

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

GLORIA JOHNSON; JOHN LOGAN,
individuals, on behalf of themselves
and all others similarly situated,

Plaintiffs-Appellees,

v.

CITY OF GRANTS PASS,

Defendant-Appellant.

Nos. 20-35752
20-35881

D.C. No. 1:18-
cv-01823-CL

ORDER AND
AMENDED
OPINION

Appeal from the United States District Court
for the District of Oregon
Mark D. Clarke, Magistrate Judge, Presiding

Argued and Submitted December 6, 2021
San Francisco, California

Filed September 28, 2022
Amended July 5, 2023

Before: Ronald M. Gould and Daniel P. Collins, Circuit
Judges, and Roslyn O. Silver, * District Judge.

* The Honorable Roslyn O. Silver, United States District Judge for the
District of Arizona, sitting by designation.

Order;
Opinion By Judge Silver;
Dissent by Judge Collins;
Statement by Judges Silver and Gould;
Statement by Judge O'Scannlain;
Statement by Judge Graber;
Dissent by Judge M. Smith;
Dissent by Judge Collins;
Dissent by Judge Bress

SUMMARY**

Civil Rights / Homelessness

The panel issued an order amending the opinion and dissent filed September 28, 2002, and reported at 50 F.4th 787; filed an amended opinion and dissent concurrently with its order; and denied a petition for rehearing en banc after a request for a vote on whether to rehear the matter en banc, and the matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration, in an action challenging City of Grants Pass ordinances which, among other things, preclude homeless persons from using a blanket, pillow, or cardboard box for protection from the elements while sleeping within City limits.

In the amended opinion, the panel affirmed in part and vacated in part the district court's summary judgment and

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

permanent injunction in favor of plaintiffs; affirmed certification pursuant to Fed. R. Civ. P. 23(b)(2), of a class of “involuntary homeless” persons; and remanded.

The five municipal ordinances, described as an “anti-sleeping” ordinance, two “anti-camping” ordinances, a “park exclusion” ordinance, and a “park exclusion appeals” ordinance, result in civil fines up to several hundred dollars per violation. Persons found to violate ordinances multiple times could be barred from all City property. If a homeless person is found on City property after receiving an exclusion order, they are subject to criminal prosecution for trespass.

The panel stated that this court’s decision in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), which held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter” served as the backdrop for this entire litigation. Pursuant to *Martin*, it is an Eighth Amendment violation to criminally punish involuntarily homeless persons for sleeping in public if there are no other public areas or appropriate shelters where those individuals can sleep.

The panel first rejected the City’s argument that the district court lacked jurisdiction because plaintiffs’ claims were moot or because plaintiffs failed to identify any relief that was within a federal court’s power to redress. The panel held that there was abundant evidence in the record establishing that homeless persons were injured by the City’s enforcement actions in the past and it was undisputed that enforcements have continued. The panel further held that the relief sought by plaintiffs, enjoining enforcement of a few municipal ordinances aimed at involuntary homeless

persons, was redressable within the limits of Article III. The death of class representative Debra Blake while the matter was on appeal did not moot the class's claims as to all challenged ordinances except possibly the anti-sleeping ordinance. The panel vacated the summary judgment as to that ordinance and remanded to allow the district court the opportunity to substitute a class representative in Blake's stead. The remaining class representatives had standing to challenge the park exclusion, criminal trespass and anti-camping ordinances.

The panel held that, based on the record in this case, the district court did not err by finding plaintiffs satisfied the requirements of Fed. R. Civ. P. 23(a) such that a class could be certified under Rule 23(b)(2). Although the City appeared to suggest that *Martin's* need for an individualized inquiry of each alleged involuntary homeless person's access to shelter defeated numerosity, commonality and typicality, the panel held that nothing in *Martin* precluded class actions. The panel held that the district court did not abuse its discretion in concluding the numerosity requirement was met; that plaintiffs' claims presented at least one question and answer common to the class; and that the class representatives' claims and defenses were typical of the class in that they were homeless persons who claimed that the City could not enforce the challenged ordinances against them when they have no shelter.

Addressing the merits, the panel affirmed the district court's ruling that the City of Grants Pass could not, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there was no other place in the City for them to go. The panel held that

Martin applied to civil citations where, as here, the civil and criminal punishments were closely intertwined.

There was no need to resolve whether the fines imposed under the anti-sleeping and anti-camping ordinances violated the Eighth Amendment’s prohibition on excessive fines because the permanent injunction would result in no class member being fined for engaging in such protected activity. Finally, the panel held that it was unnecessary to decide whether plaintiffs properly pled their procedural due process challenge to the park exclusion appeals ordinance because subsequent to the district court’s order, the City amended the ordinance.

The panel directed the district court on remand to narrow its injunction to enjoin only those portions of the anti-camping ordinances that prohibited conduct protected by *Martin* and this opinion. In particular, the district court should narrow its injunction to the anti-camping ordinances and enjoin enforcement of those ordinances only against involuntarily homeless persons for engaging in conduct necessary to protect themselves from the elements when there was no shelter space available.

Dissenting, Judge Collins stated that *Martin* seriously misconstrued the Eighth Amendment and the Supreme Court’s caselaw construing it, but even assuming that *Martin* remains good law, today’s decision—which both misreads and greatly expands *Martin*’s holding—is egregiously wrong. Although the majority’s phrasing pays lip service to the fact that the persons at issue must be “involuntarily homeless,” the majority also explicitly rejects the City’s contention that the holding of *Martin* can only be applied after an individualized inquiry of each alleged involuntary homeless person’s access to shelter. The net result, for class

certification purposes, is that any issue of individualized involuntariness is set aside and *Martin* is thereby reduced to a simplistic formula to be resolved on a classwide basis—into whether the number of homeless persons in the jurisdiction exceeds the number of available shelter beds. The majority’s analysis fails because *Martin* does not allow the individualized inquiry into involuntariness to be set aside in this way. Further, the majority opinion combines its gross misreading of *Martin*, which requires an individualized inquiry, with a flagrant disregard of settled class-certification principles pertaining to commonality under Fed. R. Civ. P. 23(a) and the requirements of Fed. R. Civ. P. 23(b). The end result of this amalgamation of error is that the majority validates the core aspects of the district court’s injunction in this case, which effectively requires the City of Grants Pass to allow all but one of its public parks to be used as homeless encampments.

In a joint statement regarding the denial of rehearing, District Judge Silver and Judge Gould wrote that Judge O’Scannlain’s statement regarding the denial of rehearing and the dissent from Judge M. Smith significantly exaggerate the holding in *Johnson v. Grants Pass*. *Grants Pass*, relying on *Martin*, holds only that governments cannot criminalize the act of sleeping with the use of rudimentary protections from the elements in some public places when a person has nowhere else to sleep. It does not establish an unrestrained right for involuntarily homeless persons to sleep anywhere they choose. Nor does it require jurisdictions to cede all public spaces to involuntarily homeless persons. Judges Silver and Gould also explained that class certification was proper, that the commonality requirement was met, that the majority applied existing Supreme Court and Ninth Circuit authority to the record

presented by the parties, and that Judge O’Scannlain greatly overstated the extent to which *Martin* and *Grants Pass* fall on one side of an existing circuit split.

Respecting the denial of rehearing en banc, Judge O’Scannlain, joined by Judges Wallace, Callahan, Bea, Ikuta, Bennett, R. Nelson, Bade, Collins, Lee, Bress, Forrest, Bumatay, and VanDyke, and with whom Judge M. Smith joins as to all parts except Part II-A, states that with this decision, this Circuit’s jurisprudence now effectively guarantees a personal federal constitutional ‘right’ for individuals to camp or to sleep on sidewalks and in parks, playgrounds, and other public places in defiance of traditional health, safety, and welfare laws—a dubious holding premised on a fanciful interpretation of the Eighth Amendment. Judge O’Scannlain writes that the *Boise* panel made no effort to ground its decision in the text, history, or tradition of the Eighth Amendment. Unfortunately, the problems created by *Boise* have now been visited upon the City of Grants Pass by the panel majority here, which has expanded *Boise*’s faulty holding to affirm an injunction effectively requiring the City to resign all but one of its public parks to be used as homeless encampments. This Circuit is the first and only federal circuit to have divined such a strange and sweeping mandate from the Cruel and Unusual Punishments Clause. The jurisprudence in this case is egregiously flawed and deeply damaging—at war with constitutional text, history, tradition, and Supreme Court precedent. And it conflicts with other circuits on a question of exceptional importance—paralyzing local communities from addressing the pressing issue of homelessness, and seizing policymaking authority that the federal system of government leaves to the democratic process.

Respecting the denial of rehearing en banc, Judge Graber agreed with the basic legal premise that the Eighth Amendment protects against criminal prosecution of the involuntary act of sleeping but stated that the injunctive relief in this case goes too far. The extension of *Martin* to classwide relief, enjoining civil statutes that may eventually lead to criminal violations but have never resulted in criminal convictions for any named plaintiff, is a step too far from the individualized inquiries inherent both in the Eighth Amendment context and in the context of injunctive relief. Even assuming that classwide injunctive relief were available against a prosecution for criminal trespass, the Eighth Amendment does not prohibit all civil remedies that could, in theory, lead to such a prosecution. In this way, *Johnson* unjustifiably expands the reach of the Eighth Amendment.

Dissenting from the denial of rehearing en banc, Judge M. Smith, joined by Judges Bennett, Bumatay, and VanDyke, and with whom Judges Ikuta, R. Nelson, Bade, Collins and Bress join as to Parts I and II, stated that *Martin* cannot be squared with the Supreme Court’s Eighth Amendment precedent; that the amendment to the original opinion is not accompanied by any downstream changes to the majority’s application of its rule to the facts or its ultimate conclusion; and that by wholly collapsing the merits into the class definition, the majority opinion certifies an impermissible “fail safe” class. Local governments are hard-pressed to find any way to regulate the adverse health and safety effects of homeless encampments without running afoul of this court’s case law—or, at a minimum, being saddled with litigation costs. Judge M. Smith states that *Martin*, particularly now that it has been supercharged by *Grants Pass*, has proven to be a runaway train that has

derailed and done substantial collateral damage to the governmental units in which it has been applied and those living therein. These cases use a misreading of Supreme Court precedent to require unelected federal judges—often on the basis of sloppy, mixed preliminary-injunction records—to act more like homelessness policy czars than as Article III judges applying a discernible rule of law.

Dissenting from the denial of rehearing en banc, Judge Collins states that the panel majority’s joint statement regarding the denial of rehearing confirms and illustrates the layers of self-contradiction that underlie its opinion in this case, and that the panel majority is wrong to suggest that a newly enacted Oregon statute regulating the application of local ordinances to homeless individuals provides another reason to not rehear this case en banc.

Dissenting from the denial of rehearing en banc, Judge Bress, joined by Judges Callahan, M. Smith, Ikuta, Bennett, R. Nelson, Miller, Bade, Lee, Forrest, Bumatay and VanDyke, states that with no mooring in the text of the Constitution, our history and traditions, or the precedent of the Supreme Court, the court has taken our national founding document and used it to enact judge-made rules governing who can sit and sleep where, rules whose ill effects are felt not merely by the States, and not merely by our cities, but block by block, building by building, doorway by doorway. Local leaders—and the people who elect them—must be allowed the latitude to address on the ground the distinctly local features of the present crisis of homelessness and lack of affordable housing. Not every challenge we face is constitutional in character. Not every problem in our country has a legal answer that judges can provide. This is one of those situations.

COUNSEL

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Angeles, and Hollywood Media District Property Owners Association.

ORDER

The Opinion filed September 28, 2022, and reported at 50 F.4th 787, is hereby amended. The amended opinion will be filed concurrently with this order.

The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc, and the matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35. Judge Watford did not participate in the deliberations or vote in this case.

Future petitions for rehearing or rehearing en banc will not be entertained in this case.

The petition for rehearing en banc is **DENIED**.

OPINION

SILVER, District Judge:

The City of Grants Pass in southern Oregon has a population of approximately 38,000. At least fifty, and perhaps as many as 600, homeless persons live in the City.¹ And the number of homeless persons outnumber the available shelter beds. In other words, homeless persons have nowhere to shelter and sleep in the City other than on the streets or in parks. Nonetheless, City ordinances preclude homeless persons from using a blanket, a pillow, or a cardboard box for protection from the elements while sleeping within the City’s limits. The ordinances result in civil fines up to several hundred dollars per violation and persons found to violate ordinances multiple times can be barred from all City property. And if a homeless person is found on City property after receiving an exclusion order, they are subject to criminal prosecution for trespass.

In September 2018, a three-judge panel issued *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), holding “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Id.* at 1048. Approximately six weeks after the initial *Martin* panel opinion, three homeless individuals filed a putative class action complaint against the City arguing a number of City ordinances were unconstitutional. The district court certified a class of “involuntarily homeless”

¹ During this litigation the parties have used different phrases when referring to this population. For simplicity, we use “homeless persons” throughout this opinion.

persons and later granted partial summary judgment in favor of the class.² After the plaintiffs voluntarily dismissed some claims not resolved at summary judgment, the district court issued a permanent injunction prohibiting enforcement against the class members of some City ordinances, at certain times, in certain places. The City now appeals, arguing this case is moot, the class should not have been certified, the claims fail on the merits, and Plaintiffs did not adequately plead one of their theories. On the material aspects of this case, the district court was right.³

² Persons are involuntarily homeless if they do not “have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free.” *See Martin*, 920 F.3d at 617 n.8. However, someone who has the financial means to obtain shelter, or someone who is staying in an emergency shelter is not involuntarily homeless. *See id.* at 617 n.8. Contrary to the City’s argument, this definition of involuntary homelessness is not the same as the definition of “homeless” found in regulations for the Department of Housing and Urban Development, 24 C.F.R. § 582.5, or the McKinney-Vento Act, 42 U.S.C. § 11434a(2), the federal law regarding the right of homeless children to a public education. For example, the McKinney-Vento Act includes as “homeless children and youths” persons who may not qualify as involuntarily homeless under *Martin*, such as children and youths “living in emergency or transitional shelters.” 42 U.S.C. § 11434a(2). Though the district court noted in part that Plaintiffs met the definition of homelessness set forth in 24 C.F.R. § 582.5, the district court also relied on the specific definition of unsheltered homeless persons set forth in the Department of Housing and Urban Development’s regulations regarding point-in-time counts: “persons who are living in a place not designed or ordinarily used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons.” 24 C.F.R. § 578.7(c)(2)(i).

³ Our dissenting colleague’s strong disagreement with the majority largely arises from his disapproval of *Martin*. *See, e.g.*, Dissent 56 (“Even assuming *Martin* remains good law . . .”); Dissent 90 (“ . . . and the gravity of *Martin*’s errors.”); Dissent 92 (claiming, without evidence,

I.

This case involves challenges to five provisions of the Grants Pass Municipal Code (“GPMC”). The provisions can be described as an “anti-sleeping” ordinance, two “anti-camping” ordinances, a “park exclusion” ordinance, and a “park exclusion appeals” ordinance. When the district court entered judgment, the various ordinances consisted of the following.

First, the anti-sleeping ordinance stated, in full

Sleeping on Sidewalks, Streets, Alleys, or Within Doorways Prohibited

A. No person may sleep on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety.

B. No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.

C. In addition to any other remedy provided by law, any person found in violation of this section may be immediately removed from the premises.

GPMC 5.61.020. A violation of this ordinance resulted in a presumptive \$75 fine. If unpaid, that fine escalated to \$160. If a violator pled guilty, the fines could be reduced by a state

that “it is hard to deny that *Martin* has ‘generate[d] dire practical consequences”) (modification in original and citation omitted). But *Martin* is controlling law in the Ninth Circuit, to which we are required to adhere.

circuit court judge to \$35 for a first offense and \$50 for a second offense. GPMC 1.36.010(K).

Next, the general anti-camping ordinance prohibited persons from occupying a “campsite” on all public property, such as parks, benches, or rights of way. GPMC 5.61.030. The term “campsite” was defined as

any place where bedding, sleeping bag, or other material used for bedding purposes, or any stove or fire is placed, established, or maintained for the purpose of maintaining a temporary place to live, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

GPMC 5.61.010. A second overlapping anti-camping ordinance prohibited camping in public parks, including “[o]vernight parking” of any vehicle. GPMC 6.46.090. A homeless individual would violate this parking prohibition if she parked or left “a vehicle parked for two consecutive hours [in a City park] . . . between the hours of midnight and 6:00 a.m.” *Id.* Violations of either anti-camping ordinance resulted in a fine of \$295. If unpaid, the fine escalated to \$537.60. However, if a violator pled guilty, the fine could be reduced to \$180 for a first offense and \$225 for a second offense. GPMC 1.36.010(J).

Finally, the “park exclusion” ordinance allowed a police officer to bar an individual from all city parks for 30 days if, within one year, the individual was issued two or more citations for violating park regulations. GPMC 6.46.350(A). Pursuant to the “park exclusion appeals” ordinance, exclusion orders could be appealed to the City Council.

GPMC 6.46.355. If an individual received a “park exclusion” order, but subsequently was found in a city park, that individual would be prosecuted for criminal trespass.

Since at least 2013, City leaders have viewed homeless persons as cause for substantial concern. That year the City Council convened a Community Roundtable (“Roundtable”) “to identify solutions to current vagrancy problems.” Participants discussed the possibility of “driving repeat offenders out of town and leaving them there.” The City’s Public Safety Director noted police officers had bought homeless persons bus tickets out of town, only to have the person returned to the City from the location where they were sent. A city councilor made clear the City’s goal should be “to make it uncomfortable enough for [homeless persons] in our city so they will want to move on down the road.” The planned actions resulting from the Roundtable included increased enforcement of City ordinances, including the anti-camping ordinances.

The year following the Roundtable saw a significant increase in enforcement of the City’s anti-sleeping and anti-camping ordinances. From 2013 through 2018, the City issued a steady stream of tickets under the ordinances.⁴ On September 4, 2018, a three-judge panel issued its opinion in

⁴ The City issued the following number of tickets under the anti-sleeping and anti-camping ordinances:

- 2013: 74 total tickets
- 2014: 228 total tickets
- 2015: 80 total tickets
- 2016: 47 total tickets
- 2017: 99 total tickets
- 2018: 46 total tickets

Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018).⁵ That case served as the backdrop for this entire litigation.

In *Martin*, six homeless or recently homeless individuals sued the city of Boise, Idaho, seeking relief from criminal prosecution under two city ordinances related to public camping. *Martin*, 920 F.3d at 603-04. As relevant here, *Martin* held the Cruel and Unusual Punishment Clause of the “Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Id.* at 616. *Martin* made clear, however, that a city is not required to “provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.” *Id.* at 617 (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007)) (omission in original).

⁵ Following the opinion, the City of Boise petitioned for rehearing en banc. On April 1, 2019, an amended panel opinion was issued and the petition for rehearing was denied. Judge M. Smith, joined by five other judges, dissented from the denial of rehearing en banc. He argued the three-judge panel had, among other errors, misinterpreted the Supreme Court precedents regarding the criminalization of involuntary conduct. *Martin*, 920 F.3d at 591-92 (M. Smith, J., dissenting from denial of rehearing en banc). Judge Bennett, joined by four judges, also dissented from the denial of rehearing en banc. Judge Bennett argued the three-judge panel’s opinion was inconsistent with the original public meaning of the Cruel and Unusual Punishment Clause. *Id.* at 599 (Bennett, J., dissenting from denial of rehearing en banc). The merits of those dissents do not alter the binding nature of the amended *Martin* panel opinion. Unless otherwise indicated, all citations to *Martin* throughout the remainder of this opinion are to the amended panel opinion.

Pursuant to *Martin*, it is an Eighth Amendment violation to criminally punish involuntarily homeless persons for sleeping in public if there are no other public areas or appropriate shelters where those individuals can sleep. *Id.* at 617 n.8 (“Naturally, our holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.”). When assessing the number of shelter spaces, *Martin* held shelters with a “mandatory religious focus” could not be counted as available due to potential violations of the First Amendment’s Establishment Clause. *Id.* at 609-10 (citing *Inouye v. Kemna*, 504 F.3d 705, 712-13 (9th Cir. 2007)).

In October 2018, approximately six weeks after the *Martin* opinion, Debra Blake filed her putative class action complaint against the City. The complaint alleged enforcement of the City’s anti-sleeping and anti-camping ordinances violated the Cruel and Unusual Punishment Clause of the Eighth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Due Process Clause of the Fourteenth Amendment. The complaint was amended to include additional named plaintiffs and to allege a claim that the fines imposed under the ordinances violated the Excessive Fines Clause of the Eighth Amendment. On January 2, 2019, a few months after the initial complaint was filed, and before Plaintiffs filed their class certification motion, the City amended its anti-camping ordinance in an attempt to come into compliance with *Martin*. Prior to this change, the anti-camping ordinance was worded such that “‘sleeping’ in parks . . . automatically constitut[ed] ‘camping.’” According to the City, “in direct response to *Martin v. Boise*, the City amended [the anti-camping

ordinance] to make it clear that the act of ‘sleeping’ was to be distinguished from the prohibited conduct of ‘camping.’” The City meant to “make it clear that those without shelter *could* engage in the involuntary acts of sleeping or resting in the City’s parks.” Shortly after the City removed “sleeping” from the “camping” definition, Plaintiffs moved to certify a class. Plaintiffs requested certification of a class defined as

All involuntarily homeless individuals living in Grants Pass, Oregon, including homeless individuals who sometimes sleep outside city limits to avoid harassment and punishment by [the City] as addressed in this lawsuit.

Plaintiffs’ class certification motion was accompanied by a declaration from the Chief Operating Officer and Director of Housing and Homeless Services for United Community Action Network (“UCAN”), a non-profit organization that serves homeless people in Josephine County, the county where the City is located.⁶ UCAN had recently conducted a “point-in-time count of homeless individuals in Josephine County.”⁷ Based on that count, the Chief Operating

⁶ The Department of Housing and Urban Development regulations impose obligations on the “continuum of care,” which is defined as “the group composed of representatives of relevant organizations . . . that are organized to plan for and provide, as necessary, a system of outreach, engagement, and assessment . . . to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area.” 24 C.F.R. § 576.2.

⁷ As the “continuum of care” in the City, UCAN was required to conduct point-in-time counts (“PIT counts”) of homeless persons within that geographic area. 24 C.F.R. § 578.7(c)(2). PIT counts measure the number of sheltered and unsheltered homeless individuals on a single night. 24 C.F.R. § 578.7(c)(2). The *Martin* court relied on PIT counts

Officer's declaration stated "[h]undreds of [homeless] people live in Grants Pass," and "almost all of the homeless people in Grants Pass are involuntarily homeless. There is simply no place in Grants Pass for them to find affordable housing or shelter. They are not choosing to live on the street or in the woods."

The City opposed class certification, arguing Plaintiffs had not provided sufficient evidence to meet any of the requirements for certifying a class. The district court disagreed and certified the class proposed by Plaintiffs. The parties proceeded with discovery and filed cross-motions for summary judgment.

At the time the parties filed their summary judgment motions, there were only four locations in the City that temporarily housed homeless persons, which proved inadequate. One location was run by the Gospel Rescue Mission, an explicitly religious organization devoted to helping the poor. The Gospel Rescue Mission operated a facility for single men without children, and another facility for women, including women with children. These two facilities required residents to work at the mission six hours a day, six days a week in exchange for a bunk for 30 days. Residents were required to attend an approved place of worship each Sunday and that place of worship had to espouse "traditional Christian teachings such as the Apostles Creed." Disabled persons with chronic medical or mental

conducted by local non-profits to determine the number of homeless people in the jurisdiction. *See Martin*, 920 F.3d at 604. Courts and experts note that PIT counts routinely undercount homeless persons, but they appear to be the best available source of data on homelessness. *See, e.g., id.*

health issues that prevented them from complying with the Mission’s rules were prohibited.⁸

In addition to the Gospel Rescue Mission, the City itself operated a “sobering center” where law enforcement could transport intoxicated or impaired persons. That facility consisted of twelve locked rooms with toilets where intoxicated individuals could sober up. The rooms did not have beds. The City also provided financial support to the Hearts with a Mission Youth Shelter, an 18-bed facility where unaccompanied minors aged 10 to 17 could stay for up to 72 hours, and could stay even longer if they had parental consent.

Finally, on nights when the temperature was below 30 degrees (or below 32 degrees with snow), UCAN operated a “warming center” capable of holding up to 40 individuals. That center did not provide beds. The center reached capacity on every night it operated except the first night it opened, February 3, 2020. Between February 3 and March 19, 2020, the warming center was open for 16 nights. The center did not open at all during the winter of 2020-2021.

Presented with evidence of the number of homeless persons and the shelter spaces available, the district court concluded “[t]he record is undisputed that Grants Pass has far more homeless individuals than it has practically available shelter beds.” The court then held that, based on the unavailability of shelter beds, the City’s enforcement of its anti-camping and anti-sleeping ordinances violated the

⁸ Multiple class members submitted uncontested declarations to the district court stating they did not stay at the Gospel Rescue Mission because they suffer from disqualifying disabilities and/or were unwilling to attend church.

Cruel and Unusual Punishment Clause. The fact that *Martin* involved criminal violations while the present case involved initial civil violations that matured into criminal violations made “no difference for Eight Amendment purposes.” Next, the court held the system of fines violated the Eighth Amendment’s Excessive Fines Clause.⁹ Finally, the court held the appeals process for park exclusions violated procedural due process under the Due Process Clause of the Fourteenth Amendment.

In reaching its decision the district court was careful to point out that, consistent with *Martin*, the scope of its decision was limited. The court’s order made clear that the City was not required to provide shelter for homeless persons and the City could still limit camping or sleeping at certain times and in certain places. The district court also noted the City may still “ban the use of tents in public parks,” “limi[t] the amount of bedding type materials allowed per individual,” and pursue other options “to prevent the

⁹ Part of the City’s argument on this issue was that the fines are not mandatory because state court judges retain discretion not to impose fines. This is inconsistent with the text of the ordinances and not supported by the record. The provision of the municipal code defining penalties for ordinance violations clarifies that the fines are mandatory. It provides, the fines “shall be \$295” and “shall be \$75.” GPMC 1.36.010(J)-(K) (emphasis added). Conversely, it is only discretionary to reduce fines because the relevant ordinance provides that, “[u]pon a plea of guilty . . . the penalty may be reduced” to the amount listed for a first or second offense. *Id.* (emphasis added). After a second citation, there is no authority within the municipal code that permits judges to reduce fines, and there is no evidence in the record demonstrating circuit court judges have reduced fines except pursuant to GPMC 1.36.010.

erection of encampments that cause public health and safety concerns.”¹⁰

Approximately one month after the summary judgment order, the district court issued a judgment which included a permanent injunction that provided a complicated mix of relief. First, the district court declared the ordinance regarding the appeals of park exclusions failed to provide “adequate procedural due process,” but that ordinance was not permanently enjoined. Instead, the district court enjoined only the enforcement of the underlying park exclusion ordinance. Next, the district court declared enforcement of the anti-sleeping and anti-camping ordinances against class members “violates the Eighth Amendment prohibition against cruel and unusual punishment” and “violates the Eighth Amendment prohibition against excessive fines.” Without explanation, however, the district court did not enjoin those ordinances in their entirety. Rather, the district court entered no injunctive relief regarding the anti-sleeping ordinance. But the district court permanently enjoined enforcement of the anti-camping ordinances, as well as an ordinance regarding “criminal trespassing on city property related to parks,” in all City parks at night except for one park where the parties agreed the injunction need not apply.¹¹ The district court also permanently enjoined enforcement of the anti-camping ordinances during daytime hours unless an initial warning was given “at least 24 hours before enforcement.”

¹⁰ The district court denied summary judgment on other claims brought by Plaintiffs. Those claims were subsequently voluntarily dismissed.

¹¹ The City ordinance regarding “criminal trespass” was never at issue in the litigation until the permanent injunction. Plaintiffs explain it was included in the injunction “[b]y agreement of the parties.”

Accordingly, under the permanent injunction, the anti-camping ordinances may be enforced under some circumstances during the day, but never at night.

The City appealed and sought initial en banc review to clarify the scope of *Martin*. The petition for initial hearing en banc was denied.

II.

The core issue involving enforcement of the anti-camping ordinances is governed in large part by *Martin*. While there are some differences between *Martin* and the present case, the City has not identified a persuasive way to differentiate its anti-camping ordinances from the questioned ordinances in *Martin*. Therefore, the district court's ruling that the Cruel and Unusual Punishment Clause bars enforcement of the anti-camping ordinances will be mostly affirmed. We need not address the potential excessiveness of the fines issue or whether Plaintiffs adequately pled their due process challenge.

Our analysis proceeds in five parts. First, we reject the City's argument that the district court lacked jurisdiction.¹² Second, we find no abuse of discretion in the district court's certification of a class of involuntarily homeless persons. Third, we agree with the district court that at least portions of the anti-camping ordinance violate the Cruel and Unusual Punishment clause under *Martin*. Fourth, we conclude there is no need to resolve whether the fines violate the Excessive

¹² However, we vacate summary judgment and remand as to the anti-sleeping ordinance to afford the district court the opportunity to substitute a class representative in place of Debra Blake, who passed away while this matter was on appeal.

Fines clause. Fifth, we hold it is unnecessary to decide Plaintiffs' procedural due process claim.

A.

Standing and mootness are questions of law that we review de novo. *Hartman v. Summers*, 120 F.3d 157, 159 (9th Cir. 1997); *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003). “Federal courts must determine that they have jurisdiction before proceeding to the merits,” and plaintiffs must demonstrate standing as a necessary component of jurisdiction. *Lance v. Coffman*, 549 U.S. 437, 439 (2007). To have Article III standing, a plaintiff must show (1) a concrete and particularized injury, (2) caused by the challenged conduct, (3) that is likely redressable by a favorable judicial decision. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000). For purposes of injunctive relief, “[a]bstract injury is not enough”—the plaintiff must have sustained or be in immediate danger “of sustaining some direct injury as the result of the challenged” law. *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974) (quotation marks and citation omitted).

The City’s appellate briefing makes two standing arguments. First, the City argues Plaintiffs’ claims are now moot because Plaintiffs no longer face a risk of injury based on the City’s changed behavior after *Martin*. Second, the City argues Plaintiffs have not identified any relief that is within a federal court’s power to redress. Both arguments are without merit.

A claim becomes moot, and no longer justiciable in federal court, if it has been remedied independent of the court. *See Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013). There is abundant evidence in the record establishing homeless persons were injured by the City’s

enforcement actions in the past. The City argues, however, that it made changes after *Martin* such that there is no longer a threat of future injury. The problem for the City is that voluntary cessation of challenged practices rarely suffices to moot a case and, in any event, there is evidence the challenged practices have continued after *Martin*.

“It is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.’” *Friends of the Earth*, 528 U.S. at 189 (quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982)). This is so “because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed.” *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307 (2012). Thus, the City “bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 190. Instead of the City making it “absolutely clear” it has stopped enforcement activities, the record shows ongoing enforcement.

The parties diverge substantially on how to characterize the degree of enforcement after *Martin* was issued in September 2018. The City argued in its briefing and at oral argument that it has largely complied with *Martin*, noting the 2019 amendment to an anti-camping ordinance, that citations were issued “sparingly” in 2019, and in particular it says it issued only two citations during the late evening and early morning since *Martin*. The City supports its petition with a declaration from a City police officer stating “[i]t is the regular practice of every officer I know of on this department to enforce these Ordinances sparingly and in recognition of the different circumstances we encounter.”

As for Plaintiffs, they offered evidence showing enforcement continued after *Martin* such that class members received citations and exclusion orders for camping or sleeping and were prosecuted for criminal trespass between the point the lawsuit was filed and the close of discovery.

Although the record does show the rate of enforcement of the various ordinances decreased since *Martin*, even accepting the City's position the evidence is undisputed that enforcement continued.¹³ It is plainly inaccurate for the City to claim all enforcement ceased. The ongoing enforcement activities establish the City did not meet its "formidable burden" of showing the challenged activities will not recur. *Friends of the Earth*, 528 U.S. at 190. The City's mootness argument fails.¹⁴

¹³ The City also argues "there was no evidence that anyone was ever cited for the simple act of sleeping in a City park" after *Martin*. But the citation issued to Dolores Nevin in late December 2019 pursuant to the City's "criminal trespass" ordinance included a narrative explaining, "[d]uring an area check of Riverside Park, Dolores Nevin was found *sleeping* during closed hours. Nevin, who has been warned in the past, was issued a citation for Trespass on City Property." (emphasis added). And on September 11, 2019, Grants Pass Police Officer Jason McGinnis issued citations to Debra Blake and Carla Thomas for being in Riverside Park at approximately 7:30 a.m. with sleeping bags and belongings spread around themselves. The citation given to Debra Blake, a named plaintiff, identified the offense as "Criminal Trespass on City Property." Debra Blake was later convicted of that offense and fined. Other individuals cited for camping in a city park in 2019 include class members: Gail Laine, William Stroh, Dawn Schmidt, Cristina Trejo, Kellie Parker, Colleen Bannon, Amanda Sirmio, and Michael and Louana Ellis.

¹⁴ Mootness was also considered during the *Martin* litigation. See *Bell v. City of Boise*, 709 F.3d 890, 898, 900-01 (9th Cir. 2013). The City of Boise argued that a combination of an amended definition of "camping"

The City’s other jurisdictional argument is that Plaintiffs’ claims are not redressable. According to the City, any possible relief intrudes inappropriately upon matters of policy best left to executive and legislative discretion. We disagree. Consistent with *Martin*, the district court granted limited relief enjoining enforcement of a few municipal ordinances at certain times, in certain places, against certain persons. None of the cases cited by the City credibly support its argument that the district court injunction overstepped the judiciary’s limited authority under the Constitution. Contrary to the City’s position, enjoining enforcement of a few municipal ordinances aimed at involuntarily homeless persons cannot credibly be compared to an injunction seeking to require the federal government to “phase out fossil fuel emissions and draw down excess atmospheric CO2.” *Juliana v. United States*, 947 F.3d 1159, 1164-65 (9th Cir. 2020). The relief sought by Plaintiffs was redressable within the limits of Article III. *See Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012) (holding a plaintiff’s burden to demonstrate redressability is “relatively modest”) (citation omitted).

in the ordinance and a “Special Order,” prohibiting police officers from enforcing the ordinances when a person is on public property and there is no available overnight shelter, mooted the case. *Id.* at 894-95. We rejected the argument that the change to the definition of “camping” rendered the case moot because “[m]ere clarification of the Camping Ordinance does not address the central concerns of the Plaintiffs’ Eighth Amendment claims”—that the ordinance “effectively criminalized their status as homeless individuals.” *Id.* at 898 n.12. And we held the adoption of a “Special Order” did not moot the case because the Special Order was not a legislative enactment, and as such it “could be easily abandoned or altered in the future.” *Id.* at 901.

Finally, we raise *sua sponte* the possibility that the death of class representative Debra Blake while this matter was on the appeal has jurisdictional significance. *Cf. Fort Bend Cty. v. Davis*, 139 S.Ct. 1843, 1849 (2019) (holding courts must raise issues of subject matter jurisdiction *sua sponte*). We hold Blake’s death does not moot the class’s claims as to all challenged ordinances except possibly the anti-sleeping ordinance. As to that ordinance, we remand to allow the district court the opportunity to substitute a class representative in Blake’s stead.

With respect to the park exclusion, criminal trespass, and anti-camping ordinances, the surviving class representatives, Gloria Johnson¹⁵ and John Logan,¹⁶ have standing in their

¹⁵ The dissent suggests Gloria Johnson does not have standing to challenge the park exclusion and criminal trespass ordinances. Dissent 71-72. The dissent concedes, however, Johnson has standing to challenge the anti-camping ordinances, GPMC 5.61.030, 6.46.090. But the dissent does not provide a meaningful explanation why it draws this distinction between the ordinances that work in concert. It is true Johnson has not received a park exclusion order and has not been charged with criminal trespass in the second degree. However, there is little doubt that her continued camping in parks would lead to a park exclusion order and, eventually, criminal trespass charges. Johnson is positioned to bring a pre-enforcement challenge against the park exclusion and criminal trespass ordinances, because they will be used against her given the undisputed fact that she remains involuntarily homeless in Grants Pass. She established a credible threat of future enforcement under the anti-camping ordinances which creates a credible threat of future enforcement under the park exclusion and criminal trespass ordinances.

¹⁶ The dissent claims John Logan has not established standing. Dissent 69-71. During the course of this case, Logan submitted two declarations. At the class certification stage, his declaration stated he “lived out of [his] truck on the streets in Grants Pass for about 4 years.” During that time, he was “awakened by City of Grants Pass police officer and told that I cannot sleep in my truck anywhere in the city and ordered to move

own right. Although they live in their cars, they risk enforcement under all the same ordinances as Blake and the class (with the exception of the anti-sleeping ordinance, GPMC 5.61.020, which cannot be violated by sleeping in a car) and have standing in their own right as to all ordinances except GPMC 5.61.020.

on.” To avoid those encounters, Logan “usually sleep[s] in [his] truck just outside the Grants Pass city limits.” However, Logan stated “[i]f there was some place in the city where [he] could legally sleep in [his] truck, [he] would because it would save valuable gas money and avoid . . . having to constantly move.” Logan also explained he has “met dozens, if not hundreds, of homeless people in Grants Pass” over the years who had been ticketed, fined, arrested, and criminally prosecuted “for living outside.” At summary judgment, Logan submitted a declaration stating he is “currently involuntarily homeless in Grants Pass and sleeping in [his] truck at night at a rest stop North of Grants Pass.” He stated he “cannot sleep in the City of Grants Pass for fear that [he] will be awakened, ticketed, fined, moved along, trespassed and charged with Criminal Trespass.” The dissent reads this evidence as indicating Logan failed to “provide[] any facts to establish” that he is likely to be issued a citation under the challenged ordinances. Dissent 70. We do not agree. The undisputed facts establish Logan is involuntarily homeless. When he slept in Grants Pass, he was awoken by police officers and ordered to move. His personal knowledge was that involuntarily homeless individuals in Grants Pass often are cited under the challenged ordinances and Grants Pass continues to enforce the challenged ordinances. And, but for the challenged ordinances, Logan would sleep in the city. Therefore, as the district court found, it is sufficiently likely Logan would be issued a citation that Logan’s standing is established. That is especially true given the Supreme Court’s instruction that a plaintiff need not wait for “an actual arrest, prosecution, or other enforcement action” before “challenging [a] law.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Finally, even if Logan had not demonstrated standing, the dissent’s analysis regarding Logan is irrelevant because this case could proceed solely based on the standing established by Gloria Johnson and the class. *See Bates v. United Parcel Serv., Inc.*, 511 F.3d at 985 (9th Cir. 2007) (en banc).

With respect to the anti-sleeping ordinance, the law is less clear. Debra Blake is the only class representative who had standing in her own right to challenge the anti-sleeping ordinance. Under cases such as *Sosna v. Iowa*, 419 U.S. 393, 401 (1975), and *Franks v. Bowman Transportation Co., Inc.*, 424 U.S. 747 (1976), a class representative may pursue the live claims of a properly certified class—without the need to remand for substitution of a new representative¹⁷—even after his own claims become moot, provided that several requirements are met.¹⁸ See *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 987-88 (9th Cir. 2007) (en banc). If Debra Blake’s challenge to the anti-sleeping ordinance became moot before she passed away, she could have continued to pursue the challenge on behalf of the class under the doctrine of *Sosna*. But we have not found any case applying *Sosna* and *Franks* to a situation such as this, in

¹⁷ See *Sosna*, 419 U.S. at 403 (“[W]e believe that the test of Rule 23(a) is met.”); *id.* at 416-17 (White, J., dissenting) (“It is claimed that the certified class supplies the necessary adverse parties for a continuing case or controversy . . . The Court cites no authority for this retrospective decision as to the adequacy of representation which seems to focus on the competence of counsel rather than a party plaintiff who is a representative member of the class. At the very least, the case should be remanded to the District Court.”).

¹⁸ The class must be properly certified, see *Franks*, 424 U.S. at 755-56, or the representative must be appealing denial of class certification. See *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 404 (1980). The class representative must be a member of the class with standing to sue at the time certification is granted or denied. See *Sosna*, 419 U.S. at 403. The unnamed class members must still have a live interest in the matter throughout the duration of the litigation. See *Franks*, 424 U.S. at 755. And the court must be satisfied that the named representative will adequately pursue the interests of the class even though their own interest has expired. See *Sosna*, 419 U.S. at 403.

which the death of a representative causes a class to be unrepresented as to part (but not all) of a claim. The parties did not brief this issue and no precedent indicates whether this raises a jurisdictional question, which would deprive us of authority to review the merits of the anti-sleeping ordinance challenge, or a matter of Federal Rule of Civil Procedure 23, which might not.

Because Plaintiffs have not moved to substitute a class representative pursuant to Federal Rule of Appellate Procedure 43(a) or identified a representative who could be substituted, because no party has addressed this question in briefing, and because we are not certain of our jurisdiction to consider the challenge to the anti-sleeping ordinance, we think it appropriate to vacate summary judgment as to the anti-sleeping ordinance and remand to determine whether a substitute representative is available as to that challenge alone. *See Cobell v. Jewell*, 802 F.3d 12, 23-24 (D.C. Cir. 2015) (discussing substitution of a party during appeal). Substitution of a class representative may significantly aid in the resolution of the issues in this case. Remand will not cause significant delay because, as we explain below, remand is otherwise required so that the injunction can be modified. In the absence of briefing or precedent regarding this question, we do not decide whether this limitation is jurisdictional or whether it arises from operation of Rule 23.

We therefore hold the surviving class representatives at a minimum have standing to challenge every ordinance except the anti-sleeping ordinance. As to the anti-sleeping ordinance, we vacate summary judgment and remand for the district court to consider in the first instance whether an adequate class representative, such as class member Dolores Nevin, exists who may be substituted.

B.

The City's next argument is the district court erred in certifying the class. We "review a district court's order granting class certification for abuse of discretion, but give the district court 'noticeably more deference when reviewing a grant of class certification than when reviewing a denial.'" *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1275 (9th Cir. 2019) (internal citation omitted) (quoting *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1115 (9th Cir. 2017)). Factual findings underlying class certification are reviewed for clear error. *Parsons v. Ryan*, 754 F.3d 657, 673 (9th Cir. 2014).

A member of a class may sue as a representative party if the member satisfies Federal Rule of Civil Procedure 23(a)'s four prerequisites: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a); *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012). Assessing these requirements involves "rigorous analysis" of the evidence. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011) (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982)).

If the initial requirements of Rule 23(a) are met, a putative class representative must also show the class falls into one of three categories under Rule 23(b). Plaintiffs brought this suit under Rule 23(b)(2), seeking injunctive or declaratory relief based on the City having "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

The district court found the Rule 23(a) requirements satisfied and certified a class under Rule 23(b)(2). The City's arguments against this class certification are obscure.

It appears the City's argument is that class certification was an abuse of discretion because the holding of *Martin* can only be applied after an individualized inquiry of each alleged involuntarily homeless person's access to shelter.¹⁹ The City appears to suggest the need for individualized inquiry defeats numerosity, commonality, and typicality. While we acknowledge the *Martin* litigation was not a class action, nothing in that decision precluded class actions.²⁰ And based on the record in this case, the district court did not err by finding Plaintiffs satisfied the requirements of Rule 23 such that a class could be certified.

To satisfy the numerosity requirement a proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). For purposes of this requirement, "'impracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (quotation omitted). There is no specific number of class members required. See *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). However, proposed

¹⁹ There is no reason to believe the putative class members are voluntarily homeless. To the contrary, at least 13 class members submitted declarations to the district court indicating that they are involuntarily homeless.

²⁰ Other courts have certified similar classes. See e.g., *Lehr v. City of Sacramento*, 259 F.R.D. 479 (E.D. Cal. 2009) (addressing numerosity, commonality, and typicality for homeless persons in Sacramento); *Joyce v. City & Cty. of S.F.*, 1994 WL 443464 (N.D. Cal. Aug. 4, 1994), *dismissed as moot*, 87 F.3d 1320 (9th Cir. 1996) (finding typicality despite some differences among homeless class members); *Pottinger v. City of Miami*, 720 F.Supp. 955, 960 (S.D. Fla. 1989) (certifying a class of homeless persons).

classes of less than fifteen are too small while classes of more than sixty are sufficiently large. *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042, 1051-52 (9th Cir. 2003).

When the district court certified the class on August 7, 2019, it found there were at least 600 homeless persons in the City based on the 2018 and 2019 PIT counts conducted by UCAN. The City does not identify how this finding was clearly erroneous. In fact, the City affirmatively indicated to Plaintiffs prior to the class certification order that the number of homeless persons residing in Grants Pass for the past 7 years was “unknown.” Further, the only guidance offered by the City regarding a specific number of class members came long after the class was certified. A City police officer claimed in a declaration that he was “aware of less than fifty individuals total who do not have access to any shelter” in the City. The officer admitted, however, it “would be extremely difficult to accurately estimate the population of people who are homeless in Grants Pass regardless of the definition used.”

The officer’s guess of “less than fifty” homeless persons is inconsistent with the general understanding that PIT counts routinely undercount homeless persons. *See Martin*, 920 F.3d at 604 (“It is widely recognized that a one-night point in time count will undercount the homeless population.”) (internal quotation marks omitted). But even accepting the officer’s assessment that there were approximately fifty homeless persons in the City, the numerosity requirement is satisfied. Joining approximately fifty persons might be impracticable and especially so under the facts here because homeless persons obviously lack a fixed address and likely have no reliable means of

communications.²¹ At the very least, the district court did not abuse its discretion in concluding the numerosity requirement was met.

A class satisfies Rule 23’s commonality requirement if there is at least one question of fact or law common to the class. *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013). The Supreme Court has said the word “question” in Rule 23(a)(2) is a misnomer: “What matters to class certification . . . is not the raising of common ‘questions’—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to

²¹ Moreover, there is a well-documented correlation between physical and mental illness and homelessness. See, e.g., Sara K. Rankin, *Punishing Homelessness*, 22 N. CRIM. L. REV. 99, 105 (2019) (“Psychiatric disorders affect at least 30 to 40 percent of all people experiencing homelessness.”); Stefan Gutwinski et al., *The prevalence of mental disorders among homeless people in high-income countries: An updated systematic review and meta-regression analysis*, 18(8) PLOS MED. 1, 14 (Aug. 23, 2021), (“Our third main finding was high prevalence rates for treatable mental illnesses, with 1 in 8 homeless individuals having either major depression (12.6%) or schizophrenia spectrum disorders (12.4%). This represents a high rate of schizophrenia spectrum disorders among homeless people, and a very large excess compared to the 12-month prevalence in the general population, which for schizophrenia is estimated around 0.7% in high-income countries.”); Greg A. Greenberg & Robert A. Rosenheck, *Jail Incarceration, Homelessness, and Mental Health: A National Study*, 59 PSYCHIATRIC SERVS. 170, 170 (2008) (“Homeless individuals may also be more likely to have health conditions . . . Severe mental illness is also more prevalent among homeless people than in the general population.”); CTR. FOR DISEASE CONTROL & PREVENTION, *HOMELESSNESS AS A PUBLIC HEALTH LAW ISSUE: SELECTED RESOURCES* (Mar. 2, 2017) (“Homelessness is closely connected to declines in physical and mental health; homeless persons experience high rates of health problems such as HIV infection, alcohol and drug abuse, mental illness, tuberculosis, and other conditions.”).

drive the resolution of the litigation.” *Wal-Mart*, 564 U.S. at 350 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)) (emphasis and omission in original). “[C]lass members’ claims [must] ‘depend upon a common contention’ such that ‘determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke.’” *Mazza*, 666 F.3d at 588 (quoting *Wal-Mart*, 564 U.S. at 350).

As correctly identified by the district court, Plaintiffs’ claims present at least one question and answer common to the class: “whether [the City’s] custom, pattern, and practice of enforcing anti-camping ordinances, anti-sleeping ordinances, and criminal trespass laws . . . against involuntarily homeless individuals violates the Eighth Amendment of the Constitution.” An answer on this question resolved a crucial aspect of the claims shared by all class members.

The City argues the commonality requirement was not met because some class members might have alternative options for housing, or might have the means to acquire their own shelter.²² But this argument misunderstands the class

²² The dissent adapts the City’s argument that enforcement of the anti-camping ordinances depends on individual circumstances and is therefore not capable of resolution on a common basis. Dissent 77-79. That misunderstands how the present class was structured. The dissent attempts to reframe the common question as a very general inquiry. It appears the dissent interprets the question whether an Eighth Amendment violation must be determined by an individualized inquiry as whether each individual is “involuntarily homeless.” To assess that, a court would have to conduct an individualized inquiry and determine if an individual was “involuntarily homeless.” But that is not the common question in this case. Rather, the question is whether the City’s enforcement of the anti-camping ordinances against all involuntarily homeless individuals violates the Eighth Amendment. This question is

definition. Pursuant to the class definition, the class includes only *involuntarily* homeless persons.²³ Individuals who have shelter or the means to acquire their own shelter simply

capable of common resolution on a prospective class-wide basis, as the record establishes.

²³ The dissent argues this created a prohibited “fail safe” class. That is erroneous. As noted in a recent en banc decision, “a ‘fail safe’ class . . . is defined to include only those individuals who were injured by the allegedly unlawful conduct.” *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 n.14 (9th Cir. 2022) (en banc). Such classes are prohibited “because a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment.” *Id.* See also *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1138 (9th Cir. 2016) (noting a fail safe class “is one that is defined so narrowly as to preclude[] membership unless the liability of the defendant is established”). No such class is present here. The class was defined, in relevant part, as “[a]ll involuntarily homeless individuals living in Grants Pass.” Membership in that class has no connection to the success of the underlying claims. Put differently, the class would have consisted of exactly the same population whether Grants Pass won or lost on the merits. The obvious illustration of this is the class population would not change if a court determined the anti-camping ordinance violated the Eighth Amendment while the anti-sleeping ordinance did not. In that situation, class members would not be “defined out of the class.” *Olean*, 31 F.4th at 669 n.14 (citation omitted). Rather, class members would be “bound by the judgment” regarding the anti-sleeping ordinance. *Id.* In any event, the dissent’s concerns regarding individualized determinations are best made when the City attempts to enforce its ordinances. Cf. *McArdle v. City of Ocala*, 519 F.Supp.3d 1045, 1052 (M.D. Fla. 2021) (requiring that officers inquire into the availability of shelter space before an arrest could be made for violation of the City’s “open lodging” ordinance). If it is determined at the enforcement stage that a homeless individual has access to shelter, then they do not benefit from the injunction and may be cited or prosecuted under the anti-camping ordinances. Moreover, as we noted above, several classes of homeless individuals have been certified in the past. See *supra* note 20.

are never class members.²⁴ Because we find there existed at least one question of law or fact common to the class, the district court did not abuse its discretion in concluding commonality was satisfied.

Typicality asks whether “the claims or defenses of the representative parties are typical” of the class. Fed. R. Civ. P. 23(a)(3). Typicality is a “permissive standard[.]” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (citation omitted). It “refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.” *Parsons*, 754 F.3d at 685 (citation omitted).

The class representatives’ claims and defenses are typical of the class in that they are homeless persons who claim that the City cannot enforce the challenged ordinances against them when they have no shelter. The defenses that apply to class representatives and class members are identical. The claims of class representatives and class members are similar, except that some class representatives live in vehicles while other class members may live on streets or in parks, not vehicles. This does not defeat typicality. The class representatives with vehicles may violate the challenged ordinances in a different manner than some class members—*i.e.*, by sleeping in their vehicle, rather than on the ground. But they challenge the same ordinances under the same constitutional provisions as other

²⁴ We do not, as the dissent contends, “suggest[] that the class definition requires only an involuntary lack of access to regular or permanent shelter to qualify as ‘involuntarily homeless.’” Dissent 84. It is unclear where the dissent finds this in the opinion. To be clear: A person with access to temporary shelter is not involuntarily homeless unless and until they no longer have access to shelter.

class members. *Cf. Staton*, 327 F.3d at 957 (“[R]epresentative claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they need not be substantially identical.”) (citation omitted). The district court did not abuse its discretion in finding the typicality requirement met.

The City does not present any other arguments regarding class certification, such as the propriety of certifying the class as an injunctive class under Rule 23(b)(2). We do not make arguments for parties and the arguments raised by the City regarding class certification fail.

C.

Having rejected the City’s jurisdictional arguments, as well as its arguments regarding class certification, the merits can be addressed. The City’s merits arguments regarding the Cruel and Unusual Punishment Clause take two forms. First, the City argues its system of imposing civil fines cannot be challenged as violating the Cruel and Unusual Clause because that clause provides protection only in criminal proceedings, after an individual has been convicted. That is incorrect. Second, the City argues *Martin* does not protect homeless persons from being cited under the City’s amended anti-camping ordinance which prohibits use of any bedding or similar protection from the elements. The City appears to have conceded it cannot cite homeless persons merely for sleeping in public but the City maintains it is entitled to cite individuals for the use of rudimentary bedding supplies, such as a blanket, pillow, or sleeping bag “for bedding purposes.” *See* GPMC 5.61.010(B). Again, the City is incorrect. Here, we focus exclusively on the anti-camping ordinances.

According to the City, citing individuals under the anti-camping ordinances cannot violate the Cruel and Unusual

Punishment Clause because citations under the ordinances are civil and civil citations are “categorically not ‘punishment’ under the Eighth Amendment.”²⁵ The City explains “the simple act of issuing a civil citation with a court date [has never] been found to be unconstitutional ‘punishment’ under the Eighth Amendment.” While not entirely clear, the City appears to be arguing the Cruel and Unusual Punishment Clause provides no protection from citations categorized as “civil” by a governmental authority.²⁶

²⁵ This position is in significant tension with the City’s actions taken immediately after *Martin* was issued. As noted earlier, the City amended its anti-camping ordinance “in direct response to *Martin v. Boise*” to allow for “the act of ‘sleeping’” in City parks. If the City believed *Martin* has no impact on civil ordinances, it is unclear why the City believed a curative “response” to *Martin* was necessary.

²⁶ The primary support for this contention is *Ingraham v. Wright*, 430 U.S. 651 (1977). In *Ingraham*, the Supreme Court addressed whether the Cruel and Unusual Punishment Clause was implicated by corporal punishment in public schools. The Court stated the Cruel and Unusual Punishment Clause limits “the criminal process in three ways: First, it limits the kinds of punishment that can be imposed on those convicted of crimes; second, it proscribes punishment grossly disproportionate to the severity of the crime; and third, it imposes substantive limits on what can be made criminal and punished as such.” *Id.* at 667. The Court interpreted the challenge to corporal punishment as, in effect, asserting arguments under only the first or second limitation. That is, the challenge was whether “the paddling of schoolchildren” was a permissible amount or type of punishment. *Id.* at 668. The *Ingraham* decision involved no analysis or discussion of the third limitation, *i.e.* the “substantive limits on what can be made criminal.” *Id.* at 667. Thus, it was in the context of evaluating the amount or type of punishment that *Ingraham* stated “Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.” *Id.* at 671 n.40. When, as here, plaintiffs are raising challenges to the “substantive limits on what can be

Plaintiffs' focus on civil citations does involve an extra step from the normal Cruel and Unusual Clause analysis and the analysis of *Martin*. Usually, claims under the Cruel and Unusual Clause involve straightforward criminal charges. For example, the situation in *Martin* involved homeless persons allegedly violating criminal ordinances and the opinion identified its analysis as focusing on the "criminal" nature of the charges over ten times. 920 F.3d at 617. Here, the City has adopted a slightly more circuitous approach than simply establishing violation of its ordinances as criminal offenses. Instead, the City issues civil citations under the ordinances. If an individual violates the ordinances twice, she can be issued a park exclusion order. And if the individual is found in a park after issuance of the park exclusion order, she is cited for criminal trespass. See O.R.S. 164.245 (criminal trespass in the second degree). Multiple City police officers explained in their depositions this sequence was the standard protocol. The holding in *Martin* cannot be so easily evaded.

Martin held the Cruel and Unusual Punishment clause "prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." 920 F.3d at 616. A local government cannot avoid this ruling by issuing civil citations that, later, become criminal offenses. A recent decision by the en banc Fourth Circuit illustrates how the

made criminal," *Ingraham* does not prohibit a challenge before a criminal conviction. See *Martin*, 920 F.3d at 614 ("*Ingraham* did not hold that a plaintiff challenging the state's power to criminalize a particular status or conduct in the first instance, as the plaintiffs in this case do, must first be convicted.>").

Cruel and Unusual Punishment Clause looks to the eventual criminal penalty, even if there are preliminary civil steps.

The disputes in *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264 (4th Cir. 2019) (en banc) arose from a Virginia law which allowed a state court to issue a civil order identifying an individual as a “habitual drunkard.” *Id.* at 268. Once labeled a “habitual drunkard,” the individual was “subject to incarceration for the mere possession of or attempt to possess alcohol, or for being drunk in public.” *Id.* at 269. A group of homeless alcoholics filed suit claiming, among other theories, the “habitual drunkard” scheme violated the Cruel and Unusual Punishment Clause. In the plaintiffs’ view, the scheme resulted in criminal prosecutions based on their “status,” *i.e.* alcoholism. *See id.* at 281.

Using reasoning very similar to that in *Martin*, the Fourth Circuit found the statutory scheme unconstitutional because it provided punishment based on the plaintiffs’ status. Of particular relevance here, the Fourth Circuit reasoned the fact that Virginia’s “scheme operate[d] in two steps” did not change the analysis. *Id.* 283. Issuing a civil order first, followed by a criminal charge, was a “two-pronged statutory scheme” potentially “less direct” than straightforwardly criminalizing the status of alcohol addiction. *Id.* But the scheme remained unconstitutional because it “effectively criminalize[d] an illness.” *Id.* The fact that Virginia “civilly brands alcoholics as ‘habitual drunkards’ before prosecuting them for involuntary manifestations of their illness does nothing to cure the unconstitutionality of this statutory scheme.” *Id.*

The same reasoning applies here. The anti-camping ordinances prohibit Plaintiffs from engaging in activity they cannot avoid. The civil citations issued for behavior

Plaintiffs cannot avoid are then followed by a civil park exclusion order and, eventually, prosecutions for criminal trespass. Imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances' Eighth Amendment infirmity.

The City offers a second way to evade the holding in *Martin*. According to the City, it revised its anti-camping ordinances to allow homeless persons to sleep in City parks. However, the City's argument regarding the revised anti-camping ordinance is an illusion. The amended ordinance continues to prohibit homeless persons from using "bedding, sleeping bag, or other material used for bedding purposes," or using stoves, lighting fires, or erecting structures of any kind. GPMC 5.61.010. The City claims homeless persons are free to sleep in City parks, but only without items necessary to facilitate sleeping outdoors.²⁷

The discrepancy between sleeping without bedding materials, which is permitted under the anti-camping ordinances, and sleeping with bedding, which is not, is intended to distinguish the anti-camping ordinances from *Martin* and the two Supreme Court precedents underlying *Martin*, *Robinson v. California*, 370 U.S. 660 (1962) and

²⁷ The Grants Pass ordinance does not specifically define "bedding" but courts give the words of a statute or ordinance their "ordinary, contemporary, common meaning" absent an indication to the contrary from the legislature. See *Williams v. Taylor*, 529 U.S. 420, 431 (2000) (citation omitted). The Oxford English Dictionary defines "bedding" as "[a] collective term for the articles which compose a bed." OXFORD ENGLISH DICTIONARY. And "bed" is defined as "a place for sleeping." MERRIAM-WEBSTER COLLEGIATE DICTIONARY 108 (11th ed.). The City's effort to dissociate the use of bedding from the act of sleeping or protection from the elements is nonsensical.

Powell v. Texas, 392 U.S. 514 (1968). Under those cases, a person may not be prosecuted for conduct that is involuntary or the product of a “status.” See *Martin*, 920 F.3d at 617 (citation omitted). The City accordingly argues that sleeping is involuntary conduct for a homeless person, but that homeless persons can choose to sleep without bedding materials and therefore can be prosecuted for sleeping *with* bedding.

In its order granting summary judgment, the district court correctly concluded the anti-camping ordinances violated the Cruel and Unusual Punishment Clause to the extent they prohibited homeless persons from “taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.” The only plausible reading of *Martin* is that it applies to the act of “sleeping” in public, including articles necessary to facilitate sleep. In fact, *Martin* expressed concern regarding a citation given to a woman who had been found sleeping on the ground, wrapped in blankets. 920 F.3d at 618. *Martin* noted that citation as an example of the anti-camping ordinance being “enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements.” *Id.* *Martin* deemed such enforcement unconstitutional. *Id.* It follows that the City cannot enforce its anti-camping ordinances to the extent they prohibit “the most rudimentary precautions” a homeless person might take against the elements.²⁸ The City’s position that it is

²⁸ Grants Pass is cold in the winter. The evidence in the record establishes that homeless persons in Grants Pass have struggled against frostbite. Faced with spending every minute of the day and night outdoors, the choice to use rudimentary protection of bedding to protect

entitled to enforce a complete prohibition on “bedding, sleeping bag, or other material used for bedding purposes” is incorrect.

The dissent claims we have misread *Martin* by “completely disregard[ing] the *Powell* opinions on which *Martin* relied, which make unmistakably clear that an individualized showing of involuntariness is required.” Dissent 82. The dissent concedes that pursuant to *Martin*, the City cannot impose criminal penalties on involuntarily homeless individuals for sitting, sleeping, or lying outside on public property. Dissent 62. Thus, our purported “complete disregard[]” for *Martin* is not regarding the central holding that local governments may not criminalize involuntary conduct. Rather, the dissent believes, based on its interpretation of the Supreme Court opinions underlying *Martin*, that the Eighth Amendment provides only “a case-specific affirmative defense” that can never be litigated on a class basis. Dissent 59. To reach this counterintuitive conclusion, the dissent reads limitations into *Robinson*, *Powell*, and *Martin* that are nonexistent.

In *Robinson*, the Supreme Court struck down, under the Eighth Amendment, a California law that made “it a criminal offense for a person to ‘be addicted to the use of narcotics.’” *Robinson*, 370 U.S. at 666. The law was unconstitutional, the Court explained, because it rendered the defendant “continuously guilty of this offense, whether or not he has ever used or possessed any narcotics within the State.” *Id.*

Six years later, in *Powell*, the Court divided 4-1-4 over whether Texas violated the Eighth Amendment under

against snow, frost, or rain is not volitional; it is a life-preserving imperative.

Robinson by prosecuting an alcoholic for public drunkenness. In a plurality opinion, Justice Marshall upheld the conviction of Leroy Powell on the ground that he was not punished on the basis of his status as an alcoholic, but rather for the *actus reus* of being drunk in public. *Powell*, 392 U.S. at 535. Four justices dissented, in an opinion by Justice Fortas, on the ground that the findings made by the trial judge—that Powell was a chronic alcoholic who could not resist the impulse to drink—compelled the conclusion that Powell’s prosecution violated the Eighth Amendment because Powell could not avoid breaking the law. *Id.* at 569-70 (Fortas, J., dissenting). Justice White concurred in the judgment. He stressed, “[i]f it cannot be a crime to have an irresistible compulsion to use narcotics, I do not see how it can constitutionally be a crime to yield to such a compulsion.” *Id.* at 549 (White, J., concurring). However, the reason for Justice White’s concurrence was that he felt *Powell* failed to prove his status as an alcoholic compelled him to violate the law by appearing in public. *Id.* at 553 (White, J., concurring).

Pursuant to *Marks v. United States*, 430 U.S. 188 (1977), the narrowest position which gained the support of five justices is treated as the holding of the Court. In identifying that position, *Martin* held: “five Justices [in *Powell*] gleaned from *Robinson* the principle that ‘that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.’” *Martin*, 920 F.3d at 616 (quoting *Jones*, 443 F.3d at 1135). *Martin* did not—as the dissent alleges—hold that *Powell*’s “controlling opinion was Justice White’s concurrence.” Dissent 60. *See id.*, 920 F.3d at 616-17. It would have violated the rule of *Marks* to adopt portions of Justice White’s concurrence that did not

receive the support of five justices. The dissent claims Justice White’s concurrence requires that the individual claiming a status must prove the status compels the individual to violate the law—here, that each homeless individual must prove their status as an involuntarily homeless person to avoid prosecution.²⁹ Dissent 59-63. The

²⁹ The dissent’s attempt to create a governing holding out of Justice White’s concurrence is erroneous. By citing a word or two out of context in the *Powell* dissenting opinion (e.g., “constitutional defense”) our dissenting colleague argues both Justice White and the dissenting justices in *Powell* agreed any person subject to prosecution has, at most, “a case-specific affirmative ‘defense.’” Dissent 59-60, 77. We disagree. Though status was litigated as a defense in the context of Leroy Powell’s prosecution, no opinion in *Powell* held status may be raised only as a defense. The *Powell* plurality noted trial court evidence that Leroy Powell was an alcoholic, but that opinion contains no indication “status” may only be invoked as “a case-specific affirmative ‘defense.’” As for Justice White, the opening paragraph of his concurrence indicates he was primarily concerned not with how a status must be invoked but with the fact that certain statuses should be beyond the reach of the criminal law:

If it cannot be a crime to have an irresistible compulsion to use narcotics, I do not see how it can constitutionally be a crime to yield to such a compulsion. Punishing an addict for using drugs convicts for addiction under a different name. Distinguishing between the two crimes is like forbidding criminal conviction for being sick with flu or epilepsy but permitting punishment for running a fever or having a convulsion. Unless Robinson is to be abandoned, the use of narcotics by an addict must be beyond the reach of the criminal law. Similarly, the chronic alcoholic with an irresistible urge to consume alcohol should not be punishable for drinking or for being drunk.

Powell, 392 U.S. at 548-49 (White, J., concurring) (internal citation omitted). Finally, neither the remainder of Justice White’s concurrence

dissent claims this renders class action litigation inappropriate. But no opinion in either *Powell* or *Martin* discussed the propriety of litigating the constitutionality of such criminal statutes by way of a class action.³⁰

The law that the dissent purports to unearth in Justice White’s concurrence is not the “narrowest ground” which received the support of five justices. No opinion in *Powell* or *Martin* supports the dissent’s assertion that *Powell* offers exclusively an “affirmative ‘defense’” that cannot be litigated in a class action.³¹ Dissent 59, 77. Although the

nor the dissenting opinion explicitly indicates one’s status may only be invoked as a defense. Rather, Justice White and the dissenters simply agreed that, if *Powell*’s status made his public intoxication involuntary, he could not be prosecuted. There is no conceivable way to interpret *Martin* as adopting our dissenting colleague’s position that one’s status must be invoked as a defense. But even assuming the burden must be placed on the party wishing to invoke a status, the class representatives established there is no genuine dispute of material fact they have the relevant status of being involuntarily homeless.

³⁰ Federal courts have certified classes of homeless plaintiffs in the past, *see supra* note 20, which counsels against the City’s and the dissent’s position that such classes are impermissible under Rule 23.

³¹ As noted above, *Martin* did not hold homeless persons bear the burden of demonstrating they are involuntarily homeless. *See supra* note 29. Because the record plainly demonstrates Plaintiffs are involuntarily homeless, there similarly is no reason for us to determine what showing would be required. We note, however, that some district courts have addressed circumstances in which the question of burden was somewhat relevant. *See, e.g., McArdle*, 519 F.Supp.3d at 1052 (requiring, based in part on *Martin*, that officers inquire into the availability of shelter space before making an arrest for violation of the City’s “open lodging” ordinance); *Butcher v. City of Marysville*, 2019 WL 918203, at *7 (E.D. Cal. Feb. 25, 2019) (holding plaintiffs failed to make the “threshold showing” of pleading that there was no shelter capacity and that they had no other housing at the time of enforcement).

dissent might prefer that these principles find support in the controlling law, they do not. We thus do not misread *Martin* by failing to apply the principles found solely in Justice White's concurrence. Rather, we adhere to the narrow holding of *Martin* adopting the narrowest ground shared by five justices in *Powell*: a person cannot be prosecuted for involuntary conduct if it is an unavoidable consequence of one's status.

In addition to erecting an absolute bar to class litigation of this sort, the dissent would also impose artificial limitations on claims brought pursuant to *Martin*. The dissent concedes Gloria Johnson has standing to bring individual challenges to most of the City's ordinances. But the dissent then speculates that Gloria Johnson may, in fact, not be involuntarily homeless in the City. The dissent would insist that Gloria Johnson, for example, leave the City to camp illegally on federal or state lands, provide the court an accounting of her finances and employment history, and indicate with specificity where she lived before she lost her job and her home. Dissent 85-88. There, of course, exists no law or rule requiring a homeless person to do any of these things. Gloria Johnson has adequately demonstrated that there is no available shelter in Grants Pass and that she is involuntarily homeless.

The undisputed evidence establishes Gloria Johnson is involuntarily homeless and there is undisputed evidence showing many other individuals in similar situations. It is undisputed that there are at least around 50 involuntarily homeless persons in Grants Pass, and PIT counts, which *Martin* relied on to establish the number of homeless persons in Boise, revealed more than 600. *See Martin*, 920 F.3d at 604. It is undisputed that there is no secular shelter space available to adults. Many class members, including the class

representatives, have sworn they are homeless and the City has not contested those declarations. The dissent claims this showing is not enough, implying that Plaintiffs must meet an extremely high standard to show they are involuntarily homeless. Even viewed in the light most favorable to the City, there is no dispute of material fact that the City is home to many involuntarily homeless individuals, including the class representatives. In fact, neither the City nor the dissent has demonstrated there is even one *voluntarily* homeless individual living in the City.³² In light of the undisputed facts in the record underlying the district court’s summary judgment ruling that show Plaintiffs are involuntarily homeless, and the complete absence of evidence that Plaintiffs are voluntarily homeless, we agree with the district court that Plaintiffs such as Gloria Johnson are not voluntarily homeless and that the anti-camping ordinances are unconstitutional as applied to them unless there is some place, such as shelter, they can lawfully sleep.³³

³² The dissent claims we have “shifted the burden to the City to establish the voluntariness of the behavior targeted by the ordinances.” Dissent 87 n.13 (emphasis omitted). To the contrary, as we have explained, we do not decide who would bear such a burden because undisputed evidence demonstrates Plaintiffs are involuntarily homeless. Rather, without deciding who would bear such a burden if involuntariness were subject to serious dispute, we note Plaintiffs have demonstrated involuntariness and there is no evidence in the record showing any class member has adequate alternative shelter.

³³ Following *Martin*, several district courts have held that the government may evict or punish sleeping in public in some locations, provided there are other lawful places within the jurisdiction for involuntarily homeless individuals to sleep. *See, e.g., Shipp v. Schaaf*, 379 F.Supp.3d 1033, 1037 (N.D. Cal. 2019) (“However, even assuming (as Plaintiffs do) that [eviction from a homeless encampment by citation or arrest] might occur, remaining at a particular encampment on public

Our holding that the City’s interpretation of the anti-camping ordinances is counter to *Martin* is not to be interpreted to hold that the anti-camping ordinances were properly enjoined in their entirety. Beyond prohibiting bedding, the ordinances also prohibit the use of stoves or fires, as well as the erection of any structures. The record has not established the fire, stove, and structure prohibitions deprive homeless persons of sleep or “the most rudimentary precautions” against the elements.³⁴ Moreover, the record does not explain the City’s interest in these prohibitions.³⁵

property is not conduct protected by *Martin*, especially where the closure is temporary in nature.”); *Aitken v. City of Aberdeen*, 393 F.Supp.3d 1075, 1082 (W.D. Wash. 2019) (“*Martin* does not limit the City’s ability to evict homeless individuals from particular public places.”); *Gomes v. Cty. of Kauai*, 481 F.Supp.3d 1104, 1109 (D. Haw. 2020) (holding the County of Kauai could prohibit sleeping in a public park because it had not prohibited sleeping on other public lands); *Miralle v. City of Oakland*, 2018 WL 6199929, at *2 (N.D. Cal. Nov. 28, 2018) (holding the City could clear out a specific homeless encampment because “*Martin* does not establish a constitutional right to occupy public property indefinitely at Plaintiffs’ option”); *Le Van Hung v. Schaaf*, 2019 WL 1779584, at *5 (N.D. Cal. Apr. 23, 2019) (holding *Martin* does not “create a right for homeless residents to occupy indefinitely any public space of their choosing”). Because the City has not established any realistically available place within the jurisdiction for involuntarily homeless individuals to sleep we need not decide whether alternate outdoor space would be sufficient under *Martin*. The district court may consider this issue on remand, if it is germane to do so.

³⁴ The dissent claims we establish “the right to use (at least) a tent.” Dissent 89 n.15. This assertion is obviously false. The district court’s holding that the City may still “ban the use of tents in public parks” remains undisturbed by our opinion.

³⁵ The dissent asserts, “it is hard to deny that *Martin* has ‘generate[d] dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.’” Dissent 92 (quoting *Martin*, 920 F.3d at 594 (M. Smith, J., dissenting from denial

Consistent with *Martin*, these prohibitions may or may not be permissible. On remand, the district court will be required to craft a narrower injunction recognizing Plaintiffs' limited right to protection against the elements, as well as limitations when a shelter bed is available.³⁶

D.

The district court concluded the fines imposed under the anti-sleeping and anti-camping ordinances violated the Eighth Amendment's prohibition on excessive fines. A central portion of the district court's analysis regarding these fines was that they were based on conduct "beyond what the City may constitutionally punish." With this in mind, the district court noted "[a]ny fine [would be] excessive" for the conduct at issue.

The City presents no meaningful argument on appeal regarding the excessive fines issue. As for Plaintiffs, they argue the fines at issue were properly deemed excessive because they were imposed for "engaging in involuntary, unavoidable life sustaining acts." The permanent injunction will result in no class member being fined for engaging in such protected activity. Because no fines will be imposed

of rehearing en banc)) (modification in original). There are no facts in the record to establish that *Martin* has generated "dire" consequences for the City. Our review of this case is governed only by the evidence contained in the record.

³⁶ The district court enjoined the park exclusion ordinance in its entirety. The parties do not address this in their appellate briefing but, on remand, the district court should consider narrowing this portion as well because the park exclusion ordinance presumably may be enforced against Plaintiffs who engage in prohibited activity unrelated to their status as homeless persons.

for protected activity, there is no need for us to address whether hypothetical fines would be excessive.

E.

The final issue is whether Plaintiffs properly pled their challenge to the park exclusion appeals ordinance. GPMC 6.46.355. That ordinance provided a mechanism whereby an individual who received an exclusion order could appeal to the City Council. Subsequent to the district court’s order, the City amended its park exclusion appeals ordinance. Therefore, the district court’s determination the previous ordinance violated Plaintiffs’ procedural due process rights has no prospective relevance. Because of this, we need not decide if Plaintiffs adequately pled their challenge to the previous ordinance.

III.

We affirm the district court’s ruling that the City of Grants Pass cannot, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City for them to go. On remand, however, the district court must narrow its injunction to enjoin only those portions of the anti-camping ordinances that prohibit conduct protected by *Martin* and this opinion. In particular, the district court should narrow its injunction to the anti-camping ordinances and enjoin enforcement of those ordinances only against involuntarily homeless person for engaging in conduct necessary to protect themselves from the elements when there is no shelter space available. Finally, the district court on remand should consider whether there is an adequate representative who may be substituted for Debra Blake.

We are careful to note that, as in *Martin*, our decision is narrow. As in *Martin*, we hold simply that it is “unconstitutional to [punish] simply sleeping *somewhere* in public if one has nowhere else to do so.” *Martin*, 920 F.3d at 590 (Berzon, J., concurring in denial of rehearing en banc). Our decision reaches beyond *Martin* slightly. We hold, where *Martin* did not, that class certification is not categorically impermissible in cases such as this, that “sleeping” in the context of *Martin* includes sleeping with rudimentary forms of protection from the elements, and that *Martin* applies to civil citations where, as here, the civil and criminal punishments are closely intertwined. Our decision does not address a regime of purely civil infractions, nor does it prohibit the City from attempting other solutions to the homelessness issue.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

COLLINS, Circuit Judge, dissenting:

In *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), we held that “the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to.” *Id.* at 603. Even assuming that *Martin* remains good law, today’s decision—which both misreads and greatly expands *Martin*’s holding—is egregiously wrong. To make things worse, the majority opinion then combines its gross misreading of *Martin* with a flagrant disregard of settled

class-certification principles. The end result of this amalgamation of error is that the majority validates the core aspects of the district court’s extraordinary injunction in this case, which effectively requires the City of Grants Pass to allow all but one of its public parks to be used as homeless encampments.¹ I respectfully dissent.

I

Because our opinion in *Martin* frames the issues here, I begin with a detailed overview of that decision before turning to the facts of the case before us.

A

In *Martin*, six individuals sued the City of Boise, Idaho, under 42 U.S.C. § 1983, alleging that the City had violated their Eighth Amendment rights in enforcing two ordinances that respectively barred, *inter alia*, (1) camping in public spaces and (2) sleeping in public places without permission. 920 F.3d at 603–04, 606. All six plaintiffs had been convicted of violating at least one of the ordinances, *id.* at 606, but we held that claims for retrospective relief based on those convictions were barred by the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994). *See Martin*, 920 F.3d at 611–12 (noting that, under *Heck*, a § 1983 action may not be maintained if success in the suit would necessarily show the invalidity of the plaintiff’s criminal conviction, unless that conviction has already been set aside or invalidated). What remained, after application of the *Heck* bar, were the claims

¹ The majority’s decision is all the more troubling because, in truth, the foundation on which it is built is deeply flawed: *Martin* seriously misconstrued the Eighth Amendment and the Supreme Court’s caselaw construing it. *See infra* at 90–92. But I am bound by *Martin*, and—unlike the majority—I faithfully apply it here.

for retrospective relief asserted by two plaintiffs (Robert Martin and Pamela Hawkes) in connection with citations they had received that did *not* result in convictions, and the claims for prospective injunctive and declaratory relief asserted by Martin and one additional plaintiff (Robert Anderson). *Id.* at 604, 610, 613–15; *see also id.* at 618–20 (Owens, J., dissenting in part) (dissenting from the majority’s holding that the prospective relief claims survived *Heck*). On the merits of those three plaintiffs’ Eighth Amendment claims, the *Martin* panel held that the district court had erred in granting summary judgment for the City. *Id.* at 615–18.

Although the text of the Eighth Amendment’s Cruel and Unusual Punishments Clause states only that “cruel and unusual *punishments*” shall not be “inflicted,” U.S. CONST., amend. VIII (emphasis added), the *Martin* panel nonetheless held that the Clause “places substantive limits” on the government’s ability to *criminalize* “sitting, sleeping, or lying outside on public property,” 920 F.3d at 615–16. In reaching this conclusion, the *Martin* panel placed dispositive reliance on the Supreme Court’s decisions in *Robinson v. California*, 370 U.S. 660 (1962), and *Powell v. Texas*, 392 U.S. 514 (1968). I therefore briefly review those two decisions before returning to *Martin*.

Robinson held that a California law that made “it a criminal offense for a person to ‘be addicted to the use of narcotics,’” 370 U.S. at 660 (quoting CAL. HEALTH & SAFETY CODE § 11721 (1957 ed.)), and that did so “even though [the person] has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment,” *id.* at 667. The California statute, the Court emphasized, made the “‘*status*’ of narcotic

addiction a criminal offense,” regardless of whether the defendant had “ever *used or possessed* any narcotics within the State” or had “been guilty of any antisocial *behavior* there.” *Id.* at 666 (emphasis added).

In *Powell*, a fractured Supreme Court rejected Powell’s challenge to his conviction, under a Texas statute, for being “found in a state of intoxication in any public place.” 392 U.S. at 517 (quoting TEX. PENAL CODE art. 477 (1952)). A four-Justice plurality distinguished *Robinson* on the ground that, because Powell “was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion,” Texas had “not sought to punish a mere status, as California did in *Robinson*.” *Id.* at 532 (plurality). The plurality held that *Robinson* did not address, much less establish, that “certain *conduct* cannot constitutionally be punished because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’” *Id.* at 533 (emphasis added).

Justice White concurred in the judgment on the narrower ground that Powell had failed to establish the “prerequisites to the possible invocation of the Eighth Amendment,” which would have required him to “satisfactorily show[] that it was not feasible for him to have made arrangements to prevent his being in public when drunk and that his extreme drunkenness sufficiently deprived him of his faculties on the occasion in issue.” *Id.* at 552 (White, J., concurring). And because, in Justice White’s view, the Eighth Amendment at most provided a case-specific affirmative “defense” to application of the statute, *id.* at 552 n.4, he agreed that the Texas statute was “constitutional insofar as it authorizes a police officer to *arrest* any seriously intoxicated person when he is encountered in a public place,” *id.* at 554 n.5 (emphasis added). Emphasizing that Powell himself “did not show that *his* conviction offended the Constitution” and

that Powell had “made no showing that *he* was unable to stay off the streets on the night in question,” Justice White concurred in the majority’s affirmance of Powell’s conviction. *Id.* at 554 (emphasis added).

The four dissenting Justices in *Powell* agreed that the Texas statute “differ[ed] from that in *Robinson*” inasmuch as it “covers more than a mere status.” 392 U.S. at 567 (Fortas, J., dissenting). There was, as the dissenters noted, “no challenge here to the validity of public intoxication statutes in general or to the Texas public intoxication statute in particular.” *Id.* at 558. Indeed, the dissenters agreed that, in the ordinary case “when the State proves such [public] presence in a state of intoxication, this will be sufficient for conviction, and the punishment prescribed by the State may, of course, be validly imposed.” *Id.* at 569. Instead, the dissenters concluded that the application of the statute to Powell was unconstitutional “*on the occasion in question*” in light of the Texas trial court’s findings about Powell’s inability to control his condition. *Id.* at 568 n.31 (emphasis added). Those findings concerning Powell’s “constitutional defense,” the dissenters concluded, established that Powell “was powerless to avoid drinking” and “that, once intoxicated, he could not prevent himself from appearing in public places.” *Id.* at 558, 568; *see also id.* at 525 (plurality) (describing the elements of the “constitutional defense” that Powell sought to have the Court recognize).

While acknowledging that the plurality in *Powell* had “interpret[ed] *Robinson* as precluding only the criminalization of ‘status,’ not of ‘involuntary’ conduct,” the *Martin* panel held that the controlling opinion was Justice White’s concurrence. 920 F.3d at 616. As I have noted, Justice White concluded that the Texas statute against public drunkenness could constitutionally be applied, even to an

alcoholic, if the defendant failed to “satisfactorily show[] that it was not feasible for him to have made arrangements to prevent his being in public when drunk and that his extreme drunkenness sufficiently deprived him of his faculties on the occasion in issue.” *Powell*, 392 U.S. at 552 (White, J., concurring).² Under *Marks v. United States*, 430 U.S. 188 (1977), this narrower reasoning given by Justice White for joining the *Powell* majority’s judgment *upholding* the conviction constitutes the Court’s holding in that case. *See id.* at 193 (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’” (citation omitted)); *see also United States v. Moore*, 486 F.2d 1139, 1151 (D.C. Cir. 1973) (en banc) (Wilkey, J., concurring) (concluding that the judgment in *Powell* rested on the overlap in the views of “four members of the Court” who held that *Powell*’s acts of public drunkenness “were punishable without question” and the view of Justice White that *Powell*’s acts “were punishable so long as the acts had not been proved to be the product of an established irresistible compulsion”).

The *Martin* panel quoted dicta in Justice White’s concurrence suggesting that, if the defendant could make the requisite “showing” that “resisting drunkenness is

² Justice White, however, did not resolve the further question of whether, if such a showing *had* been made, the Eighth Amendment would have been violated. He stated that the Eighth Amendment “*might* bar conviction” in such circumstances, but he found it “unnecessary” to decide whether that “novel construction of that Amendment” was ultimately correct. 392 U.S. at 552–53 & n.4 (emphasis added).

impossible and that avoiding public places when intoxicated is also impossible,” then the Texas statute “[a]s applied” to such persons might violate “the Eighth Amendment.” 920 F.3d at 616 (quoting *Powell*, 392 U.S. at 551 (White, J., concurring)). These dicta, *Martin* noted, overlapped with similar statements in the dissenting opinion in *Powell*, and from those two opinions, the *Martin* panel derived the proposition that “five Justices” had endorsed the view that “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.” *Id.* (citation omitted). Applying that principle, *Martin* held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Id.* Because “human beings are biologically compelled to rest, whether by sitting, lying, or sleeping,” *Martin* held that prohibitions on such activities in public cannot be applied to those who simply have “no option of sleeping indoors.” *Id.* at 617.

The *Martin* panel emphasized that its “holding is a narrow one.” *Id.* *Martin* recognized that, if there are sufficient available shelter beds for all homeless persons within a jurisdiction, then of course there can be no Eighth Amendment impediment to enforcing laws against sleeping and camping in public, because those persons engaging in such activities cannot be said to have “no option of sleeping indoors.” *Id.* But “so long as there is a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters, the jurisdiction cannot prosecute homeless individuals for *involuntarily* sitting, lying, and sleeping in public.” *Id.* (simplified) (emphasis added). Consistent with Justice White’s concurrence, the *Martin*

panel emphasized that, in determining whether the defendant was being punished for conduct that was “involuntary and inseparable from status,” *id.* (citation omitted), the specific individual circumstances of the defendant must be considered. Thus, *Martin* explained, the panel’s “holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.” *Id.* at 617 n.8. But *Martin* held that, where it is shown that homeless persons “do not have a single place where they can lawfully be,” an ordinance against sleeping or camping in public, “as applied to them, effectively punish[es] them for something for which they may not be convicted under the Eighth Amendment.” *Id.* at 617 (simplified). Concluding that the remaining plaintiffs had “demonstrated a genuine issue of material fact” as to their lack of any access to indoor shelter, *Martin* reversed the district court’s grant of summary judgment to the City. *Id.* at 617 n.9; *see also id.* at 617–18.

B

With that backdrop in place, I turn to the specific facts of this case.

In the operative Third Amended Complaint, named Plaintiffs Debra Blake, Gloria Johnson, and John Logan sought to represent a putative class of “all involuntarily homeless people living in Grants Pass, Oregon” in pursuing a variety of claims under 42 U.S.C. § 1983 against the City of Grants Pass. In particular, they asserted that the following three sections of the Grants Pass Municipal Code (“GPMC”), which generally prohibited sleeping and camping in public, violated the Eighth Amendment’s Cruel

and Unusual Punishments Clause and its Excessive Fines Clause:

5.61.020 Sleeping on Sidewalks, Streets, Alleys, or Within Doorways Prohibited

A. No person may sleep on public sidewalks, streets, or alleyways at any time as a matter of individual and public safety.

B. No person may sleep in any pedestrian or vehicular entrance to public or private property abutting a public sidewalk.

C. In addition to any other remedy provided by law, any person found in violation of this section may be immediately removed from the premises.

5.61.030 Camping Prohibited

No person may occupy a campsite in or upon any sidewalk, street, alley, lane, public right of way, park, bench, or any other publicly-owned property or under any bridge or viaduct, [subject to specified exceptions].³

6.46.090 Camping in Parks

A. It is unlawful for any person to camp, as defined in GPMC Title 5, within the boundaries of the City parks.

B. Overnight parking of vehicles shall be unlawful. For the purposes of this section,

³ The definition of “campsite” for purposes of GPMC 5.61.030 includes using a “vehicle” as a temporary place to live. See GPMC 5.61.010(B).

anyone who parks or leaves a vehicle parked for two consecutive hours or who remains within one of the parks as herein defined for purposes of camping as defined in this section for two consecutive hours, without permission from the City Council, between the hours of midnight and 6:00 a.m. shall be considered in violation of this Chapter.

Plaintiffs' complaint also challenged the following "park exclusion" ordinance as a violation of their "Eighth and Fourteenth Amendment rights":

6.46.350 Temporary Exclusion from City Park Properties

An individual may be issued a written exclusion order by a police officer of the Public Safety Department barring said individual from all City Park properties for a period of 30 days, if within a one-year period the individual:

- A. Is issued 2 or more citations for violating regulations related to City park properties, or
- B. Is issued one or more citations for violating any state law(s) while on City park property.⁴

⁴ This latter ordinance was amended in September 2020 to read as follows:

An individual may be issued a written exclusion order by a police officer of the Public Safety Department barring said

In an August 2019 order, the district court certified a class seeking declaratory and injunctive relief with respect to Plaintiffs' Eighth Amendment claims, pursuant to Federal Rule of Civil Procedure 23(b)(2).⁵ As defined in the court's order, the class consists of "[a]ll involuntarily homeless individuals living in Grants Pass, Oregon, including homeless individuals who sometimes sleep outside city limits to avoid harassment and punishment by Defendant as addressed in this lawsuit."

After the parties filed cross-motions for summary judgment, the district court in July 2020 granted Plaintiffs' motion in relevant part and denied the City's motion. The district court held that, under *Martin*, the City's enforcement of the above-described ordinances violated the Cruel and Unusual Punishments Clause. The court further held that, for similar reasons, the ordinances imposed excessive fines

individual from a City park for a period of 30 days, if within a one-year period the individual:

- A. Is issued two or more citations in the same City park for violating regulations related to City park properties, or
- B. Is issued one or more citations for violating any state law(s) while on City park property.

The foregoing exclusion order shall only apply to the particular City park in which the offending conduct under 6.46.350(A) or 6.46.350(B) occurred.

⁵ At the time that the district court certified the class, the operative complaint was the Second Amended Complaint. That complaint was materially comparable to the Third Amended Complaint, with the exception that it did not mention the park-exclusion ordinance or seek injunctive relief with respect to it.

in violation of the Eighth Amendment’s Excessive Fines Clause.

After Plaintiffs voluntarily dismissed those claims as to which summary judgment had been denied to both sides, the district court entered final judgment declaring that the City’s enforcement of the anti-camping and anti-sleeping ordinances (GPMC §§ 5.61.020, 5.61.030, 6.46.090) violates “the Eighth Amendment prohibition against cruel and unusual punishment” and its “prohibition against excessive fines.” Nonetheless, the court’s final injunctive relief did not prohibit all enforcement of these provisions. Enforcement of § 5.61.020 (the anti-sleeping ordinance) was not enjoined at all. The City was enjoined from enforcing the anti-camping ordinances (GPMC §§ 5.61.030 and 6.46.090) “without first giving a person a warning of at least 24 hours before enforcement.” It was further enjoined from enforcing those ordinances, and a related ordinance against criminal trespass on city property, in all but one City park during specified evening and overnight hours, which varied depending upon the time of year. Finally, the City was enjoined from enforcing the park-exclusion ordinance.⁶

⁶ The district court’s summary judgment order and judgment also declared that a separate ordinance (GPMC § 6.46.355), which addressed the procedures for appealing park-exclusion orders under § 6.46.350, failed to provide sufficient procedural due process. The parties dispute whether this claim was adequately raised and reached below, but as the majority notes, this claim for purely prospective relief has been mooted by the City’s subsequent amendment of § 6.46.355 in a way that removes the features that had led to its invalidation. *See* Opin. at 55. Accordingly, this aspect of the district court’s judgment should be vacated and remanded with instructions to dismiss as moot Plaintiffs’ challenge to § 6.46.355.

The City timely appealed from that judgment and from the district court’s subsequent award of attorneys’ fees.

II

Before turning to the merits, I first address the question of our jurisdiction under Article III of the Constitution. *Plains Com. Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324 (2008) (holding that courts “bear an independent obligation to assure [them]selves that jurisdiction is proper before proceeding to the merits”).

“In limiting the judicial power to ‘Cases’ and ‘Controversies,’ Article III of the Constitution restricts it to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009). “The doctrine of standing is one of several doctrines that reflect this fundamental limitation,” and in the context of a request for prospective injunctive or declaratory relief, that doctrine requires a plaintiff to “show that he is under threat of suffering ‘injury in fact’ that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury.” *Id.* at 493. The requirement to show an actual threat of *imminent* injury-in-fact in order to obtain prospective relief is a demanding one: the Supreme Court has “repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of *possible* future injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (simplified).

As “an indispensable part of the plaintiff’s case,” each of these elements of Article III standing “must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Because, as in *Lujan*, this case arises from a grant of summary judgment, the question is whether, in seeking summary judgment, Plaintiffs “‘set forth’ by affidavit or other evidence ‘specific facts’” in support of each element of standing. *Id.* (citation omitted). Moreover, “standing is not dispensed in gross,” and therefore “a plaintiff must demonstrate standing for *each* claim he seeks to press.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352–53 (2006) (emphasis added) (citation omitted).

Plaintiffs’ operative complaint named three individual plaintiffs as class representatives (John Logan, Gloria Johnson, and Debra Blake), and we have jurisdiction to address the merits of a particular claim if any one of them sufficiently established Article III standing as to that claim. *See Secretary of the Interior v. California*, 464 U.S. 312, 319 n.3 (1984) (“Since the State of California clearly does have standing, we need not address the standing of the other [plaintiffs], whose position here is identical to the State’s.”); *see also Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc) (“In a class action, standing is satisfied if at least one named plaintiff meets the requirements.”). Accordingly, I address the showing made by each named Plaintiff in support of summary judgment.

In my view, Plaintiff John Logan failed to establish that he has standing to challenge any of the ordinances in question. In support of his motion for summary judgment, Logan submitted a half-page declaration stating, in

conclusory fashion, that he is “involuntarily homeless in Grants Pass,” but that he is “sleeping in [his] truck at night at a rest stop North of Grants Pass.” He asserted that he “cannot sleep in the City of Grants Pass for fear that [he] will be awakened, ticketed, fined, moved along, trespassed[,], and charged with Criminal Trespass.” Logan also previously submitted two declarations in support of his class certification motion. In them, Logan stated that he has been homeless in Grants Pass for nearly seven of the last 10 years; that there have been occasions in the past in which police in Grants Pass have awakened him in his car and instructed him to move on; and that he now generally sleeps in his truck outside of Grants Pass. Logan has made no showing that, over the seven years that he has been homeless, he has ever been issued a citation for violating the challenged ordinances, nor has he provided any facts to establish either that the threat of such a citation is “certainly impending” or that “there is a substantial risk” that he may be issued a citation. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). At best, his declarations suggest that he would *prefer* to sleep in his truck within the City limits rather than outside them, and that he is subjectively deterred from doing so due to the City’s ordinances. But such “[a]llegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.” *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972). Nor has Logan provided any facts that would show that he has any actual intention or plans to stay overnight in the City. *See Lopez v. Candaele*, 630 F.3d 775, 787 (9th Cir. 2010) (“[W]e have concluded that pre-enforcement plaintiffs who failed to allege a concrete intent to violate the challenged law could not establish a credible threat of enforcement.”). Even if his

declarations could be generously construed as asserting an intention to stay in the City at some future point, “[s]uch ‘some day’ intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the ‘actual or imminent’ injury that [the Court’s] cases require.” *Lujan*, 504 U.S. at 564; *cf. Driehaus*, 573 U.S. at 161 (permitting pre-enforcement challenge against ordinance regulating election-related speech where plaintiffs’ allegations identified “specific statements they intend[ed] to make in future election cycles”). And, contrary to what the majority suggests, *see* Opin. at 30–31 n.16, Logan’s vaguely described knowledge about what has happened to *other* people cannot establish his standing. Accordingly, Logan failed to carry his burden to establish standing for the prospective relief he seeks.

By contrast, Plaintiff Gloria Johnson made a sufficient showing that she has standing to challenge the general anti-camping ordinance, GPMC § 5.61.030, and the parks anti-camping ordinance, GPMC § 6.46.090. Although Johnson’s earlier declaration in support of class certification stated that she “often” sleeps in her van outside the City limits, she also stated that she “*continue[s]* to live without shelter in Grants Pass” and that, consequently, “[a]t any time, I could be arrested, ticketed, fined, and prosecuted for sleeping outside in my van or for covering myself with a blanket to stay warm” (emphasis added). Her declaration also recounts “dozens of occasions” in which the anti-camping ordinances have been enforced against her, either by instructions to “move along” or, in one instance, by issuance of a citation for violating the parks anti-camping ordinance, GPMC § 6.46.090. Because Johnson presented facts showing that she continues to violate the anti-camping ordinances and

that, in light of past enforcement, she faces a credible threat of future enforcement, she has standing to challenge those ordinances. *Lujan*, 504 U.S. at 564. Johnson, however, presented no facts that would establish standing to challenge either the anti-sleeping ordinance (which, unlike the anti-camping ordinances, does not apply to sleeping in a vehicle), the park-exclusion ordinance, or the criminal trespass ordinance.⁷

Debra Blake sufficiently established her standing, both in connection with the class certification motion and the summary judgment motion. Although she was actually

⁷ The majority concludes that Johnson's standing to challenge the anti-camping ordinances necessarily establishes her standing to challenge the park-exclusion and criminal-trespass ordinances. *See* Op. at 30 n.15. But as the district court explained, the undisputed evidence concerning Grants Pass's enforcement policies established that "Grants Pass first issues fines for violations and *then* either issues a trespass order or excludes persons from all parks *before* a person is charged with misdemeanor criminal trespass" (emphasis added). Although Johnson's continued intention to sleep in her vehicle in Grants Pass gives her standing to challenge the anti-camping ordinances, Johnson has wholly failed to plead any facts to show, *inter alia*, that she intends to engage in the *further* conduct that might expose her to a "credible threat" of prosecution under the park-exclusion or criminal trespass ordinances. *Driehaus*, 573 U.S. at 159 (citation omitted). Johnson's declaration states that she has been homeless in Grants Pass for three years, but it does not contend that she has ever been issued, or threatened with issuance of, a trespass order, a park-exclusion order, or a criminal trespass charge or that she has "an intention to engage in a course of conduct" that would lead to such an order or charge. *Id.* (citation omitted). Because "standing is not dispensed in gross," *see DaimlerChrysler*, 547 U.S. at 353 (citation omitted), Johnson must separately establish her standing with respect to each ordinance, and she has failed to do so with respect to the park-exclusion and criminal-trespass ordinances.

living in temporary housing at the time she submitted her declarations in support of class certification in March and June 2019, she explained that that temporary housing would soon expire; that she would become homeless in Grants Pass again; and that she would therefore again be subject to being “arrested, ticketed and prosecuted for sleeping outside or for covering myself with a blanket to stay warm.” And, as her declaration at summary judgment showed, that is exactly what happened: in September 2019, she was cited for sleeping in the park in violation of GPMC § 6.46.090, convicted, and fined. Her declarations also confirmed that Blake’s persistence in sleeping and camping in a variety of places in Grants Pass had also resulted in a park-exclusion order (which she successfully appealed), and in citations for violation of the anti-sleeping ordinance, GPMC § 5.61.020 (for sleeping in an alley), and for criminal trespass on City property. Based on this showing, I conclude that Blake established standing to challenge each of the ordinances at issue in the district court’s judgment.

However, Blake subsequently passed away during this litigation, as her counsel noted in a letter to this court submitted under Federal Rule of Appellate Procedure 43(a). Because the only relief she sought was prospective declaratory and injunctive relief, Blake’s death moots her claims. *King v. County of Los Angeles*, 885 F.3d 548, 553, 559 (9th Cir. 2018). And because, as explained earlier, Blake was the only named Plaintiff who established standing with respect to the anti-sleeping, park-exclusion, and criminal trespass ordinances that are the subject of the district court’s classwide judgment, her death raises the question whether we consequently lack jurisdiction over those additional claims. Under *Sosna v. Iowa*, 419 U.S. 393 (1975), the answer to that question would appear to be no.

Blake established her standing at the time that the class was certified and, as a result, “[w]hen the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by [Blake].” *Id.* at 399. “Although the controversy is no longer alive as to [Blake], it remains very much alive for the class of persons she [had] been certified to represent.” *Id.* at 401; *see also Nielsen v. Preap*, 139 S. Ct. 954, 963 (2019) (finding no mootness where “there was at least one named plaintiff with a live claim when the class was certified”); *Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 987–88 (9th Cir. 2007) (en banc).

There is, however, presently no class representative who meets the requirements for representing the certified class with respect to the anti-sleeping, park-exclusion, and criminal trespass ordinances.⁸ Although that would

⁸ Because—in contrast to the named representative in *Sosna*, who had Article III standing at the time of certification—Johnson and Logan *never* had standing to represent the class with respect to the anti-sleeping ordinance, they may not represent the class as to such claims. *See Sosna*, 419 U.S. at 403 (holding that a *previously proper* class representative whose claims had become moot on appeal could continue to represent the class for purposes of that appeal); *see also Bates*, 511 F.3d at 987 (emphasizing that the named plaintiff “had standing at the time of certification”); *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 966 (9th Cir. 2019) (stating that “class representatives must have Article III standing”); *cf. NEI Contracting & Eng’g, Inc. v. Hanson Aggregates Pac. SW., Inc.*, 926 F.3d 528, 533 (9th Cir. 2019) (holding that, where the named plaintiffs never had standing, the class “must be decertified”). The majority correctly concedes this point. *See* Opin. at 32–33. Nonetheless, the majority wrongly allows Johnson and Logan to represent the class as to the park-exclusion and criminal-trespass

normally require a remand to permit the possible substitution of a new class member, *see Kuahulu v. Employers Ins. of Wausau*, 557 F.2d 1334, 1336–37 (9th Cir. 1977), I see no need to do so here, and that remains true even if one assumes that the failure to substitute a new class representative might otherwise present a potential jurisdictional defect. As noted earlier, we have jurisdiction to address all claims concerning the two anti-camping ordinances, as to which Johnson has sufficient standing to represent the certified class. And, as I shall explain, the class as to those claims should be decertified, and the reasons for that decertification rest on cross-cutting grounds that apply equally to all claims. As a result, I conclude that we have jurisdiction to order the complete decertification of the class as to all claims, without the need for a remand to substitute a new class representative as to the anti-sleeping, park-exclusion, and criminal trespass ordinances. *Cf. Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 98 (1998) (holding that, where “a merits issue [is] dispositively resolved in a companion case,” that merits ruling could be applied to the other companion case without the need for a remand to resolve a potential jurisdictional issue).

III

I therefore turn to whether the district court properly certified the class under Rule 23 of the Federal Rules of Civil Procedure. In my view, the district court relied on erroneous legal premises in certifying the class, and it therefore abused its discretion in doing so. *B.K.*, 922 F.3d at 965.

ordinances, based on its erroneous conclusion that they established standing to challenge those ordinances. *See supra* at 69–72 & n.7.

A

“To obtain certification of a plaintiff class under Federal Rule of Civil Procedure 23, a plaintiff must satisfy both the four requirements of Rule 23(a)—‘numerosity, commonality, typicality, and adequate representation’—and ‘one of the three requirements listed in Rule 23(b).’” *A.B. v. Hawaii State Dep’t of Educ.*, 30 F.4th 828, 834 (9th Cir. 2022) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345, 349 (2011)). Commonality, which is contested here, requires a showing that the class members’ claims “depend upon a common contention” that is “of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 350. In finding that commonality was satisfied with respect to the Eighth Amendment claims, the district court relied solely on the premise that whether the City’s conduct “violates the Eighth Amendment” was a common question that could be resolved on a classwide basis. And in finding that Rule 23(b) was satisfied here, the district court relied solely on Rule 23(b)(2), which provides that a “class action may be maintained” if “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” FED. R. CIV. P. 23(b)(2). That requirement was satisfied, the district court concluded, because (for reasons similar to those that underlay its commonality analysis) the City’s challenged enforcement of the ordinances “applies equally to all class members.” The district court’s commonality and Rule 23(b)(2) analyses are both flawed because they are based on an incorrect understanding of our decision in *Martin*.

As the earlier discussion of *Martin* makes clear, the Eighth Amendment theory adopted in that case requires an individualized inquiry in order to assess whether any individuals to whom the challenged ordinances are being applied “do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.” 920 F.3d at 617 n.8. *See supra* at 61–63. Only when persons “do not have a *single place* where they can lawfully be,” can it be said that an ordinance against sleeping or camping in public, “*as applied to them*, effectively punish[es] them for something for which they may not be convicted under the Eighth Amendment.” *Id.* at 617 (simplified) (emphasis added).

Of course, such an individualized inquiry is not required—and no Eighth Amendment violation occurs under *Martin*—when the defendant can show that there is adequate shelter space to house all homeless persons in the jurisdiction. *Id.* But the converse is not true—the mere fact that a city’s shelters are full does *not* by itself establish, without more, that any particular person who is sleeping in public does “not have a single place where [he or she] can lawfully be.” *Id.* The logic of *Martin*, and of the opinions in *Powell* on which it is based, requires an assessment of a person’s individual situation before it can be said that the Eighth Amendment would be violated by applying a particular provision against that person. Indeed, the opinions in *Powell* on which *Martin* relied—Justice White’s concurring opinion and the opinion of the dissenting Justices—all agreed that, at most, the Eighth Amendment provided a case-specific affirmative defense that would require the defendant to provide a “satisfactor[y] showing that it was not feasible for him to have made arrangements”

to avoid the conduct at issue. *Powell*, 392 U.S. at 552 (White, J., concurring); *id.* at 568 n.31 (Fortas, J., dissenting) (agreeing with Justice White that the issue is whether the defendant “on the occasion in question” had shown that avoiding the conduct was “impossible”); *see also supra* at 59–60.⁹

In light of this understanding of *Martin*, the district court clearly erred in finding that the requirement of commonality was met here. “What matters to class certification is not the raising of common ‘questions’—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.”

⁹ The majority incorrectly contends that the dissenters in *Powell* did not endorse Justice White’s conclusion that the *defendant* bears the burden to establish that his or her conduct was involuntary. *See* Opin. at 48–51. On the contrary, the *Powell* dissenters’ entire argument rested on the affirmative “constitutional defense” presented at the trial in that case and on the findings made by the trial court in connection with that defense. *See* 392 U.S. at 558 (Fortas, J., dissenting). The majority’s suggestion that I have taken that explicit reference to *Powell*’s defense “out of context,” *see* Opin. at 49 n.29, is demonstrably wrong—the context of the case was precisely the extensive affirmative defense that *Powell* presented at trial, including the testimony of an expert. *See* 392 U.S. at 517–26 (plurality) (summarizing the testimony). And, of course, in *Martin*, the issue was raised in the context of a § 1983 action in which the plaintiffs challenging the laws bore the burden to prove the involuntariness of their relevant conduct. The majority points to nothing that would plausibly support the view that *Powell* and *Martin* might require the *government* to carry the burden to establish *voluntariness*. *See* Opin. at 50 n.31 (leaving this issue open). The majority claims that it can sidestep this issue here, but that is also wrong: the burden issue is critical both to the class-certification analysis and to the issue of summary judgment on the merits. *See infra* at 78–89.

Wal-Mart, 564 U.S. at 350 (simplified). Under *Martin*, the answer to the question whether the City’s enforcement of each of the anti-camping ordinances violates the Eighth Amendment turns on the individual circumstances of each person to whom the ordinance is being applied on a given occasion. That question is simply not one that can be resolved, on a common basis, “in one stroke.” *Id.* That requires decertification.

For similar reasons, the district court also erred in concluding that the requirements of Rule 23(b)(2) were met. By its terms, Rule 23(b)(2) is satisfied only if (1) the defendant has acted (or refused to act) on grounds that are generally applicable to the class as whole and (2) as a result, final classwide or injunctive relief is appropriate. As the Supreme Court has observed, “[t]he key to the (b)(2) class is ‘the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” *Wal-Mart*, 564 U.S. at 360. It follows that, when the *wrongfulness* of the challenged conduct with respect to any particular class member depends critically upon the individual circumstances of that class member, a class action under Rule 23(b)(2) is not appropriate. In such a case, in which (for example) the challenged enforcement of a particular law may be lawful as to some persons and not as to others, depending upon their individual circumstances, the all-or-nothing determination of wrongfulness that is the foundation of a (b)(2) class is absent: in such a case, it is simply not true that the defendant’s “conduct is such that it can be enjoined or declared unlawful *only* as to *all* of the class members or as to *none* of them.” *Id.* (emphasis added).

Because *Martin* requires an assessment of each person’s individual circumstances in order to determine whether application of the challenged ordinances violates the Eighth Amendment, these standards for the application of Rule 23(b)(2) were plainly not met in this case. That is, because the applicable law governing Plaintiffs’ claims would entail “a process through which highly individualized determinations of liability and remedy are made,” certification of a class under Rule 23(b)(2) is improper. *Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 499 (7th Cir. 2012). Moreover, the mere fact that the district court’s final judgment imposes sweeping across-the-board injunctive relief that disregards individual differences in determining the defendant’s liability does *not* mean that Rule 23(b)(2) has been satisfied. The rule requires that any such classwide relief be rooted in a determination of *classwide liability*—the defendant must have acted, or be acting, unlawfully “on grounds that apply generally to the class, *so that* final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole.” FED. R. CIV. P. 23(b)(2) (emphasis added). That requirement was not established here, and the class must be decertified.¹⁰

¹⁰ The majority wrongly concludes that the City has forfeited any argument concerning Rule 23(b)(2) because it did not specifically mention that subdivision of the rule in its opening brief. Opin. at 41. This “Simon Says” approach to reading briefs is wrong. The *substance* of the argument is contained in the opening brief, in which the City explicitly contended that *Martin* requires “a more individualized analysis” than the district court applied and that, as a result, “neither FED. R. CIV. P. 23 nor *Martin* provide plaintiffs the ability to establish the type of sweeping class-wide claims advanced in this case.” Indeed, Plaintiffs themselves responded to this argument, in their answering brief, by

B

The majority provides two responses to this analysis, but both of them are wrong.

First, the majority contends that *Martin* established a bright-line rule that the government cannot prosecute “involuntarily homeless persons for sleeping in public”—or, presumably, for camping—“if there are no other public areas or appropriate shelters where those individuals can sleep.” *See* Opin. at 19. As the majority makes clear, that latter inquiry into available shelter space turns on whether “the number of homeless persons outnumber the available shelter beds,” except that, “[w]hen assessing the number of shelter spaces,” shelters that have a “mandatory religious focus” are not to be counted. *See* Opin. at 13, 19 (citation omitted). Moreover, although the majority’s phrasing pays lip service to the fact that the persons at issue must be “involuntarily homeless,” the majority also explicitly rejects the City’s contention that “the holding of *Martin* can only be applied after an individualized inquiry of each alleged involuntarily homeless person’s access to shelter.” *See* Opin. at 35. The net result, for class certification purposes, is that any issue of individualized involuntariness is set aside and *Martin* is thereby reduced to a simplistic formula—to be resolved on a classwide basis—into whether the number of homeless persons in the jurisdiction exceeds the number of available shelter beds. *See* Opin. at 34–35, 38.

The majority’s analysis fails, because *Martin* does *not* allow the individualized inquiry into involuntariness to be set aside in this way. *Martin* states that, if there are

explaining why they believe that the requirements of Rule 23(b)(2) were met.

insufficient available beds at shelters, then a jurisdiction “cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’” 920 F.3d at 617 (emphasis added). The lack of adequate shelter beds thus merely eliminates a *safe-harbor* that might otherwise have allowed a jurisdiction to prosecute violations of such ordinances *without* regard to individual circumstances, with the result that the jurisdiction’s enforcement power will instead depend upon whether the conduct of the individual on a particular occasion was “involuntar[y].” *Id. Martin* confirms that the resulting inquiry turns on whether the persons in question have access to “a *single place* where they can lawfully be,” *id.* at 617 (emphasis added) (citation omitted), and not just on whether they have access to “appropriate shelters” or “other public areas.” And the majority’s misreading of *Martin* completely disregards the *Powell* opinions on which *Martin* relied, which make unmistakably clear that an individualized showing of involuntariness is required.

Second, and relatedly, the majority states that, to the extent that *Martin* requires such an individualized showing to establish an Eighth Amendment violation, any such individualized issue here has been eliminated by the fact that “[p]ursuant to the *class definition*, the class includes only *involuntarily* homeless persons.” *See* Opin. at 38–40 (first emphasis added). As the majority acknowledges, “[p]ersons are involuntarily homeless” under *Martin* only “if they do not ‘have access to adequate temporary shelter,’” such as, for example, when they lack “‘the means to pay for it’” and it is otherwise not “‘realistically available to them for free.’” Opin. at 14 n.2 (quoting *Martin*, 920 F.3d at 617 n.8). Because that individualized issue has been shifted into the class definition, the majority holds, the City’s enforcement

of the challenged ordinances against *that* class can in that sense be understood to present a “common question” that can be resolved in one stroke. According to the majority, because the class definition requires that, at the time the ordinances are applied against them, the class members must be “involuntarily homeless” in the sense that *Martin* requires, there is a common question as to whether “the City’s enforcement of the anti-camping ordinances against all involuntarily homeless individuals violates the Eighth Amendment.” *See* Opin. at 38–39 & n.22.

The majority cites no authority for this audacious bootstrap argument. If a person’s individual circumstances are such that he or she has *no* “access to adequate temporary shelter”—which necessarily subsumes (among other things) the determination that there are no shelter beds available—then the *entire* (highly individualized) question of the City’s liability to that person under *Martin*’s standards has been shifted into the class definition. That is wholly improper. *See Olean Wholesale Grocery Coop. v. Bumble Bee Foods*, 31 F.4th 651, 670 n.14 (9th Cir. 2022) (en banc) (“A court may not . . . create a ‘fail safe’ class that is defined to include only those individuals who were injured by the allegedly unlawful conduct.”); *see also Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1138 n.7 (9th Cir. 2016) (stating that it would be improper to define a class in such a way “as to preclude membership unless the liability of the defendant is established” (simplified)).

The majority nonetheless insists that “[m]embership in [the] class” here “has no connection to the success of the underlying claims.” *See* Opin. at 39 n.23. That is obviously false. As I have explained, *Martin*’s understanding of when a person “involuntarily” lacks “access to adequate temporary shelter” or to “a single place where [he or she] can lawfully

be,” *see* 920 F.3d at 617 & n.8 (citations omitted), requires an individualized inquiry into a given person’s circumstances at a particular moment. By insisting that a common question exists here *because Martin’s* involuntariness standard has been folded into the class definition, the majority is unavoidably relying on a fail-safe class definition that improperly subsumes this crucial individualized merits issue into the class definition. The majority’s artifice renders the limitations of Rule 23 largely illusory.¹¹

To the extent that the majority instead suggests that the class definition requires only an involuntary lack of access to regular or permanent shelter to qualify as “involuntarily homeless,” its argument collapses for a different reason. Because *Martin’s* Eighth Amendment holding applies only to those who involuntarily lack “access to adequate temporary shelter” on a given occasion, *see* 920 F.3d at 617 n.8, such an understanding of the class definition would *not*

¹¹ The majority contends that, despite the presence of a liability-determining individualized issue in the class definition, there is no fail-safe class here because one or more of the claims might still conceivably fail on the merits for *other* reasons. *See* Opin. at 39 n.23. But the majority does not identify any such other reasons and, of course, under the majority’s view of the substantive law, there are none. But more importantly, the majority is simply wrong in positing that the *only* type of class that would qualify as an impermissible fail-safe class is one in which *every* conceivable merits issue in the litigation has been folded into the class definition. What matters is whether the class definition folds within it *any* bootstrapping merits issue (such as the “injur[y]” issue mentioned in *Olean*) as to which “a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment.” *Olean*, 31 F.4th at 670 n.14 (citation omitted). To the extent that the central individualized merits issue in this case has been folded into the class definition, that defect is present here.

be sufficient to eliminate the highly individualized inquiry into whether a particular person lacked such access at a given moment, and the class would then have to be decertified for the reasons I have discussed earlier. *See supra* at 75–80. Put simply, the majority cannot have it both ways: either the class definition is co-extensive with *Martin*’s involuntariness concept (in which case the class is an improper fail-safe class) or the class definition differs from the *Martin* standard (in which case *Martin*’s individualized inquiry requires decertification).

IV

Given these conclusions as to standing and class certification, all that remains are the individual claims of Johnson for prospective relief against enforcement of the two anti-camping ordinances. In my view, these claims fail as a matter of law.

Johnson’s sole basis for challenging these ordinances is that they prohibit her from sleeping in her van within the City. In her declaration in support of class certification, however, Johnson specifically stated that she has “often” been able to sleep in her van by parking *outside* the City limits. In a supplemental declaration in support of summary judgment, she affirmed that these facts “remain true,” but she added that there had also been occasions in which, outside the City limits, county officers had told her to “move on” when she “was parked on county roads” and that, when she parked “on BLM land”—*i.e.*, land managed by the federal Bureau of Land Management—she was told that she “could only stay on BLM for a few days.”

As an initial matter, Johnson’s declaration provides no non-conclusory basis for finding that she lacks *any* option other than sleeping in her van. Although her declaration

notes that she worked as a nurse “for decades” and that she now collects social security benefits, the declaration simply states, without saying anything further about her present economic situation, that she “cannot afford housing.” Her declaration also says nothing about where she lived before she began living “on the street” a few years ago, and it says nothing about whether she has any friends or family, in Grants Pass or elsewhere, who might be able to provide assistance.¹² And even assuming that this factual showing would be sufficient to permit a trier of fact to find that Johnson lacks any realistic option other than sleeping in her van, we cannot affirm the district court’s summary judgment in Johnson’s favor without holding that her showing was so overwhelming that she should prevail as a matter of law. Because a reasonable trier of fact could find, in light of these evidentiary gaps, that Johnson failed to carry her burden of proof on this preliminary point, summary judgment in her favor was improper.¹³

¹² The majority dismisses these questions about the sufficiency of Johnson’s evidentiary showing as “artificial limitations” on claims under *Martin*, see Opin. at 51, but the standard for establishing an Eighth Amendment violation under *Martin* and the *Powell* opinions on which it relies is a demanding and individualized one, and we are obligated to follow it. Indeed, in upholding Powell’s conviction for public drunkenness, the controlling opinion of Justice White probed the details of the record as to whether, in light of the fact that Powell “had a home and wife,” he could have “made plans while sober to prevent ending up in a public place,” and whether, despite his chronic alcoholism, he “retained the power to stay off or leave the streets, and simply preferred to be there rather than elsewhere.” 392 U.S. at 553.

¹³ The majority errs by instead counting all gaps in the evidentiary record against the City, faulting it for what the majority thinks the City has failed to “demonstrate[.]” See Opin. at 52 & n.32. That is contrary to well-settled law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)

But even assuming that Johnson had established that she truly has no option other than sleeping in her van, her showing is still insufficient to establish an Eighth Amendment violation. As noted, Johnson's *sole* complaint in this case is that, by enforcing the anti-camping ordinances, the City will not let her sleep in her van. But the sparse facts she has presented fail to establish that she lacks any alternative place where she could park her van and sleep in it. On the contrary, her factual showing establishes that the BLM will let her do so on BLM land for a "few days" at a time and that she also has "often" been able to do so on county land. Given that Johnson has failed to present sufficient evidence to show that she lacks alternatives that would allow her to avoid violating the City's anti-camping ordinances, she has not established that the conduct for which the City would punish her is involuntary such that, under *Martin* and the *Powell* opinions on which *Martin* relies, it would violate the Eighth Amendment to enforce that prohibition against her.

In nonetheless finding that the anti-camping ordinances' prohibition on sleeping in vehicles violates the Eighth Amendment, the majority apparently relies on the premise that the question of whether an individual has options for avoiding violations of the challenged law must be limited to alternatives that are *within the City limits*. Under this view, if a large homeless shelter with 1,000 vacant beds were

(holding that a movant's summary judgment motion should be granted "against a [nonmovant] who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial"). The majority's analysis also belies its implausible claim that it has not shifted the burden to the City to establish the *voluntariness* of the behavior targeted by the ordinances. *See supra* at 78 n.9.

opened a block outside the City’s limits, the City would *still* be required by the Eighth Amendment to allow hundreds of people to sleep in their vans in the City and, presumably, in the City’s public parks as well. Nothing in law or logic supports such a conclusion. *Martin* says that anti-sleeping ordinances may be enforced, consistent with the Eighth Amendment, so long as there is a “*single place* where [the person] can lawfully be,” 920 F.2d at 617 (emphasis added) (citation omitted), and Justice White’s concurrence in *Powell* confirms that the Eighth Amendment does not bar enforcement of a law when the defendant has failed to show that avoiding the violative conduct is “*impossible*,” 392 U.S. at 551 (emphasis added).¹⁴ Nothing in the rationale of this Eighth Amendment theory suggests that the inquiry into whether it is “impossible” for the defendant to avoid violating the law must be artificially constrained to only those particular options that suit the defendant’s geographic or other preferences. To be sure, Johnson states that having to drive outside the City limits costs her money for gas, but that does not provide any basis for concluding that the option is infeasible or that she has thereby suffered “cruel and unusual punishment.”

Finally, because the district court’s reliance on the Excessive Fines Clause was predicated on the comparable view that the challenged ordinances punish “status and not conduct” in violation of *Robinson*, that ruling was flawed for the same reasons. And because Johnson provides no other

¹⁴ The majority complains that this standard is too high, *see* Opin. at 52, but it is the standard applied in *Martin* and in the *Powell* opinions on which *Martin* relied.

basis for finding an Excessive Fines violation here, her claims under that clause also fail as a matter of law.

V

Accordingly, I would remand this case with instructions (1) to dismiss as moot the claims of Debra Blake as well as Plaintiffs' claims with respect to GPMC § 6.46.355; (2) to dismiss the claims of John Logan for lack of Article III standing; (3) to dismiss the remaining claims of Gloria Johnson for lack of Article III standing, except to the extent that she challenges the two anti-camping ordinances (GPMC §§ 5.61.030, 6.46.090); (4) to decertify the class; and (5) to grant summary judgment to the City, and against Johnson, with respect to her challenges to the City's anti-camping ordinances under the Eighth Amendment's Cruel and Unusual Punishments Clause and Excessive Fines Clause. That disposes of all claims at issue, and I therefore need not reach any of the many additional issues discussed and decided by the majority's opinion or raised by the parties.¹⁵

¹⁵ Two of the majority's expansions of *Martin* nonetheless warrant special mention. First, the majority's decision goes well beyond *Martin* by holding that the Eighth Amendment precludes enforcement of anti-camping ordinances against those who involuntarily lack access to temporary shelter, if those ordinances deny such persons the use of whatever materials they need "to keep themselves warm and dry." *See* Opin. at 46. It seems unavoidable that this newly declared right to the necessary "materials to keep warm and dry" while sleeping in public parks must include the right to use (at least) a tent; it is hard to see how else one would keep "warm and dry" in a downpour. And the majority also raises, and leaves open, the possibility that the City's prohibition on the use of other "items necessary to facilitate sleeping outdoors"—such as "stoves," "fires," and makeshift "structures"—"may or may not be permissible." *See* Opin. at 45–46, 53–54. Second, the majority indirectly extends *Martin*'s holding from the strictly criminal context at issue in that case to civil citations and fines. *See* Opin. at 41–45. As the

VI

Up to this point, I have faithfully adhered to *Martin* and its understanding of *Powell*, as I am obligated to do. See *Miller v. Gammie*, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc). But given the importance of the issues at stake, and the gravity of *Martin*'s errors, I think it appropriate to conclude by noting my general agreement with many of the points made by my colleagues who dissented from our failure to rehear *Martin* en banc.

In particular, I agree that, by combining *dicta* in a concurring opinion with a *dissent*, the panel in *Martin* plainly misapplied *Marks*' rule that “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’” 430 U.S. at 193 (emphasis added) (citation omitted). Under a correct application of *Marks*, the holding of *Powell* is that there is no constitutional obstacle to punishing conduct that has *not* been shown to be involuntary, and the converse question of what rule applies when the

district court noted below, the parties vigorously debated the extent to which a “violation” qualifies as a crime under Oregon law. The majority, however, sidesteps that issue by instead treating it as irrelevant. The majority’s theory is that, even assuming *arguendo* that violations of the anti-camping ordinances are only civil in nature, they are covered by *Martin* because such violations *later* could lead (after more conduct by the defendant) to criminal fines, see Opin. at 44–45. But the majority does not follow the logic of its own theory, because it has not limited its holding or remedy to the enforcement of the ultimate criminal provisions; on the contrary, the majority has enjoined *any* relevant enforcement of the underlying ordinances that contravenes the majority’s understanding of *Martin*. See Opin. at 55.

conduct *has* been shown to be involuntary was left open. See *Martin*, 920 F.3d at 590–93 (M. Smith, J., dissenting from denial of rehearing en banc) (explaining that, under a proper application of *Marks*, “there is definitely no Supreme Court holding’ prohibiting the criminalization of involuntary conduct” (citation omitted)).

Moreover, the correct answer to the question left open in *Powell* was the one provided in Justice Marshall’s plurality opinion in that case: there is no federal “constitutional doctrine of criminal responsibility.” 392 U.S. at 534. In light of the “centuries-long evolution of the collection of interlocking and overlapping concepts which the common law has utilized to assess the moral accountability of an individual for his antisocial deeds,” including the “doctrines of *actus reus*, *mens rea*, insanity, mistake, justification, and duress,” the “process of adjustment” of “the tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man” is a matter that the Constitution leaves within “the province of the States” or of Congress. *Id.* at 535–36. “There is simply no indication in the history of the Eighth Amendment that the Cruel and Unusual Punishments Clause was intended to reach the substantive authority of Congress to criminalize acts or status, and certainly not before conviction,” and the later incorporation of that clause’s protections vis-à-vis the States in the Fourteenth Amendment “worked no change in its meaning.” *Martin*, 920 F.3d at 602 (Bennett, J., dissenting from denial of rehearing en banc); see also *id.* at 599 (explaining that *Martin*’s novel holding was inconsistent with the “text, tradition, and original public meaning[] [of] the Cruel and Unusual Punishments Clause of the Eighth Amendment”). Consequently, so long as “the accused has committed some

act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some *actus reus*,” the Eighth Amendment principles applied in *Robinson* have been satisfied. *Powell*, 392 U.S. at 533 (plurality). The Eighth Amendment does not preclude punishing such an act merely “because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’” *Id.*; see also *Martin*, 920 F.3d at 592 n.3 (M. Smith, J., dissenting from denial of rehearing en banc) (“*Powell* does not prohibit the criminalization of involuntary conduct.”).

Further, it is hard to deny that *Martin* has “generate[d] dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.” *Id.* at 594 (M. Smith, J., dissenting from denial of rehearing en banc). Those harms, of course, will be greatly magnified by the egregiously flawed reconceptualization and extension of *Martin*’s holding in today’s decision, and by the majority’s equally troubling reworking of settled class-action principles. With no sense of irony, the majority declares that no such harms are demonstrated by the record in this case, even as the majority largely endorses an injunction effectively requiring Grants Pass to allow the use of its public parks as homeless encampments. Other cities in this circuit can be expected to suffer a similar fate.

In view of all of the foregoing, both *Martin* and today’s decision should be overturned or overruled at the earliest opportunity, either by this court sitting en banc or by the U.S. Supreme Court.

* * *

I respectfully but emphatically dissent.

Silver, District Judge, and Gould, Circuit Judge, joint statement regarding denial of rehearing:

The differences of opinion in this case are hard and there is basis for good-faith disagreements which are reflected in the filings from a variety of judges. The robust defense of the panel majority opinion we offer here should not be read as any comment on the sincerity of our colleagues' quarrels with our position.

The statement regarding the denial of rehearing from Judge O'Scannlain and the dissent from Judge M. Smith significantly exaggerate the holding in *Johnson v. Grants Pass*, 50 F.4th 787 (9th Cir. 2022). *Grants Pass*, relying on *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), holds only that governments cannot criminalize the act of sleeping with the use of rudimentary protections, such as bedding, from the elements in some public places when a person has nowhere else to sleep. It does not establish an unrestrained right for involuntarily homeless persons to sleep anywhere they choose. Nor does it require jurisdictions to cede all public spaces to involuntarily homeless persons. The argued notion that *Martin* and *Grants Pass* work together to guarantee a "federal constitutional 'right' . . . to camp or to sleep on sidewalks and in parks, playgrounds, and other public places" is completely absent from the opinion. The denial of en banc rehearing should not be criticized based on rhetorical exaggerations.

Beyond misdescribing the holding of *Grants Pass*, Judge O'Scannlain extrapolates and proposes that the Ninth Circuit ignore 65 years of Supreme Court precedent in favor of his preferred approach of looking exclusively to what he declares is the "text, history, and tradition" of the Eighth Amendment. But inferior courts are not free to embark on

such freewheeling adventures when the Supreme Court has provided the applicable guidance. Judge M. Smith does not join the portion of Judge O’Scannlain’s statement discussing this point, but Judge M. Smith engages in a puzzling error by attributing in part the homelessness problem throughout the Ninth Circuit to *Martin* and now *Grants Pass*. The homelessness problem predates *Martin*, and cities outside the Ninth Circuit, and outside the United States, are experiencing crisis-levels of homelessness. It is implausible to argue the crisis would abate if jurisdictions in the Ninth Circuit regained the authority to punish involuntarily homeless persons for sleeping in public with blankets.

I. Limited Holding of *Grants Pass*

Judge O’Scannlain and Judge M. Smith aim most of their fire at the portion of *Grants Pass* addressing the two overlapping “anti-camping” ordinances. *Grants Pass* holds the anti-camping ordinances enacted by the City of Grants Pass violate the Eighth Amendment but only to the extent they criminalize sleeping with rudimentary forms of protection from the elements (*i.e.*, bedding or sleeping bags) by those persons without access to any other shelter (*i.e.*, persons who are “involuntarily homeless”). *Grants Pass* does not expressly preface every reference to “homeless persons” with the adjective “involuntarily.” However, in clear reliance on *Martin*, the opinion is strictly limited to enforcement of the ordinances against “involuntarily” homeless persons. Like *Martin*, *Grants Pass* holds only that “it is ‘unconstitutional to [punish] simply sleeping *somewhere* in public if one has nowhere else to do so.’” *Id.* (quoting *Martin*, 920 F.3d at 590 (Berzon, J., concurring in denial of rehearing en banc)).

The holding in *Grants Pass* is *not* that involuntarily

homeless persons in the City of Grants Pass and elsewhere in the Ninth Circuit are allowed to sleep wherever and whenever they wish. When there is space available in shelters, jurisdictions are free to enforce prohibitions on sleeping *anywhere* in public. And emphatically, when an involuntarily homeless person refuses a specific offer of shelter elsewhere, that individual may be punished for sleeping in public. When there is no shelter space, jurisdictions may still enforce limitations on sleeping at certain locations. The assertion that jurisdictions must now allow involuntarily homeless persons to camp or sleep on every sidewalk and in every playground is plainly wrong. Jurisdictions remain free to address the complex policy issues regarding homelessness in the way those jurisdictions deem fit, subject to the single restriction that involuntarily homeless persons must have “*somewhere*” to sleep and take rudimentary precautions (bedding) against the elements. *Id.* (quoting *Martin*, 920 F.3d at 590 (Berzon, J., concurring in denial of rehearing en banc)).

Judge M. Smith misinterpreted a statement in the original majority opinion that he believed mandated “a crude *jurisdiction-wide* inquiry” dictating a local “government cannot prosecute homeless people for sleeping in public if there is a greater number of homeless individuals in a jurisdiction than the number of available shelter spaces.” Judge M. Smith’s understanding of the original statement was incorrect. To avoid any possibility of confusion, the majority has now removed the statement Judge M. Smith found confounding. But Judge M. Smith is still not satisfied. He complains the change did not result in any “downstream changes” to the majority’s analysis. But Judge M. Smith fails to acknowledge the undisputed facts established that in the City of Grants Pass, there were zero shelter beds

available on almost every night of the year. Given that, there was no need to change the remaining analysis.

As clearly explained in the majority opinion, the only secular shelter beds in the City of Grants Pass (other than beds for intoxicated adults) were located at a “warming center” that operated on especially cold nights. The warming center could hold 40 individuals and was open 16 nights during the winter of 2020 and zero nights during the winter of 2021. Thus, on 95% of the nights in 2020 and 100% of the nights in 2021, the City of Grants Pass had zero secular shelter beds for non-intoxicated adults. Given that reality, there was no need to make “downstream changes” to the analysis based on the availability of shelter beds in the City of Grants Pass. When a jurisdiction has zero shelter beds even theoretically available, it does not require significant analysis to conclude the jurisdiction is barred from prosecuting the involuntarily homeless persons in that jurisdiction.

Judge M. Smith’s refusal to acknowledge the lack of shelter space in the City of Grants Pass reveals his actual complaint in this area is the perceived failure to strictly police who will qualify as involuntarily homeless. According to Judge M. Smith, it was inappropriate to find that zero shelter beds, combined with “conclusory allegations of involuntariness,” were enough to conclude there were involuntarily homeless persons in the jurisdiction. The “conclusory allegations” Judge M. Smith faults are expressly found in a declaration submitted by Gloria Johnson where she stated, in relevant part, “I have no choice but to live outside and have no place else to go,” and “I continue to live without shelter in Grants Pass.” It bears repeating this case was resolved on summary judgment. The City of Grants Pass did not present any evidence to the

district court, nor did it argue on appeal, that Gloria Johnson's declaration was inaccurate. In fact, it is undisputed there are at least fifty involuntarily homeless persons in the City of Grants Pass, as stated in the testimony of a City of Grants Pass police officer. Describing unequivocal and undisputed statements submitted at the summary judgment stage as mere "conclusory allegations" is incorrect.

Judge M. Smith worries the amended opinion might still prohibit any enforcement actions against individuals with access to shelter. But the opinion repeatedly notes it only addresses enforcement attempts against "involuntarily homeless persons." *Grants Pass* goes to great lengths to make this clear. *Grants Pass* states individuals qualify as "involuntarily homeless" only if they "do not have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free." *Id.* at 793 n.2 (internal quotation marks and citation omitted). To remove any doubt, *Grants Pass* stresses "[i]ndividuals who have shelter or the means to acquire their own shelter simply are never class members," meaning such individuals are not "involuntarily homeless." *Id.* at 805. And to further illuminate the point, *Grants Pass* states "To be clear: A person with access to temporary shelter is not involuntarily homeless unless and until they no longer have access to shelter." *Id.* at 805 n.24. Judge M. Smith's assertion that *Grants Pass* might prohibit enforcement against persons "no matter their personal situations" is wrong.

When an individual has access to a shelter, such as through a "city's offer of temporary housing," that person is not "involuntarily homeless" and anti-camping ordinances may be enforced against that person. Similarly, if a

jurisdiction always has shelter beds or other locations available, that jurisdiction is free to enforce its anti-camping ordinances on all other public areas.

Judge M. Smith also claims that after *Grants Pass* local authorities are “powerless to cite” individuals “even for public defecation.”¹ Neither *Martin* nor *Grants Pass* involved particular ordinances precluding public urination and defecation and the assertion that *Martin* and *Grants Pass* resolved the constitutionality of ordinances addressing public urination and defecation is mistaken.²

¹ Judge M. Smith’s sole support for this interpretation is an unpublished decision by the Eastern District of California. *Mahoney v. City of Sacramento*, No. 2:20-cv-00258-KJM, 2020 WL 616302 (E.D. Cal. Feb. 10, 2020). That case involved the removal of portable toilets from public property that had been placed there by private citizens for homeless individuals to use. The plaintiffs alleged many different constitutional claims, including that the removal of the toilets would violate their Eighth Amendment rights. On that point, the City of Sacramento stated “neither the benefactors of the toilets nor the users of the toilets have, or will be, criminally prosecuted.” In denying a request for a temporary restraining order, the court stated “Extending *Martin* to these facts, the City may not prosecute or otherwise penalize the plaintiffs . . . for eliminating in public if there is no alternative to doing so.” *Id.* The court continued, arguably based on the city’s representations regarding non-prosecution, that “no irreparable injury to plaintiffs’ Eighth Amendment rights is likely.” *Id.* Because the plaintiffs voluntarily dismissed their claim nine days after the court’s order, the court did not provide a more complete Eighth Amendment analysis based on *Martin*. A brief statement made in the context of resolving an emergency motion is not a solid foundation for Judge M. Smith’s assertion that after *Grants Pass* local authorities are now “powerless to cite” individuals for public defecation.

² The focus of *Martin* and *Grants Pass* was sleep. Sleep is not a voluntary act but an “identifiable human need[.]” *Rico v. Ducart*, 980 F.3d 1292, 1298 (9th Cir. 2020). “[S]leep is critical to human existence.”

As another panel recently noted, it is unwise “to adjudicate slippery-slope hypotheticals.” *Mayes v. Biden*, No. 22-15518, 2023 WL 2997037, at *17 (9th Cir. Apr. 19, 2023). And Judge O’Scannlain noted almost twenty years ago, “[i]n our system of government, courts base decisions not on dramatic Hollywood fantasies . . . but on concretely particularized facts developed in the cauldron of the adversary process and reduced to an assessable record.” *United States v. Kincade*, 379 F.3d 813, 838 (9th Cir. 2004) (en banc). Because there was no challenge to any public urination or defecation ordinances in *Grants Pass*, the parties did not develop a record regarding those issues such that neither the district court nor Ninth Circuit had a basis to address them. Judge M. Smith’s assertion that *Grants Pass* prohibits citations “even for public defecation” is wrong.

II. Class Certification was Proper

Connected to the purported “jurisdiction-wide analysis,” Judge M. Smith argues, as did the dissent by Judge Collins, that *Grants Pass* erred in affirming certification of the class.

Walker v. Schult, 717 F.3d 119, 126 (2d Cir. 2013). See also Wilkins Kaplan & Sadock’s *Comprehensive Textbook of Psychiatry*, 10th Ed. CH23 (“Sleep is a process required for proper brain function. Failure to sleep impairs thought processes, mood regulation, and a host of normal physiological functions.”). The lack of sleep may play a role in the development of dementia. See Nedergaard and Goldman, *Glymphatic failure as a final common pathway to dementia*, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8186542/>. And long-term sleep deprivation has been shown to be lethal in some animals. See *Why Severe Sleep Deprivation Can be Lethal*, available at https://brain.harvard.edu/hbi_news/why-severe-sleep-deprivation-can-be-lethal/#:~:text=We%20found%20high%20levels%20of,can%20eventually%20trigger%20cell%20death.

According to Judge M. Smith, the opinion “wholly collaps[es] the merits into the class definition” which resulted in an “impermissible fail safe class.” The *Grants Pass* opinion explains why that conclusion is wrong. 50 F.4th at 805 n.23. In brief, the population of the class of “involuntarily homeless” individuals does not change based on whether the class wins or loses. There has never been a possibility that a “class member either wins or, by virtue of losing, is defined out of the class.” *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 n.14 (9th Cir. 2022) (quotation marks and citation omitted).

Judge M. Smith, as did Judge Collins, also believes the class should not have been certified due to a “lack of commonality.” Judge M. Smith’s view is that “commonality” was lacking because determining class membership requires an individualized assessment of each potential class member’s access to shelter. This is an incorrect understanding of Federal Rule of Civil Procedure 23’s “commonality” requirement.

To satisfy Rule 23’s “commonality” requirement there must be a “common contention” such “that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). In *Grants Pass*, the “common contention” was the assertion that the City’s anti-camping ordinances violated the Eighth Amendment as applied to the class. That contention could be resolved in “one stroke,” meaning the “commonality” requirement was met. *Dukes*, 564 U.S. at 350.

While not entirely clear, Judge M. Smith might be arguing “commonality” does not exist when a court is unable

to immediately and easily identify each and every class member. But there has never been such a requirement. See *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1115 (9th Cir. 2021) (affirming class settlement despite it being “not feasible” to identify class members). Alternatively, Judge M. Smith might be arguing “commonality” does not exist when some effort will be required to identify class members. But it is entirely routine for class actions to require individualized determinations to identify class members.

For example, a recent Ninth Circuit opinion involved a class defined as “All individuals who have worked as California-based flight attendants of Virgin America, Inc. while residing in California at any time during the Class Period.” *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1134 (9th Cir. 2021). Identifying members of that class necessarily required individualized determinations to identify whether an individual had worked as a flight attendant for Virgin America and where the individual had lived throughout the multi-year class period. Judge M. Smith’s view that “commonality” is not present whenever class members can only be identified after an individualized inquiry would preclude certification of most classes.

III. Eighth Amendment Doctrine

Judge O’Scannlain laments “*Grants Pass* never meaningfully engaged the text, history, and tradition of the Constitution.” For the most part, that criticism is misplaced as the *Grants Pass* majority was bound to follow *Martin*. More importantly, however, the present record does not contain sufficient facts to conduct the analysis Judge O’Scannlain wishes to perform, presumably because the parties were aware Judge O’Scannlain’s preferred method of

analysis is foreclosed by long established precedent.

The historical inquiry regarding the meaning of constitutional terms may require looking as far back as the 13th Century. *See Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2249 (2022) (discussing cases from 13th century). The parties in *Grants Pass* did not gather and present evidence regarding centuries of history to illuminate the complete “text, history, and tradition” of the Eighth Amendment. If, as Judge O’Scannlain believes, courts must assess the Eighth Amendment exclusively under a “text, history, and tradition” approach, the parties must be given the opportunity to present relevant historical evidence. *See United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (noting courts should follow “party presentation principle”). That may require the parties retain experts. *See, e.g., Miller v. Smith*, No. 22-1482, 2023 WL 334788, at *1 (7th Cir. Jan. 20, 2023) (remanding for district court to solicit additional expert reports regarding “text, history, and tradition framework” in Second Amendment case).

Notably, Judge O’Scannlain is not arguing *Grants Pass* should be remanded for a proper inquiry under his proposed “text, history, and tradition” test. Rather, he professes he has conducted the relevant inquiry on his own and definitively established the correct interpretation of centuries of history. Our adversarial system takes a dim view of appellate courts embarking on their own fact-finding missions. *Alpha Distrib. Co. of California v. Jack Daniel Distillery*, 454 F.2d 442, 453 (9th Cir. 1972) (“The appellate court is not the trier of facts and does not ordinarily make findings of fact.”). And that is especially true when the inquiry has not been briefed by the parties. *Sineneng-Smith*, 140 S. Ct. at 1579 (2020). Ultimately, however, Judge O’Scannlain’s favored constitutional analysis is beside the point. The Supreme

Court has made clear “text, history, and tradition” is not the correct method when assessing Eighth Amendment claims.

According to the Supreme Court, the proper interpretation of the Eighth Amendment does not turn exclusively on standards from hundreds of years ago. In a plurality opinion in 1958, the Supreme Court explained the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion). More recently, the Supreme Court stated a proper Eighth Amendment analysis “is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that ‘currently prevail.’” *Kennedy v. Louisiana*, 554 U.S. 407, 419 (2008) (citation omitted). And “courts must look beyond historical conceptions” when assessing Eighth Amendment challenges. *Graham v. Florida*, 560 U.S. 48, 58 (2010).

Given this guidance, lamenting *Grants Pass* did not delve into the Eighth Amendment’s “text, history, and tradition” is a complaint that the majority in *Grants Pass* followed the Supreme Court’s settled guidance. Contrary to Judge O’Scannlain, the majority in *Grants Pass* was not free to ignore the Supreme Court, embark on its own fact-finding mission, and conclude the correct interpretation of the Eighth Amendment is the one Judge O’Scannlain likes. Instead, the majority chose the more modest approach of applying existing Supreme Court and Ninth Circuit authority to the record presented by the parties.³

³ Judge Graber agrees with the “underlying legal premise” that the Eighth Amendment prohibits criminal prosecution of involuntarily homeless persons. But she believes *Grants Pass* “unjustifiably expands the reach of the Eighth Amendment” by prohibiting “civil remedies that could, in

IV. Application of *Marks* Doctrine

Both Judge O’Scannlain and Judge M. Smith take issue with the *Marks v. United States*, 430 U.S. 188 (1977), analysis in *Martin* and *Grants Pass*. According to them, the proper application of the *Marks* doctrine is obvious and should have prevented the result in *Martin* and *Grants Pass*. It is not clear if the *Marks* analyses conducted by Judge O’Scannlain and Judge M. Smith reach the same conclusion.⁴ Moreover, neither Judge O’Scannlain nor Judge M. Smith cite the en banc majority opinion from the Fourth Circuit that conducts the *Marks* analysis on the relevant Supreme Court authorities and reaches the “same conclusion” as that reached in *Martin*. *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 283 n.17 (4th Cir. 2019) (en banc). Thus, Judge O’Scannlain and Judge M. Smith show overconfidence that their application of the *Marks* doctrine is correct. In the end, however, an exhaustive

theory, lead to [criminal] prosecution.” But all parties in *Grants Pass* agreed the civil violations were used as the first step in the eventual pursuit of criminal charges. This is not a case where the jurisdiction has disavowed pursuing criminal charges.

⁴ Judge O’Scannlain describes Justice White’s concurrence in *Powell v. Texas*, 392 U.S. 514 (1968), as “the dispositive fifth vote.” But Judge O’Scannlain also relies heavily, without explanation, on statements made by the non-binding plurality in *Powell*. As for Judge M. Smith, he argues *Powell* produced “no single rationale and only its specific result is binding.” But Judge M. Smith then faults the *Martin* and *Grants Pass* majorities for not addressing arguments made by the non-binding plurality in *Powell*. Judge M. Smith seems to believe proper application of the *Marks* doctrine means only the result in *Powell* is binding, but lower courts have an affirmative obligation to address points made by the *Powell* plurality. Judge M. Smith does not cite any authority for his idiosyncratic view of how the *Marks* doctrine operates.

Marks analysis is not necessary.

Everyone agrees *Robinson v. California*, 370 U.S. 660 (1962) is the binding Supreme Court precedent. It is vital that every justice in *Powell v. State of Texas*, 392 U.S. 514 (1968), fully embraced the holding in *Robinson* that a status cannot be prosecuted. In *Robinson*, the Supreme Court concluded it violated the Eighth Amendment for California to criminalize the status of being “addicted to the use of narcotics.” In doing so, the Supreme Court also noted it would violate the Eighth Amendment for a state to make it a criminal offense to be “mentally ill, or a leper, or to be afflicted with a venereal disease.” *Robinson*, 370 U.S. at 666. And “[e]ven one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.” *Id.* at 667. Judge O’Scannlain and Judge M. Smith interpret *Robinson* as establishing a conclusive line between constitutionally barred “status crimes” and constitutionally permitted “conduct crimes.” But such a definitive line requires *Robinson* be read rigidly, such that a jurisdiction could avoid *Robinson* by tying “status” to inescapable human activities.

For example, under a strict “status-conduct” distinction, the California statute at issue in *Robinson* could have been cured by tying the addiction status to sleeping. Under such logic, it would have been constitutional for California to make it a criminal offense for a person “addicted to the use of narcotics” to fall asleep. *Id.* at 660. Similarly, it now would be constitutional for a jurisdiction to criminalize falling asleep while being “mentally ill, or a leper, or [] afflicted with a venereal disease.” *Id.* at 666. Reading

Robinson as allowing such simple evasion is absurd.⁵

Regardless of the *Marks* analysis, *Robinson* limits the reach of criminal law. Or, as the Supreme Court declared fifteen years after *Robinson*, the Eighth Amendment “imposes substantive limits on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). *Martin* and *Grants Pass* recognize those substantive limits reach the exceptionally narrow situation of prohibiting punishment when involuntarily homeless persons engage in the life-sustaining act of sleeping in public. Criminalizing the act of sleeping in public when an individual has nowhere else to sleep is, in effect, criminalizing the underlying status of being homeless.

V. Non-Existent Circuit Split

Judge O’Scannlain greatly overstates the extent to which *Martin* and *Grants Pass* fall on one side of an existing circuit split. According to Judge O’Scannlain, no “federal circuit or state supreme court . . . has ever embraced *Grants Pass*’s sweeping holding” regarding the Eighth Amendment. Judge O’Scannlain then cites opinions from the Eleventh and Fifth Circuits, but neither of those opinions hold what Judge O’Scannlain claims. In fact, no circuit court has reached the merits of a challenge to public camping or sleeping

⁵ Even the dissent in the Fourth Circuit opinion Judge O’Scannlain cites with approval understood the logic of *Robinson* points away from a rigid interpretation. *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 290 (4th Cir. 2019) (Wilkinson, J., dissenting). That dissent noted “[i]n the rare case where the Eighth Amendment was found to invalidate a criminal law, the law in question sought to punish persons merely for their need to eat or sleep, which are essential bodily functions. This is simply a variation of *Robinson*’s command that the state identify conduct in crafting its laws, rather than punish a person’s mere existence.” *Id.*

restrictions when no shelter space was available and concluded such restrictions were lawful. Judge O’Scannlain also points to a state supreme court opinion but that opinion explicitly does not decide the question presented in *Martin* and *Grants Pass*.

First, in *Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000), the Eleventh Circuit addressed a challenge to an anti-camping ordinance. The entire Eighth Amendment analysis in that case was premised on the fact the City of Orlando “presented unrefuted evidence that . . . a large homeless shelter . . . never reached its maximum capacity and that no individual has been turned away because there was no space available or for failure to pay the one dollar nightly fee.” *Id.* at 1362. Thus, the Eleventh Circuit concluded the anti-sleeping ordinance did “not criminalize involuntary behavior” because the plaintiff could “comply with the [anti-sleeping] ordinance” by sleeping in the shelter. *Id.* There is no suggestion the result would have been the same if there were no shelter space available.

Judge O’Scannlain claims the availability of shelter space is not a “compelling response” in terms of distinguishing the result in *Joel* from that in *Martin* and *Grants Pass*. But the central holding in *Martin* and *Grants Pass* is that the Eighth Amendment analysis turns on whether there are shelter beds or other locations where an involuntarily homeless person can lawfully sleep. It would be hard to imagine a more “compelling” way to distinguish *Joel* than pointing out *Joel* did not involve involuntary conduct because shelter space was always available.

Judge O’Scannlain also cites *Johnson v. City of Dallas, Tex.*, 61 F.3d 442 (5th Cir. 1995), where the Fifth Circuit concluded the plaintiffs lacked standing to challenge an anti-

sleeping ordinance because they had not been prosecuted. The district court had conducted an extensive overview of the Supreme Court cases and concluded the challenged anti-sleeping ordinance impermissibly “punishe[d] the homeless for their status as homeless.” *Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994). Instead of rejecting or even addressing such reasoning, the Fifth Circuit concluded no individual had standing to seek pre-enforcement review of a criminal statute. It is not clear whether Judge O’Scannlain agrees with this standing analysis and there is significant reason to doubt it is correct. *See, e.g., Holder v. Humanitarian L. Project*, 561 U.S. 1, 15 (2010) (allowing “preenforcement review of a criminal statute”). But at the very least, it is misleading to describe the Fifth Circuit’s rejection based on standing as establishing any position on the merits of the Eighth Amendment issue.⁶

⁶ Judge O’Scannlain also professes to find conflicting decisions from the First and Seventh Circuits. In the First Circuit case, the defendant argued “because his drug addiction is a disease, sentencing him to a term of imprisonment for manifesting a condition of his disease constitutes cruel and unusual punishment in violation of the Eighth Amendment.” *United States v. Sirois*, 898 F.3d 134, 135 (1st Cir. 2018). The First Circuit rejected this argument, primarily because the standard of review was “clear error” based on the defendant’s failure to raise the argument in the district court. Thus, the First Circuit held only that existing caselaw did not make it “clear or obvious” that “the Eighth Amendment proscribes criminal punishment for conduct that results from narcotic addiction.” *Id.* at 138. Concluding existing caselaw did not make the issue “clear or obvious” is not the same as reaching the merits of the issue. As for the Seventh Circuit opinion, it is unpublished and is based on an obvious error. The opinion discusses a defendant who, allegedly due to his alcoholism, “failed to attend treatment programs, used cocaine, and abused alcohol so excessively that it led to his arrest for public intoxication.” *United States v. Stenson*, 475 Fed. App’x 630, 631 (7th Cir. 2012). The Seventh Circuit concluded the defendant could be

Judge O’Scannlain also cites *Tobe v. City of Santa Ana*, 892 P.2d 1145 (1995) from the California Supreme Court. That case involved a facial challenge to an anti-camping ordinance. *Id.* at 1154. The California Supreme Court explicitly noted, however, it was not resolving whether an “involuntarily homeless person who involuntarily camps on public property may be convicted or punished under the ordinance.” *Id.* at 1166 n.19. Claiming *Tobe* is contrary to *Grants Pass* requires ignoring the language of *Tobe*.

Finally, Judge O’Scannlain does not disclose that reaching his preferred result would create a circuit split with the Fourth Circuit. In *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 268 (4th Cir. 2019) (en banc), the en banc Fourth Circuit addressed Virginia’s statutory scheme that made it a criminal offense for individuals identified as “habitual drunkards” to possess or attempt to possess alcohol. The Fourth Circuit concluded this scheme might violate the Eighth Amendment’s Cruel and Unusual Punishments clause because it targeted “conduct that is both *compelled by [the plaintiffs’] illness* and is *otherwise lawful* for all those of legal drinking age.” *Id.* at 281. In reaching that conclusion, the Fourth Circuit unequivocally adopted the same view of the Supreme Court cases regarding status crimes as that adopted in *Martin*. 930 F.3d at 282 n.17.

Judge O’Scannlain acknowledges that *Manning* holds “involuntary conduct may be exempt” from prosecution.

punished for those acts because he was not being “punished for his status as an alcoholic but for his conduct.” *Id.* However, as noted by the Fourth Circuit, the Seventh Circuit “erroneously treated the plurality opinion in *Powell* as the holding of the Court.” *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 283 n.17 (4th Cir. 2019). Therefore, *Stenson* is of little value.

But he argues *Manning* “limited its holding to laws that singled individuals out for special punishment for otherwise lawful conduct that is compelled by their illness.” Judge O’Scannlain apparently believes the ordinances addressed in *Grants Pass* do not “single out” individuals in a similar manner. Judge O’Scannlain is wrong. The ordinances addressed in *Grants Pass* target the involuntarily homeless the same way the scheme in *Manning* targeted alcoholics.

Under the ordinances addressed in *Grants Pass*, it would be lawful for an individual with access to shelter to wrap himself in a blanket in a public park because the individual was not using the blanket “for the purpose of maintaining a temporary place to live.” 50 F.4th at 793. However, the same conduct could lead to criminal prosecution of an involuntarily homeless person because, with no other place to live, the person would be using the blanket for purposes of maintaining a place to live. In brief, blanket use in a public park is criminal if you are homeless and “lawful conduct” if you are not. As with the ordinances in *Manning* regarding alcoholics, the ordinances addressed in *Grants Pass* single out the involuntarily homeless for criminalization of otherwise lawful conduct.

Judge O’Scannlain’s purported “deep and varied intercircuit split over how to read the Eighth Amendment” is an illusion. The Ninth Circuit is the sole circuit to have addressed, on the merits, a challenge to the criminalization of sleeping in public by involuntarily homeless persons. The Ninth Circuit’s current approach is faithful to Supreme Court precedent and consistent with the Fourth Circuit’s approach to a similar issue. Thus, Judge O’Scannlain’s desire to hear *Grants Pass* en banc is so that a circuit split with the Fourth Circuit can be created, not that an existing circuit split can be resolved.

VI. Evidence Not in the Record

Judge M. Smith cites a wide variety of extra-record evidence establishing homelessness is a serious issue “caused by a complex mix of economic, mental-health, and substance-abuse factors.” Everyone agrees. Judge M. Smith then states, “local governments have taken a variety of steps intended to ameliorate the crisis . . . but most of these attempts to mitigate the challenging issues of homelessness have been wholly or partially frustrated by an alleged constitutional right conjured by a panel of our court.” This appears to say that, but for *Martin* and now *Grants Pass*, local governments would be able to pursue policies that would reduce the homeless population. In other words, Judge M. Smith believes *Martin* and *Grants Pass* are somewhat responsible for the size of the homeless population. That is not sensible.

Judge M. Smith points out the City of Los Angeles has roughly 70,000 homeless persons. Judge M. Smith seems to believe at least some of those 70,000 persons, and more throughout the Ninth Circuit, remain homeless because of the very limited protection offered by *Martin*. Thus, it follows that if *Martin* were overruled and criminal penalties were again possible, at least some of those 70,000 persons in Los Angeles would obtain housing. Judge M. Smith does not cite any authority that shows the possibility of criminal penalties would have this effect. Available evidence points away from such a conclusion. See, e.g., Donald Saelinger, *Nowhere to Go: The Impacts of City Ordinances Criminalizing Homelessness*, 13 *Geo. J. on Poverty L. & Pol’y* 545, 559 (2006) (“[C]riminalization laws make it much more difficult for the homeless to gain social and economic mobility, and thus the laws have the result of extending the period of time that one is homeless.”).

Judge M. Smith’s extra-record evidence is carefully limited to support his causal theory. But if extra-record evidence should be considered, other jurisdictions show *Martin* is not the problem. New York City is experiencing a crisis in the increase of the involuntarily homeless population. As of February 2023, New York City had more than 77,000 homeless persons, “by far the most ever recorded and an increase of over 70 percent since May.” Emma G. Fitzsimmons and Andy Newman, *New York City Commissioner Of Social Services Resigns*, The New York Times (Feb. 8, 2023). New York City is not in the Ninth Circuit and it seems unlikely the holding in *Martin* is causing a surge in the homeless population across the country. Thus, *Martin* is not, as alleged, the driver of the homelessness problem.

VII. Conclusion

The Eighth Amendment “imposes substantive limits on what can be made criminal and punished as such.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977). Those substantive limits are implicated only in rare circumstances. One such circumstance is when a jurisdiction attempts to punish as a criminal offense the life-sustaining act of sleeping in public with bedding when a person has nowhere else to go. Because *Grants Pass* and *Martin* provide exceptionally limited protection, and are consistent with Supreme Court precedent, the decision not to rehear *Grants Pass* en banc is correct.⁷

⁷ The city ordinances addressed in *Grants Pass* will be superseded, to some extent, on July 1, 2023, when a new Oregon state law takes effect. The new state law requires “[a]ny city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable

O’SANNLAIN, Circuit Judge,¹ with whom Judges WALLACE, CALLAHAN, BEA, IKUTA, BENNETT, R. NELSON, BADE, COLLINS, LEE, BRESS, FORREST, BUMATAY, and VANDYKE join, and with whom Judge M. SMITH joins as to all parts except Part II-A, respecting the denial of rehearing en banc:

With this decision, our Circuit’s jurisprudence now effectively guarantees a personal federal constitutional ‘right’ for individuals to camp or to sleep on sidewalks and in parks, playgrounds, and other public places in defiance of traditional health, safety, and welfare laws—a dubious holding premised on a fanciful interpretation of the Eighth Amendment. We are the first and only federal circuit to have divined such a strange and sweeping mandate from the Cruel and Unusual Punishments Clause. Our jurisprudence in this case is egregiously flawed and deeply damaging—at war with constitutional text, history, and tradition, and Supreme Court precedent. And it conflicts with other circuits on a question of exceptional importance—paralyzing local

as to time, place and manner with regards to persons experiencing homelessness.” Or. Rev. Stat. Ann. § 195.530(2). The statute specifies that “[k]eeping warm and dry means using measures necessary for an individual to survive outdoors given the environmental conditions” but it “does not include any measure that involves fire or flame.” Or. Rev. Stat. Ann. § 195.530(1)(b)(B). This change in state law is yet another reason why it was wise to not rehear *Grants Pass*.

¹ As a judge of this court in senior status, I no longer have the power to vote on calls for rehearing cases en banc or formally to join a dissent from failure to rehear en banc. See 28 U.S.C. § 46(c); Fed. R. App. P. 35(a). Following our court’s general orders, however, I may participate in discussions of en banc proceedings. See Ninth Circuit General Order 5.5(a).

communities from addressing the pressing issue of homelessness, and seizing policymaking authority that our federal system of government leaves to the democratic process. We should have reheard this case en banc to reconsider our unfortunate constitutional mistake.

I

Instead of respecting constitutional “text, history, and precedent,” *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2271 (2022), our Eighth Amendment jurisprudence here has disrupted the “paramount role of the States in setting ‘standards of criminal responsibility,’” *Kahler v. Kansas*, 140 S. Ct. 1021, 1028 (2020) (quoting *Powell v. Texas*, 392 U.S. 514, 533 (1968) (plurality)). In my view, our cases do not inspire confidence that we have faithfully followed the Cruel and Unusual Punishments Clause—and it is worth explaining how we got here before considering why we should have reheard *Grants Pass* en banc to fix our constitutional mistakes. See *Martin v. City of Boise*, 920 F.3d 584, 603 (9th Cir. 2019) (inventing the doctrine); *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) (expanding the doctrine).

A

Our untenable jurisprudence here started in *Boise*—where a three-judge panel first invented a federal constitutional ‘right’ (rooted in the Eighth Amendment, of all places!) to sleep on public property. In *Boise*, six homeless individuals alleged that the City of Boise, Idaho, had violated their constitutional rights by enforcing municipal ordinances that prohibited unauthorized sleeping on sidewalks and in parks, plazas, and other public places. Even though the Eighth Amendment, on its own terms, only prohibits “cruel and unusual punishments,” U.S. Const.

amend. VIII, the *Boise* panel went where no federal circuit had gone before—holding that the Eighth Amendment prohibited a local government from “prosecuting people criminally” for the “involuntary act” of “sleeping outside on public property [including sidewalks] when those people have no home or other shelter to go to.” *Boise*, 920 F.3d at 603, 613, 616 (cleaned up).

In doing so, the *Boise* panel made no effort to ground its decision in the text, history, or tradition of the Eighth Amendment. Instead—after failing to identify a single Supreme Court precedent blessing its approach—the *Boise* panel attempted to fashion its preferred constitutional rule by stitching together *dicta* in a lone concurrence with a *dissent*. *Id.* at 616 (holding that these separate, unprevailing writings in *Powell* “compel[led]” *Boise*’s result). While we declined to rehear *Boise* en banc, *see id.* at 590-99 (M. Smith, J., dissent) (explaining *Boise*’s misconstruction of Supreme Court precedent); *id.* at 599-603 (Bennett, J., dissent) (articulating *Boise*’s inconsistency with the Eighth Amendment), our mistake in *Boise* has (fortunately) not been replicated in other circuits—and, as I have already stated, we remain the only federal court of appeals to have recognized an individual constitutional ‘right’ to sleep or to camp on sidewalks and other public property.

B

Unfortunately, the problems created by *Boise* have now been visited upon the City of Grants Pass by the panel majority here, which has expanded *Boise*’s faulty holding to affirm an injunction effectively requiring the City to resign all but one of its public parks to be used as homeless

encampments. *See Grants Pass*, 50 F.4th at 792-93, 813.² In this case, several individuals sought to represent a putative class of all involuntarily homeless people living in Grants Pass, seeking a permanent injunction barring the enforcement of municipal ordinances that prohibited unauthorized sleeping or camping in public spaces. *Id.* at 792-94 (explaining that violating the challenged public-sleeping, public-camping, and park-exclusion ordinances could result in civil citations and fines, that repeat violators could be excluded from specified City property, and that violating an exclusion order could subject a violator to criminal trespass prosecution). The district court sided with the challengers—and it certified a class consisting of “[a]ll involuntarily homeless individuals living in Grants Pass,” and held that the City’s enforcement of the public-sleeping and public-camping ordinances violated the Eighth Amendment. *Id.* at 795-97.

1

A divided panel of our Court affirmed in all “material

² The cities of Boise and Grants Pass are, regrettably, not the only victims of our Eighth Amendment jurisprudence here—a point that is not to be celebrated. *See, e.g., Fund for Empowerment v. City of Phoenix*, No. CV-22-02041-PHX-GMS, 2022 WL 18213522 (D. Ariz. Dec. 16, 2022) (applying *Boise*); *Coal. on Homelessness v. City & Cnty. of San Francisco*, No. 22-CV-05502-DMR, 2022 WL 17905114 (N.D. Cal. Dec. 23, 2022) (applying *Grants Pass*). While our mistaken jurisprudence in this area has some limits, *see Grants Pass*, 50 F.4th at 812 n.33, we should not pretend that the jurisprudential experiment started by *Boise* and expanded by *Grants Pass*—which “effectively strikes down the anti-camping and anti-sleeping [o]rdinances ... of countless, if not all, cities within our jurisdiction,” *Boise*, 920 F.3d at 599 (M. Smith, J., dissent)—is “narrow,” *contra id.* at 617 (majority opinion); *Grants Pass*, 50 F.4th at 813.

aspects of this case.” *Id.* at 793. After concluding that class certification was proper, the panel majority held, following *Boise*, that the City could not enforce the public-camping and park-exclusion ordinances against “involuntarily homeless persons” for the “mere act of sleeping” or camping in public spaces when “there is no other place in the City for them to go.” *Id.* at 798 & n.12, 813 (remanding, *inter alia*, on the public-sleeping ordinance because the relevant plaintiff had died). It also expanded *Boise* by holding that the City could not deprive persons of whatever materials they needed “to keep ... warm and dry,” and by extending *Boise* from the purely criminal arena to civil fines and citations. *Id.* at 806-09. In doing so, the panel majority—content to rest on *Boise*’s tortured reading of Supreme Court precedent, *see id.* at 808-11—declined to devote any serious attention to the text, history, or tradition of the Eighth Amendment.

2

Judge Collins dissented. *Id.* at 814-31. He explained, *inter alia*, that the case should be reheard en banc because the panel majority decision combined a “gross misreading of [*Boise*] with a flagrant disregard of settled class-certification principles,” and because “the foundation on which [the panel majority decision] is built is deeply flawed: [*Boise*] seriously misconstrued the Eighth Amendment and the Supreme Court’s caselaw construing it.” *Id.* at 814, n.1. In his view, *Boise* has “generate[d] dire practical consequences for the hundreds of local governments within our jurisdiction,” and those harms will be “greatly magnified by the egregiously flawed reconceptualization and extension of [*Boise*’s] holding.” *Id.* at 831 (quoting *Boise*, 920 F.3d at 594 (M. Smith, J., dissental)).

II

There is a simple reason why we should have reheard *Grants Pass* en banc: it entrenches a deeply damaging and egregiously wrong construction of the Eighth Amendment in our Circuit’s precedent. An “erroneous interpretation” of the Constitution is “always important.” *Dobbs*, 142 S. Ct. at 2265. But some judicial mistakes are “more damaging” than others—and “more than just wrong.” *Id.* at 2265-66. The novel and expansive jurisprudence entrenched by *Grants Pass*—which thumbs its nose at the “standard grounds for constitutional decisionmaking[:] text, history, and precedent”—stands on “exceptionally weak grounds” and “should be overruled.” *Id.* at 2264, 2266, 2271.

A

The first flaw in *Grants Pass*’s jurisprudence is that it conflicts with the text, history, and tradition of the Eighth Amendment—which demonstrate that the Cruel and Unusual Punishments Clause does not establish a federal constitutional “doctrine[] of criminal responsibility.” *Kahler*, 140 S. Ct. at 1028 (cleaned up). Constitutional text, history, and tradition make plain that the Clause was directed to *modes of punishment*—and that it was never intended to arrogate the substantive authority of legislatures to prohibit “acts” like those at issue here, and “certainly not before conviction.” *Boise*, 920 F.3d at 602 (Bennett, J., dissent). Indeed, one might question whether the Cruel and Unusual Punishments Clause has anything to do with the jurisprudence embraced by *Grants Pass*—which authorizes a plaintiff who has never been assigned a “punishment,” let alone one that is “cruel and unusual,” to challenge traditional anti-vagrancy regulations under the Clause. It is regrettable that *Grants Pass* never meaningfully engaged the text,

history, and tradition of the Constitution—which are the “standard grounds for constitutional decisionmaking.” *Dobbs*, 142 S. Ct. at 2271 (“text, history, and precedent”); *see, e.g., Ingraham v. Wright*, 430 U.S. 651, 664 (1977) (“history” and precedent); *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008) (“text, history, meaning, and purpose”); *see also, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022) (“historical practices and understandings” (cleaned up)); *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2128-29 (2022) (“text and history”); *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (“history and tradition” (cleaned up)).

1

The Eighth Amendment provides, “Excessive bail shall not be required, nor excessive fines imposed, nor *cruel and unusual punishments inflicted*.” U.S. Const. amend. VIII (emphasis added). The Amendment’s bar on excessive “bail,” excessive “fines,” and the infliction of cruel and unusual “punishments” indicates the Amendment’s punitive focus. And the text of the Cruel and Unusual Punishments Clause itself provides no substantive limit on what conduct may be punished. Instead, it only prohibits “punishments” (i.e., pain or suffering inflicted for a crime or offense) that are “cruel” (i.e., marked by savagery and barbarity) and “unusual” (i.e., not in common use), reflecting a constitutional prohibition originally and traditionally understood to forbid the government from “authorizing particular forms or ‘modes’ of punishment—specifically, cruel methods of punishment that are not regularly or customarily employed.” *Harmelin v. Michigan*, 501 U.S. 957, 976 (1991) (opinion of Scalia, J.); *id.* at 979 (“[b]reaking on the wheel,” “flaying alive,” and “maiming, mutilating, and scourging to death” (cleaned up)).

Constitutional text, history, and tradition make clear—contrary to *Grants Pass*'s holding—that the Clause was not originally understood to displace the authority of legislatures to prohibit historically proscribable acts (and certainly not before any punishment was imposed), see *Boise*, 920 F.3d at 599-603 (Bennett, J., dissental), and that the Clause was not traditionally taken to enshrine a constitutional “doctrine[] of criminal responsibility,” *Kahler*, 140 S. Ct. at 1028 (cleaned up).

2

Ultimately, the text, history, and tradition of the Eighth Amendment teach a simple truth: the Cruel and Unusual Punishments Clause—a constitutional prohibition fundamentally centered on *modes of punishment*—is not a boundless remedy for all social and policy ills, including homelessness. It does not empower us to displace state and local decisionmakers with our own enlightened view of how to address a public crisis over which we can claim neither expertise nor authority, and it certainly does not authorize us to dictate municipal policy here. Given the “centuries-long evolution of the collection of interlocking and overlapping concepts which the common law has utilized to assess the moral accountability of an individual for his antisocial deeds,” including the “doctrines of actus reus, mens rea, insanity, mistake, justification, and duress,” the “process of adjustment” of the “tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man” has primarily “been thought to be the province of the States.” *Powell*, 392 U.S. at 535-36 (plurality). So long as “the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some *actus reus*,” the Eighth

Amendment does not prohibit punishing such an act merely “because it is, in some sense, ‘involuntary’ or ‘occasioned by a compulsion.’” *Id.* at 533. It is troubling that our Circuit—in inventing a new individual ‘right’ unmoored from text, history, or tradition—has twisted the Eighth Amendment to displace the substantive authority of local officials to prohibit a species of antisocial conduct that was neither originally nor traditionally thought to warrant the protection of the Constitution, let alone immunity under the Cruel and Unusual Punishments Clause.

B

The second flaw in *Grants Pass*’s jurisprudence is that it lacks any foundation in the Eighth Amendment doctrine handed down to us by the Supreme Court—which, to be clear, has *never* accepted *Grants Pass*’s theory that the Cruel and Unusual Punishments Clause establishes a federal constitutional prohibition on the criminalization of purportedly nonvolitional conduct. While *Grants Pass* purports faithfully to follow the Supreme Court’s decisions in *Robinson v. California*, 370 U.S. 660 (1962), and *Powell v. Texas*, 392 U.S. 514 (1968), it actually rests on a plain misreading of the Supreme Court’s instructions because it does little more than combine dicta in a solo concurrence with a dissent. In doing so, *Grants Pass* has clearly erred—embracing a startling misapplication of the *Marks* doctrine to venture far astray from Supreme Court precedent, *see Marks v. United States*, 430 U.S. 188, 193 (1977) (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” (cleaned up)).

1

The Supreme Court has never blessed our Circuit’s sweeping approach to the Eighth Amendment here—and neither *Robinson* nor *Powell* provide any support for *Grants Pass*’s adventurous holding. In *Robinson*, the Supreme Court first articulated the status-act distinction that should have made this a simple case—holding only that the Eighth Amendment prohibited states from making it a crime “to be addicted to the use of narcotics.” *Robinson*, 370 U.S. at 662 (cleaned up). Unlike laws “punish[ing] a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration,” the California law invalidated by *Robinson* punished the mere “status” of narcotics addiction, unmoored from any particular conduct. *Id.* at 662, 666. The holding of *Robinson* is simple: the criminal law cannot punish status (e.g., “be[ing] addicted to the use of narcotics”); it can only punish conduct (e.g., “the use of narcotics”). *Id.* at 662-67 (cleaned up); see *Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 288 (4th Cir. 2019) (en banc) (Wilkinson, J., dissenting).

The Supreme Court has not wavered from the status-act distinction articulated by *Robinson*—and *Powell* is certainly no exception. In *Powell*, decided soon after *Robinson*, a fractured Supreme Court upheld a Texas law prohibiting public drunkenness against an Eighth Amendment challenge alleging that the alcoholic’s status compelled him to drink in public. *Powell*, 392 U.S. 514. No controlling majority rejected the status-act line drawn by *Robinson*: (1) Justice Marshall’s four-justice plurality upheld the statute based on *Robinson*’s status-act distinction, *id.* at 516-37 (plurality); (2) Justice White’s lone concurrence (the dispositive fifth vote) upheld the statute because it involved a volitional act,

and he declined to determine whether a non-volitional act could be criminalized, *id.* at 548-54 (White, J., concurring); and (3) Justice Fortas’s four-justice dissent rejected *Robinson*’s status-act distinction and deemed the statute’s enforcement unconstitutional, *id.* at 554-70 (Fortas, J., dissenting). Because Justice White did not “reach[] the broader question of compulsion, the judgment in *Powell* neither extended [n]or contracted *Robinson*, which was left undisturbed.” *Manning*, 930 F.3d at 289 (Wilkinson, J., dissenting). And the Supreme Court has certainly never understood *Powell* to have such broad effect: it has neither “walked away from *Robinson*” nor “embraced [*Boise*’s] whole notion of nonvolitional conduct.” *Id.*

2

Nevertheless, *Grants Pass*—turning to *Powell*’s fractured decision, *see Grants Pass*, 50 F.4th at 809-11 (contorting *Powell* and *Marks*)—attempts to “tease [its] preferred reading from the dicta of a single justice,” *Manning*, 930 F.3d at 290 (Wilkinson, J., dissenting). *Grants Pass*’s distortion of *Powell* clearly violates *Marks*—which, as explained, instructs that the Court’s holding is “that position taken by those Members who concurred in the judgment[] on the narrowest grounds.” *Marks*, 430 U.S. at 193 (cleaned up). Because no victorious majority in *Powell* disrupted *Robinson*’s “status-act” distinction or blessed *Grants Pass*’s “involuntary conduct” theory, we are left with nothing more than *Grants Pass*’s attempt to craft its preferred rule by combining dicta in a concurrence with a dissent—which means that *Grants Pass* is ultimately predicated on a plain *Marks* violation. Such a fundamental mistake, which directly implicates the limits on an inferior court’s authority to circumvent the limits of such controlling precedents, should not remain the law of our Circuit.

III

The fundamental flaws in *Grants Pass* are sufficient reason to reject its deeply damaging and egregiously wrong interpretation of the Eighth Amendment. But even apart from the constitutional errors entrenched by *Grants Pass*, there are additional, compelling reasons why this case warranted rehearing en banc. Perhaps most importantly, our expansive interpretation of the Cruel and Unusual Punishments Clause diverges from other courts on an issue of exceptional importance—and it is telling that we remain the only circuit bold enough to embrace an Eighth Amendment doctrine that effectively requires local communities to surrender their sidewalks and other public places to homeless encampments.

A

The Eighth Amendment jurisprudence undergirding *Grants Pass* squarely conflicts with decisions from other circuits and other courts. We should not pretend that our Circuit’s divination of a personal constitutional ‘right’ to encamp on public property (including sidewalks) is anything but the inventive, judge-made novelty that we all know it to be.

1

The first set of conflicts—which centers on *Grants Pass*’s result—is plain. No federal circuit or state supreme court (not one!) has ever embraced *Grants Pass*’s sweeping holding that the Eighth Amendment prohibits the enforcement of public-camping restrictions (including before any punishment is imposed). Other circuits to consider the issue have uniformly upheld such laws against Eighth Amendment challenges. *See Joel v. City of Orlando*,

232 F.3d 1353, 1356, 1361-62 (11th Cir. 2000) (upholding public-camping proscription because “[a] distinction exists between applying criminal laws to punish conduct, which is constitutionally permissible, and applying them to punish status, which is not”); *see also Johnson v. City of Dallas*, 61 F.3d 442, 443-45, n.5 (5th Cir. 1995) (rejecting challenge to public-camping proscription because the prohibition on cruel and unusual punishments is applicable only after prosecution and conviction, and none of the challengers had been “*convicted* of violating the sleeping in public ordinance” (relying on *Ingraham*, 430 U.S. at 664)). And no state supreme court has reached the same result as our aberrant decision here. *See Tobe v. City of Santa Ana*, 892 P.2d 1145, 1166 (Cal. 1995) (upholding public-camping regulation because the “ordinance permits punishment for proscribed conduct, not punishment for status”); *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 60 (2015) (upholding public-camping bar because “the Eighth Amendment does not prohibit the punishment of acts,” and the “ordinance punishes the act[] of [illegal] camping, ... not homelessness”). No defender of *Grants Pass*’s jurisprudence has provided a compelling response to these decisions, *see Boise*, 920 F.3d at 617 n.9 (attempting to reconcile *Boise* with *Joel*’s alternative rationale, but declining to do much else); *Grants Pass*, 50 F.4th 787 (not even attempting this much)—let alone a federal appellate or state supreme court case that has ever reached *Grants Pass*’s result. While *Grants Pass* has not been replicated elsewhere, aside from a smattering of trial-level dispositions, a decision that stands so far out of step with so many other courts is one that cries out for correction.

Pass's rationale—is similarly troublesome. Our approach to the Eighth Amendment in this area conflicts with decisions from the First Circuit, Fourth Circuit, and Seventh Circuit, which embrace several competing tests for determining whether the Eighth Amendment immunizes involuntary conduct. At least two other circuits—the First Circuit and the Seventh Circuit—have flatly rejected the *Grants Pass* principle that purportedly “involuntary” conduct is exempt from criminal liability under the Eighth Amendment, or that Justice White’s lone concurrence in *Powell* provides the binding opinion that compels such exemptions. See, e.g., *United States v. Sirois*, 898 F.3d 134, 137-38 (1st Cir. 2018); *United States v. Stenson*, 475 F. App’x 630, 631 (7th Cir. 2012) (citing *United States v. Black*, 116 F.3d 198, 200-01 (7th Cir. 1997)); see also *supra* (collecting cases rejecting *Grants Pass*’s reading of *Robinson*, *Powell*, and *Ingraham*). And the Fourth Circuit—the only circuit that embraces anything like *Grants Pass*’s approach—provides, at best, only mixed support because even though it held that involuntary conduct may be exempt based on dicta in Justice White’s lone concurrence, it limited its holding to laws that “singled” individuals “out for special punishment for otherwise lawful conduct that is compelled by their illness.” *Manning*, 930 F.3d at 281 n.14. Our Circuit is, therefore, locked in a deep and varied intercircuit split over how to read the Eighth Amendment in light of *Robinson* and *Powell*—and, as explained, we are the only federal court of appeals to have discovered a personal constitutional ‘right’ for individuals to encamp on public property (including sidewalks) in violation of traditional health, safety, and welfare laws, a result that no other federal circuit or state supreme court in the country has been bold enough to replicate.

B

Grants Pass also presents a question of exceptional practical and institutional importance. The immodest approach to the Eighth Amendment that it embraces is both troubling and dangerous. It undermines the power of state and local governments to address the homelessness crisis. And it arrogates to federal judges authority that the Constitution reserves elsewhere. We should have granted rehearing en banc to stop the damage already being worked by *Boise* and to stave off the mischiefs that *Grants Pass* is sure to worsen. It is regrettable that our Circuit has declined to grapple with the consequences of our mistakes.

1

The practical consequences should have been reason enough to reconsider our jurisprudential experiment before it did any more harm to our communities—and before its dangers were exacerbated by *Grants Pass*. No one reasonably doubts that our existing precedent in *Boise* has created grave and troubling consequences for the state and local communities within our jurisdiction. And no one meaningfully contests that these harms will be greatly worsened by the doctrinal innovations introduced by *Grants Pass*. One need only walk through our neighborhoods—through the Tenderloin (San Francisco) or Skid Row (Los Angeles)—to know that our communities are fast coming undone. Tents crowding out sidewalks, needles flooding parks, and rubbish (and worse) marring public squares reflect a threat to the public welfare that should not be taken lightly. Nor do such troubling blights mark an area where we should be eager to throw caution to the wind and to embrace judicial adventurism so far removed from the guardrails set by the Constitution’s text and the Supreme

Court’s precedents.

Unfortunately, the “Hobson’s choice” imposed by our Circuit effectively requires state and local officials to “abandon enforcement of a host of laws regulating public health and safety,” *Boise*, 920 F.3d at 594 (M. Smith, J., dissental)—and, if today’s decision is any guide, our precedents will readily be wielded effectively to require jurisdictions throughout our Circuit to surrender the use of many of their public spaces (including sidewalks) to homeless encampments. It is easy enough for us, behind marble walls and sealed doors, to dismiss the consequences of our decisions. But for those who call these communities home—who must live by the criminal violence, narcotics activity, and dangerous diseases that plague the homeless encampments buttressed by our decisions—the consequences of our judicial arrogation are harder to accept.

2

In addition to the practical harms that our jurisprudence creates for our communities, we also should have ended the jurisprudential mistake embraced by *Grants Pass* as quickly as possible because it “visit[s] structural and institutional damage in so many respects.” *Manning*, 930 F.3d at 305 (Wilkinson, J., dissenting). In particular, the doctrine embraced by *Grants Pass* puts “judges in policymaking roles reserved largely for legislatures and states.” *Id.* at 297. It erodes “the states’ role as separate sovereigns entrusted to define the criminal law within their own borders,” and “pushes the Eighth Amendment as a catch-all corrective” for social ills identified by inexperienced and unelected judicial officers. *Id.* Under our federal system, state and local leaders—not distant federal judges—are primarily entrusted with the power and duty to protect the common welfare of

our towns, cities, and neighborhoods, and to ensure that our streets, squares, and sidewalks remain clean and safe. *See United States v. Lopez*, 514 U.S. 549, 561 n.3 (1995). The reason for such “legislative responsibility over criminal law is fundamental: the criminal law exists to protect the safety of citizens, and ensuring the safety of the people is one of those things that popular government exists to do.” *Manning*, 930 F.3d at 297 (Wilkinson, J., dissenting). Unfortunately, this has not swayed our Court—with consequences that will sweep well past the troubles visited upon the City of Boise and the City of Grants Pass.

IV

Grants Pass is a regrettable mistake that entrenches and expands upon previous deeply damaging jurisprudence. While I do not doubt the good faith of my colleagues, it is hard to imagine a jurisprudence that combines so little regard for the sacred words of the Constitution, with so much disregard for the state and local authorities that our constitutional system entrusts as the primary protectors of the health, safety, and welfare of our communities. Our jurisprudence here is flawed—in conflict with the text, history, and tradition of the Eighth Amendment, and the precedents of the Supreme Court. And it splits from other circuits on a question of exceptional importance, working great violence to our constitutional structure and threatening dire consequences for communities within our jurisdiction. It is most regrettable that our Court has failed to rehear this case en banc.

GRABER, Senior Circuit Judge, respecting the denial of rehearing en banc:

The constitutional limits on a municipality’s ability to address the issue of homelessness present an exceptionally important and complex topic. I appreciate the many thoughtful views expressed by my colleagues. I write separately to offer a middle ground.

Whether or not the result is dictated by Powell v. Texas, 392 U.S. 514 (1968), the Eighth Amendment almost certainly prohibits criminal punishment of persons who engage in truly involuntary actions such as sleeping. I thus agree with the underlying legal premise of the decisions in Johnson v. City of Grants Pass, 50 F.4th 787 (9th Cir. 2022), and Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019). Eighth Amendment protection also extends to individualized injunctive relief, such as precluding a municipality from enforcing a particular criminal provision against a specific person, if past actions by the municipality warrant such equitable relief. Our opinion in Martin, though controversial, reached a reasonable result, particularly because Martin emphasized the “narrow” nature of its holding. 920 F.3d at 617. I did not join, and did not agree with, the dissents from denial of rehearing en banc in Martin.

In my view, though, the extension of Martin to classwide relief, enjoining civil statutes that may eventually lead to criminal violations but have never resulted in criminal convictions for any named plaintiff, is a step too far from the individualized inquiries inherent both in the Eighth Amendment context and in the context of injunctive relief. A key part of Johnson’s reasoning begins with the observation that civil citations could lead to a civil park-exclusion order which, in turn, could lead to a prosecution

for criminal trespass (but which never has for the named plaintiffs).¹ Johnson, 50 F.4th at 807–08. The opinion then concludes that, because the Eighth Amendment would prohibit that ultimate prosecution, it also must prohibit the civil citations. Id. I disagree with that double leap in logic. Even assuming that classwide injunctive relief were available against a prosecution for criminal trespass, the Eighth Amendment does not prohibit all civil remedies that could, in theory, lead to such a prosecution. In this way, Johnson unjustifiably expands the reach of the Eighth Amendment.

The challenges faced by individuals experiencing homelessness are severe. And the challenges that face municipalities are daunting. When called upon, we have an obligation to ensure that a municipality’s efforts to provide for the common health and safety do not violate the Constitution. I agree with the basic legal premise that the Eighth Amendment protects against criminal prosecution of the involuntary act of sleeping, but the injunctive relief in this case goes too far. Moreover, given the widespread nature of the homelessness crisis in our jurisdiction, it is

¹ The amended opinion refers to Debra Blake as “a named plaintiff,” and the amended opinion states that she was convicted of “Criminal Trespass on City Property.” Amended Op. at 28 n.13. Blake unfortunately died. As the opinion elsewhere recognizes, Johnson, 50 F.4th at 800–02, she is no longer a named plaintiff. Moreover, Blake’s “conviction” is doubly inapt here. First, despite the name of the citation, the conviction was for a violation, not a crime. Second, Blake was cited for being in a closed park, not for violating any of the civil statutes challenged here. The crux of the opinion’s analysis is that a civil citation could lead to a criminal misdemeanor conviction under Oregon Revised Statute section 164.245. Johnson, 50 F.4th at 807. No evidence in the record suggests that the civil statutes relevant here have caused Blake or any named plaintiff to be convicted of that crime.

crucial that we get it right. Our court should have reheard this case en banc.

M. SMITH, Circuit Judge, with whom Judges BENNETT, BUMATAY, and VANDYKE join, and with whom Judges IKUTA, R. NELSON, BADE, COLLINS, and BRESS join as to Parts I and II, dissenting from the denial of rehearing en banc:

Homelessness is presently the defining public health and safety crisis in the western United States. California, for example, is home to half of the individuals in the entire country who are without shelter on a given night.¹ In the City of Los Angeles alone, there are roughly 70,000 homeless persons.² There are stretches of the city where one cannot help but think the government has shirked its most basic responsibilities under the social contract: providing public safety and ensuring that public spaces remain open to all. One-time public spaces like parks—many of which provide scarce outdoor space in dense, working-class neighborhoods—are filled with thousands of tents and makeshift structures, and are no longer welcoming to the

¹ HUD, *The 2022 Annual Homelessness Assessment Report (AHAR) to Congress* 16 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>.

² Doug Smith, *Rand Survey Finds Homelessness Up 18% in L.A. Hot Spots Where the Official Count Recorded Decreases*, L.A. Times (Jan. 26, 2023), <https://www.latimes.com/california/story/2023-01-26/rand-survey-finds-homelessness-up-18-in-l-a-hot-spots-where-the-official-count-recorded-decreases>.

broader community.³

It is a status quo that fails both those in the homeless encampments and those near them. The homeless disproportionately risk being the victims of violence, sexual assault, and drug-related death,⁴ and encampments' unsanitary conditions have caused resurgences of plagues such as typhus, tuberculosis, and hepatitis-A.⁵ For those who live, work, and attend school near these encampments, they have become a source of fear and frustration. A plurality of California residents rate homelessness and the closely related issue of a lack of affordable housing as the

³ See generally Luis Sinco, *Photos: An Unflinching Look at Homelessness During the Pandemic* (Mar. 8, 2021), <https://www.latimes.com/california/story/2021-03-08/homelessness-and-the-pandemic> (depicting homeless encampments); L.A. Homeless Servs. Auth., *Car, Van, RV/Camper, Tent, and Makeshift Shelter (CVRTM)* (2022), <https://www.lahsa.org/documents?id=6533-cvrtm-summary-by-geography> (estimating the total number of tents and makeshift structures across the City of Los Angeles).

⁴ See Gale Holland, *Attacked, Abused and Often Forgotten: Women Now Make Up 1 in 3 Homeless People in L.A. County*, L.A. Times (Oct. 28, 2016), <https://www.latimes.com/projects/la-me-homeless-women/>; Christian Martinez & Rong-Gong Lin II, *L.A. County Homeless Deaths Surged 56% in Pandemic's First Year. Overdoses Are Largely to Blame*, L.A. Times (Apr. 22, 2022), <https://www.latimes.com/california/story/2022-04-22/la-county-homeless-deaths-surge-pandemic-overdoses>.

⁵ Soumya Karlamangla, *L.A. Typhus Outbreak Adds Fuel to Debates Over Homelessness and Housing*, L.A. Times (Oct. 11, 2018), <https://www.latimes.com/local/california/la-me-ln-typhus-outbreak-20181011-story.html>; Anna Gorman & Kaiser Health News, *Medieval Diseases Are Infecting California's Homeless*, Atlantic, <https://www.theatlantic.com/health/archive/2019/03/typhus-tuberculosis-medieval-diseases-spreading-homeless/584380/> (last updated Mar. 11, 2019).

state's two most pressing issues.⁶ In the City of Los Angeles, a startling 95% of residents view homelessness as a serious or very serious problem, while roughly 40% of residents report that pervasive homelessness makes them no longer feel safe in their own neighborhoods.⁷

Homelessness is caused by a complex mix of economic, mental-health, and substance-abuse factors, and appears to resist any easy solution. In recent years, state and local governments have taken a variety of steps intended to ameliorate the crisis: adopting zoning reforms to increase the supply of housing, declaring public emergencies to bypass red tape and more quickly build new public housing, increasing spending on mental-health services, and contracting with hotels and motels to offer temporary housing to those living on the street. Some local governments have also reasonably chosen to couple these longer-term measures with attempts to enforce public-camping bans and other public health measures—but most of these attempts to mitigate the challenging issues of homelessness have been wholly or partially frustrated by an

⁶ Mark Murray, *California Poll: Homelessness Is Most Urgent Issue in the State*, NBC News (Mar. 1, 2023), <https://www.nbcnews.com/meet-the-press/meetthepressblog/california-poll-homelessness-urgent-issue-state-rcna72972>.

⁷ Benjamin Oreskes, Doug Smith & David Lauter, *95% of Voters Say Homelessness is L.A.'s Biggest Problem, Times Poll finds. 'You Can't Escape It.'*, L.A. Times (Nov. 14, 2019), <https://www.latimes.com/california/story/2019-11-14/homeless-housing-poll-opinion>; Benjamin Oreskes & David Lauter, *L.A. Voters Angry, Frustrated Over Homeless Crisis, Demand Faster Action, Poll Finds*, L.A. Times (Dec. 1, 2021), <https://www.latimes.com/homeless-housing/story/2021-12-01/la-voters-are-frustrated-impatient-over-persistent-homelessness-crisis>.

alleged constitutional right conjured by a panel of our court that finds no support in United States Supreme Court jurisprudence.

Assume, for example, that you are a police officer and you encounter a homeless person in some public space—say, San Francisco’s Civic Center near the James R. Browning Building where our court sits. Assume further that the person has set up a tent and “engage[d] in other life-sustaining activities” like defecation and urination on the sidewalk nearby. *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019) (citation omitted). You also know that, pursuant to the city’s good-faith efforts to comply with the dictates of *Martin*, government workers have conducted outreach and offered temporary housing to the homeless persons in this area. Nonetheless, under the majority’s reasoning, you are powerless to cite this person even for public defecation because San Francisco has fewer shelter beds than total homeless persons. It is irrelevant that the city already offered this specific person shelter because “the number of homeless persons outnumber the available shelter beds.” *Johnson v. City of Grants Pass*, 50 F.4th 787, 792 (9th Cir. 2022) (cleaned up).⁸ In a democracy, voters and government officials should be able to debate the efficacy and desirability of these types of enforcement actions. Regrettably, our court has short-circuited the political process and declared a reasonable policy response to be off-limits and flatly unconstitutional.

Contrary to Judges Gould and Silver’s assertion, neither

⁸ This hypothetical is based on two district-court applications of *Martin* and *Grants Pass*. See *infra* section III (San Francisco and Sacramento examples).

my description of the West’s homelessness crisis nor my offering of the above hypothetical is meant to “argue the crisis would abate” if *Martin* and *Grants Pass* were overruled. Though these decisions certainly add obstacles to local governments’ already difficult path to solving the homelessness crisis, I have never and do not here contend that our precedent is an on/off-switch entirely responsible for the crisis.

I describe the scope of the West’s homelessness crisis to instead make a point about our proper role, as well as our institutional competence and accountability. Unlike the officials tasked with addressing homelessness, the members of our court are neither elected nor policy experts. Of course, the political process must yield to the fundamental rights protected by the Constitution, and some of federal courts’ finest moments have come in enforcing the rights of politically marginal groups against the majority. But when asked to inject ourselves into a vexing and politically charged crisis, we should tread carefully and take pains to ensure that any rule we impose is truly required by the Constitution—not just what our unelected members think is good public policy. Unfortunately, the careful constitutional analysis that the West’s homelessness crisis calls for is absent from both *Martin*, 920 F.3d 584, and the majority opinion here, *Grants Pass*, 50 F.4th 787.

Martin misread Supreme Court precedent, yet we failed to give that case the en banc reconsideration it deserved. *Grants Pass* now doubles down on *Martin*—crystallizing *Martin* into a crude population-level inquiry, greenlighting what should be (at most) an individualized inquiry for class-wide litigation, and leaving local governments without a clue of how to regulate homeless encampments without risking legal liability. *Martin* handcuffed local jurisdictions as they

tried to respond to the homelessness crisis; *Grants Pass* now places them in a straitjacket. If this case does not “involve[] a question of exceptional importance,” I cannot imagine one that does. Fed. R. App. P. 35(a)(2). We should have taken this second chance to revisit our flawed precedent en banc, and I respectfully dissent from our decision not to do so.

I.

As Judge O’Scannlain explains in his Statement, *Martin* cannot be squared with the Supreme Court’s Eighth Amendment precedent. What is more, as Judge O’Scannlain also explains, *Martin* violates Supreme Court precedent regarding what constitutes binding precedent. The *Marks* rule instructs in no uncertain terms that, “[w]hen a fragmented [Supreme] Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who *concurred in the judgments* on the narrowest grounds.” *Marks v. United States*, 430 U.S. 188, 193 (1977) (cleaned up) (emphasis added). Yet *Martin* counted to five votes for its understanding of the Eighth Amendment by including the four votes of the *Powell* dissenters. *Martin*, 920 F.3d at 616 (“The four dissenting Justices adopted a position consistent with that taken by Justice White [in his concurrence] . . .”). When the *Marks* rule is properly applied to *Powell v. Texas*, 392 U.S. 514 (1968), it produces the holding that *Powell*’s “conviction was constitutional because it involved the commission of an act. Nothing more, nothing less.” *Martin*, 920 F.3d at 591 (M. Smith, J., dissenting from denial of rehearing en banc); see also *Grants Pass*, 50 F.4th at 830 (Collins, J., dissenting) (“Under a correct application of *Marks*, the holding of *Powell* is that there is no constitutional obstacle to punishing conduct that has *not* been shown to be

involuntary, and the converse question of what rule applies when the conduct has been shown to be involuntary was left open.”). Put differently: When the *Marks* rule is properly applied, *Martin* cannot hide behind *Powell* and insist that Supreme Court precedent “compels the conclusion” it reached. *Martin*, 920 F.3d at 616.

Martin therefore had the burden to affirmatively justify its rule—that a “state may not criminalize conduct that is an unavoidable consequence” of a person’s status—as consistent with the Eighth Amendment. *Id.* at 617 (cleaned up). But neither *Martin* nor the majority in this case even attempts to make that showing, including rebutting the number of reasons Justice Thurgood Marshall and the other Justices in the *Powell* plurality thought an unavoidable-consequence-of-status rule would be both improper and unworkable. We are left completely in the dark as to why, for example, the *Martin* panel and *Grants Pass* majority apparently thought:

- The *Powell* plurality was wrong to interpret *Robinson v. California*, 370 U.S. 660 (1962) as a ban on “punish[ing] a mere status” and nothing more. *Powell*, 392 U.S. at 532 (plurality) (Marshall, J.).
- The *Powell* plurality was wrong to be concerned that an unavoidable-consequence-of-status rule would lack “any limiting principle.” *Id.* at 533.
- The *Powell* plurality was wrong to think that a constitutionalized unavoidable-consequence rule would improperly override the ability of states to develop “[t]he doctrines of actus reus, mens rea, insanity, mistake, justification, and duress” to resolve as they think best “the tension between the evolving

aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man.” *Id.* at 535–36.

- The *Powell* plurality incorrectly characterized an unavoidable-consequence rule as conferring upon unelected federal judges the impossible task of being “the ultimate arbiter[s] of the standards of criminal responsibility, in diverse areas of the criminal law, throughout the country.” *Id.* at 533.
- The punishment flowing from a public-camping prosecution (or even just a civil citation) constitutes the “exceedingly rare” instance—outside the context of capital punishment and juvenile life without parole—where a particular sentence may violate the Eighth Amendment. *Rummel v. Estelle*, 445 U.S. 263, 272 (1980); see *Miller v. Alabama*, 567 U.S. 460, 469–70 (2012) (summarizing proportionality case law).

Judges Gould and Silver are correct to note that the *Powell* plurality is, after all, just a plurality. But these questions, and others, still warranted a response—one would hope that a lower court, when fashioning a novel constitutional rule, would at least grapple with the reasons four Supreme Court Justices expressly chose to reject the very same rule. The district courts tasked with applying *Martin/Grants Pass*, the local governments placed in a straitjacket by these decisions, and the residents of our circuit who now must live with the consequences all deserved better than the half-reasoned decisions they received from our court.

II.

Moreover, even if one assumes *arguendo* that the Eighth

Amendment supports an unavoidable-consequence-of-status principle, *Grants Pass*'s homelessness-specific analysis has nothing to do with that principle. One would reasonably assume that *Grants Pass* implemented *Martin*'s general Eighth Amendment principle by mandating that courts conduct an *individualized* inquiry: whether public camping by the individual plaintiffs before the court is an "unavoidable consequence" of their status as homeless persons—inquiring, for example, into whether the plaintiffs declined offers of temporary housing.⁹ But one would be mistaken in that assumption. Instead of calling for an individualized inquiry, the original *Grants Pass* majority opinion candidly set forth a crude *jurisdiction-wide* inquiry: "The formula established in *Martin* is that the government cannot prosecute homeless people for sleeping in public if there is a greater number of homeless individuals in a jurisdiction than the number of available shelter spaces." *Grants Pass*, 50 F.4th at 795 (cleaned up); *see id.* at 823–28 (Collins, J., dissenting) (arguing that *Martin* provides at most a "case-specific," as-applied claim). The original

⁹ One short-term housing site in Los Angeles sits nearly empty despite proximity to a large homeless camp, and one of the new Los Angeles mayor's marquee offers of short-term housing had a below-50% acceptance rate. *See* Helen Li, *The Times Podcast: Why Hotel Rooms for L.A.'s Homeless Sit Empty* (Feb. 15, 2023), <https://www.latimes.com/podcasts/story/2023-02-15/the-times-podcast-cecil-hotel-los-angeles>; Benjamin Oreskes, *Bass Wants to Bring Homeless People Indoors. Can She Secure Enough Beds?*, L.A. Times (Dec. 22, 2022), <https://www.latimes.com/california/story/2022-12-22/karen-bass-homelessness-directive-inside-safe>; *see also* David Zahniser, *In Downtown L.A., Bass' Plan to Clear Encampments Faces Crime, Addiction and Resistance* (May 30, 2023), L.A. Times, <https://www.latimes.com/california/story/2023-05-30/la-me-mayor-bass-homeless-encampment-resistance>.

majority opinion made clear that the beds-versus-population “formula” is all that matters: Because the plaintiffs in this case established a shelter-beds deficit, they are deemed—no matter their personal situations—involuntarily homeless, and the city effectively cannot enforce its ordinances against *any* homeless person.

The majority has now amended its opinion to remove this “formula” language, and the opinion’s body now quotes *Martin*’s statement that individuals are outside the purview of its holding if they “have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but [they] choose not to use it.” *Martin*, 920 F.3d at 617 n.8. But I fear that this amendment, in reality, does little to change the substance of *Grants Pass* and instead simply obscures what *Grants Pass* holds.

Notably, the amendment is not accompanied by any downstream changes to the majority’s application of its rule to the facts or its ultimate conclusion. So, the “formula” language may be gone, but the approach that language forthrightly described remains embedded in the opinion. *Grants Pass* still holds that “[t]here, of course, exists no law or rule requiring a homeless person” to “provide the court an accounting of her finances and employment history” before being deemed “involuntarily homeless.” 50 F.4th at 811. It still equates a shelter-beds deficit with jurisdiction-wide involuntariness: “[T]he number of homeless persons outnumber the available beds. In other words, homeless persons have nowhere to shelter and sleep in the City” *Id.* at 792; *see also id.* at 797 (describing the district court decision, which it largely affirms, as holding “that, based on the unavailability of shelter beds, the City’s enforcement of its anti-camping and anti-sleeping ordinances violated the

Cruel and Unusual Punishment Clause”). And it still treats a shelter-beds deficit, when combined with conclusory allegations of involuntariness, as sufficient for an individual to show that he or she is involuntarily homeless: “Gloria Johnson has adequately demonstrated that there is no available shelter in Grants Pass and that she is involuntarily homeless.” *Id.* at 811.

The amendment thus places district courts in an impossible position. They will not be able to reconcile *Grants Pass*’s disparate strands—because they cannot be reconciled. District courts will have to choose between following what *Grants Pass* now says in one place (there must be a meaningful voluntariness inquiry) and what *Grants Pass* says and does in another place (a shelter-beds deficit and conclusory allegations are all one needs).

Indeed, *Grants Pass*’s class-certification analysis confirms that its nod to the *unavoidable*-consequence or *involuntarily*-homeless limitation is just window dressing—and that the amendment to the opinion is one of form, not substance. As Judge Collins explained, if *Martin*’s public-camping ban is truly limited to those who are involuntarily homeless, then *Martin*-type cases cannot possibly be litigated on a class-wide basis. *Grants Pass*, 50 F.4th at 823–28 (Collins, J., dissenting). To be certified, a putative class must satisfy Federal Rule of Civil Procedure 23’s commonality requirement, among others. “What matters” for purposes of that requirement “is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (cleaned up). A court must be able to “resolve an issue that is central to the validity of each one of the [class members’]

claims in one stroke.” *Id.* Whether a public-camping ban is unconstitutional as applied to a homeless plaintiff depends (it would seem) on whether that plaintiff is “involuntarily homeless,” which in turn depends on a host of individualized factors: Did they decline the city’s offer of temporary housing? Do they otherwise “have the means to pay” for temporary housing? Were there areas of the city where they could publicly camp without citation in light of the city’s enforcement policies? It blinks reality to say that the district court could, “in one stroke,” resolve the constitutionality of the public-camping ban as applied to each of the “at least around 50” class members here. *Grants Pass*, 50 F.4th at 811.

The majority, for what it is worth, tries to backdoor involuntariness into its Rule 23 analysis. But its argument is one that Philosophy 101 professors should consider using as their go-to example of circular reasoning: The class satisfies Rule 23’s commonality requirement because the class members’ claims all present the question of whether enforcement of public-camping ordinances against “involuntarily homeless individuals violates the Eighth Amendment.” *Id.* at 804–05 n.22. Answering that question resolves the claims of each class member “in one stroke” because “[p]ursuant to the class definition, the class includes only involuntarily homeless persons.” *Id.* at 804–05 (citation omitted). The basis for that premise? “[T]he record establishes” it. *Id.* at 804–05 n.22. As Judge Collins explained, there is “no authority for this audacious bootstrap argument.” *Id.* at 827 (Collins, J., dissenting). By wholly collapsing the merits into the class definition, the majority opinion certified an impermissible “fail safe” class. *Id.* (quoting *Olean Wholesale Grocery Coop. v. Bumble Bee Foods*, 31 F.4th 651, 670 n.14 (9th Cir. 2022) (en banc)).

In response to this criticism, Judges Gould and Silver suggest that *Grants Pass*'s class-certification analysis is run of the mill—analagizing it to our court's recent approval of a district court's certification of a class of California residents who worked for a certain employer. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1134 (9th Cir. 2021). It is telling that Judges Gould and Silver think involuntary homelessness is as easily determined as residency and employment history—another piece of evidence that *Martin*'s involuntariness component has faded away or been collapsed into the shelter-beds inquiry. More fundamentally, their analogy overlooks that the *Bernstein* class definition did not swallow the merits inquiry in the manner that the class definition does here. Separate from class membership (based on residency and employment), the *Bernstein* plaintiffs still had to make a merits showing that the defendant violated California labor laws by, among other things, failing to pay a minimum wage and to pay for all hours worked. *See id.* at 1133. Here, by contrast, the game is essentially over as soon as the class is certified. The class (purportedly) consists only of involuntarily homeless people, and application of the challenged ordinances to the class members is unconstitutional (under our flawed precedent) *because* the class members are involuntarily homeless.

Viewing the majority's class-certification analysis, there are only two possible conclusions: *Either* (1) the majority erred in certifying the class despite a lack of commonality; *or* (2) the majority read "involuntarily" out of *Martin*'s purported involuntarily-homeless rule. Either conclusion points to profound error that we should have used the en banc process to correct.

III.

Judges Gould and Silver insist that *Martin* and *Grants Pass* apply only in “exceptionally narrow situation[s]” and that critics of these decisions have resorted to “rhetorical exaggerations.” But whose word should one take: that of a panel majority defending its own work or that of several district court judges who have no dog in this fight and are simply trying to understand and apply the law as we have handed it down to them? Several district court decisions have understood *Martin* and now *Grants Pass* to run roughshod over normal procedural rules and past any substantive limiting principles. As a result, local governments are hard-pressed to find any way to regulate the adverse health and safety effects of homeless encampments without running afoul of our court’s case law—or, at a minimum, being saddled with litigation costs. If one picks up a map of the western United States and points to a city that appears on it, there is a good chance that city has already faced a lawsuit in the few short years since our court initiated its *Martin* experiment. Without expressing any view on how other district courts or panels of our court should decide these or similar cases pursuant to our existing precedent, I offer a few examples of the judicial adventurism our case law has already produced:

1. ***San Francisco*** responded conscientiously to *Martin*. The police department promulgated an enforcement bulletin intended to comply with that case’s dictates while retaining flexibility to clear some of the city’s worst encampments. *See Coal. on Homelessness v. City & Cnty. of San Francisco*, No. 22-cv-05502-DMR, 2022 WL 17905114, at *3–7 (N.D. Cal. Dec. 23, 2022). Pursuant to the bulletin, an officer cannot arrest a homeless person for a set of enumerated offenses unless SFPD first “secure[s] appropriate shelter.”

Id. at *4 (emphasis omitted). SFPD policy requires officers to work with other city agencies to implement a multi-step process: The city posts a notice that an encampment clearing will occur on a particular date; city workers perform outreach at the encampment the weekend before the clearing; and city workers follow up at the encampment 24 to 72 hours before the clearing. *Id.* at *5–7. Only then can an encampment clearing take place. To be sure, the record on SFPD’s compliance with this policy was mixed. The defendants asserted that they *always* comply with the policy—“conduct[ing] regular training[s]” on it, setting aside beds based on an estimated acceptance rate, and providing officers with the means to check shelter-bed availabilities. *Id.* at *13–15, *23. Some plaintiffs asserted that they *never* received advance notice of encampment clearings or offers of housing. *Id.* at *8–9. Other plaintiffs asserted that SFPD *sometimes* complied with the policy and “acknowledge[d] receiving and/or accepting shelter offers at . . . encampment closures.” *Id.* at *22; *see also id.* at *10–12. The plaintiffs’ expert opined that San Francisco had a shelter-beds deficit but conceded that a “clear way to access shelter is via an encampment [closure] while under threat from law enforcement.” *Id.* at *14.

Nonetheless, the court found the mixed record before it sufficient to issue a sweeping preliminary injunction. The district court repeatedly returned not to the facts of specific plaintiffs in specific encampment clearings but to the consideration at the center of *Grants Pass*: whether there is a shelter-beds deficit. *See id.* at *21 (“insufficient stock of shelter beds”); *id.* *22 (“long-standing shelter bed shortfalls”); *id.* at *23 (“there are thousands more homeless individuals . . . than there are available shelter beds”); *id.* at *27 (“shortfall of shelter beds”). The court determined that

it “need not decide” how offers of housing, when actually made, would impact the constitutionality of arrests or alter the scope of an injunction. *See id.* at *23–24. The court instead issued a broad, if ambiguous, injunction that appears to effectively prevent SFPD from enforcing five separate prohibitions against homeless persons in San Francisco “as long as there are more homeless individuals . . . than there are shelter beds available.” *Id.* at *28.

2. *Phoenix* suffered a similar fate. Like San Francisco, it adopted a policy that police “officers must make individualized assessments” before issuing citations against homeless persons for certain offenses. *Fund for Empowerment v. City of Phoenix*, No. CV-22-02041-PHX-GMS, 2022 WL 18213522, at *3 (D. Ariz. Dec. 16, 2022). Unlike the San Francisco case, the district court cited no evidence in the record showing that Phoenix breached its policy. Still, the district court issued a sweeping injunction after conducting a merits inquiry that focused almost exclusively on the *Grants Pass* beds-versus-population inquiry. The district court noted that it was “not contested that there are more unsheltered individuals than shelter beds in Phoenix” and then concluded that Phoenix’s policy “present[s] likely unconstitutional applications especially when the unsheltered in the city outnumber the available bed spaces.” *Id.* The city’s enforcement policy—as a mere “statement of administrative policy”—was insufficient to “forestall the Plaintiffs’ ultimate likelihood of success on the merits.” *Id.* (quoting *Martin*, 920 F.3d at 607).

3. *Santa Barbara* adopted a half-measure: a geographically- and time-limited ban against public sleeping that applied only in the city’s downtown area. *Boring v. Murillo*, No. CV-21-07305, 2022 WL 14740244, at *1 (C.D. Cal. Aug. 11, 2022). Despite the ordinance’s modest scope,

the district court still held that the plaintiffs stated a plausible claim to relief pursuant to *Martin* and denied the city's motion to dismiss. *See id.* at *5–6.

4. *Sacramento* found itself subject to a lawsuit after taking the innocuous step of removing a portable toilet from city-owned property. *Mahoney v. City of Sacramento*, No. 2:20-cv-00258-KJM, 2020 WL 616302, at *1 (E.D. Cal. Feb. 10, 2020). Though the court ultimately declined to issue a temporary restraining order because the plaintiffs' claims failed on factual grounds, it still interpreted *Martin* to cover public urination and defecation prosecutions and stated that “the City may not prosecute or otherwise penalize the plaintiffs . . . for eliminating in public if there is no alternative to doing so.” *Id.* at *3.

Judges Gould and Silver argue this “brief statement made in the context of resolving an emergency motion is not a solid foundation” on which to suggest that the enforcement of public defecation and urination laws may well be suspect pursuant to our court's precedent. In their view, that is because *Martin* and *Grants Pass* did not involve a “challenge to any public urination or defecation ordinances.” But our decisions are not good-for-one-ride-only tickets forever bound to their specific facts; they serve as precedent to which parties analogize in related situations. *Martin* attempted to limit its reach by explaining that sleep is a “life-sustaining activit[y].” *Martin*, 920 F.3d at 617. In their concurrence, Judges Gould and Silver offer a slightly different version of that limiting principle—that sleep is an “identifiable human need[.]” But “[w]hat else is [an identifiable human need]? Surely bodily functions.” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting from denial of rehearing en banc). It is not a slippery-slope fallacy to note a realistic consequence that flows directly from *Martin*

and *Grants Pass*'s reasoning. Moreover, Judges Gould and Silver fail to recognize that something is fundamentally amiss with our precedent if a city, even if it ultimately prevails, must first go to court before it can remove a toilet from property it owns.

5. *Chico* “constructed an outdoor temporary shelter facility at the Chico Municipal Airport that accommodate[d] all 571 of the City’s homeless persons.” *Warren v. City of Chico*, No. 2:21-CV-00640-MCE, 2021 WL 2894648, at *3 (E.D. Cal. July 8, 2021). But the district court cited stray lines in *Martin* in addition to *Merriam-Webster*’s definition of “shelter,” conducted a single paragraph of analysis, concluded that the airport shelter was not *Martin*-type shelter, and subsequently enjoined Chico from enforcing its anti-camping laws against “homeless persons in violation.” *Id.* at *3–4.

As the district court itself recognized, this decision (as well as the others above) shows that, while the *Martin* analysis may be “straight-forward . . . [as] to the facts of [a] case,” the “practical ramifications for the community are much more complex” and the “concerns raised in the dissent from the denial of rehearing en banc appear to have come to fruition.” *Id.* at *4 n.4 (citation omitted). As I feared, our case law has “prohibit[ed] local governments from fulfilling their duty to enforce an array of public health and safety laws,” and the “[h]alting [of] enforcement of such laws” has “wreak[ed] havoc on our communities.” *Martin*, 920 F.3d at 594 (M. Smith, J., dissenting from denial of rehearing en banc).

* * *

I respect the good intentions of my colleagues on the *Martin* panel and in the *Grants Pass* majority. But *Martin*,

particularly now that it has been supercharged by *Grants Pass*, has proven to be a runaway train that has derailed and done substantial collateral damage to the governmental units in which it has been applied and those living therein. These cases use a misreading of Supreme Court precedent to require unelected federal judges—often on the basis of sloppy, mixed preliminary-injunction records—to act more like homelessness policy czars than as Article III judges applying a discernible rule of law. I respectfully dissent from our court’s decision not to rehear *Grants Pass* en banc.

COLLINS, Circuit Judge, dissenting from the denial of rehearing en banc:

In my dissent as a member of the panel in this case, I explained that:

- *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), is a “deeply flawed” decision that “seriously misconstrued the Eighth Amendment and the Supreme Court’s caselaw construing it”;
- Even if *Martin* were correct in its Eighth Amendment holding, the panel majority’s decision in *Johnson* “greatly expands *Martin*’s holding” in a way that is “egregiously wrong”; and
- The panel majority’s decision “make[s] things worse” by “combin[ing] its gross misreading of

Martin with a flagrant disregard of settled class-certification principles.”

See *Johnson v. City of Grants Pass*, 50 F.4th 787, 814 & n.1 (9th Cir. 2022) (Collins, J., dissenting). In its “joint statement regarding denial of rehearing,” the panel majority today recycles many of the flawed arguments in its opinion. I have already explained in my dissent why those arguments are wrong. See *id.* at 823–31. The statement of Judge O’Scannlain respecting the denial of rehearing en banc and Parts I and II of Judge M. Smith’s dissent from the denial of rehearing en banc—which I join—further cogently explain the multiple serious errors in the panel majority’s opinion. I will not repeat all of what has already been said, but I think that two points are worth underscoring in response to the panel majority’s statement regarding the denial of rehearing.

First, the panel majority’s statement confirms and illustrates the layers of self-contradiction that underlie its opinion in this case.

The panel majority continues implausibly to insist that its opinion is “strictly limited to enforcement of the ordinances against ‘involuntarily’ homeless persons,” which would suggest—as *Martin* itself suggested—an individualized case-specific inquiry. See Panel Majority Statement at 94. But the panel majority also continues to insist that the class was properly certified *because* any individualized issues concerning involuntariness were moved into the class definition. See Panel Majority Statement at 99–101. As I have explained, that “artifice” ignores the requirements of Federal Rule of Civil Procedure 23, because it “rel[ies] on a fail-safe class definition that improperly subsumes this crucial individualized merits issue into the class definition.” 50 F.4th at 827 (Collins, J.,

dissenting). The panel majority tries to wave away the problem as merely one of “individualized determinations to *identify* class members,” arguing that what it did in this case is no different than asking whether, for example, a given class member resides in a particular State or performs a given job for a company. *See* Panel Majority Statement at 101 (emphasis added). But in sharp contrast to the simple factual inquiries in the panel majority’s examples, its standard for “identifying” class members here—*i.e.*, whether a given plaintiff’s homelessness is involuntary under all of the circumstances—is the *central merits issue* in the case under a correct reading of *Martin*. Thus, under the faulty class action upheld by the panel majority, if a particular person’s individual circumstances confirm that his homelessness is not “involuntary” in the sense that *Martin* requires, then his Eighth Amendment claim under *Martin* fails on the merits—and he is then defined out of the class. But if his homelessness is involuntary under *Martin*’s standards, then (under that decision’s reading of the Eighth Amendment) his *Martin* claim is a winner—and he remains in the class. The result is a classic fail-safe class: each “class member either wins or, by virtue of losing, is defined out of the class.” *Olean Wholesale Grocery Coop. v. Bumble Bee Foods*, 31 F.4th 651, 669–70 n.14 (9th Cir. 2022) (en banc) (citation omitted).

Underlying all of this is a fundamental inconsistency between the various propositions endorsed by the panel majority’s opinion. As I stated in my panel dissent, “the majority cannot have it both ways: either the class definition is co-extensive with *Martin*’s involuntariness concept (in which case the class is an improper fail-safe class) or the class definition differs from the *Martin* standard (in which case *Martin*’s individualized inquiry requires

decertification).” 50 F.4th at 827–28 (Collins, J., dissenting). Nothing in the panel majority’s statement resolves these internal contradictions, which plague its deeply flawed opinion.

Second, I cannot let pass without comment the panel majority’s contention that a newly enacted Oregon statute regulating the application of local ordinances to homeless individuals provides “yet another reason why it was wise to not rehear” this case en banc. *See* Panel Majority Statement at 112–13 n.7. Even assuming that this statute will require that city laws such as those challenged here must be “objectively reasonable as to time, place and manner with regards to persons experiencing homelessness,” under “the totality of the circumstances,” *see* Or. Rev. Stat. § 195.530(2), (5), the removal of the objectively *unreasonable* constitutional straitjacket wrongly imposed by *Martin* and *Johnson* would continue to alter the outcome of this case and would also greatly improve the cogency, coherence, and correctness of Eighth Amendment jurisprudence in this circuit. The panel majority is quite wrong in suggesting that this statute provides any grounds for looking the other way and allowing *Martin*’s cancer on our jurisprudence to continue to metastasize.

I reiterate what I said in the conclusion of my panel dissent, which is that both *Martin* and *Johnson* “should be overturned or overruled at the earliest opportunity, either by this court sitting en banc or by the U.S. Supreme Court.” 50 F.4th at 831 (Collins, J., dissenting). By denying rehearing en banc today, we have regrettably failed to overrule *Martin* and *Johnson*. I again emphatically dissent.

BRESS, Circuit Judge, joined by CALLAHAN, M. SMITH, IKUTA, BENNETT, R. NELSON, MILLER, BADE, LEE, FORREST, BUMATAY, and VANDYKE, Circuit Judges, dissenting from the denial of rehearing en banc:

Looking out the windows of the Ninth Circuit's courthouse in San Francisco, one sees the most difficult problems plaguing big-city America on display. Homelessness, drug addiction, barely concealed narcotics dealing, severe mental health impairment, the post-COVID hollowing out of our business districts. These problems of disrespect for the law, human suffering, and urban decline would seem connected, the result of a complex interaction of forces that defies any easy solution.

But on top of everything that our localities must now contend with, our court has injected itself into the mix by deploying the Eighth Amendment to impose sharp limits on what local governments can do about the pressing problem of homelessness—a problem now so often related to every other in our great cities. With no mooring in the text of the Constitution, our history and traditions, or the precedent of the Supreme Court, we have taken our national founding document and used it to enact judge-made rules governing who can sit and sleep where, rules whose ill effects are felt not merely by the States, and not merely by our cities, but block by block, building by building, doorway by doorway.

The antecedent question we must always ask when interpreting the Constitution is whether a matter has been entrusted, in the first instance, to the courts or to the people. The answer to that question here is clear: we must allow local leaders—and the people who elect them—the latitude to address on the ground the distinctly local features of the present crisis of homelessness and lack of affordable

housing. And we must preserve for our localities the ability to make tough policy choices unobstructed by court-created mandates that lack any sound basis in law. The expanding constitutional common law our court is fashioning in this area adds enormous and unjustified complication to an already extremely complicated set of circumstances.

Not every challenge we face is constitutional in character. Not every problem in our country has a legal answer that judges can provide. This is one of those situations. The decision in *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), and our decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), on which *Johnson* is premised, are clearly wrong and should have been overruled. I respectfully dissent from the denial of rehearing en banc.

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Glymphatic failure as a final common pathway to dementia

[Maiken Nedergaard](#) and [Steven A. Goldman](#)

Abstract

Sleep is conserved across all species and impaired sleep is a common trait of the diseased brain. The quality of sleep decreases as we age and disruption of the regular sleep architecture is a frequent antecedent to the onset of dementia in neurodegenerative diseases. The glymphatic system, which clears the brain of protein waste products, is mostly active during sleep. Yet the glymphatic system degrades with age, suggesting a causal relationship between sleep disturbance and symptomatic progression in the neurodegenerative dementias. The ties that bind sleep, aging, glymphatic clearance and protein aggregation have shed new light on the pathogenesis of a broad range of neurodegenerative diseases, for which glymphatic failure may comprise a therapeutically targetable final common pathway.

Little can replace the rejuvenating feeling of a good night's sleep. Our mood and affect, ability to attend, focus and problem solve, are all directly linked to how well we sleep. Indeed, the benefits of sleep are cumulative; they are not restricted to the morning hours, or even to a given day. Good sleepers live longer, weigh less, have a reduced incidence of psychiatric disorders, and remain cognitively intact longer (1–4).

Why do we sleep?

The idea that our brain rests during sleep so as to preserve energy was both posited and rejected in the 1950s, when electroencephalographic (EEG) recordings of brain activity made it clear that

rapid eye movement (REM) sleep, which comprises about 20% of normal sleep, is linked to cortex-wide neuronal activation (5, 6). In fact, energy consumption declines by only 15% in the remaining non-REM (NREM) periods of sleep. Borbely proposed 40 years ago that the sleep-wake cycle is determined by the interaction of two processes: a circadian oscillator, which cycles with the solar day, and a homeostatic drive for sleep (7). A key element in that model is that a sleep deficit - i.e., sleep deprivation - causes a quantifiable "pressure to go to sleep." The subject's subsequent NREM sleep is both longer and deeper than normal, and the antecedent sleep loss can be identified post hoc by an increase in EEG slow wave activity during recovery sleep (8). Slow wave activity is a wave of synchronous local neural firing, that typically begins in the frontal cortex and propagates posteriorly, roughly every second during NREM sleep (9). One of the predictions of the Borbely model is that daytime sleep is lighter, since it is not aligned with the circadian clock, and hence fails to fulfill the homeostatic function of sleep. This prediction has been supported by numerous studies of night shift workers, who as a group are predisposed to stress, obesity, cognitive deficits and an elevated risk of neurodegenerative diseases (10-13). One of the most prominent current models of sleep - posits that the purpose of sleep is to restore synaptic homeostasis (14). The synaptic homeostasis hypothesis of sleep is based on the observations that wakefulness is associated with the sustained potentiation of excitatory transmission, as well as with the structural expansion of postsynaptic dendritic spines (15, 16). The larger size of spines during wakefulness increases their postsynaptic currents, and thereby strengthens excitatory transmission. This model is supported by the observation that sleep deprivation is linked to an increased risk of seizures in predisposed individuals (17). It is only during subsequent recovery sleep that excitatory transmission tone and spine volume fall, each returning to its sleep-associated baseline (18).

Recent studies have offered molecular insights into the synaptic homeostasis hypothesis, by mapping the impact of the sleep-wake cycle on synaptic gene expression (19, 20). These studies showed that genes involved in synaptic signaling were predominantly transcribed prior to mice waking up, while transcripts of genes involved in metabolism rose a few hours prior to the expected bedtime. Thus, the circadian clock dictates the transcription of genes in anticipation of the tasks appropriate for the time of day. Similarly, translation of mRNAs into proteins largely followed transcription, so that proteins involved in synaptic signaling were produced during wakefulness, while those involved in metabolism were translated during sleep. Surprisingly though, when the mice were kept awake longer than normal, the translation of proteins involved in synaptic signaling continued during sleep deprivation, concurrently with a suppression of production of proteins involved in metabolism (19, 20). Thus, the behavioral state, rather than the circadian clock, controls synaptic protein production. Under continued wakefulness, those proteins involved in synaptic signaling are continuously made, while proteins needed for restorative metabolic processes are not translated. Thus, extended wakefulness is associated with a dysregulation of translation that enables the sustained potentiation of excitatory transmission; this supports a critical homeostatic role of sleep that cannot occur in the awake state. It is intriguing to speculate that the depth of recovery sleep, detected as slow wave activity, controls the translation of proteins needed to restore metabolic homeostasis.

The glymphatic and lymphatic systems

A fundamental tenet of brain homeostasis is that protein clearance must approximate protein synthesis. Is removal of protein waste also controlled by the sleep wake cycle? Until 2012 it was believed that the brain, unique among organs, was recycling all of its own protein waste (21). Only a small number of proteins were known to be transported across the blood-brain barrier, and these did not include most of the major proteins made or shed by brain cells (22). Lacking lymphatic vessels or any overt pathways for fluid export, it was unclear how protein waste might exit the mature brain parenchyma. The default conclusion was that the classical cellular protein degradation pathways, autophagy and ubiquitination, must be responsible for all CNS protein recycling (23).

This supposition, that the brain must recycle its own wastes, was questioned by the discovery of the glymphatic system (24). The glymphatic system is a highly organized cerebrospinal fluid transport system that shares several key functions with the lymphatic vessels of peripheral tissues, including the export of excess interstitial fluid and proteins (Fig. 1a). Indeed, both the brain's cerebrospinal fluid (CSF) and peripheral lymph are drained together into the venous system, from which protein waste is removed and recycled by the liver (25). Yet brain tissue itself lacks histologically-distinct lymphatic vessels. Rather, fluid clearance from the brain proceeds via the glymphatics, a structurally distinct system of fluid transport that utilizes the perivascular spaces created by the vascular endfeet of astrocytes (26). The endfeet surround arteries, capillaries and veins serving as a second wall plastering the entire cerebral vascular bed. The perivascular spaces are open, fluid-filled tunnels that offer little resistance to flow. This is in sharp contrast to the disorientingly crowded and compact architecture of adult brain tissue, called the neuropil, through which interstitial fluid flow is necessarily slow and restricted; a marsh flowing to the glymphatics' creeks and then rivers (27). The glymphatics' perivascular tunnels are directly connected to the subarachnoid spaces surrounding the brain, from which CSF is rapidly driven into deep regions of the brain by the cardiac rhythm-linked pulsations of the arterial wall (28). The vascular endfeet of astrocytes, a major subtype of glial cells, surround the perivascular spaces and can be regarded as open gates for fluid influx into the neuropil. The astrocytic endfeet are connected by gap junctions, and almost 50% of their plasma membrane facing the vessel wall is occupied by square arrays composed of the water channel AQP4 (29). Deletion of AQP4 channels reduces both the influx of CSF tracers and the efflux of solutes from the neuropil (24, 30, 31). Given its functional similarities to the peripheral lymphatic system, we coined this astrocyte-regulated mechanism of brain fluid transport the glymphatic (glial-lymphatic) system.

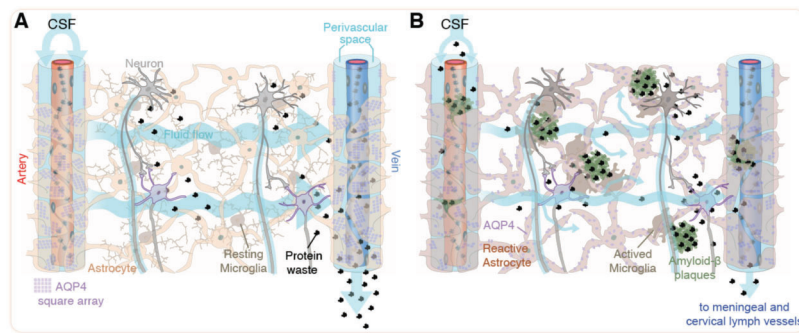


Fig. 1.

The brain glymphatic system is a highly organized fluid transport system

(A) The vascular endfeet of astrocytes create the perivascular spaces through which CSF enters the brain and pervades its interstitium. CSF enters these perivascular spaces from the subarachnoid space, and is propelled by arterial pulsatility deep into the brain, from where CSF enters the neuropil, facilitated by the dense astrocytic expression of the water channel AQP4, which is arrayed in nanoclusters within the endfeet. CSF mixes with fluid in the extracellular space and leaves the brain via the perivenous spaces, as well as along cranial and spinal nerves. Interstitial solutes, including protein waste, are then carried through the glymphatic system and exported from the central nervous system via meningeal and cervical lymphatic vessels. (B) Amyloid- β plaque formation is associated with an inflammatory response, including reactive micro- and astroglia with dispersal of AQP4 nanoclusters. An age-related decline in CSF production, the decrease in perivascular AQP4 polarization, gliosis and plaque formation all impede directionally glymphatic flow, and thereby impair waste clearance. Of note, vascular amyloidosis might be initiated by several mechanisms. Amyloid- β might be taken up from the CSF by vascular smooth muscle cells expressing the low-density lipoprotein receptor-related protein 1 (LRP1) (111). Alternatively, amyloid deposition might be initiated by the backflow of extracellular fluid containing amyloid- β into the periarterial space from the neuropil - rather than proceeding on to the perivenous spaces - due to an increase in hydrostatic pressure on the venous side, or because of an inflammation-associated loss of AQP4 localization to astrocytic endfeet.

It is important to note that fluid transport through the glymphatic system is directionally polarized, with influx along penetrating arteries, fluid entry into the neuropil supported by AQP4, and efflux along the peri-venous spaces, as well as along the cranial and spinal nerves (24, 32–34). Besides its vectorial nature, glymphatic clearance is temporally regulated and cyclically so, in that fluid transport is enabled by sleep and suppressed during wakefulness. Brain fluid transport initiates and proceeds during NREM sleep, and CSF tracer influx correlates with the prevalence of EEG slow wave activity (35, 36). Fluid flow through the glymphatic system is thus inextricably linked with sleep, to the extent that flow appears to stop with the onset of wakefulness. In this regard, slow wave activity predominates in early hours of asleep, and is a direct measure of the sleep pressure, increasing with antecedent sleep deprivation (8). As such, waste removal is likely most efficient in the early hours of sleep, and especially during recovery sleep after prolonged wakefulness (37). Yet it is easy to imagine why the awake state might be incompatible with active parenchymal fluid flow. Wakefulness relies on the precision of synaptic transmission in both

time and space. Active flow might be expected to increase glutamate spillover during synaptic activity, resulting in the bystander activation of local synapses, and hence in a loss of both the temporal and spatial fidelity of synaptic transmission. A recent analysis showed that glymphatic flow is also regulated by circadian rhythmicity, such that fluid transport peaks during the sleep phase of diurnal activity, and falls during the active phase, independent of the light cycle. This rhythm is supported by the temporally-regulated localization of AQP4 via the dystrophin associated complex, providing a dynamic link to the molecular circadian clock (38),

The glymphatic-lymphatic system is a functionally integrated unit

Upon discovery and characterization of the glymphatic system, it became quickly apparent that glymphatic efflux pathways needed to be more comprehensively defined. At about that time, two other groups reported that classical lymphatic vessels draining brain interstitial CSF might also be identified in the dura – the fibrous external layer of the meningeal membranes (39, 40). The meningeal lymphatic vessels are separated from CSF by the arachnoid membrane – an internal meningeal layer whose cells comprise a tight fluid barrier by virtue of their dense expression of tight junctions, identified by their expression of claudin-11 (41). Yet the glymphatic and meningeal lymphatic systems are clearly connected: CSF tracers can exit the CNS via the meningeal lymphatic vessels, particularly by way of the lymph vessels draining the ventral aspect of the brain draining to the cervical lymph nodes (39, 40, 42). Indeed, CSF exit from the CNS by way of the meningeal lymph vessels, as well as via both cranial and spinal nerve roots, is rapid; contrast agents can be detected in the deep cervical lymph nodes within minutes after CSF delivery (42–45). Nonetheless, proteins and tracers can circulate back into the brain along the peri-arterial spaces, suggesting that our understanding of flow vectors in the CNS is incomplete; more work is clearly needed to comprehensively account for all of the paths by which extracellular fluid and its solutes are cleared from the adult brain (46). Regardless of its precise efflux pathways, CSF ultimately drains into the cervical lymphatic vasculature, by which it returns to the venous system. Accordingly, in a murine model of Alzheimer disease, amyloid-b was present in high concentrations in the cervical and axillary lymph nodes, at levels analogous to those in the brain, and yet was either undetectable or barely so in the spleen and other peripheral tissues (47). Accordingly, a large proportion of brain waste proteins and metabolites might then be expected to pass through, and be cleared, by the cervical lymphatics. It is in this regard important to note that lymphatic vessels undergo atrophy in aging (48, 49), so that one may speculate that lymphatic drainage of CSF may pose a checkpoint – and with aging, a bottleneck - for brain protein clearance. In this regard, VEGFC-overexpression induced spouting of the meningeal lymphatic vessels and slowed the cognitive decline in a mouse model of Alzheimer disease (50). Conversely, both UV photoablation of meningeal lymphatic vessels and mechanical ligation of cervical lymphatics aggravated amyloid plaque formation in the same mouse models of Alzheimer disease (50, 51). Thus, the glymphatic and lymphatic systems are intimately connected, both structurally and functionally, such that interference with fluid transport at any segment or node within their integrated network risks upstream fluid stasis, and hence the aggregation of proteins otherwise destined for clearance.

Why do proteins aggregate in neurodegenerative diseases?

Aging is also associated with a steep fall in glymphatic flow in the brains of both rodents and humans. CSF inflow of larger tracers are reduced by up to 85% in aged wild-type mice, while contrast clearance in human brain tissue was inversely correlated to age in all subjects studied (50, 52–54). The decrease in glymphatic flow in old mice is in part mediated by mislocation of AQP4 water channels away from the vascular wall (52) and possibly by atrophy of meningeal lymphatic vessel (42). On top of aged-related decreases in brain fluid transport, glymphatic CSF influx and CSF clearance are each reduced in early stages of amyloid deposition in the APP/PS1 model of Alzheimer disease, compared with littermate controls; CSF clearance continues to decline as the amyloid burden increases (Fig. 1b). Infusion of amyloid- β into CSF acutely reduced glymphatic activity in wild-type mice suggesting a direct toxic effect (50, 55). The suppressive effects of both age and amyloid- β overexpression on glymphatic flow can be extended to other experimental rodent models of neurodegeneration; both traumatic brain injury and Parkinson's disease are similarly linked to a sustained reduction of glymphatic fluid transport (56–58). Importantly, most of these age-related primary neurodegenerative diseases involve disorders of protein processing and aggregation. The hallmark feature of these proteinopathies are the fibrillary aggregates of misfolded or hyperphosphorylated proteins (59). The protein aggregates can range in size from oligomers to large fibrillary structures. These aggregation-prone proteins include amyloid- β in Alzheimer Disease; phosphorylated tau in frontotemporal dementia (FTD) and chronic traumatic encephalopathy, as well as in Alzheimer's; α -synuclein in Parkinson's, Lewy body disease, and the multisystem atrophies; mutant huntingtin in Huntington's disease, and TDP-43 in ALS and FTD (60). Although the specific protein species differ in the different neurodegenerative disorders, in most cases their protein aggregates are formed in part by the interactions of intermolecular β -sheet-rich strands. Once a seed is formed, the aggregates attract monomers of the same protein, as well as other proteins which may be preferentially bound and entrapped (60).

Noted in cited in Johnson v. City of Grants Pass, No. 20-35752 & 20-35881, archived June 29 & 30, 2023

To understand why aging predisposes to these proteinopathies, we need to consider those conditions that favor nucleation, the growth of protein aggregates, and their subsequent seeding to neighboring cells. Proteins self-assemble and aggregate depending upon a number of factors, among which are structure, concentration, ionic strength and local pH, as well as their interactions with nucleating interfaces, such as phospholipid membranes (61, 62). Ex vivo aggregation can be induced by simply mixing hydrophobic nanoparticles into an aqueous solution containing proteins (63). A lack of fluid flow, i.e. stagnation, or its opposite, shear stress, can also promote aggregation (64, 65), which can occur at a distance from the protein source - for example, along the cerebral vasculature (Fig. 1) (66). Depending upon the protein, each of these factors, alone or in combination, can lead to self-aggregation with the formation of stable β -sheet-rich strands. Reduced glymphatic clearance might then be predicted to increase the risk of protein aggregation, given the combination of locally stagnant fluid flow together with the elevated extracellular concentration of the protein of interest.

Spread of protein aggregates: A possible role of the glymphatic system?

The recent discovery that specific misfolded and aggregated proteins can propagate and spread in a prion-like fashion has sparked considerable interest (67). It has been generally posited that

seeding occurs across regions that are synaptically connected (68). However, the evidence for synaptic spread is largely based upon post hoc analysis of anatomic networks; it remains unclear how synaptic relationships per se can mediate seeding. The arguments for synaptic spread are somewhat weakened by the fact that aggregate spread happens in both antero- and retrograde directions across regions that are anatomical neighbors (68). An alternative hypothesis is that aggregates simply spread via the extracellular spaces, and that the age-dependent reduction in glymphatic flow, with its attendant fluid stagnation, raises the local protein concentration to a level that favors aggregation. In support of this hypothesis, the suppression of glymphatic flow by deletion of AQP4 water channels sharply increased both amyloid- β plaque formation and cognitive deficits in a mouse model of Alzheimer disease (69). Similarly, in human subjects, efflux of CSF containing amyloid- β and phosphor-tau is reduced in patients with Alzheimer disease, compared to age-matched controls. The suppression of CSF in Alzheimer disease is so substantial that it can possibly serve as a biomarker (70).

What then do we know about the spread of protein aggregates on a macroscopic scale? In Alzheimer disease, amyloid- β deposition typically first deposit in the basal portions of the frontal, temporal, and occipital lobes. Later the plaques spread to include the hippocampus and posterior parietal cortex, initially sparing both the motor and sensory cortex. These latter regions are first recruited in the final stages of the disease, along with subcortical gray matter regions. Yet the cognitive decline of Alzheimer disease correlates more closely with the later-occurring tauopathy and microglial activation, than with the earlier amyloid- β plaque formation (71, 72). In the initial stages of AD, phosphorylated tau deposits in the entorhinal cortex, followed by the hippocampus and dorsal thalamus, while the neocortex becomes involved later. In Parkinson's disease and Lewy body disease, α -synuclein aggregates initially spread through the brainstem and olfactory bulb, followed by limbic structures, and only thence to the neocortex. (Fig. 3A). In each of these cases, the aggregates initially deposit at the ventral base of the fore-brain and midbrain, and then extend rostrally and dorsally to the cortex.

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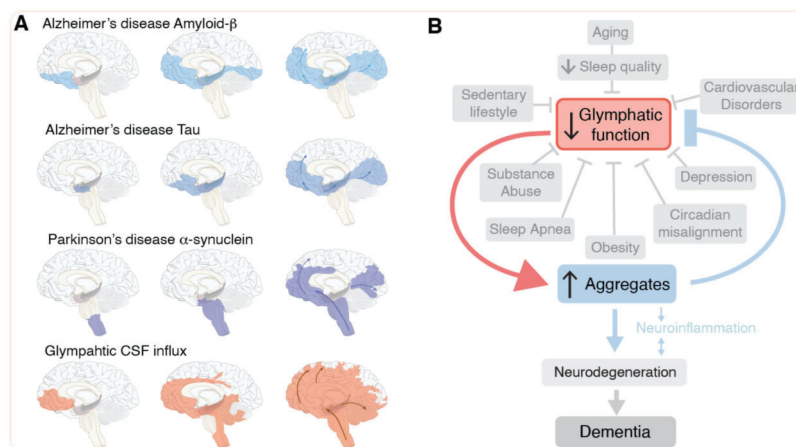


Fig. 3.

Prion-like spread of protein aggregates and proposed role of glymphatic transport

(A) Seeding and prion-like spread of protein aggregates (amyloid- β and tau) in Alzheimer disease, and α -synuclein in Parkinson disease, relative to the distribution of glymphatic influx of a CSF tracer after intrathecal delivery (67). Prion-like spread of protein aggregates includes an extracellular component and thereby the possibility that the seeds are transported by the glymphatic system. **(B)** In this model, the glymphatic system resides at the intersection of a broad scope of disorders, which share an association with diminished brain fluid clearance. In addition, normal aging is also linked to a sharp decrease in the quality of sleep and in glymphatic flow. In turn, the stagnation of glymphatic flow, and hence that of extracellular proteins, contribute to protein aggregation, with misfolding and seeding, leading in turn to local inflammation, neuronal loss, and ultimately dementia.

*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

How does this pattern of spread compare to glymphatic CSF inflow? (Fig. 3A)(67, 73).

Neuroimaging studies from the Eide group have shown that intrathecally-delivered contrast agents first are propelled into the brain along the large cerebral arteries entering the mediobasal frontal lobe and cingulate cortex along the anterior cerebral artery, insula via the middle cerebral artery and the limbic structures, including the hippocampus and entorhinal cortex via the posterior circulation. The contrast agent remains trapped in the same regions for prolonged periods of time, especially if an underlying pathology is present (74, 75). The accumulation of low molecular weight CSF contrast agents (< 1 kDa) supports the notion that much larger proteins also get trapped in the tortuous extracellular spaces of deep brain regions.

While the conditions by which pathogenic proteins may become entrapped and aggregate in glymphatic channels remain unclear, the geographic spread of aggregates in Alzheimer and Parkinson diseases clearly mirrors the pattern of glymphatic inflow in the human brain, as mapped by MRI. In fact, the geographic pattern of macroscopic aggregate formation closely resembles that of entrapped CSF contrast agents during challenge of glymphatic flow in those brains (Fig. 3B). On that basis, we propose that trapping of aggregation-prone proteins in the extracellular space, rather than synaptic connectivity, is responsible for the patterns of protein

spread in at least some proteinopathies. As such, the regional variations in the path of seeding noted across the different types of neurodegenerative diseases may reflect region- and patient-specific variability in the rates of neuronal production of amyloid, tau, and α -synuclein. Of note, while proteins involved in neurodegenerative diseases may normally be either intracellular or extracellular in nature, all are present in the extracellular space. Sampling of CSF and extracellular fluid have documented that amyloid- β , tau and α -synuclein are all present outside the cytosol. These proteins all lack N-terminal signal sequences, so that unconventional mechanisms must be responsible for their release (76). In each of these cases, it is unclear whether oligomers or the larger protein aggregates comprise the principal neurotoxic species (60). While no consensus has been reached, several studies have highlighted the critical role of oligomers as both directly toxic, and as niduses for macromolecular aggregation. Immune therapies have attempted to 'clear' the extracellular space and CSF of amyloid- β in Alzheimer patients. The failure of these clinical trials may reflect the relatively late initiation of treatment or that the antibody load was not enough to clear sufficient amyloid- β to yield clinical benefit. Alternatively though, it is possible that the underlying model of direct, aggregation-associated neurotoxicity is fundamentally incorrect, in AD as well as more broadly (77).

Sleep, aging, neurodegeneration and the glymphatic system

The most significant risk factor for developing protein aggregation, just as it is for developing dementia - is age (78). With the glymphatic in mind, it is of interest to note that sleep quality decreases as a function of normal aging. Insomnia is more frequent with age, and total sleep duration becomes shorter and more interrupted. Perhaps more critically, older individuals rarely enter deep NREM, stage 3 sleep. Most NREM sleep in people over 60 years is light, consisting of the more superficial stages 1 & 2 (79) (Fig. 2). Thus, the aged brain spends less time in NREM sleep, potentially causing a catastrophic decline in clearance of brain waste, as the efficacy of glymphatic fluid transport correlates directly with the prevalence of slow wave activity (36). The age-related impairment in sleep quality may thus be causally involved in the increased incidence and accelerated course of neurodegenerative disease in the elderly, whose disrupted sleep architecture and depth may sharply diminish the clearance of brain fluid and its attendant export of protein waste, leading in turn to the stagnant interstitial flow that favors aggregate formation.

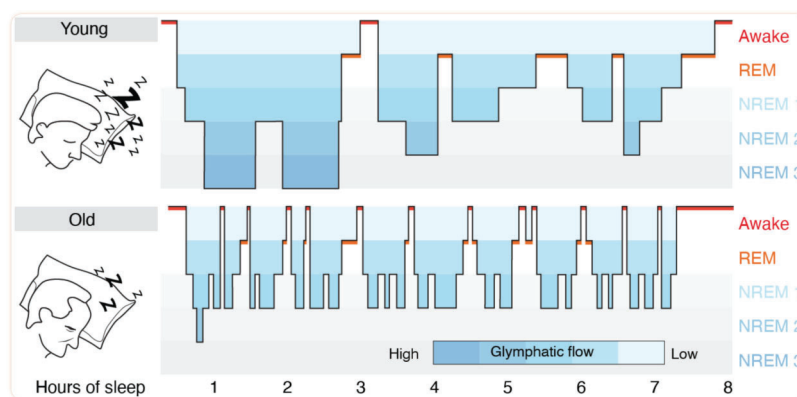


Fig. 2.

Sleep architecture in young and old subjects

Hypnograms are constructed from EEG recordings and display the cyclic transitions between sleep stages. The two schematic hypnograms illustrate the sleep architecture of a young and an old subject that transitions spontaneously between awake, REM and NREM (stage 1–3) sleep. Stages 1 NREM sleep is light sleep whereas stage 3 NREM sleep is the deepest sleep stage and characterized by slow wave EEG activity. Deep stage 3 NREM sleep dominates in the early phases of sleep, whereas REM sleep is more frequent in the later phases of sleep in young subjects. Sleep spindles are most frequent in stage 2 NREM sleep. In subjects older than 60 years, sleep is often interrupted by short awake episodes, and older subjects do not typically enter stage 3 NREM sleep; total sleep time decreases by 10 min for each decade of life (79). Blue coloring indicates the proposed efficacy of glymphatic clearance based on data collected in rodents (35, 36). The lack of stage 3 NREM sleep, the frequent interruptions of stage 1–2 NREM sleep, and the shorter total sleep time, all serve to decrease glymphatic activity in aging. Critically, a number of disorders and conditions can suppress glymphatic function during NREM sleep (Fig. 3B), further exacerbating the effects of glymphatic dysfunction in neurodegenerative disease.

On top of the deterioration of sleep architecture in aging, the neurodegenerative diseases, including Alzheimer disease, Parkinson disease, Huntington disease, the multisystem atrophies, and the frontotemporal dementias, are all associated with sleep disturbances (80). The best characterized among these are the sleep pathologies associated with Parkinson disease, in which REM sleep disturbances often precede the onset of motor symptoms by several years, even decades (80, 81). Future work should define whether sleep disturbances that preceded the clinical diagnosis contribute to aggregate seeding and whether the sleep disturbances during disease progression accelerate the aggregate spread. It would seem axiomatic that a stronger focus on age-related impairment of sleep quality should benefit the growing elderly population.

AQP4 polymorphisms in sleep and neurodegeneration

The polarized expression of the water channel, AQP4, in the vascular endfeet of astrocytes facilitates glymphatic fluid transport and amyloid- β export in rodents (24, 30) (Fig. 1). In man, genetic variation in AQP4 has been shown to impact both sleep and amyloid- β burden (82). A recent

study established a link between AQP4, sleep and the effects of prolonged wakefulness on cognitive function. The study demonstrating that a common single nucleotide polymorphism (SNP) of AQP4 was linked to changes in slow wave activity during NREM sleep, that were mirrored by changes in daytime sleepiness as well as in altered reaction times during extended wakefulness (83). Yet AQP4 SNPs have also been associated with the rate of cognitive decline in longitudinally-followed cohorts of AD patients (84). Patients with two specific AQP4 SNPs exhibited slower cognitive decline after AD diagnosis, while conversely, cognitive decline progressed more rapidly in subjects with two other AQP4 SNPs (85). Structurally, the integrity of perivascular AQP4 localization was found to degrade with AD, while it was preserved by subjects older than 85 years, who remained cognitively intact (84). Similarly, the expression of a cluster of transcripts encoding proteins associated with astrocytic end-feet predicted lower levels of cortical phospho-tau in human subjects (86). Indeed, a recent study reported that deletion of AQP4 accelerated amyloid plaque formation in a murine model of Alzheimer disease (69). Thus, although AQP4 is expressed only in astrocytes, and not in amyloid-producing neurons, considerable evidence indicates that AQP4 modulates both sleep architecture, the tolerance to sleep deprivation, amyloid- β accumulation, and the progression of Alzheimer disease. Targeting the brain's waste removal system may thus an attractive approach for alleviating the waste burden of the proteinopathies, because aggregation-prone proteins are removed by bulk flow, without the requirement for specific transporters.

Glymphatic failure links cardiovascular with neurodegenerative disease

Neurodegenerative diseases are hardly the only cause of dementia. It has been known for decades that poor cardiovascular health negatively affects cognitive abilities (87, 88), while cardiovascular fitness positively correlates with cognition in young adults (89) and preserves cognitive performance with aging (90). Why then is a healthy heart so important for higher brain function? It has been shown that glymphatic function is suppressed in hypertensive rats (91, 92). It is also well-established that the quality of sleep is compromised in cardiovascular diseases (93) perhaps providing a link to impaired glymphatic clearance and subsequent protein aggregation and dementia (94).

We also propose that a healthy cardiovascular system, besides its role in delivering energy metabolites to the brain, plays a hitherto-unappreciated role in the clearance of neurotoxic wastes from the brain. In particular, we have found that the brain's fluid transport system is designed to take advantage of cardiac pulsatility to drive CSF transport in the neuropil (28). To wit, the ejection pressure of blood from the left ventricle is partly absorbed by the elastic arterial wall of the aorta. As the ejected blood transits the arteries, it enlarges the arterial diameter as its pulse wave propagates downstream (28). About 20–25% of the total ejected blood volume enters CNS via the paired internal carotid and posterior cerebral arteries. Pulsatility in these large caliber arteries constantly transmits pressure waves along the axis of the major vessels, as well as through the soft brain tissue (Fig. 4). The motion of the brain is locally supplemented by the pulsatility of the penetrating arteries, as they enter the brain from the CSF-filled subarachnoid space, thereby driving CSF into the neuropil along the periarteral spaces (24). It should not be surprising that heart disease associated with reduced cardiac output, including such common

entities as congestive heart failure and atrial dysrhythmias (95), are associated with diminished glymphatic flow, since the pulsatility of the cerebral arteries and hence the driving forces within the glymphatic system are reduced. Indeed, the cognitive decline frequently noted in patients with low cardiac ejection fraction, so often attributed to low cerebral perfusion, may also reflect poor glymphatic flow and incomplete waste clearance, as well as a consequent predisposition to aggregate formation and still-slower glymphatic flow as a result (95).

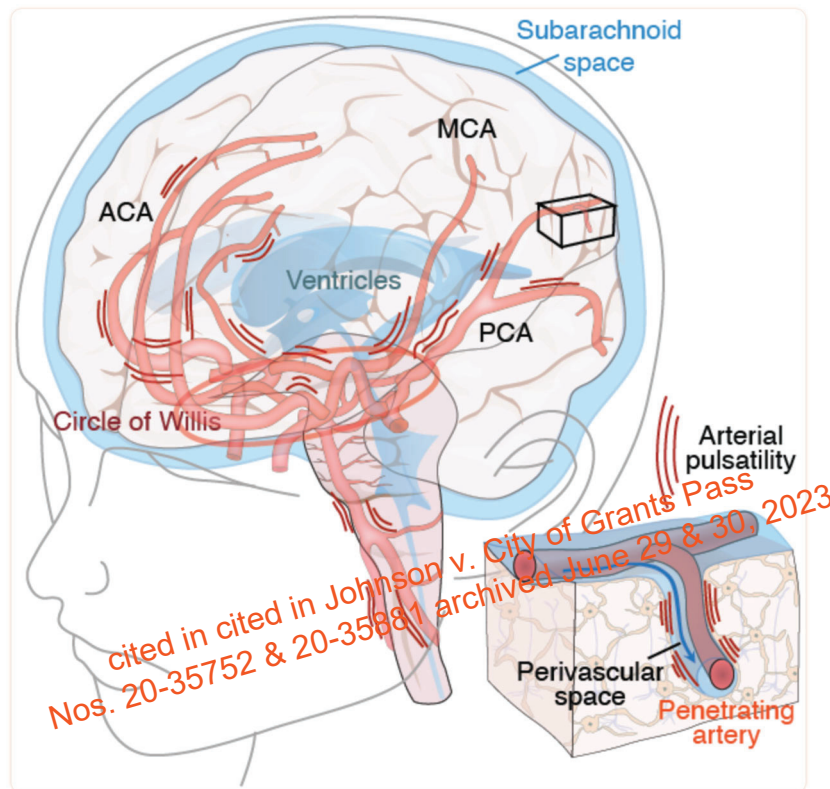


Fig. 4.

Arterial pulsatility propels fluid flow in the brain

The brain receives 20–25% of cardiac output, yet comprises ~2% of total body weight. The large caliber arteries of the circle of Willis are positioned in the CSF-containing basal cisterns below the ventral surface of the brain. Arterial pulsatility provides the motive force for CSF transit into the perivascular spaces surrounding the major arteries, while respiration and slow vasomotion contribute to sustaining its flow (112). The anterior (ACA), middle (MCA), and posterior (PCA) arteries transport CSF to the penetrating arteries (insert), from which CSF is then driven into the neuropil via the still-contiguous perivascular spaces. Cardiovascular diseases associated with reduced cardiac output, such as left heart failure and atrial arrhythmias, reduce arterial wall pulsatility, resulting in less CSF flow. In addition, thickening of the arterial wall in small vessel disease, hypertension and diabetes all reduce arterial wall compliance and hence pulsatility. Each of these fundamentally cardiovascular disorders serves to attenuate glymphatic flow, providing a potential causal link between these vascular etiologies and Alzheimer disease (113).

Small vessel disease (SVD) is a vascular disorder that targets the small cerebral vessels, in which penetrating arterioles undergo progressive thickening of their walls (96). Deterioration of the vascular bed may occur alone or in combination with other pathologies (97), leading to progressive demyelination and loss of white matter (98). SVD is common in hypertensive patients, many of whom are concurrently diabetic or smokers, and it progresses silently for years before dementia is clinically evident (99). Hypertension in particular induces hypertrophy of vascular smooth muscle cells, with a stiffening of the arterial wall that dampens arterial wall pulsatility and compliance, thus reducing convective perivascular flow (94, 100). The stiffening of perivascular glycocalyx of diabetic patients accomplishes much the same (101), and the two disorders are in frequent combination as the incidence of obesity, a predisposing factor and comorbidity to both, increases worldwide. SVD is linked glymphatic dysfunction in experimental models (91), and may potentiate the progression of neurodegenerative dementias in precisely the same patients at risk for SVD-associated vascular dementia. It is no wonder then that the clinical distinctions between Alzheimer's and the vascular dementias often is blurred by their frequent co-association (102).

Conclusion

Fundamentally, these studies have served to highlight the benefits of a good night's sleep. To be sure, sleep is an evolutionary conserved mechanism that serves multiple purposes, with benefits to the homeostatic support of the cardiovascular system, immune system and memory (103–105). Yet the most fundamental incentive for the brain to sleep lies in its own self-preservation: Only the sleeping brain is capable of efficiently cleaning up the waste products generated during active wakefulness. amyloid- β , tau and α -synuclein are all present at higher levels in the brain extracellular fluid and CSF during wakefulness than during sleep, and sleep deprivation increases their levels further (106–108). Indeed, PET imaging showed that a single night of sleep deprivation resulted in a significant increase in Amyloid- β burden in the hippocampus and thalamus (109). We need sleep to clear proteins from the brain extracellular space, less they aggregate, impede flow, and in a vicious positive feedback cycle, potentiate further fibril polymerization, which together with inflammation then suppresses glymphatic flow in the most affected regions.

Together, these observations suggest a causal linkage between the sleep-wake cycle and its regulation of fluid flow via the glymphatics, and the modulation thereby of the balance between protein clearance and aggregation. As such, they suggest a basis for the increased incidence of aggregation-related disorders seen with aging, the appearance of which tracks age-related declines in both vascular health and glymphatic patency. The neurodegenerative dementias may thus be viewed as the products of a final common pathway that integrates the dysfunction of any and all of these closely interdependent upstream mechanisms (Fig. 3B). These various processes are linked in their regulation by the brain's glymphatic system, whose directed regulation in turn may present bold new therapeutic opportunities for the disease-modifying treatment of patients with these disorders (75). In particular, the development of small molecule agonists of glymphatic efflux might present opportunities to slow disease progression in the aggregation disorders, just as the optimization of cardiovascular health might be expected to delay disease onset.

These systems are intimately connected, so that modulation of glymphatic flow and hence protein clearance from the brain will ultimately require a deeper understanding of the dependence of both glymphatic and lymphatic flow on intracardiac pressures. Indeed, the high incidence of interstitial lung disease that is emerging in patients with resolved COVID19 may predict a higher risk of aggregation disorders for these individuals going forward, as their greater risk of long-term heart failure may predict their impaired lymphatic and hence glymphatic flow. In that regard, recent advances in neuroimaging have provided multiple approaches to map the human glymphatic system, and hence to assess its functional competence in the context of disease, as well as of the effects thereof on sleep-dependent glymphatic cyclicity (72, 73, 108). The diagnostic neuroimaging of glymphatic function via such “glymphograms” may indeed provide both a means to predict the risk of developing proteinopathies, and an approach by which to evaluate the efficacy of glymphatic flow-directed treatments as they are developed.

Until then though, the most assured means of preserving effective glymphatic clearance is to just get a good night’s sleep.

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Footnotes

Conflict of interest statement: The authors declare no conflict of interest

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Why Severe Sleep Deprivation Can be Lethal

By Alexandra Vaccaro and Yosef Kaplan Dor

Why do we spend a third of our lives sleeping? Is sleep essential for survival? In the 1980s, Allan Rechtschaffen and colleagues reported that long-term sleep deprivation in rats is lethal. Similar observations were made in other model organisms, including fruit flies, but the underlying mechanism remained a mystery.

It has been assumed that death during sleep loss results directly from impaired brain function, but evidence of significant cell injury was never found in sleep-deprived brains. At the same time, many diseases are associated with poor sleep – diabetes, cardiovascular disease, even cancer. This implies that other parts of the body are affected when sleep is restricted. To understand what kills sleep-deprived animals, we systematically examined fruit flies for signs of cellular damage throughout the body during long-term sleep deprivation.

We found high levels of reactive oxygen species, ROS, specifically in the gut. At physiological levels, ROS have many important functions, but when their levels become abnormally high, they oxidize and damage DNA, lipids, and proteins, which can eventually trigger cell death. Indeed, ROS accumulation caused widespread oxidative damage and cell death in the gut of sleep-deprived flies. In addition to flies, we examined sleep-deprived mice – their small and large intestines also exhibit specific ROS accumulation and subsequent oxidative damage, suggesting that we have uncovered a conserved phenomenon.

Is intestinal ROS accumulation the cause of death in sleep-deprived animals? To answer

this question, we asked if preventing ROS accumulation in the gut of sleep-deprived flies prolongs their survival. Importantly, clearing ROS from the gut using oral antioxidants or gut-targeted overexpression of antioxidant enzymes allowed normal lifespan despite almost complete lack of sleep. Contrary to the gut-targeted

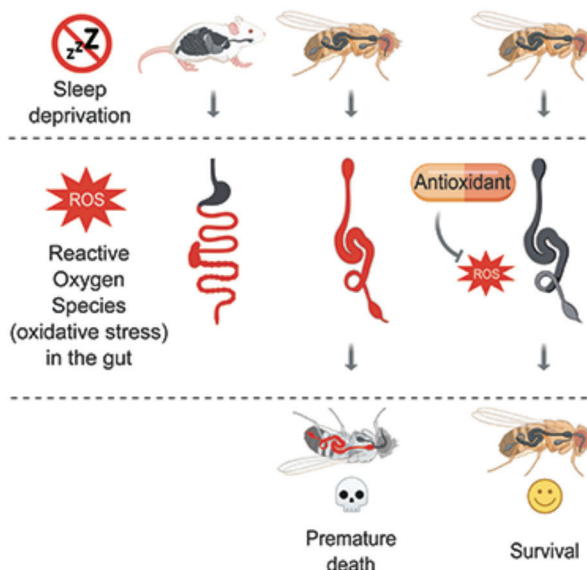
survival rescue, overexpressing antioxidant enzymes in the nervous system extended survival only by a few days. These experiments indicate that severe sleep-deprivation kills flies primarily through ROS accumulation in the gut.

Our work points to the gut as a major site of impact when sleep is severely suppressed. Similar oxidative processes may take place in the gut during chronic lack of sleep in humans, a common occurrence in the modern society. Our observations could potentially explain the link between insufficient sleep and some of the pathologies (including gastro-intestinal diseases) associated with sleep disturbances. We are now investigating how sleep deprivation causes ROS accumulation preferentially in the gut, and what the consequences of this increase in ROS levels are. We hope that this will help us better understand what the physiological basis for sleep need is, with the ultimate goal of developing strategies to ameliorate the negative impact of inadequate sleep.

Alexandra Vaccaro and Yosef Kaplan Dor are postdocs in the lab of Dragana Rogulja at Harvard Medical School.

This story will also appear in the HMS Neurobiology Department newsletter, The Action Potential.

Learn more in the original article:



Sleep deprivation induces ROS accumulation and oxidative stress in the gut of mice (left) and flies (middle). In flies, ROS accumulation leads to premature death (middle, bottom). Death of sleep-deprived flies can be prevented through neutralization of intestinal ROS (right).

Artist/image source: Rogulja lab. Created with BioRender.com.

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Sleep Loss Can Cause Death through Accumulation of Reactive Oxygen Species in the Gut. Alexandra Vaccaro, Yosef Kaplan Dor, Keishi Nambara, Elizabeth A. Pollina, Cindy Lin, Michael E. Greenberg, Dragana Rogulja. *Cell*, 2020 June 11.

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OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

The 2022 Annual Homelessness Assessment Report (AHAR) to Congress



PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS
DECEMBER 2022

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Key Findings

On a single night in 2022, roughly 582,500 people were experiencing homelessness in the United States. Six in ten (60%) were staying in sheltered locations—emergency shelters, safe havens, or transitional housing programs—and four in ten (40%) were in unsheltered locations such as on the street, in abandoned buildings, or in other places not suitable for human habitation.

There continues to be an overrepresentation of people who identify as Black, African American, or African, as well as indigenous people (including Native Americans and Pacific Islanders) among the population experiencing homelessness compared to the U.S. population. People who identify as Black made up just 12 percent of the total U.S. population but comprised 37 percent of all people experiencing homelessness and 50 percent of people experiencing homelessness as members of families with children.

Homelessness slightly increased nationwide. Between 2020 and 2022, the overall number of people experiencing homelessness increased by less than one percent (1,996 people). This increase reflects a three percent increase in people experiencing unsheltered homelessness, which was offset by a two percent decline in people staying in sheltered locations. However, between 2021 and 2022, sheltered homelessness increased by seven percent, or 22,504

people. A possible cause for the increase in sheltered homelessness is the easing of pandemic-related restrictions some emergency shelter providers had in place during the 2021 PIT count. These restrictions included reducing shelter capacity to allow for more space between people sleeping in congregate settings to reduce their risk of exposure. Additionally, the national inventory of shelter beds increased between 2021 and 2022, likely reflecting an infusion of pandemic-related funding that supported additional non-congregate shelter beds.

The number of veterans experiencing homelessness declined by 11 percent (4,123 fewer people) between 2020 and 2022. In 2022, 40,238 fewer veterans were experiencing homelessness than in 2009, when these data were first reported, a drop of nearly 55 percent.

Six of every 10 people experiencing unsheltered homelessness did so in an urban area (60%), with more than half of all unsheltered people counted in the Continuums of Care (CoCs) that encompass the nation's 50 largest cities (54%). The remaining four of every ten people who experienced unsheltered homelessness were almost evenly split between largely suburban areas (21%) and largely rural areas (19%).

More than two thirds of all people experiencing homelessness (72%) did so in households without children present. The number of individuals

EXHIBIT A-1: Overview of Changes in People Experiencing Homelessness by Population and Sheltered Status

2020-2022

	All People	Individuals	People in Families with Children	Unaccompanied Youth	Veterans	Individuals Experiencing Chronic Homelessness
Total Population (2020-2022)	0.3%	3.1%	-6.1%	-12.0%	-11.1%	15.6%
Sheltered Population (2020-2022)	-1.6%	2.7%	-7.2%	-1.0%	-11.3%	32.4%
Unsheltered Population (2020-2022)	3.4%	3.4%	4.0%	-23.3%	-10.8%	7.1%
Sheltered Population (2021-2022)	6.9%	5.2%	9.4%	8.5%	-0.9%	10.1%

■ below -5% ■ -1% to -5% ■ less than (+/-) 1% ■ 1% to 5% ■ above 5%

experiencing sheltered homelessness between 2021 and 2022 increased by 5 percent (10,148 people).

This was the second largest year-to-year increase in sheltered homelessness among individuals since reporting began in 2007.

About three in every ten people experiencing homelessness (28%) did so as part of a family with children. The overall number of people in families with children who were experiencing homelessness on a single night in 2022 decreased by about 10,500 people since 2020, following a general trend of year-to-year declines over most of the previous several years.

On a single night in 2022, more than 30,000 people under the age of 25 experienced homelessness on their own as “unaccompanied youth.” Slightly more than half of these youth (57%) were in sheltered locations. Most (91%) were between the ages of 18 and 24. Four percent of the unaccompanied youth population reports identifying as transgender, not singularly female or male, or gender questioning, compared with one percent of all individuals experiencing homelessness.

Nearly one-third (30%) of all individuals experiencing homelessness in 2022 had chronic patterns of homelessness. While there has been a steady rise in the number of individuals experiencing chronic homelessness in both sheltered and unsheltered locations since 2016, sheltered homelessness among individuals with chronic patterns of homelessness doubled between 2016 and 2022.

The national inventory of beds for people currently or formerly experiencing homelessness increased by 11 percent between 2020 and 2022. The largest increases in year-round inventory in any inventory type occurred in emergency shelters (28,548 more beds), rapid re-housing (27,166 more beds), and other permanent housing (40,221 more beds). Within emergency shelter programs, the largest increase in inventory was for voucher-based beds which are often single-occupancy rooms in hotels or motels (as opposed to congregate facility-based beds), which increased by 243 percent between 2020 and 2022. This increase reflects a response to the COVID-19 pandemic, in which many communities made investments in non-congregate forms of shelter.

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Definition of Terms

Please note: Key terms are used for AHAR reporting purposes and accurately reflect the data used in this report. Definitions of these terms may differ in some ways from the definitions found in the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act and in HUD regulations.

Adults refers to people age 18 or older.

Children refers to people under the age of 18.

Chronically Homeless Individual refers to an individual with a disability who has been continuously homeless for one year or more or has experienced at least four episodes of homelessness in the last three years where the combined length of time homeless on those occasions is at least 12 months.

Chronically Homeless People in Families refers to people in families with children in which the head of household has a disability and has either been continuously homeless for one year or more or has experienced at least four episodes of homelessness in the last three years where the combined length of time homeless on those occasions is at least 12 months.

Continuums of Care (CoC) are local planning bodies responsible for coordinating the full range of homelessness services in a geographic area, which may cover a city, county, metropolitan area, or an entire state.

Emergency Shelter is a facility with the primary purpose of providing temporary shelter for people experiencing homelessness.

Family Households refers to the total number of households made up of at least one adult age 18 or older and one child age under 18 that were experiencing homelessness on the night of the point-in-time count.

HMIS stands for homeless management information system. CoCs use an HMIS to collect data on people who are experiencing sheltered homelessness in their area, such as information about their characteristics and service-use patterns over time.

Homeless describes a person who lacks a fixed, regular, and adequate nighttime residence.

Housing Inventory Count (HIC) is produced by each CoC and provides an annual inventory of beds that provide assistance to people in the CoC who are experiencing homelessness or leaving homelessness.

Individual refers to a person who is not part of a family

with children during an episode of homelessness. Individuals may be single adults, unaccompanied children, or in multiple-adult or multiple-child households.

Multiple Races refers to people who self-identify as more than one race.

Other Permanent Housing is housing with or without services that is specifically for people who formerly experienced homelessness but that does not require people to have a disability.

Parenting Children are people under age 18 who are the parents or legal guardians of one or more children (under age 18) who are present with or sleeping in the same place as the child parent and there is no person over the age of 18 in the household.

Parenting Child Household is a household with at least one parenting child and the child or children for whom the parenting child is the parent or legal guardian.

Parenting Youth are people under age 25 who are the parents or legal guardians of one or more children (under age 18) who are present with or sleeping in the same place as that youth parent, where there is no person over age 24 in the household.

Parenting Youth Household is a household with at least one parenting youth and the child or children for whom the parenting youth is the parent or legal guardian.

People in Families with Children are people who are experiencing homelessness as part of a household that has at least one adult (age 18 or older) and one child (under age 18).

Point-in-Time (PIT) Counts are unduplicated one-night estimates of both sheltered and unsheltered homeless populations. The one-night counts are conducted by CoCs nationwide and occur during the last week in January of each year.¹

Permanent Supportive Housing (PSH) is a housing model designed to provide housing assistance (project- and tenant-based) and supportive services on a

¹ While CoCs are only required to conduct an unsheltered and sheltered PIT count biennially per 24 CFR 578.7(c)(2), most CoCs conduct a PIT count annually.

long-term basis to people who formerly experienced homelessness. HUD's Continuum of Care program, authorized by the McKinney-Vento Act, funds PSH and requires that the client have a disability for eligibility.

Rapid Re-Housing (RRH) is a housing model designed to provide temporary housing assistance to people experiencing homelessness, moving them quickly out of homelessness and into permanent housing.

Safe Havens are projects that provide private or semi-private temporary shelter and services to people experiencing severe mental illness and are limited to serving no more than 25 people within a facility.

Sheltered Homelessness refers to people who are staying in emergency shelters, transitional housing programs, or safe havens.

Transitional Housing Programs provide people experiencing homelessness a place to stay combined with supportive services for up to 24 months.

Unaccompanied Youth (under 18) are people in households with only children who are not part of a family with children or accompanied by their parent or guardian during their episode of homelessness, and who are under the age of 18.

Unaccompanied Youth (18-24) are people in households without children who are not part of a family with children or accompanied by their parent or guardian during their episode of homelessness and who are between the ages of 18 and 24.

Unsheltered Homelessness refers to people whose primary nighttime location is a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for people (for example, the streets, vehicles, or parks).

Veteran refers to any person who served on active duty in the armed forces of the United States. This includes Reserves and National Guard members who were called up to active duty.

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About this Report

The US Department of Housing and Urban Development (HUD) releases the Annual Homelessness Assessment Report to Congress (AHAR) in two parts. Part 1 provides Point-in-Time (PIT) estimates, offering a snapshot of homelessness—both sheltered and unsheltered—on a single night. The PIT counts also provide an estimate of the number of people experiencing homelessness within particular populations experiencing homelessness such as individuals with chronic patterns of homelessness and veterans experiencing homelessness.

The one-night PIT counts are typically conducted during the last 10 days of January each year. However, because of concerns surrounding the COVID-19 health emergency, 145 CoCs (more than one-third) received waivers in 2022 to conduct the PIT count in late February or early March instead of the last 10 days of January. Many seasonal emergency shelter programs are still in operation during the February and early March months, so those programs would still have reported people served in the sheltered count. However, the sheltered count may have undercounted the number of people who would have been counted had cold weather or warming shelters been open. Warming shelters typically only open when temperatures drop to dangerous levels. In late February and early March, some regions' cold weather shelters may not have needed to open.

To understand our nation's capacity to serve people who are currently or formerly experiencing homelessness, this report also provides counts of beds in emergency shelters, transitional housing programs, safe havens, rapid re-housing programs, permanent supportive housing programs, and other permanent housing.

In 2022, the PIT estimates of people experiencing homelessness in sheltered and unsheltered locations,

as well as the number of beds available to serve them, were reported by 387 Continuums of Care (CoC) nationwide. These 387 CoCs covered virtually the entire United States.

To better understand how homelessness differs by geography, the AHAR study team categorized CoCs into four groups:

1. Major city CoCs
2. Other largely urban CoCs
3. Largely suburban CoCs
4. Largely rural CoCs

First, CoCs representing the 50 most populous cities in the United States were assigned to the major city CoC category. Next, the study team used geographic data published by the U.S. Department of Education's National Center for Education Statistics (NCES)¹ to determine the urbanicity of the remaining CoCs. NCES defines 12 geographic locales, which were collapsed into three distinct categories: urban (mapping to the three NCES "City" locales), suburban (mapping to the three NCES "Suburban" locales, as well as the "Town – Fringe" locale), and rural (mapping to the three NCES "Rural" locales, as well as the "Town – Distant" and "Town – Remote" locales).² Using the percentage of each CoC's total population³ living in urban, suburban, and rural areas, based on the NCES geographic data, CoCs were classified into categories according to their largest percentage among the three.

In other words, a CoC where a plurality of its population lives in rural areas would be classified as a "largely rural CoC." That would not imply, however, that all people experiencing homelessness in the largely rural CoC were counted in rural areas. CoCs span large territories (even an entire state in some cases) and may comprise a mixture of urban, suburban, and rural areas. Because PIT estimates are reported for

1 The study team used NCES data from the 2017–2019 school year (the most recent data available when the CoC categories were developed).

2 Definitions for each of the 12 NCES locales are available in the Locale Boundaries User's Manual: https://nces.ed.gov/programs/edge/docs/EDGE_NCES_LOCALE_FILEDOC.pdf

3 The study team used population counts from the Census Bureau's 2010 block-level data. Census blocks are the smallest geographic unit for which the Census reports population counts, and they are the ideal unit for this CoC analysis. Block-level population data are only available in the decennial census reports.

an entire CoC, each person experiencing homelessness in the CoC cannot be classified as staying in an urban, suburban, or rural area. Rather, all people experiencing homelessness in the CoC are classified as staying in a CoC that is largely urban, suburban, or rural.⁴

HUD has methodological standards for conducting the PIT counts, and CoCs use a variety of approved methods to produce the counts. The guide for PIT methodologies can be found here: <https://www.hudexchange.info/resource/4036/point-in-time-count-methodology-guide>. While methodological standards exist, CoCs determine their own methodology, and there is no universal method used to collect PIT data. This results in variations in how CoCs conduct their PIT counts, often based on the size and type of CoC. For example, some CoCs conduct a full census capturing data on all people experiencing homelessness. Others, often those with large geographic areas, use a sampling approach to count a smaller group of people experiencing homelessness and use that sample to estimate the number and characteristics for the entire population of people experiencing homelessness within their community.

HUD also sets several standards for what types of situations qualify as unsheltered homelessness. All situations that qualify as unsheltered homelessness are considered places not meant for human habitation. However, the level of connection to services and resources varies. For example, unsheltered homelessness includes situations where a person is sleeping in public spaces possibly with no shelter or connection to resources as well as sanctioned encampments that may have water or bathroom facilities and are attended by outreach workers who provide connections to supportive services. Unsheltered homelessness also includes people sleeping in cars, trucks, and recreational vehicles when it appears to the enumerators that the purpose is not recreational but instead because of the lack of an alternative place to sleep. Some communities have established “safe parking” programs that are similar

to sanctioned encampments. They are also considered unsheltered locations.

When collecting demographic data on people experiencing homelessness, enumerators use pre-established categories to collect race, ethnicity, and gender. Those categories are based on current reporting standards as defined in the fiscal year 2022 Homeless Management Information System (HMIS) Data Standards and similar definitions used in surveys of people experiencing unsheltered homelessness. Those race, ethnicity, and gender categories were recently updated for the 2022 PIT count and may change in the future to better reflect the ways in which people identify themselves.

The PIT counts of homelessness and the housing inventory information are based on data from early 2022 (the last 10 days of January into early March) and reflect the impact the COVID-19 pandemic had on levels of homelessness and characteristics of people experiencing homelessness. When the 2021 PIT count was conducted, precautions taken to reduce the spread of the COVID-19 virus resulted in considerable changes to the capacity of homeless service providers. To reduce the risk of COVID-19 transmission, facility-based emergency shelters with congregate settings took measures to increase physical distancing by reducing the number of beds available for occupancy. In some cases, this reduced capacity was reported through the Housing Inventory Count (HIC), but in other communities it was not.

Additionally, in 2021, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. Many CoCs chose to not conduct a full unsheltered PIT count in 2021 or conducted a partial unsheltered count, which artificially reduced the overall count of people experiencing homelessness in the United States. In 2022, all communities that did not conduct an

⁴ The median percentage of the population living in urban areas among major city CoCs was 70 percent. The median urban percentage among other CoCs classified as largely urban was 58 percent. The median suburban percentage among CoCs classified as largely suburban was 65 percent, and the median rural percentage among CoCs classified as largely rural was 71 percent.



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unsheltered PIT count in 2021 were required to conduct an unsheltered count. As a result, in 2022, 371 CoCs conducted a full sheltered and unsheltered count and 16 CoCs conducted a sheltered-only count. The 2021 PIT count data on the number and characteristics of people experiencing unsheltered homelessness for these 16 CoCs was carried over for the 2022 PIT data. For three of these CoCs, this did not include complete demographic data on people experiencing unsheltered homelessness.

Because of pandemic-related disruptions to counts of people staying in unsheltered locations in January 2021 and the drop in shelter capacity and shelter use related to the public health emergency, the findings discussed throughout this 2022 Part 1 Report focus on comparisons between the 2020 and 2022 PIT counts for people experiencing sheltered and unsheltered homelessness.

The effects of the pandemic on the ability to conduct unsheltered counts and on shelter capacity persisted into 2022 in some communities. Therefore, numbers could still be artificially depressed in 2022 compared with non-pandemic times and should be viewed with caution.

In an effort to meaningfully include people with lived experiences and expertise (PLEE) with homelessness as a part of the AHAR process, HUD invited TA providers with lived experiences to provide a limited review of the AHAR chapters. The process was limited due to the timeline—as people with lived experiences and expertise were not intentionally included for the full life cycle of the process—and was focused on the introductory material, the first chapter on all people experiencing homelessness, and the final chapter on the national bed inventory at the exclusion of chapters 2 through 6.

This review continued a collaboration between HUD and PLEE that began with the 2020 AHAR Part 2 report. The AHAR is an important source of data used to inform policies, programmatic decisions, and funding. HUD will continue collaboration with PLEE in development of the report as it will strengthen and improve the usefulness of the AHAR.

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1 National Estimates Homelessness in the United States

Data source: PIT 2007-2022

The 2021 national Point-in-Time (PIT) counts were considerably impacted by the COVID-19 pandemic. During the public health crisis, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. As a result, less than half of communities conducted a full sheltered and unsheltered count. While this report includes some data on all people in sheltered locations in 2021, incomplete unsheltered data is not included. Analysis of changes over time are generally limited to those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 will be included in text boxes at the end of each chapter.

EXHIBIT 1.2: Homelessness
By Household Type and Sheltered Status, 2022

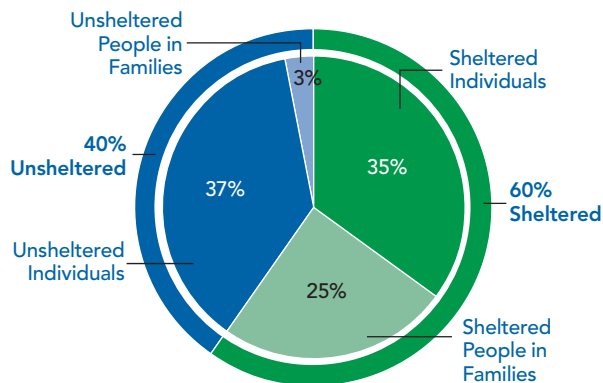
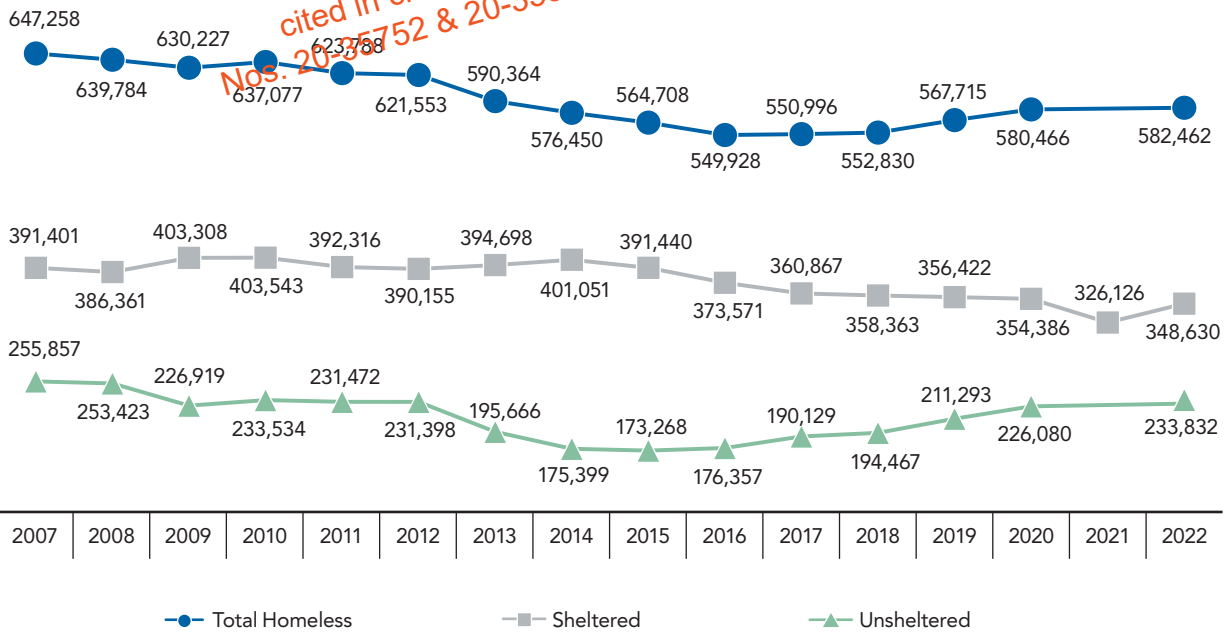


EXHIBIT 1.1: PIT Estimates of People Experiencing Homelessness
By Sheltered Status, 2007-2022



Note: The data for 2021 does not display the total count of people experiencing homelessness or the count of all people experiencing unsheltered homelessness due to pandemic-related disruptions to counts. Additionally, estimates of the number of people experiencing sheltered homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.

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EXHIBIT 1-3: Change in Number of People Experiencing Homelessness 2007-2022

	Change 2020–2022		Change 2010–2022		Change 2007–2022	
	#	%	#	%	#	%
All People	1,996	0.3%	-54,615	-8.6%	-64,796	-10.0%
Sheltered	-5,756	-1.6%	-54,913	-13.6%	-42,771	-10.9%
Unsheltered	7,752	3.4%	298	0.1%	-22,025	-8.6%

EXHIBIT 1-4: Change in Homelessness by Age and Sheltered Status 2020-2022

	All People		Sheltered People		Unsheltered People	
	#	%	#	%	#	%
All People	1,996	0.3%	-5,756	-1.6%	7,752	3.4%
Under 18	-8,120	-7.6%	-7,753	-8.1%	-367	-3.4%
18 to 24	-5,066	-11.2%	-1,232	-4.4%	-3,834	-22.5%
Over 24	15,182	3.5%	3,229	1.4%	11,953	6.0%

On a Single Night in 2022

- 582,462 people – or about 18 of every 10,000 people in the United States – experienced homelessness across the United States.
- Six in 10 people experiencing homelessness were staying in sheltered locations, and four in 10 were unsheltered, that is, staying in a place not meant for human habitation.
- More than two-thirds of all people experiencing homelessness were in households with only adults (72%). Households with only adults staying in unsheltered locations comprised the largest single segment of the total population experiencing homelessness (37%), followed by individuals staying in shelters (35%). Twenty-eight percent of people experiencing homelessness did so as part of a family with at least one adult and one child under 18 years of age, and most people in families were sheltered.
- Less than one percent of people experiencing homelessness, 2,804 people, were unaccompanied children, people under 18 without a parent or guardian present.¹

¹ The point-in-time counts include children without an adult present as individuals.

1 National Estimates Homelessness in the United States

Data source: PIT 2007-2022

EXHIBIT 1-5: Demographic Characteristics of People Experiencing Homelessness 2022

	All People		Sheltered People		Unsheltered People	
	#	%	#	%	#	%
All People	582,462	100%	348,630	100%	233,832	100%
Age						
Under 18	98,244	16.8%	87,960	25.2%	10,284	4.2%
18 to 24	40,177	6.9%	26,981	7.7%	13,196	5.6%
Over 24	444,041	76.3%	233,689	67.0%	210,352	90.1%
Gender						
Female	222,970	38.3%	152,693	43.8%	70,277	30.0%
Male	352,836	60.6%	193,366	55.5%	159,470	68.3%
Transgender	3,588	0.6%	1,593	0.5%	1,995	0.9%
A Gender that is not Singularly 'Female' or 'Male'	2,481	0.4%	846	0.2%	1,635	0.7%
Questioning	609	0.1%	132	0.0%	477	0.2%
Ethnicity						
Non-Hispanic/Non-Latin(a)(o)(x)	442,220	75.9%	269,964	77.4%	172,256	73.5%
Hispanic/Latin(a)(o)(x)	140,230	24.1%	78,666	22.6%	61,564	26.5%
Race						
American Indian, Alaska Native, or Indigenous	19,618	3.4%	8,843	2.5%	10,775	4.6%
Asian or Asian American	8,261	1.4%	3,909	1.1%	4,352	1.9%
Black, African American, or African	217,366	37.3%	154,557	44.3%	62,809	26.9%
Native Hawaiian or Pacific Islander	10,461	1.8%	4,692	1.3%	5,769	2.5%
White	291,395	50.0%	157,637	45.2%	133,758	57.2%
Multiple Races	35,383	6.1%	18,992	5.4%	16,391	7.0%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

Changes over Time

Given that more than half of communities did not conduct full unsheltered counts in 2021, changes over time are limited to those between 2022 and 2020 or earlier. Notable changes in the sheltered population between 2021 and 2022 are highlighted in the text box at the end of this section.

- The number of people experiencing either sheltered or unsheltered homelessness increased only slightly between 2020 and 2022, increasing by 1,996 people (or less than 1%).
- However, between 2020 and 2022, the number of

people counted in unsheltered locations rose by three percent or 7,752 people. The number of people staying in shelter dropped by two percent between 2020 and 2022 (5,756 fewer people).

- Despite recent increases in the unsheltered population, the number of all people experiencing homelessness on a single night in January is ten percent lower (64,796 fewer people) than it was in 2007, when these data were first reported. Unsheltered homelessness declined by nine percent (22,025 fewer people) over the longer period, despite steady increases over the past seven years, with 60,564 more people experiencing unsheltered



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1 National Estimates Homelessness in the United States

homelessness in 2022 than in 2015, the lowest observed estimate of people staying in places not meant for human habitation.

Demographic Characteristics of All People Experiencing Homelessness

The AHAR has been reporting demographic information on people experiencing homelessness on a single night since 2017. In 2022, the ways in which people identified their gender changed considerably, expanding the gender identity categories to include “questioning” and allowing people to select more than one gender.² As a result, any comparisons made to prior years should be viewed with caution as they are not exact comparisons.³

- The demographic characteristics of people experiencing homelessness vary considerably by household type and shelter status and reflect the large percentage of individuals among the total population experiencing homelessness. Detailed characteristics are shown separately for individuals in Section 2 of this report and for families with children in Section 3.
- More than three-quarters (76%) of all people experiencing homelessness were adults aged 25 or older (444,041 people), 17 percent were children under the age of 18 (98,244 children). Seven percent were young adults aged 18 to 24 (40,177 young adults).
- Among people experiencing unsheltered homelessness, nine of every ten people were adults aged 25 or older.
- Children – either in families or on their own – were most often staying in sheltered locations (90%) with 10,284 children counted in unsheltered locations in 2022.
- Six of every 10 people experiencing homelessness were men or boys (61% or 352,836 men and boys), 38 percent were women or girls (222,970 women and

girls), and less than one percent were transgender (3,588 people), did not identify as singularly female or male (2,481 people) or were questioning their gender identity (609 people). More than half of all people experiencing unsheltered homelessness who identified as transgender, not singularly female or male, or questioning were in unsheltered locations (63% or 4,107 people).

- Nearly 4 of every 10 people experiencing homelessness identified as Black, African American, or African (37% or 217,366 people). A higher percentage of people in shelter identified as Black (44% or 154,557 people) compared to people experiencing homelessness in unsheltered locations (27% or 62,809). Half of all people experiencing homelessness identified as White (50% or 291,395 people). A higher share of the unsheltered population identified as White (57%) than the sheltered population (45%).
- Of the remaining 13 percent, six percent identified as more than one race, three percent identified as American Indian, Alaska Native, or Indigenous, two percent as Native Hawaiian or Pacific Islander, and one percent as Asian or Asian American.
- Almost a quarter of all people experiencing homelessness, 24 percent, were Hispanic or Latin(a) (o)(x) (counting people of all races who identify as Hispanic or Latin(a)(o)(x)). The proportion is slightly higher for people staying in unsheltered versus sheltered locations (27% and 23%).

Changes in Demographic Characteristics of All People Experiencing Homelessness

- National increases in homelessness were driven by increases in the unsheltered population among people over the age of 25. Between 2020 and 2022, the number of people aged 25 and older who were experiencing unsheltered homelessness increased by 11,953 people. Meanwhile, the number of

2 For more information on how gender was reported for the PIT, see: <https://files.hudexchange.info/resources/documents/Reporting-Gender-for-the-PIT-Count.pdf>

3 For example, in previous years a person might only identify as “female” when they may have also identified as “questioning.” In 2022, that person was allowed to select both “female” and “questioning,” which was then categorized as “questioning.”

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unsheltered children (under age 18) decreased by 367 people and the number of young adults (ages 18 to 24) decreased by 3,834 people.

- Between 2020 and 2022, unsheltered homelessness rose by five percent among women and girls (3,380 people) and by two percent among men and boys (3,057 more people). These increases among the unsheltered population were offset by similar decreases in the sheltered population. Sheltered homelessness declined by three percent among women and girls between 2020 and 2022 (3,988 fewer people) and one percent among men and boys (2,432 fewer people).
- Between 2020 and 2022, the number of people experiencing homelessness who identified as transgender or not singularly female or male increased in both sheltered and unsheltered locations. The number of people who identified as transgender, not singularly female or male, or questioning their gender who were experiencing sheltered homelessness increased by 98 percent (407 more people), and the number of people who identified as transgender increased by 13 percent. Unsheltered homelessness increased by 60 percent among people who identified as neither female nor male (614 more people) and 14 percent among people who identify as transgender (246 people). However, as noted above, these comparisons – as well as those for people identifying as any gender – should be viewed with caution due to the changed data collection methodology.
- Between 2020 and 2022, the number of people experiencing homelessness who identified as Black, African American, or African decreased by five percent (11,430 people). The number of people who identified as more than one race declined by one percent (297 people). The decrease in overall homelessness among people who identify as Black reflected an eight percent decrease in sheltered homelessness (12,648 fewer people). That decrease was partly offset by a two percent increase in unsheltered homelessness (1,218 more people) among people who identify as Black.
- Over the same time period, the number of people

experiencing homelessness increased slightly among all other racial groups, ranging from a four percent increase among American Indian, Alaska Native, or Indigenous to a 19 percent increase among Native Hawaiians or Pacific Islanders).

- The number people experiencing homelessness who identified as Hispanic or Latin(a)(o)(x) increased by eight percent between 2020 and 2022. This reflects a considerable increase in the number of people who identify as Hispanic and were experiencing unsheltered homelessness, which increased by 16 percent (8,513 people) between 2020 and 2022.

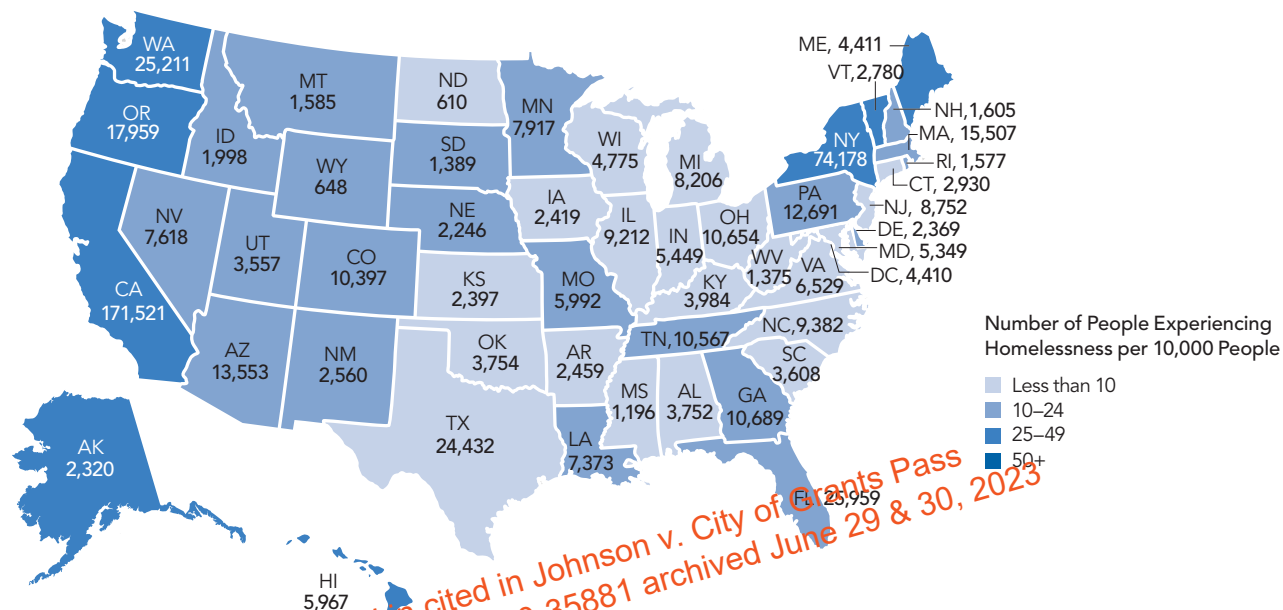
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1 State Estimates

Homelessness in the United States

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

EXHIBIT 1.6: Estimates of People Experiencing Homelessness
By State, 2022



On a Single Night in 2022

- More than half of all people experiencing homelessness in the country were in four states: California (30% or 171,521 people); New York (13% or 74,178 people); Florida (5% or 25,959 people); and Washington (4% or 25,211).
- California accounted for half of all unsheltered people in the country (115,491 people). This is more than nine times the number of unsheltered people in the state with the next highest number, Washington. In the 2022 point-in-time count, Washington reported 12,668 people or just six percent of the national total of people in unsheltered locations.
- California also had the highest rate of homelessness, with 44 people experiencing homelessness out of every 10,000 people in the state. Vermont, Oregon, and Hawaii also had very high rates, with 43, 42, and 41 people per 10,000. While Florida and Texas contributed large numbers of people experiencing homelessness to the national estimates, they had rates of homelessness lower than the national average of 18 people per 10,000 (12 for every 10,000

people in Florida and 8 for every 10,000 people in Texas).

- States in the West reported some of the highest percentages of all people experiencing homelessness who were counted in unsheltered locations. In California, 67 percent of people experiencing homelessness did so outdoors. Other states with more than half of their total population of people experiencing homelessness counted in unsheltered locations were: Mississippi (64%), Hawaii (63%), Oregon (62%), Arizona (59%), Tennessee (58%), Arkansas (53%), Georgia (52%) and Washington (50%).
- Three states sheltered at least 95 percent of people experiencing homelessness: Vermont (98%), Maine (96%), and New York (95%).

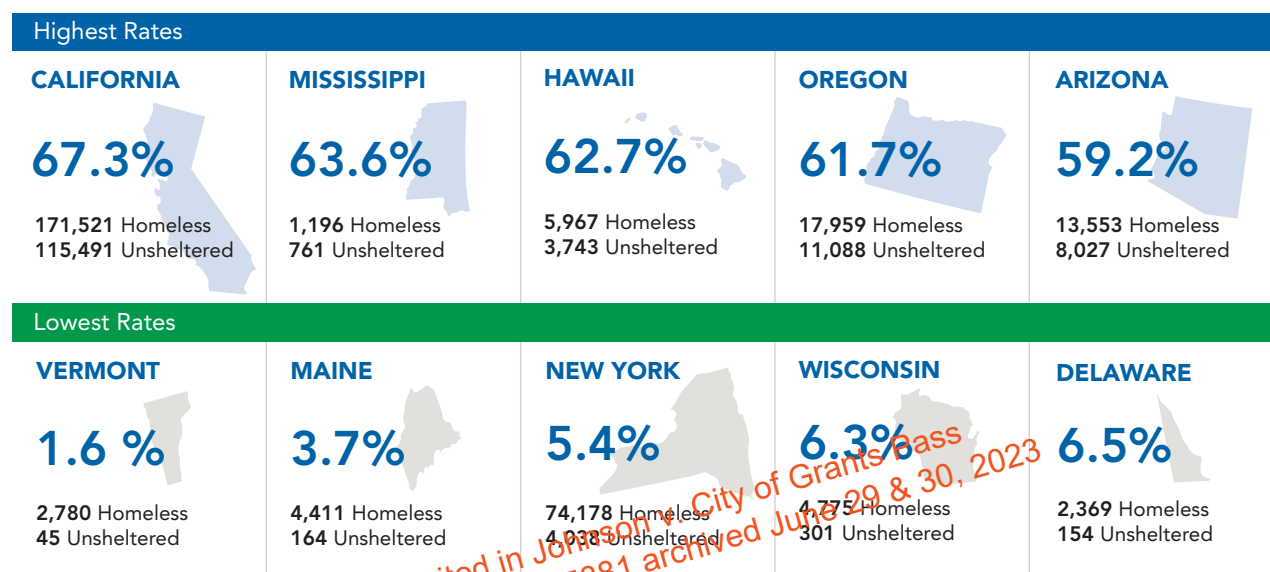
Changes over Time

- Between 2020 and 2022 the number of people experiencing homelessness increased in more states than it decreased. Homelessness increased in 27 states and decreased in 23 states and the District of Columbia.

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EXHIBIT 1.7: States with the Highest and Lowest Percentages of People Experiencing Homelessness Who Are Unsheltered

2022

EXHIBIT 1.8: Largest Changes in Homelessness
By State, 2007–2022

	2020–2022	2007–2022
Largest Increases		
CALIFORNIA	9,973 / 6.2%	CALIFORNIA 32,535 / 23.4%
LOUISIANA	4,200 / 132.4%	NEW YORK 11,577 / 18.5%
TENNESSEE	3,311 / 45.6%	LOUISIANA 1,879 / 34.2%
OREGON	3,304 / 22.5%	WASHINGTON 1,832 / 7.8%
ARIZONA	2,574 / 23.4%	MAINE 1,773 / 67.2%
Largest Decreases		
NEW YORK	-17,093 / -18.7%	FLORIDA -22,110 / -46.0%
TEXAS	-2,797 / -10.3%	TEXAS -15,356 / -38.6%
MASSACHUSETTS	-2,468 / -13.7%	GEORGIA -8,950 / -45.6%
DISTRICT OF COLUMBIA	-1,970 / -30.9%	NEW JERSEY -8,562 / -49.5%
FLORIDA	-1,528 / -5.6%	ILLINOIS -6,275 / -40.5%

1 State Estimates

Homelessness in the United States

- States with the largest absolute increases in homelessness between 2020 and 2022 were California (9,973 more people), Louisiana (4,200), Tennessee (3,311), and Oregon (3,304). States with the largest *percentage* increases between 2020 and 2022 were: Vermont (151%), Louisiana (132%), Maine (110%), and Delaware (103%).
- Between 2020 and 2022, states with the largest absolute decreases in people experiencing homelessness were New York (17,093 fewer people), Texas (2,797), and Massachusetts (2,468). Areas with the largest percentage decreases were the District of Columbia (31% fewer people), New Mexico (23%), and New York (19%).
- Over the longer period, from 2007 to 2022, the number of people experiencing homelessness declined in 32 states and the District of Columbia. The largest absolute decreases were in Florida (22,110 fewer people) and Texas (15,356 fewer people). The largest percentage decreases were in Kentucky (51%), New Jersey (50%), Florida (46%), Georgia (46%) and Maryland (44%).
- Between 2007 and 2022, the number of people experiencing homelessness increased in 18 states. The largest absolute increases were in California (32,535 more people) and New York (11,577). Vermont had the largest percentage increase (169%), followed by Delaware (123%) and Maine (67%).

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1 Estimates by CoC

Homelessness in the United States

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

Continuums of Care (CoC) were Divided into Four Geographic Categories

- 1. Major City CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other Largely Urban CoCs (n= 58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely Suburban CoCs (n= 167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely Rural CoCs (n= 109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For information on how they were applied to CoCs, see the About this Report section of this report.

On a Single Night in 2022

- Half of all people experiencing homelessness were in one of the nation's 50 largest cities. One-quarter of people experiencing homelessness were in predominantly suburban CoCs, 18 percent were in largely rural CoCs, and the remainder (7%) were in largely urban CoCs that do not contain one of the 50 largest cities.
- Two of every ten people experiencing homelessness in the United States did so in either Los Angeles or New York City. In New York City, a slight majority (52%) of people experiencing homelessness were individuals (people in households without children). In Los Angeles, 84 percent of people either counted in unsheltered locations or in shelters were individuals.

EXHIBIT 1.9: Share of All People Experiencing Homelessness by CoC Category by Sheltered Status 2022

	All People Experiencing Homelessness	Sheltered	Unsheltered
Major Cities	50.3%	47.7%	54.3%
Other Largely Urban CoCs	6.7%	7.1%	5.9%
Largely Suburban CoCs	24.6%	27.1%	20.7%
Largely Rural CoCs	18.4%	18.0%	19.0%

- Major City CoCs had the largest percentage of people experiencing homelessness in unsheltered locations, 43 percent, followed by largely rural CoCs, 41 percent.
- In two major city CoCs, more than 75 percent of people experiencing homelessness were unsheltered: San Jose, CA (77%) and Raleigh, NC (76%).
- Eleven largely rural CoCs reported unsheltered rates of 75 percent or higher, two with unsheltered rates above 90 percent: Hendry, Hardee, and Highlands Counties, which are located along the central Gulf Coast of Florida (94%) and the Chattanooga/Southeast Tennessee CoC (94%). Eight largely suburban CoCs had unsheltered rates of 75 percent or higher, with Imperial County, CA – on the southern border of California – reporting the highest rate of its category (88%).

Changes over Time

- Between 2020 and 2022, homelessness increased across all geographic categories except major cities, which saw a three percent decrease in homelessness.
- Major cities experienced the largest changes in homelessness between 2020 and 2022, with an overall decrease of nearly 10,000 people or three percent. This drop was driven by the nine percent decline in the number of people staying in shelters in major cities (or 17,030 people). This pattern likely reflects pandemic-related shifts in bed capacity

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in urban areas, some of which persisted into early 2022. Meanwhile, major cities experienced a considerable growth in the number of people sleeping outdoors (7,046 more people or 6%).

- Other largely urban CoCs experienced changes similar to those in major cities between 2020 and 2022 – with drops in the numbers of people in shelter and increases in the number of people in unsheltered

locations. However, in this case, the increase in the number of people sleeping outdoors (13%) outpaced the drop in people staying in shelters (1%).

EXHIBIT 1.11: Percent of People Experiencing Homelessness
By Household Type and CoC Category, 2022

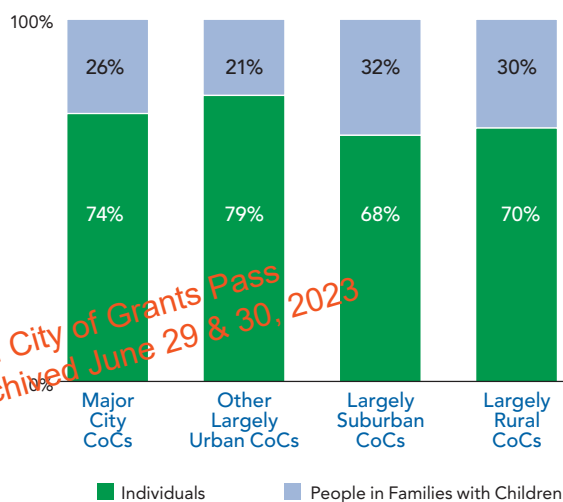
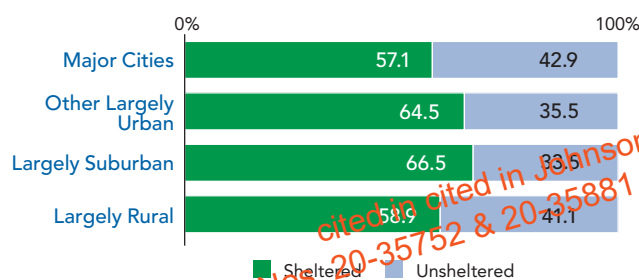


EXHIBIT 1.10: Percent of All People Experiencing Homelessness that are Sheltered or Unsheltered
By CoC Category, 2022



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EXHIBIT 1.12: CoCs with the Largest Numbers of People Experiencing Homelessness in Each CoC Category
2022

CoC Name	All People Experiencing Homelessness	CoC Name	All People Experiencing Homelessness
Major City CoCs		Other Largely Urban CoCs	
Los Angeles City & County, CA	65,111	Santa Rosa, Petaluma/Sonoma County, CA	2,893
New York City, NY	61,840	Eugene, Springfield/Lane County, OR	2,880
Seattle/King County, WA	13,368	Oxnard, San Buenaventura/Ventura County, CA	2,248
San Jose/Santa Clara City & County, CA	10,028	St. Petersburg, Clearwater, Largo/Pinellas County, FL	1,985
Oakland, Berkeley/Alameda County, CA	9,747	Spokane City & County, WA	1,757
Largely Suburban CoCs		Largely Rural CoCs	
Santa Ana, Anaheim/Orange County, CA	5,718	Texas Balance of State	7,054
Louisiana Balance of State	4,731	Georgia Balance of State	5,856
Honolulu City and County, HI	3,945	Washington Balance of State	5,854
San Bernardino City & County, CA	3,333	Maine Statewide	4,411
Riverside City & County, CA	3,316	Ohio Balance of State	4,075

1 Estimates by CoC

Homelessness in the United States

- Largely suburban areas had patterns that were different from those of major cities and other largely urban CoCs. Overall, the number of people experiencing homelessness in these CoCs increased by four percent. This increase, however, was driven by an increase in the sheltered population. Sheltered homelessness increased by 5,483 people or six percent. Partly offsetting this increase was a two percent decline in the number of people experiencing unsheltered homelessness in suburban areas (705 fewer people).
- Largely rural areas experienced the largest overall percentage change, increasing by six percent between 2020 and 2022. Like suburban areas, this

EXHIBIT 1.13: CoCs with the Highest Percentages of People Experiencing Homelessness Who Are Unsheltered in Each CoC Category 2022

CoC Name	All People Experiencing Homelessness	Percent Unsheltered	CoC Name	All People Experiencing Homelessness	Percent Unsheltered
Major City CoCs			Other Largely Urban CoCs		
San Jose/Santa Clara City & County, CA	10,028	76.9%	Fayetteville/Cumberland County, NC	475	82.5%
Raleigh/Wake County, NC	1,534	75.6%	Napa City & County, CA	495	73.9%
Tucson/Pima County, AZ	2,227	74.0%	Eugene/Springfield/Lane County, OR	2,880	73.1%
Oakland, Berkeley/Alameda County, CA	9,767	73.2%	Santa Rosa, Petaluma/Sonoma County, CA	2,893	72.2%
Sacramento City & County, CA	9,278	71.8%	Oxnard, San Buenaventura/Ventura County, CA	2,248	60.3%
Largely Suburban CoCs			Largely Rural CoCs		
Imperial County, CA	1,057	87.5%	Hendry, Hardee, Highlands Counties, FL	650	93.7%
El Dorado County, CA	511	85.7%	Chattanooga/Southeast Tennessee, TN	3,392	93.5%
Fort Pierce/St. Lucie, Indian River, Martin Counties, FL	846	82.6%	Panama City/Bay, Jackson Counties, FL	378	88.4%
San Luis Obispo County, CA	1,448	79.8%	Columbia, Hamilton, Lafayette, Suwannee Counties, FL	488	83.4%
Vallejo/Solano County, CA	1,179	78.0%	Jackson/West Tennessee, TN	906	81.3%

EXHIBIT 1.14: Change in Homelessness by Sheltered Status and CoC Category 2020–2022

	All People		Sheltered		Unsheltered	
	Numeric Change	Percent Change	Numeric Change	Percent Change	Numeric Change	Percent Change
Total	2,064	0.4%	-5,781	-1.6%	7,845	3.5%
Major City CoCs	-9,984	-3.3%	-17,030	-9.3%	7,046	6.0%
Other Largely Urban CoCs	1,497	4.0%	-120	-0.5%	1,617	13.4%
Largely Suburban CoCs	4,778	3.5%	5,483	6.2%	-705	-1.5%
Largely Rural CoCs	5,773	5.7%	5,886	10.4%	-113	-0.3%

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increase was driven by relatively large increases in the shelter population. Between 2020 and 2022, the number of people staying in shelters during the point-in-time count increased by 10 percent, while

the unsheltered population remained relatively stable (decreasing by 113 people).

Changes in the Sheltered Population during the Pandemic (2021-2022)

The number of people experiencing sheltered homelessness increased by seven percent between 2021 and 2022 (or 22,504 more people). Increases were observed across all demographic categories. The increase in sheltered people slightly outpaced the increase in the number of beds available to people experiencing homelessness, which increased by six percent nationally between 2021 and 2022. Occupancy rates of beds in emergency shelter (ES), transitional housing (TH), and safe havens (SH) declined between 2020 and 2021 as shelters reduced the number of people served to meet physical distancing requirements. Both occupancy rates and inventory increased between 2021 and 2022 indicating some rebound in emergency shelter capacity since the height of the pandemic.

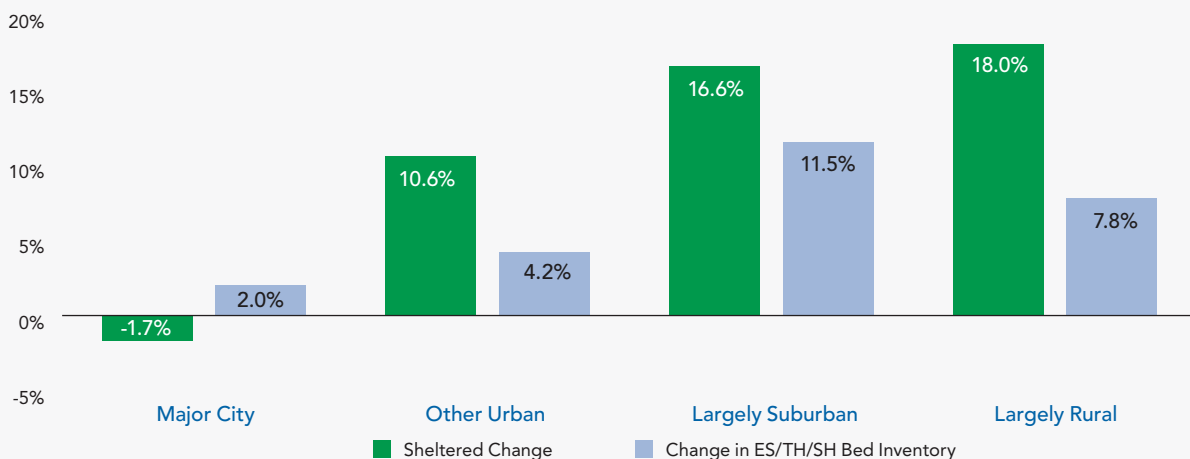
EXHIBIT 1.15: Year-Round Bed Inventory and Occupancy Rates of Programs for People in Sheltered Locations 2020–2022

	2020		2021		2022	
	Bed Inventory	Occupancy Rate	Bed Inventory	Occupancy Rate	Bed Inventory	Occupancy Rate
Total ES, SH, and TH Inventory	396,149	89.5%	396,466	82.3%	418,642	83.3%

Note: Occupancy rate is based on year-round beds and does not include seasonal or overflow beds.

Major cities experienced a slight decline in the number of all people experiencing sheltered homelessness, while all other geographic categories experienced increases. Rural areas had the largest percentage increase, with 18 percent more people in shelters in 2022 than in 2021. These increases are likely due to a restoration of shelter capacity across the country as vaccinations were more widely available and programs were able to use COVID-related shelter resources.

EXHIBIT 1.16: Change in Beds and People in Sheltered Locations By Geographic Category, 2021-2022



2 National Estimates Individuals Experiencing Homelessness

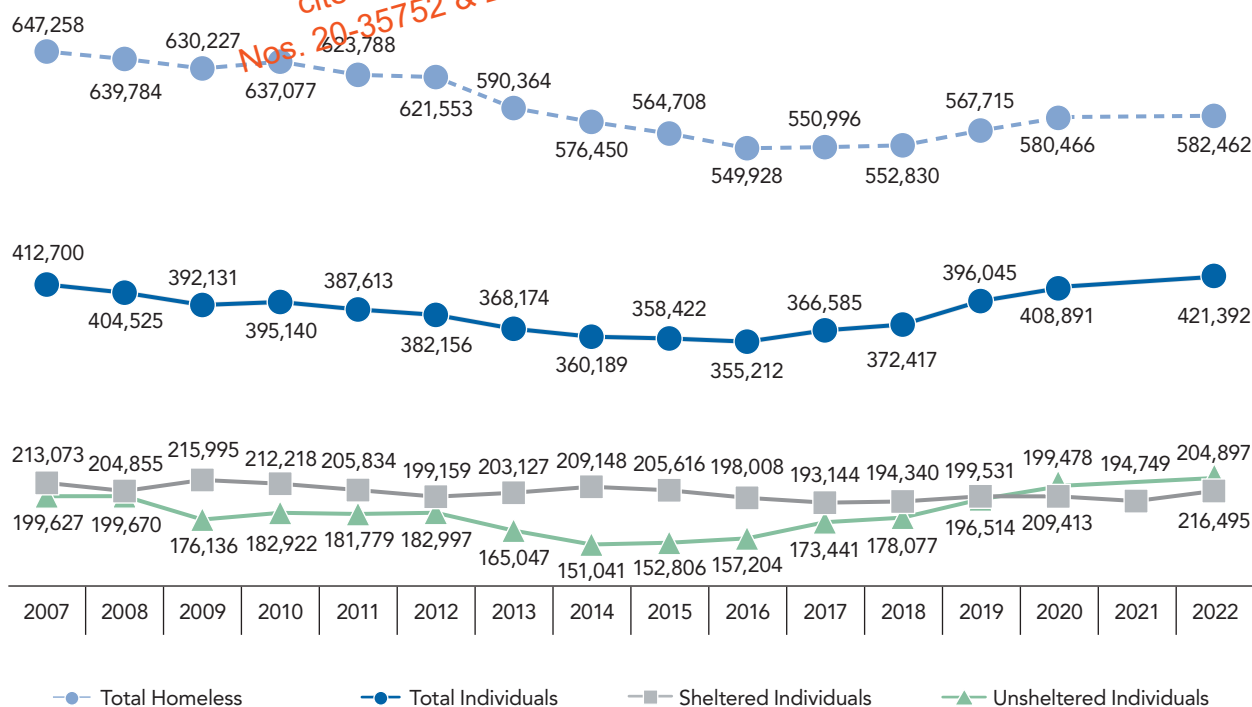
Data source: PIT 2007–2022

The 2021 national Point-in-Time (PIT) counts were considerably impacted by the COVID-19 pandemic. During the public health crisis, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. As a result, less than half of communities conducted a full sheltered and unsheltered count. While this report includes some data on individuals in sheltered locations in 2021, incomplete unsheltered data is not included. Analysis of changes over time are generally limited to those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 will be included in text boxes at the end of each chapter.

On a Single Night in 2022

- 421,392 people experienced homelessness as individuals—that is, people in households that were not composed of both adults and children. Individuals made up 72 percent of the total population of people experiencing homelessness in 2022.
- Slightly over half of all people who experienced homelessness as individuals were staying in unsheltered locations, 51 percent or 216,495 people.
- Just under a third (30%) of all individuals experiencing homelessness had chronic patterns of homelessness, meaning that they experienced homelessness for extended periods of time and have a disability. (These individuals are discussed in detail in Section 6)

EXHIBIT 2.1: PIT Estimates of Sheltered Homeless Individuals 2007–2021



Note: The data for 2021 does not display the total count of individuals experiencing homelessness or the count of individuals experiencing unsheltered homelessness due to pandemic-related disruptions to counts. Additionally, estimates of the number of individuals experiencing sheltered homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.

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EXHIBIT 2-2: Change in Numbers of Individuals Experiencing Homelessness 2007–2022

	Change 2020-2022		Change 2010-2022		Change 2007-2022	
	#	%	#	%	#	%
All Individuals	12,501	3.1%	25,252	6.6%	8,692	2.1%
Sheltered Individuals	5,419	2.7%	-7,321	-3.4%	-8,176	-3.8%
Unsheltered Individuals	7,082	3.4%	33,573	18.2%	16,868	8.4%

EXHIBIT 2-3: Changes in the Number of Individuals Experiencing Homelessness by Age and Sheltered Status 2007–2022

	All Individuals 2020-2022		Sheltered Individuals 2020-2022		Unsheltered Individuals 2020-2022	
	#	%	#	%	#	%
Under 18	-794	-22.1%	-207	-11.4%	-587	-32.8%
18 to 24	-3,750	-11.4%	-327	-1.9%	-3,423	-21.9%
Over 24	17,045	4.6%	8,953	3.3%	11,092	5.8%

Changes in Individual Homelessness over Time

Given that more than half of communities did not conduct full unsheltered counts in 2021, changes over time are limited to those between 2022 and 2020 or earlier. Notable changes in the sheltered population between 2021 and 2022 are highlighted in the text box at the end of this section.

- Between 2020 and 2022, individuals experiencing homelessness increased by three percent (12,501 more people). Increases were experienced across sheltered and unsheltered homelessness, which increased by about three percent each, or 5,419 more sheltered and 7,082 more unsheltered people. These increases follow a pattern of increases in homelessness among individuals over the past several years.
- The overall increase in people experiencing homelessness as individuals between 2020 and 2022 was made up entirely of adults over the age of 24. Homelessness for people 25 and older increased

by five percent (or 17,045 people). Homelessness decreased among children and young adults ages 18 to 24 (by 22% and 11%).

- The 2022 Point-in-Time count marks the first time that the number of people experiencing homelessness as individuals is higher than it was when reporting began in 2007. From 2007 to 2022, individual homelessness increased by two percent (8,692 more people). This increase is driven by an eight percent increase in the unsheltered population (16,868 more people). The sheltered population decreased by four percent.

Demographic Characteristics of Individuals Experiencing Homelessness

The AHAR has been reporting demographic information on individuals experiencing homelessness on a single night since 2017. In 2022, the ways in which people identified their gender changed considerably, expanding the gender identity categories to include “questioning” and allowing people to select more than one gender.⁴ As a result, any comparisons made to prior

⁴ For more information on how gender was reported for the PIT, see: <https://files.hudexchange.info/resources/documents/Reporting-Gender-for-the-PIT-Count.pdf>

2 National Estimates Individuals Experiencing Homelessness

Data source: PIT 2007-2022

EXHIBIT 2-4: Demographic Characteristics of Individuals Experiencing Homelessness 2022

	All Individuals		Sheltered Individuals		Unsheltered Individuals	
	#	%	#	%	#	%
All Individuals	421,392	100.0%	204,774	100.0%	216,146	100.0%
Age						
Under 18	2,804	0.7%	1,604	0.8%	1,200	0.6%
18 to 24	29,147	6.9%	16,905	8.3%	12,242	5.7%
Over 24	389,441	92.4%	186,388	91.0%	203,053	93.8%
Gender						
Female	126,852	30.1%	65,808	32.1%	61,044	28.2%
Male	288,262	68.4%	136,755	66.7%	151,297	70.0%
Transgender	3,440	0.8%	1,510	0.7%	1,930	0.9%
A Gender that is not Singularly 'Female' or 'Male'	2,297	0.5%	719	0.4%	1,578	0.7%
Questioning	563	0.1%	185	0.1%	458	0.2%
Ethnicity						
Non-Hispanic/Non-Latin(a)(o)(x)	328,799	78.0%	170,029	83.0%	158,770	73.3%
Hispanic/Latin(a)(o)(x)	92,581	22.0%	34,868	17.0%	57,713	26.7%
Race						
American Indian, Alaska Native, or Indigenous	15,491	3.7%	5,626	2.7%	9,865	4.6%
Asian or Asian American	6,559	1.6%	2,624	1.3%	3,935	1.8%
Black, African American, or African	137,638	32.7%	79,180	38.6%	58,458	27.0%
Native Hawaiian or Pacific Islander	6,429	1.5%	2,172	1.1%	4,257	2.0%
White	230,839	54.8%	105,680	51.6%	125,159	57.8%
Multiple Races	24,458	5.8%	9,615	4.7%	14,843	6.9%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

years should be viewed with caution as they are not exact comparisons.⁵

- The typical person experiencing homelessness as an individual in 2022 was 25 years of age or older (92%), male (68%), identified as White (55%), and was non-Hispanic/non-Latin(a)(o)(x) (78%).
- Very few people experiencing homelessness as individuals were young adults aged 18 to 24, just seven percent or 29,147 people. These young adults accounted for a slightly larger share of people experiencing sheltered than unsheltered

homelessness (8% vs. 6%).

- Three in ten individuals experiencing homelessness were women (30%), and just over one percent of individuals identified as transgender, a gender other than singularly female or male, or gender questioning. By comparison, six in ten people experiencing homelessness in families with children were women (60%).
- Women were a slightly larger percentage of individuals experiencing homelessness in sheltered locations than in unsheltered locations (32% vs.

⁵ For example, in previous years a person might only identify as "female" when they may have also identified as "questioning." In 2022, that person was allowed to select both "female" and "questioning," which was then categorized as "questioning."

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28%).

- Individuals who identified as transgender, not singularly female or male, or gender questioning were a larger percentage of individuals experiencing unsheltered homelessness than sheltered homelessness (2% vs. 1%).
- More than five in ten people experiencing homelessness as individuals identified their race as White (55%), and a third, 33 percent, identified as Black, African American, or African. Black, African American, and African individuals accounted for a higher percentage of sheltered individuals (39%) than of unsheltered individuals (27%).
- Twenty-two percent of all people experiencing homelessness as individuals in 2022 were Hispanic or Latin(a)(o)(x). Hispanic individuals were more likely to be in unsheltered locations than in sheltered locations, making up 27 percent of unsheltered individuals compared with 17 percent of sheltered individuals. In contrast, among people experiencing homelessness in families with children, people who were Hispanic made up a higher percentage of the sheltered population (30% sheltered vs. 22% unsheltered).

Changes in Demographics over Time

- Between 2020 and 2022, the population of individuals experiencing homelessness became slightly older, slightly more Hispanic or Latin(o)(a)(x), with a higher percentage of people identifying as a gender other than male.
- The increase in the number of individuals experiencing homelessness between 2020 and 2022 was driven by the increase in unsheltered individuals ages 25 and older, which increased by five percent (or more than 17,000 people).
- Both the number and percentage of women experiencing homelessness as individuals increased at a greater rate than men between 2020 and 2022. Homelessness increased among women by 6,837 people or six percent (compared to an increase of 3,663 men or 1%).
- Sixteen percent more people identifying as Hispanic or Latin(a)(o)(x) experienced homelessness as

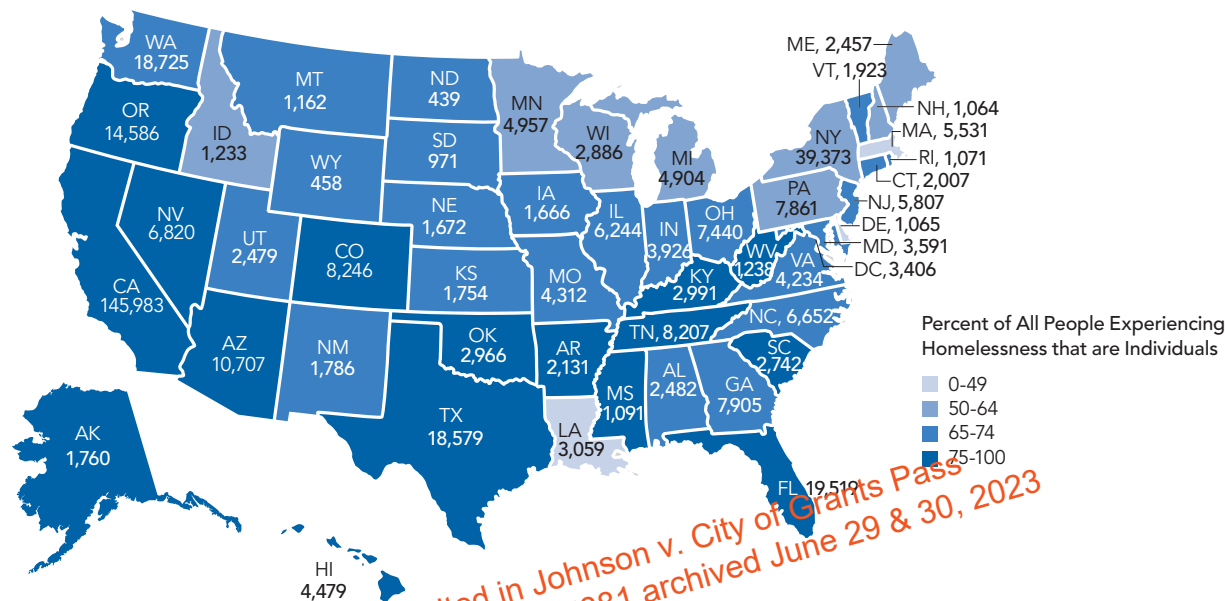
individuals in 2022 than in 2020 (12,410 more people). This overall increase reflects an 18 percent increase in unsheltered Hispanic individuals and an 11 percent increase in sheltered Hispanic individuals.

- The number of people experiencing homelessness as individuals who identified as White increased by five percent overall and by three percent for individuals staying in unsheltered locations.
- Native Hawaiians and Pacific Islanders experienced a 23 percent rise in individual homelessness (or 1,201 more people) and a 31 percent rise in unsheltered individual homelessness (or 1,003 people).
- Asians and Asian Americans also experienced a large percentage increase in sheltered and unsheltered individual homelessness, both of which rose by 13 percent (or 768 people). Individuals who identified as American Indian, Alaska Native, or Indigenous experienced the largest percentage increase in sheltered homelessness, at just over 11 percent (or 571 people).
- The number of Black, African American or African individuals experiencing homelessness decreased in sheltered locations by 2,246 people (or 3%). This was offset by an increase in the number of unsheltered individuals who identified as Black (by 2,170 people or 4%).

2 State Estimates Individuals Experiencing Homelessness

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

EXHIBIT 2.5: Estimates of Individuals Experiencing Homelessness
By State, 2022



On a Single Night in 2022

- More than one of every three people in the United States experiencing homelessness as an individual was found in California, 35 percent. California accounted for more than half (52%) of all individuals counted in unsheltered locations.
- Other states with large numbers of individuals experiencing homelessness were New York (9% of the national total or 39,373 people), Florida (5% or 19,519 people), and Washington (5% or 18,725).
- In two states, more than 70 percent of individuals experiencing homelessness were staying in unsheltered locations: Hawaii (77%) and California (76%).
- In contrast, four states shelter at least 90 percent of people experiencing homelessness as individuals in their state: Vermont (98%), Maine (93%), Wisconsin (91%), and New York (90%).

Changes over Time

- The number of individuals experiencing homelessness increased in just over half (28) of all states between 2020 and 2022. The largest absolute increase was in California (10,212 people), followed

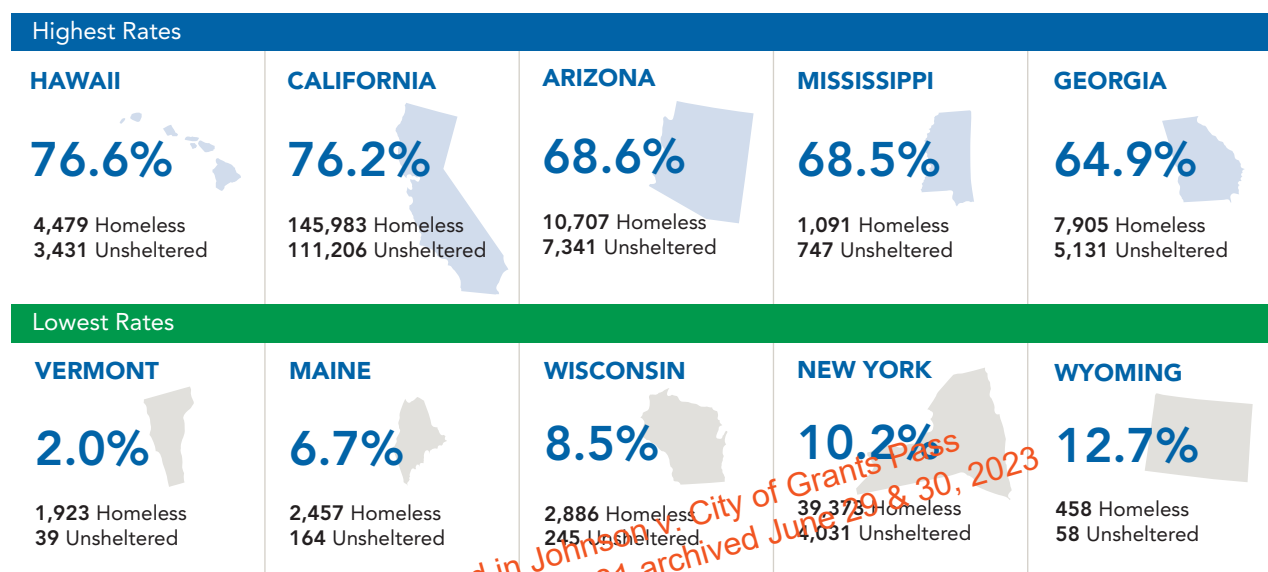
by Oregon (2,591 people) and Tennessee (2,534 people). The states with the largest percentage increases were Vermont (161%), Maine (91%), and Rhode Island (48%).

- Between 2020 and 2022, the number of individuals experiencing homelessness declined in 22 states and the District of Columbia. The largest absolute declines occurred in New York (3,910 fewer people), Texas (2,536 fewer people), and Maryland (839 fewer people). The largest percentage declines were in New Mexico (30%), South Carolina (20%), and Maryland (19%).
- Over the longer period, 2007 to 2022, the number of individuals experiencing homelessness increased in 26 states. The largest absolute increases were in California (35,031 more people or 32%) and New York (11,317 more people or 40%), while the highest rates of increase were in Vermont (221%) and Maine (116%).
- Over the same period, 24 states and the District of Columbia experienced a decline in the number of people experiencing homelessness as individuals. The largest declines were reported in Florida (13,521 fewer people or 41%) and Texas (7,727 fewer people or 29%).

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EXHIBIT 2.6: States with the Highest and Lowest Percentages of Individuals Experiencing Homelessness in Unsheltered Locations

2022



Notes: Excludes Puerto Rico and U.S. territories.

EXHIBIT 2.7: Largest Changes in the Number of Individuals Experiencing Homelessness By State, 2007–2022

2020–2022		2007–2022	
Largest Increases			
CALIFORNIA	10,212 / 7.5%	CALIFORNIA	35,031 / 31.6%
OREGON	2,591 / 21.6%	NEW YORK	11,317 / 40.3%
TENNESSEE	2,534 / 44.7%	WASHINGTON	5,436 / 40.9%
WASHINGTON	2,527 / 15.6%	OREGON	4,715 / 47.8%
ARIZONA	2,427 / 29.3%	MINNESOTA	1,688 / 51.6%
Largest Decreases			
NEW YORK	-3,910 / -9.0%	FLORIDA	-13,521 / -40.9%
TEXAS	-2,536 / -12.0%	TEXAS	-7,727 / -29.4%
MARYLAND	-839 / -18.9%	GEORGIA	-4,616 / -36.9%
FLORIDA	-825 / -4.1%	NEW JERSEY	-3,165 / -35.3%
NEW MEXICO	-769 / -30.1%	MASSACHUSETTS	-2,761 / -33.3%

Notes: Excludes Puerto Rico and U.S. territories. Due to methodological changes, Colorado, North Dakota, South Dakota, Michigan, and Wyoming were excluded from the list of largest decreases between 2007 and 2022.

2

Estimates by CoC Individuals Experiencing Homelessness

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

Continuums of Care (CoC) were divided into four geographic categories

- 1. Major city CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other largely urban CoCs (n=58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely suburban CoCs (n=167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely rural CoCs (n=109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For detailed information on how they were applied to CoCs, see the About the Report section of this report.

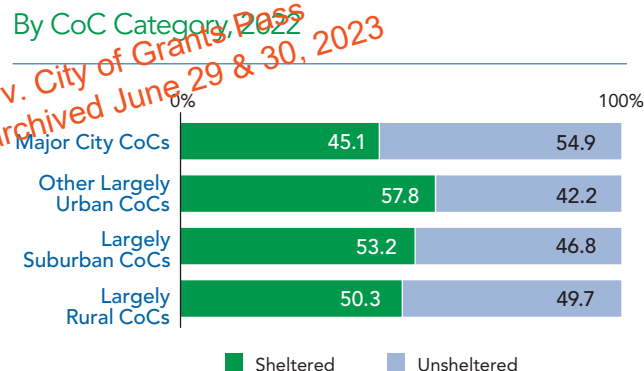
On a Single Night in 2022

- Nearly 6 of every 10 individuals experiencing homelessness did so in urban areas. Most (52%) were in one of the nation's largest cities. Seven percent were in other largely urban areas. Nearly one-quarter of individuals experiencing homelessness (23%) were in largely suburban areas. The remaining 18 percent of individuals were in largely rural areas.
- Within major city and largely rural CoCs, at least half of all people experiencing homelessness as individuals did so in unsheltered locations (55% and 50%). Other largely urban CoCs (those that do not contain one of the nation's largest cities) had the highest rate of sheltered homelessness at 58 percent.

EXHIBIT 2.8: Share of Individuals Experiencing Homelessness By CoC Category and Sheltered Status, 2022

	All Individuals	Sheltered Individuals	Unsheltered Individuals
Major City CoCs	51.7%	47.8%	55.4%
Other Largely Urban CoCs	7.3%	8.6%	6.0%
Largely Suburban CoCs	22.9%	25.0%	21.0%
Largely Rural CoCs	18.1%	18.7%	17.6%

EXHIBIT 2.9: Percent of all Individuals Experiencing Homelessness that are Sheltered and Unsheltered By CoC Category, 2022



- In six major city CoCs, more than 75 percent of individuals experiencing homelessness were unsheltered: San Jose, CA (83%), Los Angeles (82%), Raleigh, NC (79%), Sacramento, CA (78%), Oakland, CA (76%), and Tucson, AZ (76%).
- Nine largely suburban CoCs reported a share of individuals who were unsheltered greater than 80 percent, with two reporting shares over 90 percent: Imperial County, CA (96%) and Ft. Pierce, FL (93%).
- Several largely rural CoCs reported large shares of individuals experiencing unsheltered homelessness, with Hendry, Hardee, and Highlands Counties (which about Lake Okeechobee in Florida) reporting all individuals experiencing homelessness staying in unsheltered locations. Three other CoCs reported shares greater than 90 percent: Chattanooga/Southeast Tennessee (95%), Jackson County, in

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Florida's panhandle (93%), and Tehama County in north central California (93%).

Demographic Differences by CoC Category

- Individuals experiencing homelessness in largely rural CoCs were somewhat more likely to be women (35%) than those in a major city (28%), other largely urban (29%), or largely suburban CoCs (31%).
- Individuals that identified as Black, African American, or African accounted for 42 percent of individuals experiencing homelessness in major cities compared with 15 percent in rural areas. Conversely, nearly three in four people experiencing homelessness as individuals in largely rural areas were White (74%) compared with 45 percent in major city CoCs.
- In largely rural CoCs, nearly six percent of individuals experiencing homelessness were American Indian, Alaska Native, or Indigenous, the highest percentage of indigenous people across the geographic categories.
- In major city CoCs, more than a quarter of individuals experiencing homelessness were

EXHIBIT 2.10: Demographic Characteristics of Individuals Experiencing Homelessness by CoC Category 2022

	Major City CoCs	Other Largely Urban CoCs	Largely Suburban CoCs	Largely Rural CoCs
All Individuals	216,316	30,483	95,333	75,815
Age				
Under 18	0.6%	0.8%	0.5%	1.0%
18 to 24	6.7%	7.1%	6.8%	7.7%
Over 24	92.7%	92.0%	92.7%	91.3%
Gender				
Female	28.2%	29.2%	31.1%	34.9%
Male	69.8%	69.8%	68.0%	64.2%
Transgender	1.2%	0.6%	0.4%	0.4%
A Gender that is not Singularly 'Female' or 'Male'	0.7%	0.4%	0.3%	0.4%
Questioning	0.1%	0.1%	0.2%	0.1%
Ethnicity				
Non-Hispanic/Non-Latin(a)(o)(x)	71.4%	87.4%	82.6%	89.1%
Hispanic/Latin(a)(o)(x)	28.6%	12.6%	17.4%	10.8%
Race				
American Indian, Alaska Native, or Indigenous	3.4%	4.7%	2.5%	5.6%
Asian or Asian American	1.9%	1.2%	1.5%	0.7%
Black, African American, or African	42.0%	25.8%	28.1%	14.9%
Native Hawaiian or Pacific Islander	1.4%	0.9%	2.0%	1.0%
White	44.9%	61.5%	60.6%	73.7%
Multiple Races	6.3%	6.0%	5.4%	4.2%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

2 Estimates by CoC Individuals Experiencing Homelessness

EXHIBIT 2.11: CoCs with the Largest Numbers of Individuals Experiencing Homelessness
By CoC Category, 2022

CoC Name	All Individuals Experiencing Homelessness	CoC Name	All Individuals Experiencing Homelessness
Major City CoCs		Other Largely Urban CoCs	
Los Angeles City & County, CA	54,469	Santa Rosa, Petaluma/Sonoma County, CA	2,738
New York City, NY	32,308	Eugene, Springfield/Lane County, OR	2,301
Seattle/King County, WA	9,776	Oxnard, San Buenaventura/Ventura County, CA	1,980
San Jose/Santa Clara City & County, CA	9,130	St. Petersburg, Clearwater, Largo/Pinellas County FL	1,536
Oakland, Berkeley/Alameda County, CA	8,903	Spokane City & County, WA	1,467
Largely Suburban CoCs		Largely Rural CoCs	
Santa Ana, Anaheim/Orange County, CA	4,517	Texas Balance of State CoC	5,270
Honolulu City and County, HI	3,018	Georgia Balance of State CoC	4,267
San Bernardino City & County, CA	2,917	Washington Balance of State CoC	4,259
Richmond/Contra Costa County, CA	2,880	Oregon Balance of State CoC	3,208
Riverside City & County, CA	2,822	Ohio Balance of State CoC	2,768

Hispanic or Latin(a)(o)(x) (29%) a higher proportion than were reported in other largely urban, largely suburban, and largely rural CoCs, which ranged from 11 to 17 percent.

Changes over Time by CoC Category

- Homelessness among individuals increased across all CoC categories and most shelter statuses. The largest absolute increase was in major cities, where 5,694 more individuals were counted in 2022 than in 2020, an increase of 3 percent. Largely rural areas experienced the largest percentage increase, 6 percent or 4,322 people.
- Major cities and other largely urban CoCs drove the overall increase in the number of unsheltered individuals. Major cities reported 6,422 (or 6%) more individuals staying outside, while largely urban CoCs reported 1,194 (or 10%) more unsheltered individuals. These increases more than offset modest declines in the unsheltered homelessness among individuals in largely suburban and largely rural CoCs.
- Largely rural CoCs experienced the largest absolute

and percentage increases in the number of sheltered individuals, with 4,516 more individuals counted in 2022 than 2020, an increase of 13 percent. Only major cities saw a decline (728 fewer people) in the sheltered population.

- While the number of individuals experiencing homelessness increased nationally, 52 percent of communities (198 CoCs) experienced decreases or no change in the number of individuals experiencing homelessness between 2020 and 2022.

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EXHIBIT 2.12: CoCs with the Highest Percentages of Individuals Experiencing Homelessness who were Unsheltered

By CoC Category, 2022

CoC Name	All Individuals Experiencing Homelessness	Percent Unsheltered	CoC Name	All Individuals Experiencing Homelessness	Percent Unsheltered
Major City CoCs			Other Largely Urban CoCs		
San Jose/Santa Clara City & County, CA	9,130	82.9%	Fayetteville/Cumberland County, NC	424	91.3%
Los Angeles City & County, CA	54,469	81.6%	Napa City & County, CA	467	77.5%
Raleigh/Wake County, NC	795	79.1%	Santa Rosa, Petaluma/Sonoma County, CA	2,738	76.1%
Sacramento City & County, CA	7,901	78.4%	Amarillo, TX	504	75.4%
Oakland, Berkeley/Alameda County, CA	8,903	76.5%	Eugene, Springfield/Lane County, OR	2,301	70.3%
Largely Suburban CoCs			Largely Rural CoCs		
Imperial County, CA	816	96.0%	Hendry, Hardee, Highlands Counties, FL	568	100.0%
Fort Pierce/St. Lucie, Indian River, Martin Counties, FL	585	93.2%	Chattanooga/Southeast Tennessee, TN	2,637	95.2%
San Luis Obispo County, CA	1,020	87.5%	Panama City/Bay, Jackson Counties, FL	356	93.0%
El Dorado County, CA	493	87.2%	Tehama County, CA	231	92.6%
Marin County, CA	897	82.4%	Columbia, Hamilton, Lafayette, Suwannee Counties, FL	383	85.9%

EXHIBIT 2.13: Change in the Number of Individuals Experiencing Homelessness

By Sheltered Status and CoC Category, 2020-2022

	All Individuals Experiencing Homelessness		Sheltered		Unsheltered	
	#	%	#	%	#	%
Total	12,810	3.2%	5,453	2.7%	7,357	3.6%
Major City CoCs	5,694	2.7%	-728	-0.7%	6,422	5.7%
Other Largely Urban CoCs	1,520	5.2%	326	1.9%	1,194	10.2%
Largely Suburban CoCs	1,274	1.3%	1,339	2.7%	-65	-0.1%
Largely Rural CoCs	4,322	6.0%	4,516	13.4%	-194	-0.5%

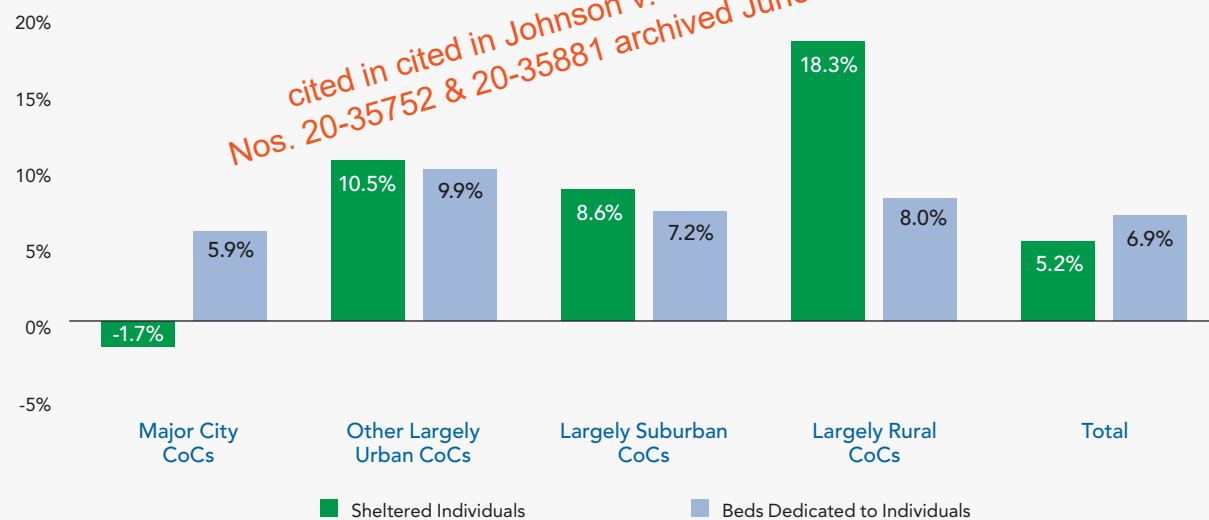
2 Estimates by CoC Individuals Experiencing Homelessness

Key Changes in the Sheltered Individual Population, 2021-2022

The number of individuals experiencing sheltered homelessness between 2021 and 2022 increased by 5 percent (10,148 people). This was the second largest increase in sheltered homelessness among individuals since reporting began in 2007. Of the 10,000 more individuals experiencing sheltered homelessness in 2022, about 9,000 were over the age of 24. The increase in the number of beds dedicated to individuals during this time slightly outpaced the increase in sheltered individuals, with 7 percent more beds in 2022 than 2021.

Major cities experienced slight decline in the number of individuals experiencing sheltered homelessness (2%), while all other geographic categories experienced increases. Rural areas had the largest percentage increase in individuals experiencing sheltered homelessness, with 18 percent more individuals in shelters in 2022 than in 2021. These increases are likely due to a restoration of shelter capacity across the country as vaccinations were more widely available and programs were able to use COVID-related shelter resources. The change in inventory in largely suburban CoCs mirrored increases in the number of individuals experiencing sheltered homelessness between 2021 and 2022.

EXHIBIT 2.14: Change in Individuals in Sheltered Locations and Beds Dedicated to Individuals by Geographic Category 2021-2022





cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

3 National Estimates Families with Children Experiencing Homelessness

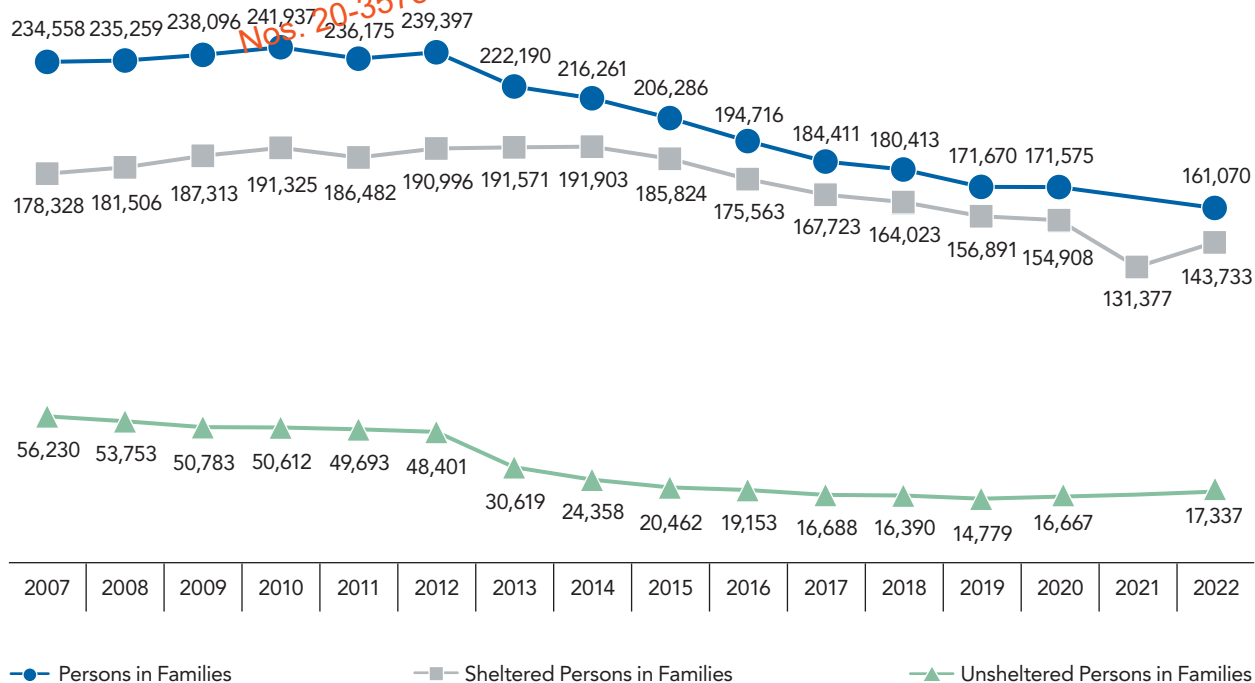
Data source: PIT 2007-2022

The 2021 national Point-in-Time (PIT) counts were considerably impacted by the COVID-19 pandemic. During the public health crisis, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. As a result, less than half of communities conducted a full sheltered and unsheltered count. While this report includes some data on people in families with children in sheltered locations in 2021, incomplete unsheltered data is not included. Analysis of changes over time are generally limited to those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 will be included in text boxes at the end of each chapter.

On a Single Night in 2022

- 161,070 people experienced homelessness as part of a family with at least one adult and one child under the age of 18, 28 percent of the total population experiencing homelessness.
- Nine in ten people experiencing homelessness in families with children were sheltered, 143,733 people. Ten percent of people in families with children, 17,337 people, were found in unsheltered locations in 2022.
- The average family size was 3.2 people, and about 51,000 family households were experiencing homelessness nationwide.

EXHIBIT 3.1: PIT Estimates of People in Families with Children Experiencing Homelessness By Sheltered Status, 2007-2022



Note: The data for 2021 does not display the total count of people in families with children experiencing homelessness or the count of people in families with children experiencing unsheltered homelessness due to pandemic-related disruptions to counts. Additionally, estimates of the number of people in families with children experiencing sheltered homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.

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EXHIBIT 3.2: Change in the Number of People in Families with Children Experiencing Homelessness

By Sheltered Status, 2007-2022

	Change 2020-2022		Change 2010-2022		Change 2007-2022	
	#	%	#	%	#	%
People in Families with Children	-10,505	-6.1%	-80,867	-33.4%	-73,488	-31.3%
Sheltered People in Families	-11,175	-7.2%	-47,592	-24.9%	-34,595	-19.4%
Unsheltered People in Families	670	4.0%	-33,275	-65.7%	-38,893	-69.2%
Family Households	-2,972	-5.5%	-28,675	-36.1%	-27,768	-35.4%

Changes in Family Homelessness over Time

Given that more than half of communities did not conduct full unsheltered counts in 2021, changes over time are limited to those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 are presented at the end of this chapter.

- The overall number of people in families with children who were experiencing homelessness on a single night decreased by more than 10,500 from 2020 to 2022, continuing a downward trend that began in 2012.
- The number of people in families who were experiencing homelessness in 2022 was 31 percent lower (73,488 fewer people) than it was in 2007. The number of family households that were experiencing homelessness dropped by 35 percent over that same period.
- The overall decline in family homelessness between 2007 and 2022 reflects steady decreases in families experiencing both sheltered and unsheltered homelessness. However, in recent years declines have been driven by reductions in sheltered family homelessness. Unsheltered family homelessness increased by four percent (670 more people) between 2020 and 2022 while sheltered family homelessness declined by seven percent (11,175

fewer people).

Demographic Characteristics of Family Homelessness

The AHAR has been reporting demographic information on people experiencing homelessness on a single night since 2017. In 2022, the ways in which people identified their gender changed considerably, expanding the gender identity categories to include “questioning” and allowing people to select more than one gender.⁶ As a result, any comparisons made to prior years should be viewed with caution as they are not exact comparisons.⁷

- Children under the age of 18 made up 59 percent of people experiencing homelessness in families with children in 2022. Another 34 percent were adults over the age of 24, and seven percent were young adults between 18 and 24 years of age.
- Fewer people in families with children in unsheltered locations were under the age of 18, 52 percent compared with 60 percent in shelters. However, unsheltered families with children were more likely to have more than one adult, so the sizes of unsheltered families with children are similar to those in shelter.
- 91 percent of all children under 18 experiencing homelessness in families with children (86,356 children) can be found in sheltered locations, compared to 57 percent of children under 18

⁶ For more information on how gender was reported for the PIT, see: <https://files.hudexchange.info/resources/documents/Reporting-Gender-for-the-PIT-Count.pdf>

⁷ For example, in previous years a person might only identify as “female” when they may have also identified as “questioning.” In 2022, that person was allowed to select both “female” and “questioning,” which was then categorized as “questioning.”

3 National Estimates

Families with Children Experiencing Homelessness

Data source: PIT 2007-2022

EXHIBIT 3.3: Demographic Characteristics of People in Families with Children Experiencing Homelessness 2022

	All People in Families		Sheltered People in Families		Unsheltered People in Families	
All People in Families	161,070	100.0%	143,733	100.0%	17,337	100.0%
Age						
Under 18	95,440	59.3%	86,356	60.1%	9,084	52.4%
18 – 24	11,030	6.8%	10,076	7.0%	954	5.5%
Over 24	54,600	33.9%	47,301	32.9%	7,299	42.1%
Gender						
Female	96,118	59.7%	86,885	60.4%	9,233	53.3%
Male	64,574	40.0%	56,611	39.4%	7,963	45.9%
Transgender	148	0.1%	83	0.1%	65	0.4%
A Gender that is not Singularly 'Female' or 'Male'	184	0.1%	127	0.1%	57	0.3%
Questioning	46	0.0%	27	0.0%	19	0.1%
Ethnicity						
Non-Hispanic/Non-Latin(a)(o)(x)	113,421	70.4%	99,935	69.5%	13,486	77.8%
Hispanic/Latin(a)(o)(x)	47,649	29.6%	43,798	30.5%	3,851	22.2%
Race						
American Indian, Alaska Native, or Indigenous	4,127	2.6%	3,217	2.2%	910	5.2%
Asian or Asian American	1,702	1.1%	1,285	0.9%	417	2.4%
Black, African American, or African	79,728	49.5%	75,377	52.4%	4,351	25.1%
Native Hawaiian or Pacific Islander	4,127	2.5%	2,520	1.8%	1,512	8.7%
White	60,556	37.6%	51,957	36.2%	8,599	52.2%
Multiple Races	10,925	6.8%	9,377	6.5%	1,548	9.4%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

experiencing homelessness as an individual (1,604 children).

- A majority of 18- to 24-year-olds in families with children were parents (about 58% or 6,348 total parenting youth). Just under 1 of every 10 children under 18 years of age in families experiencing homelessness is the child of a parenting youth.
- Six in 10 people in families with children were women and girls, and about four in 10 were men and boys.
- Of people in families with children experiencing homelessness in 2022, 50 percent were Black,

African American, or African and 38 percent were White. In the total U.S. population, just 14 percent of all people in families with children identified as Black and 57 percent identified as White.

People of multiple races made seven percent of all families with children experiencing homelessness, followed by American Indians, Alaska Natives and Indigenous persons (3%), Native Hawaiians or Pacific Islanders (3%), and Asian or Asian Americans (1%).

- People identifying as Black, African American, or African made up 52 percent of sheltered families with children but just 25 percent of unsheltered

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EXHIBIT 3.4: Number of People in Parenting Youth Households Experiencing Homelessness 2022

	Parents in Households	Children in Households	Total People in Households
Parenting Youth (Under 18)	50	63	113
Parenting Youth Age (18 to 24)	6,348	7,898	14,246
Total Parenting Youth	6,398	7,961	14,359

families, whereas people in families who identified as White made up 36 percent of sheltered families and 50 percent of unsheltered people in families.

- Nearly three in 10 people in families with children experiencing homelessness were Hispanic or Latin(a)(o)(x) (30% or 47,649 people). This is higher than the percentage of individuals experiencing homelessness in 2022 that were Hispanic or Latin(a)(o)(x) (22%).

13 percent (11,354 fewer people) for people who identify as Black, African American or African, and stayed essentially the same for people who are White (516 more people). Family homelessness increased by the largest percentage among people who are Native Hawaiian or Pacific Islander, by 13 percent (or 466 more people).

Changes in Demographics of Family Homelessness over Time

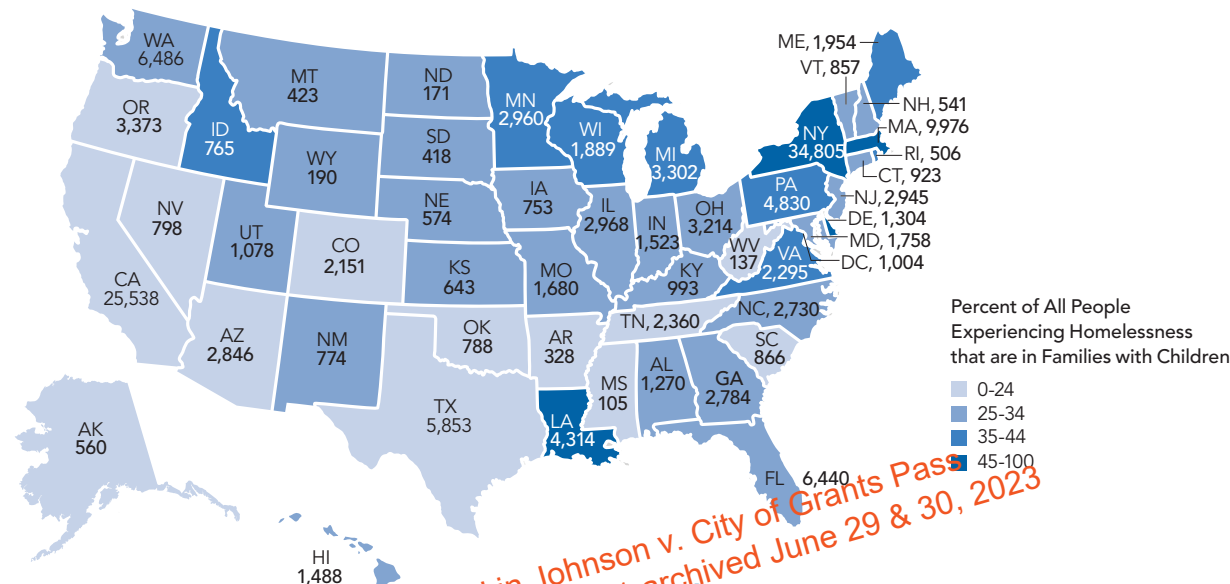
- Between 2020 and 2022, family homelessness declined for all age groups, with an overall decline of 6 percent (10,505 fewer people). Nearly all of this decline was driven by a reduction in the number of people in families with children experiencing sheltered homelessness which declined by 7 percent (11,175 fewer people).
- Though the number is small, between 2020 and 2022, there was a 57 percent increase in the number of people in families with children experiencing homelessness who identify as transgender (54 more people). By comparison, there was a 12 percent increase in the number of people experiencing homelessness as an individual who identify as transgender (373 more people).
- Family homelessness decreased by five percent among people who were Hispanic or Latin(a)(o)(x) (2,528 fewer people) and seven percent among Non-Hispanic or Non-Latin(a)(o)(x) people (7,966 fewer people).
- Experiences of family homelessness declined by

3 State Estimates

Families with Children Experiencing Homelessness

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

EXHIBIT 3.5: Estimates of People in Families with Children Experiencing Homelessness By State, 2022



On a Single Night in 2022

- A little under half of all people experiencing homelessness as part of a family with children were in four states: New York, California, Massachusetts, and Washington. About two in ten (22%) were in New York (34,805 people), and they were essentially all sheltered. Six percent (9,976 people) were in Massachusetts and, similarly, virtually all were sheltered.
- California accounted for 16 percent of people in families with children experiencing homelessness in the U.S. This was a much lower percentage than for people experiencing homelessness as individuals, 35 percent of whom were in California. In California, 17 percent of people experiencing homelessness as part of a family were unsheltered (4,285 people).
- Oregon, Washington, Texas, and Tennessee also have a substantial number of people in families with children found in unsheltered locations: 1,991 in Oregon (59%), 1,640 in Washington (25%), 1,189 in Texas (20%), and 1,040 in Tennessee (44%). Idaho and Arkansas have smaller numbers of people experiencing homelessness as part of a family but high rates at which families experiencing homelessness were found in unsheltered locations (47% and 38%).

Changes over Time

- Between 2020 and 2022, homelessness experienced by people in families with children increased in 26 states. The largest absolute increases were in Louisiana (3,732 more people or 641%), Maine (1,146 more people or 142%), and Delaware (876 more people or 205%).
- Family homelessness dropped between 2020 and 2022 in 24 states and the District of Columbia. The largest absolute decrease was in New York, with 13,183 fewer people experiencing homelessness part of a family in 2022 than in 2020.
- Over a longer period, 2007-2022, family homelessness increased in only 10 states. The largest percentage increases were in Delaware (278%, 959 more people), Vermont (97%, 421 more people), and Louisiana (71%, 1,793 more people). The largest absolute increase was in Massachusetts with 3,141 more people in families with children experiencing homelessness in 2022 than 2020.
- Between 2007 and 2022, family homelessness dropped in 40 states and the District of Columbia. The largest absolute decreases were in Florida (8,589 fewer people) and Texas (7,629 fewer people).

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EXHIBIT 3.6: States with the Highest and Lowest Percentages of People in Families with Children who are Unsheltered 2022

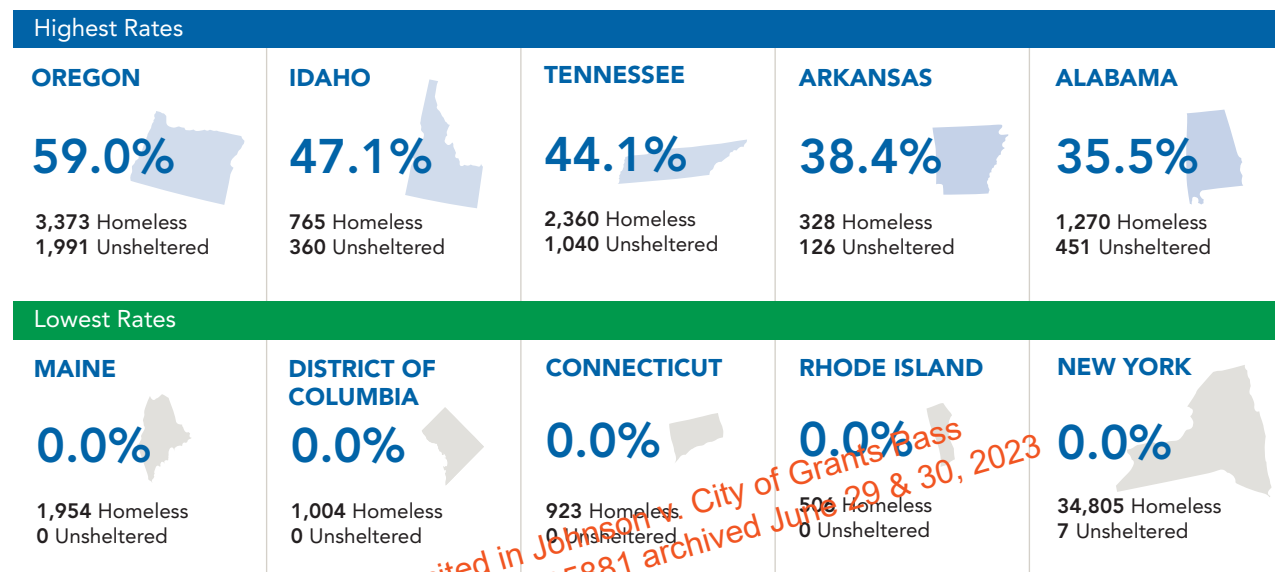


EXHIBIT 3.7: Largest Changes in the Number of People in Families with Children Experiencing Homelessness By State, 2007–2022

	2020–2022		2007–2022
Largest Increases			
LOUISIANA	3,732 / 641.2%	MASSACHUSETTS	3,141 / 46.0%
MAINE	1,146 / 141.8%	LOUISIANA	1,793 / 71.1%
DELAWARE	876 / 204.7%	DELAWARE	959 / 278.0%
TENNESSEE	777 / 49.1%	MAINE	452 / 30.1%
OREGON	713 / 26.8%	VERMONT	421 / 96.6%
Largest Decreases			
NEW YORK	-13,183 / -27.5%	FLORIDA	-8,589 / -57.1%
MASSACHUSETTS	-1,766 / -15.0%	TEXAS	-7,629 / -56.6%
DISTRICT OF COLUMBIA	-1,427 / -58.7%	NEW JERSEY	-5,397 / -64.7%
FLORIDA	-703 / -9.8%	OREGON	-4,346 / -56.3%
ILLINOIS	-468 / -13.6%	GEORGIA	-4,334 / -60.9%

Note: Due to methodological changes, Colorado, Michigan, North Dakota, South Dakota, and Wyoming were excluded from the list of largest decreases between 2007 and 2022.

3 Estimates by CoC Families with Children Experiencing Homelessness

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

Continuums of Care (CoC) were divided into four geographic categories

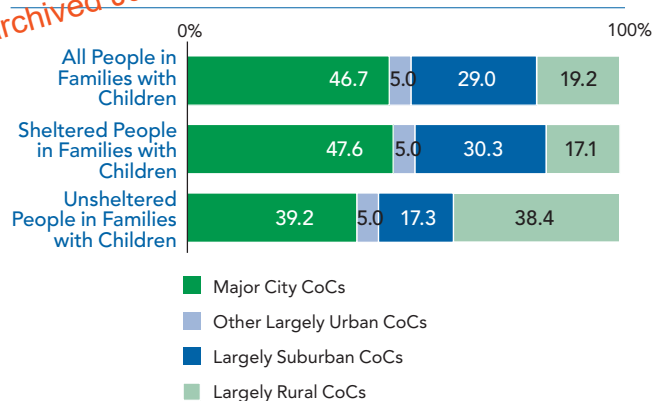
- 1. Major city CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other largely urban CoCs (n=58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely suburban CoCs (n=167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely rural CoCs (n=109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For detailed information on how they were applied to CoCs, see the About the Report section of this report.

children occurs more often in largely rural areas than in other areas. One-fifth of all people in families with children experiencing homelessness in rural areas were unsheltered. This is much higher than the rates within other geographic types. In largely suburban areas, for example, six percent of all families with children experiencing homelessness were unsheltered. In major cities it was eight percent.

- While 19 percent of all people experiencing unsheltered homelessness were located in rural areas in 2022, 39 percent of the nation's population of unsheltered families with children were found there.
- Of major city CoCs, four reported that more than

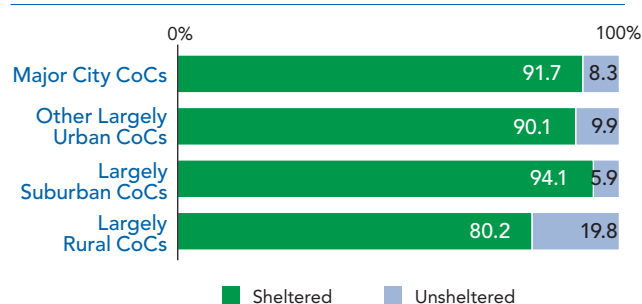
EXHIBIT 3.8: Share of People in Families with Children Experiencing Homelessness By CoC Category and Sheltered Status, 2022



On a Single Night in 2022

- A little under half (47%) of all people in families with children experiencing homelessness in the United States did so in one of the nation's 50 largest cities. However, 39 percent of all unsheltered people in families with children were counted in major cities nationwide (or 6,188 people of the 15,766 unsheltered persons in households with at least one adult and one child).
- New York City has the largest number of people in families with children experiencing homelessness in the nation, at 29,532 people (or 18% of all families experiencing homelessness in the nation).
- Unsheltered homelessness among families with

EXHIBIT 3.9: Percent of all People in Families Experiencing Homelessness that are Sheltered and Unsheltered By CoC Category, 2022



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EXHIBIT 3.10: CoCs with the Largest Numbers of People Experiencing Family Homelessness By CoC Category, 2022

CoC Name	People in Families with Children Experiencing Homelessness	CoC Name	People in Families with Children Experiencing Homelessness
Major City CoCs		Other Largely Urban CoCs	
New York City, NY	29,532	Eugene, Springfield/Lane County, OR	579
Los Angeles City & County, CA	10,642	Saint Paul/Ramsey County, MN	455
Seattle/King County, WA	3,592	St. Petersburg, Clearwater, Largo/Pinellas County, FL	449
Boston, MA	2,894	Anchorage, AK	318
Phoenix, Mesa/Maricopa County, AZ	1,946	Spokane City & County, WA	290
Largely Suburban CoCs		Largely Rural CoCs	
Louisiana Balance of State	3,480	Maine Statewide	1,954
Massachusetts Balance of State	2,302	Texas Balance of State	1,784
Nassau, Suffolk Counties, NY	1,865	Washington Balance of State	1,595
Springfield/Hampden County, MA	1,734	Georgia Balance of State	1,589
Delaware Statewide	1,304	Wisconsin Balance of State	1,351

50 percent of people in families with children were unsheltered (Raleigh/Wake County with 72%, Portland, Gresham/Multnomah County with 68%, Tucson/Pima County with 67%, and Austin/Travis County with 65 percent families with children staying outside). The top five largely rural CoCs with the highest unsheltered rates among families with children experiencing homelessness, as well as largely suburban CoCs, exceed 58 percent.

Changes over Time by CoC Category

- Between 2020 and 2022, family homelessness increased in largely rural and largely suburban areas and decreased in major cities. The number of families experiencing homelessness in largely urban areas that were not one of the nation's largest cities remained relatively flat.
- The overall increase in family homelessness in largely suburban areas (8%) was driven by an 11 percent increase in the number of people in families

with children staying in sheltered locations. The number of unsheltered families declined by 19 percent (or 640 people).

- In rural areas, the five percent overall increase of people in families with children experiencing homelessness was the result of increases in both sheltered (6% or 1,370 people) and unsheltered homelessness (1% or 81 people).
- Family homelessness declined in major cities by 17 percent (15,678 fewer people), driven by a 19 percent decrease in the sheltered population. However, the number of people found sleeping outside in major cities increased by 11 percent (or 624 people).

3 Estimates by CoC

Families with Children Experiencing Homelessness

EXHIBIT 3.11: CoCs with the Highest Percentages of People Experiencing Family Homelessness who are Unsheltered

By CoC Category, 2022

CoC Name	People in Families with Children	Percent Unsheltered	CoC Name	People in Families with Children	Percent Unsheltered
Major City CoCs			Other Largely Urban CoCs		
Raleigh/Wake County, NC	739	71.9%	Eugene, Springfield/Lane County, OR	579	84.3%
Portland, Gresham/Multnomah County, OR	668	67.8%	Little Rock/Central Arkansas CoC	150	73.3%
Tucson/Pima County, AZ	467	66.6%	Durham City & County, NC	130	26.9%
Austin/Travis County, TX	1,088	65.1%	Augusta-Richmond County, GA	103	23.3%
Oakland, Berkeley/Alameda County, CA	844	38.2%	Fayetteville/Northwest Arkansas CoC	122	8.2%
Largely Suburban CoCs			Largely Rural CoCs		
Yuba City & County/Sutter County, CA	465	77.2%	Chattanooga/Southeast Tennessee CoC	755	87.7%
Clackamas County, OR	193	62.7%	Central Oregon CoC	373	86.3%
San Luis Obispo County, CA	428	81.7%	Jackson/West Tennessee CoC	244	76.2%
Fort Pierce/St. Lucie, Indian River, Martin Counties, FL	261	59.0%	Columbia, Hamilton, Lafayette, Suwannee Counties, FL	105	74.3%
Imperial County, CA	241	58.9%	Alabama Balance of State CoC	623	68.7%

EXHIBIT 3.12: Change in the Number of People in Families with Children Experiencing Homelessness

By Sheltered Status and CoC Category, 2020-2022

	All People in Families with Children		Sheltered		Unsheltered	
	#	%	#	%	#	%
Total	-10,869	-6.4%	-11,353	-7.3%	484	3.2%
Major City CoCs	-15,678	-17.4%	-16,302	-19.3%	624	11.2%
Other Largely Urban CoCs	-23	-0.3%	-446	-5.8%	423	114.6%
Largely Suburban CoCs	3,504	8.2%	4,144	10.5%	-640	-19.0%
Largely Rural CoCs	1,451	5.0%	1,370	5.9%	81	1.4%

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EXHIBIT 3.13: Demographic Characteristics of People in Families with Children Experiencing Homelessness

By CoC Category, 2022

Characteristic	Major City CoCs	Other Largely Urban	Largely Suburban	Largely Rural
Number of People	74,407	8,024	46,172	30,628
Age				
Under 18	58.8%	60.1%	59.9%	59.9%
18 to 24	7.9%	5.9%	6.1%	5.5%
Over 24	33.4%	33.9%	34.0%	34.6%
Gender				
Female	59.9%	61.3%	59.8%	58.9%
Male	39.8%	38.5%	40.0%	40.8%
Transgender	0.1%	0.1%	0.1%	0.1%
A Gender that is not Singularly 'Female' or 'Male'	0.1%	0.1%	0.1%	0.1%
Questioning	0.0%	0.0%	0.0%	0.1%
Ethnicity				
Non-Hispanic/Non-Latin(a)(o)(x)	61.7%	83.1%	73.3%	82.8%
Hispanic/Latin(a)(o)(x)	38.3%	16.9%	26.7%	17.2%
Race				
American Indian, Alaska Native, or Indigenous	1.9%	2.9%	1.4%	6.0%
Asian or Asian American	1.0%	1.3%	0.8%	0.6%
Black, African America, or African	63.5%	42.2%	47.1%	23.8%
Native Hawaiian or Pacific Islander	1.3%	2.6%	2.3%	1.5%
White	26.6%	42.2%	41.0%	59.9%
Multiple Races	5.7%	8.8%	7.3%	8.1%

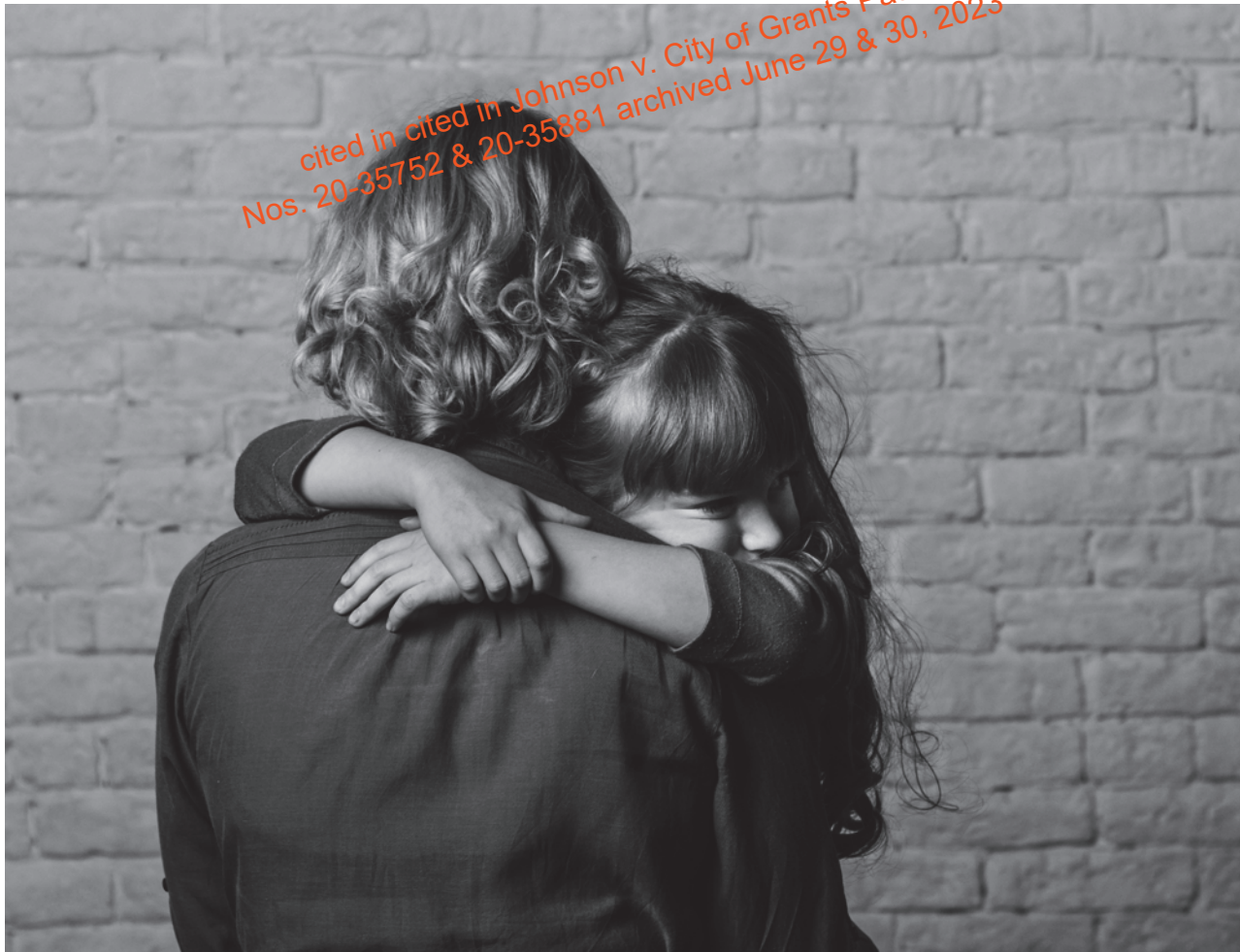
Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

3 Estimates by CoC

Families with Children Experiencing Homelessness

Demographic Characteristics by CoC Category

- The race and ethnicity of people in families with children experiencing homelessness vary geographically. People that identify as Black, African American, or African make up 24 percent of people in rural CoCs, and 64 percent in major cities. Meanwhile, 60 percent of families with children experiencing homelessness in rural CoCs identified as White, but only 27 percent of families experiencing homelessness identified as White in major cities.
- Racial composition does not vary much across geographic areas for other racial groups, with the exception of largely rural CoCs, where the percentage of people who identify as American Indian, Alaska Native, or Indigenous is substantially higher than in the other three geographic areas (6% vs. 1-3%).
- A higher percentage of Hispanic or Latin(a)(o)(x) people experience homelessness in major cities (38%) than in the other geographic areas (17% in other largely urban areas, 27% in suburban CoCs, and 17% in rural CoCs).
- Age and gender characteristics of people in families with children experiencing homelessness are similar across geographic categories.



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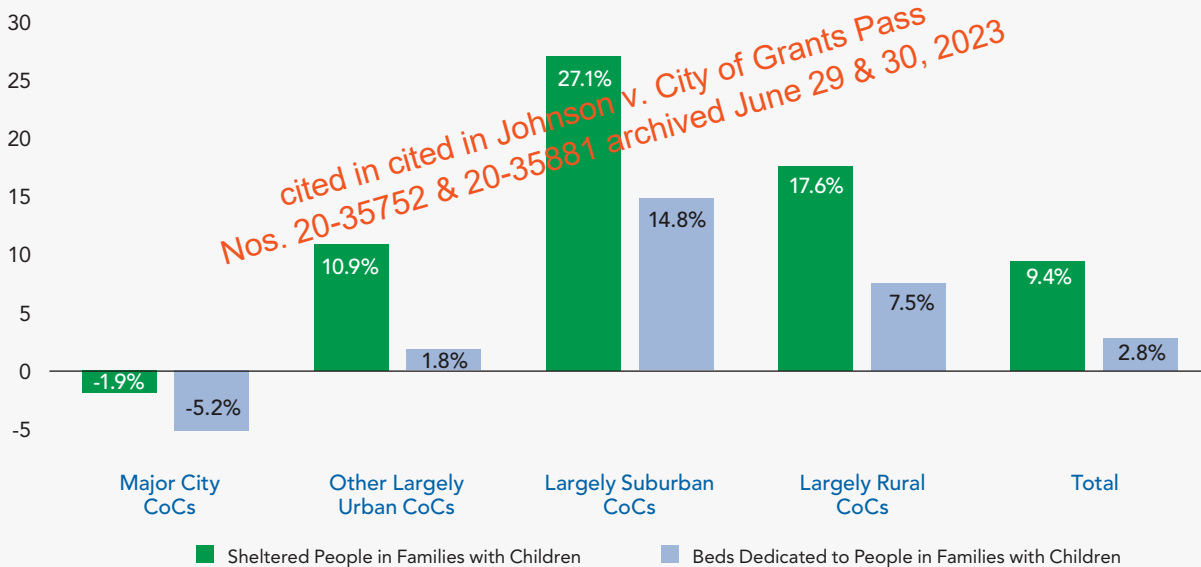
Changes in the Sheltered Family Population during the Pandemic (2021-2022)

Between 2021-2022, the number of people in families with children experiencing sheltered homelessness increased by nine percent (or 12,356 more people), and the number of family households increased by 17 percent (7,480 more households). This is likely due to a combination of factors, including a restoration of shelter capacity and the expiration of eviction moratoria that were critical in reducing the number of people accessing shelter during the pandemic. This increase in people far outpaces the increase in beds for people in families with children (3%).

CoCs with a major city were the only geographic category to experience a decrease in sheltered people in families with children. Largely suburban areas had the largest increase, with 27 percent more people in families accessing shelter in 2022 than in 2021, and 15 percent more beds dedicated to them.

EXHIBIT 3.14: Change in Sheltered People in Families with Children and Dedicated Family Beds

By Geographic Category, 2021-2022



4 National Estimates Unaccompanied Youth Experiencing Homelessness

Data source: PIT 2017-2022

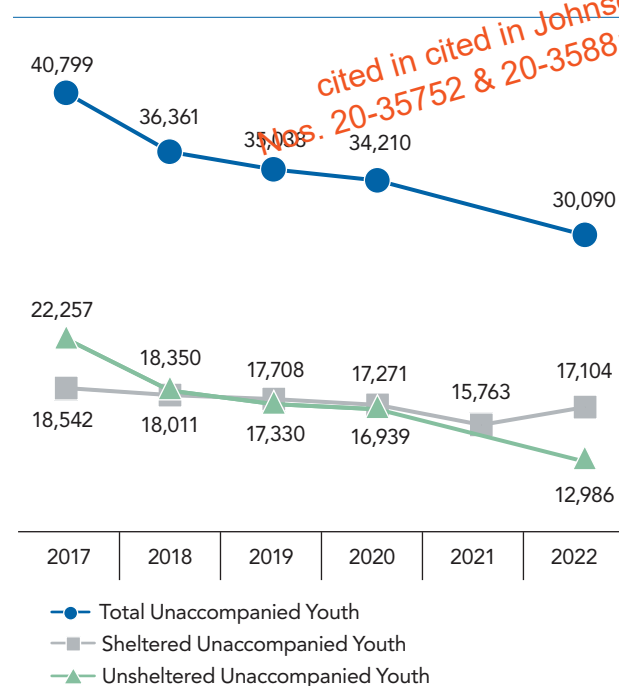
The 2021 national Point-in-Time (PIT) counts were considerably impacted by the COVID-19 pandemic. During the public health crisis, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. As a result, less than half of communities conducted a full sheltered and unsheltered count. While this report includes some data on unaccompanied youth in sheltered locations in 2021, incomplete unsheltered data is not included. Analysis of changes over time are generally limited to those between 2022 and 2020 or earlier. Key changes

in the sheltered population between 2021 and 2022 will be included in text boxes at the end of each chapter.

HUD's Point-in-Time (PIT) count data collection includes information on the number of young adults and children, people under the age of 25, who are experiencing homelessness "unaccompanied"—that is, without a parent or guardian present. Children and youth who experience homelessness on their own are 22 percent of all people under the age of 25 experiencing homelessness. HUD and its federal partners selected the PIT counts from January 2017 as the baseline measure of homelessness among unaccompanied youth.

EXHIBIT 4.1: PIT Estimates of Unaccompanied Youth Experiencing Homelessness

By Sheltered Status, 2017-2022



Note: The data for 2021 does not display the total count of unaccompanied youth experiencing homelessness or the count of unaccompanied youth experiencing unsheltered homelessness due to pandemic-related disruptions to counts. Additionally, estimates of the number of unaccompanied youth experiencing sheltered homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.

In addition to not experiencing homelessness with a parent, unaccompanied youth are not themselves parents experiencing homelessness together with one or more children. Thus, unaccompanied youth are a subset of the population that experiences homelessness as individuals.

On a Single Night in 2022

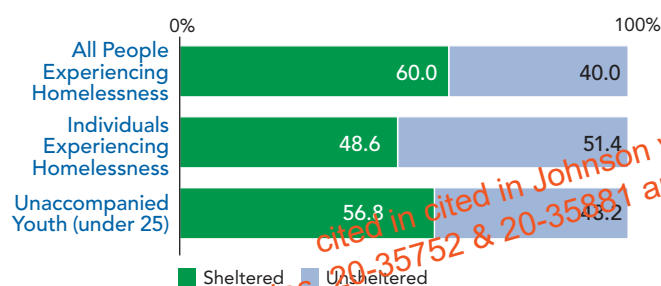
- 30,090 unaccompanied youth were reported to be experiencing homelessness in the United States. These unaccompanied youth were 5 percent of the total population of people experiencing homelessness and 7 percent of all people experiencing homelessness as individuals.
- Another 6,348 youth were experiencing homelessness as parents, with at least one child under the age of 18. (More detail on parenting youth is in Section 3 of this report, People in Families with Children Experiencing Homelessness.)
- 27,395 unaccompanied youth experiencing homelessness were between the ages of 18 and 24 (91%). The remaining 9 percent (2,695 people) were children (under the age of 18) experiencing homelessness on their own.
- More than 4 in 10 unaccompanied youth experiencing homelessness were unsheltered (43%), a smaller percentage than individuals experiencing homelessness (51%) and a similar percentage as all people experiencing homelessness (40%).

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EXHIBIT 4.2: PIT Estimates of Unaccompanied Youth Experiencing Homelessness By Age and Sheltered Status, 2022

	All Unaccompanied Youth		Sheltered Unaccompanied Youth		Unsheltered Unaccompanied Youth	
	#	%	#	%	#	%
All Unaccompanied Youth Experiencing Homelessness (under 25)	30,090	100.0%	17,104	100.0%	12,986	100.0%
Unaccompanied Youth Experiencing Homelessness (under 18)	2,695	9.0%	1,510	8.8%	1,185	9.1%
Unaccompanied Youth Experiencing Homelessness (18-24)	27,395	91.0%	15,594	91.2%	11,801	90.9%

EXHIBIT 4.3: Population Comparisons of People Experiencing Homelessness By Sheltered Status, 2022



Demographic Characteristics of Unaccompanied Youth

The AHAR has been reporting demographic information on people experiencing homelessness on a single night since 2017. In 2022, the ways in which people identified their gender changed considerably, expanding the gender identity categories to include “questioning” and allowing people to select more than one gender.⁸ As a result, any comparisons made to prior years should be viewed with caution as they are not exact comparisons.⁹

- The characteristics of unaccompanied youth experiencing homelessness differ from those of the overall population experiencing homelessness as individuals. Unaccompanied youth experiencing homelessness were less likely to be White and more likely than all individuals experiencing

EXHIBIT 4.4: Change in Numbers of Unaccompanied Youth Experiencing Homelessness 2017-2022

	Change 2020-2022		Change 2017-2022	
	#	%	#	%
Total Unaccompanied Youth	-4,120	-12.0%	-8,213	-21.4%
Sheltered Unaccompanied Youth	-167	-1.0%	-1,438	-7.8%
Unsheltered Unaccompanied Youth	-3,953	-23.3%	-6,775	-34.3%

homelessness to be female (48% vs. 55% and 40% vs. 30%).

- Youth identifying as transgender, not singularly female or male, or questioning their gender accounted for four percent of the unaccompanied youth population, compared with only one percent of all individuals experiencing homelessness.
- Unaccompanied youth experiencing homelessness were slightly more likely to be Black, African American, or African (37%) than all individuals experiencing homelessness (33%). Black unaccompanied youth accounted for a larger share of the sheltered unaccompanied youth population (44%) than the unsheltered population (27%). Unaccompanied youth who identified as Black, African American, or African were the only racial group to make up a smaller percentage of youth

⁸ For more information on how gender was reported for the PIT, see: <https://files.hudexchange.info/resources/documents/Reporting-Gender-for-the-PIT-Count.pdf>

⁹ For example, in previous years a person might only identify as “female” when they may have also identified as “questioning.” In 2022, that person was allowed to select both “female” and “questioning,” which was then categorized as “questioning.”

4 National Estimates Unaccompanied Youth Experiencing Homelessness

Data source: PIT 2017-2022; Excludes PR and U.S. territories

EXHIBIT 4.5: Demographic Characteristics of Unaccompanied Youth Experiencing Homelessness 2022

	All Unaccompanied Youth		Sheltered Unaccompanied Youth		Unsheltered Unaccompanied Youth	
Total	30,090	100.0%	17,104	100.0%	12,986	100.0%
Age						
Under 18	2,695	9.0%	1,510	8.8%	1,185	9.1%
18 to 24	27,395	91.0%	15,594	91.2%	11,801	90.9%
Gender						
Female	12,152	40.4%	7,290	42.6%	4,862	37.4%
Male	16,648	55.3%	8,993	52.6%	7,655	58.9%
Transgender	611	2.0%	418	2.4%	193	1.5%
A Gender that is not Singularly 'Female' or 'Male'	543	1.8%	339	2.0%	204	1.6%
Questioning	136	0.5%	64	0.4%	72	0.6%
Ethnicity						
Non-Hispanic/Non-Latin(a)(o)(x)	22,328	74.2%	13,235	77.4%	9,093	70.0%
Hispanic/Latin(a)(o)(x)	7,762	25.8%	3,869	22.6%	3,893	30.0%
Race						
American Indian, Alaska Native, or Indigenous	1,110	3.7%	533	3.1%	577	4.4%
Asian or Asian American	384	1.3%	179	1.0%	205	1.6%
Black, African American, or African	11,097	36.9%	7,560	44.2%	3,537	27.2%
Native Hawaiian or Pacific Islander	469	1.6%	185	1.1%	284	2.2%
White	14,560	48.4%	7,429	43.4%	7,131	54.9%
Multiple Races	2,470	8.2%	1,218	7.1%	1,252	9.6%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

experiencing unsheltered homelessness compared with sheltered homelessness.

- Youth who identified as more than one race accounted for 8 percent of all unaccompanied youth experiencing homelessness, compared with 6 percent of individuals experiencing homelessness.
- Just over one-quarter of unaccompanied youth identified as Hispanic or Latin(a)(o)(x) (26%), compared with 22 percent of all individuals experiencing homelessness. Hispanic unaccompanied youth made up a larger percentage of the unsheltered population (30%).

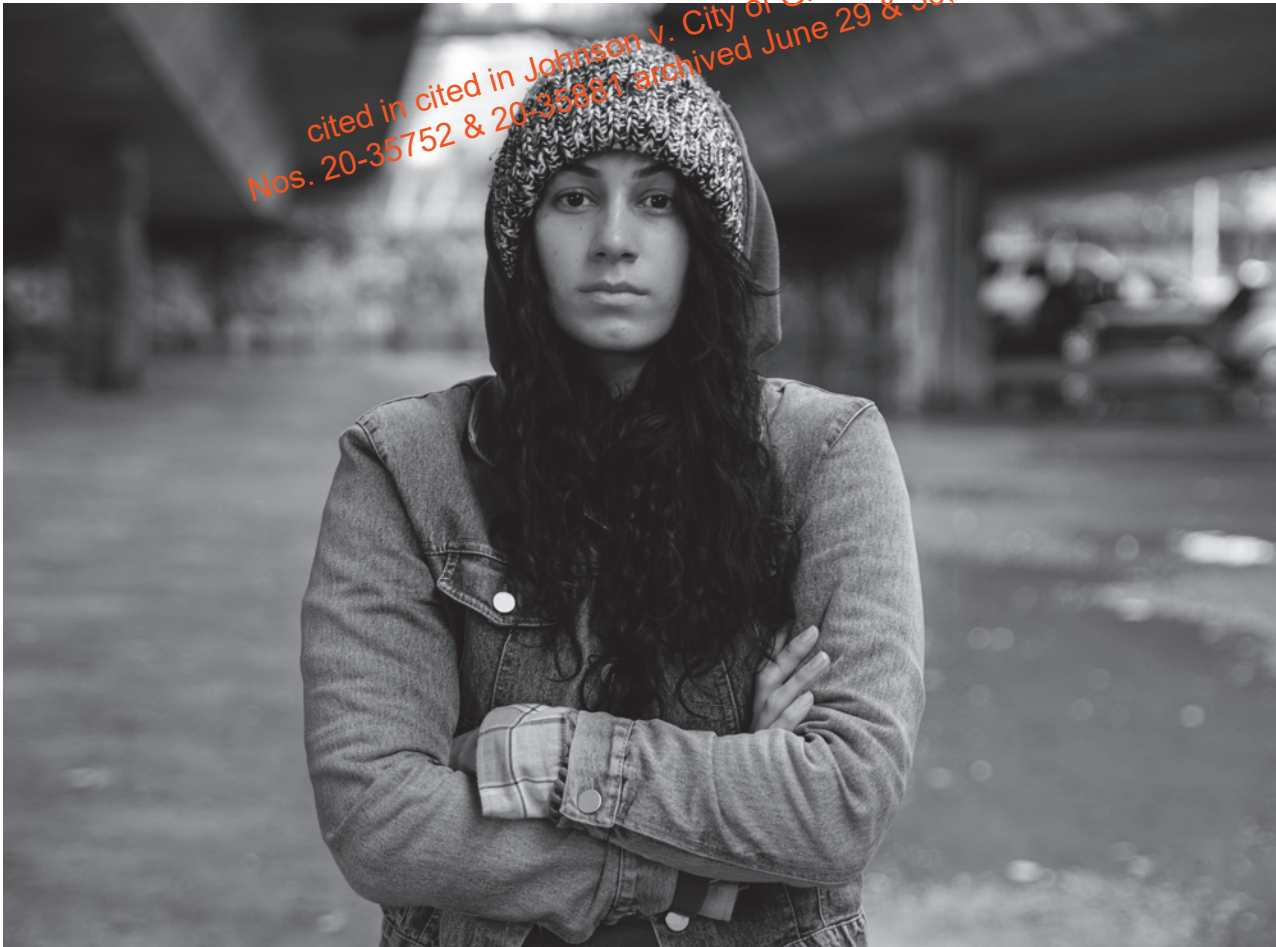
Changes over Time

Given that more than half of communities did not conduct full unsheltered counts in 2021, changes over time are limited to those between 2022 and 2020 or earlier. Notable changes in the sheltered unaccompanied youth population between 2021 and 2022 are highlighted in the text box at the end of this section.

- The number of unaccompanied youth reported by communities declined by 12 percent between 2020 and 2022. The overall decline primarily resulted from a decrease in the number of unsheltered unaccompanied youth (a decrease of 23% or 3,953 youth).

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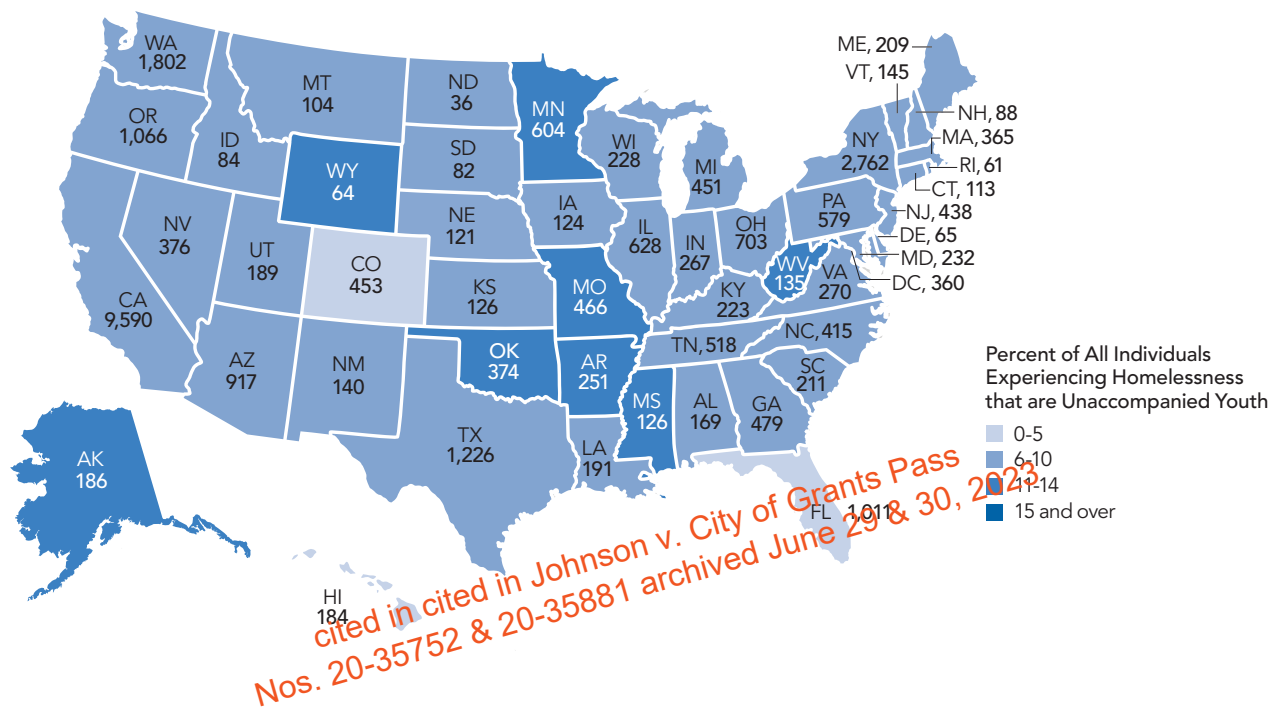
- Between 2020 and 2022, the number of unaccompanied youth in sheltered locations decreased slightly (by 1%). However, this obscures a steeper drop between 2020 and 2021 that was likely due to contracted bed capacity during the height of the pandemic (see the box at the end of this section for more information on changes between 2021 and 2022).
- Between 2017 (the baseline year for youth experiencing homelessness in the PIT count) and 2022, there has been a 21 percent decline in the overall number of unaccompanied youths reported nationally (or 8,213 fewer people). This decline was driven by recent, pandemic-era declines in unaccompanied youth. During this time, shelter capacity was reduced, which likely impacted the number of young people accessing shelter. There were also several federal, state, and local resources aimed at preventing homelessness among youth, most notably resources provided to communities through the Youth Homelessness Demonstration Program (YHDP).
- The overall decline in unaccompanied youth homelessness since 2017 reflects an eight percent decline in the number of sheltered unaccompanied youth (1,438 fewer people) and a 34 percent decline in unsheltered unaccompanied youth (6,775 fewer people). Young adults often stay in locations that are not stable but are not also technically homeless. For example, youth staying temporarily with friends or family, couch surfing, or doubling up are not included in this estimate.



4 State Estimates Unaccompanied Youth Experiencing Homelessness

Data source: PIT 2019-2022; Excludes Puerto Rico and U.S. territories

EXHIBIT 4.6: Estimates of Unaccompanied Youth Experiencing Homelessness By State, 2022



*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

On a Single Night in 2022

- California reported the largest number of unaccompanied youth (9,590 people), accounting for more than a third of all unaccompanied youth nationally (32%). Other states with large numbers of unaccompanied youth experiencing homelessness were New York (2,762 or 9% of the national total), Washington (1,802 or 6%), Texas (1,226 or 4%), Oregon (1,066 or 4%), and Florida (1,011 or 3%). Together, these six states account for nearly 6 of every 10 unaccompanied youth across the country.
- Four states reported sheltering more than 95 percent of unaccompanied youth experiencing homelessness: Vermont (99%), Maine (97%), Nebraska (96%), and Wisconsin (96%).
- California accounted for 52 percent of all unsheltered unaccompanied youth (6,762 people). Washington (1,048), Oregon (650), and Arizona (622) had the next largest numbers of unsheltered unaccompanied youth, with each accounting for between eight and five percent of the national total.

- Four states reported that two-thirds or more of their unaccompanied youth experiencing homelessness were staying in unsheltered locations: Hawaii (71%), California (71%), Mississippi (70%), and Arizona (68%).

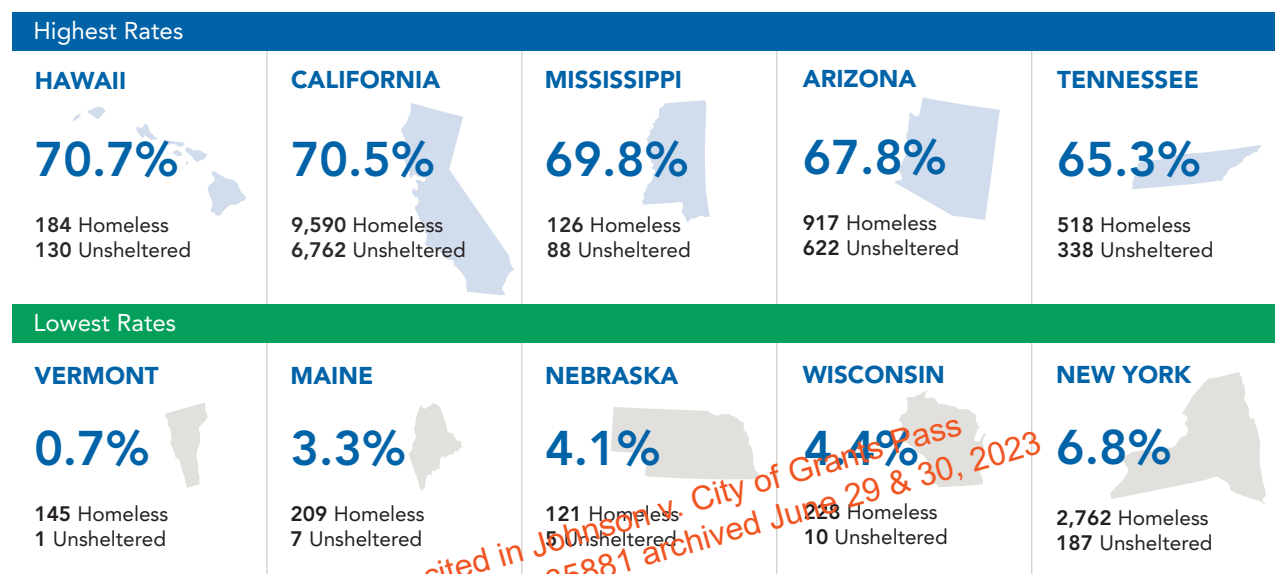
Changes over Time

- Homelessness among unaccompanied youth increased in 20 states and the District of Columbia between 2020 and 2022. The largest absolute increases were in Arizona (284 more youth), Tennessee (165 more youth), and the District of Columbia (107 more youth). The largest percentage increases were in Rhode Island (165%), Mississippi (147%), Delaware (51%), and Maine (50%).
- Homelessness declined for unaccompanied youth in 30 states between 2020 and 2022. The largest absolute decrease was in California, with 2,582 fewer unaccompanied youth experiencing homelessness in 2022. Florida had the next largest absolute decrease (320 fewer youth), followed by

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EXHIBIT 4.7: States with the Highest and Lowest Percentages of Unaccompanied Youth Experiencing Homelessness who were Unsheltered

By State, 2022



New York (310 fewer youth). Hawaii experienced the largest percentage decline, with the unaccompanied youth population dropping by 39 percent, followed by New Mexico (35%) and Nevada (34%).

EXHIBIT 4.8: Largest Changes in the Number of Unaccompanied Youth Experiencing Homelessness 2020-2022

Largest Increases	
ARIZONA	284 / 44.9%
TENNESSEE	165 / 46.7%
DISTRICT OF COLUMBIA	107 / 42.3%
OKLAHOMA	84 / 29.0%
MISSISSIPPI	75 / 147.1%
Largest Decreases	
CALIFORNIA	-2,582 / -21.2%
FLORIDA	-320 / -24.0%
NEW YORK	-310 / -10.1%
OREGON	-248 / -18.9%
MISSOURI	-198 / -29.8%

4 Estimates by CoC Unaccompanied Youth Experiencing Homelessness

Data source: PIT 2022; Excludes Puerto Rico and U.S. territories

Continuums of Care (CoC) were divided into four geographic categories

- 1. Major city CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other largely urban CoCs (n=58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely suburban CoCs (n=167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely rural CoCs (n=109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For detailed information on how they were applied to CoCs, see the About the Report section of this report.

in unsheltered locations (47%), followed by largely urban CoCs (43%) and largely rural CoCs (40%). Largely suburban CoCs had the lowest percentage of unsheltered unaccompanied youth, at 37 percent.

- Five major city CoCs had percentages of unaccompanied youth staying in unsheltered locations exceeding 75 percent: San Jose, CA (91%), Raleigh, NC (85%), San Francisco, CA (84%), Tucson, AZ (81%) and Austin, TX (80%).
- Three largely suburban CoCs had more than 80 percent of their unaccompanied youth found in unsheltered locations: Santa Cruz (97%), Marin County (95%), and Contra Costa County (83%).
- Among largely rural CoCs, four CoCs had more than three in every four youth staying in unsheltered locations: Chattanooga, TN (97%), Salinas/Monterey covering San Benito County in California (94%), Oregon Balance of State CoC (76%), and Georgia Balance of State CoC (75%).
- In all categories of CoCs, nearly all unaccompanied youth experiencing homelessness (88-93%) were between the ages of 18 and 24. Largely rural CoCs had the highest percentage of unaccompanied youth experiencing homelessness under the age of 18 (12%).
- In major cities, Black, African American, and African youth made up nearly half of the unaccompanied youth population (46%), followed by Hispanic/Latin(o)(a)(x) youth (31%). In contrast, Black unaccompanied youth made up 17% of unaccompanied youth in largely rural CoCs, followed by Hispanic youth (16%). White unaccompanied youth made up the largest

On a Single Night in 2022

- Half of all people under the age of 25 and experiencing homelessness on their own were counted in the nation's major cities. New York City and Los Angeles had the largest numbers, reporting 2,094 and 2,042 unaccompanied youth. The major cities with the next highest numbers were all on the West Coast.
- Within geographic areas, major cities had the highest percentage of unaccompanied youth found staying

EXHIBIT 4.9: Share of Unaccompanied Youth Experiencing Homelessness By CoC Category and Sheltered Status, 2022

	All Unaccompanied Youth	Sheltered	Unsheltered
Major City CoCs	49.5%	46.2%	54.0%
Other Largely Urban CoCs	7.8%	7.9%	7.7%
Largely Suburban CoCs	22.1%	24.4%	19.2%
Largely Rural CoCs	20.5%	21.6%	19.1%

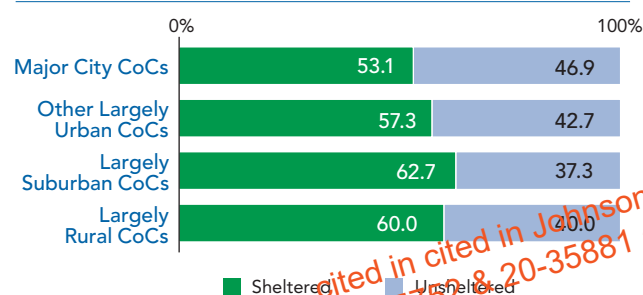
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percentage of youth in largely rural CoCs (69%) and the lowest percentage in major cities (39%).

- Unaccompanied youth who identified as Asian or Asian American or Native Hawaiian or Pacific Islander were evenly distributed across geographic areas and represented a small share of all unaccompanied youth.

- Unaccompanied youth who identified as American Indian, Alaska Native, or Indigenous were more likely to be in largely urban CoCs, as were youth identifying as multiracial.

EXHIBIT 4.10: Percent of all Unaccompanied Youth Experiencing Homelessness that are Sheltered and Unsheltered
By CoC Category, 2022



Changes over Time by CoC Category

- Between 2020 and 2022, the number of unaccompanied youth experiencing homelessness declined by 12 percent (4,120 fewer youth). Declines occurred across all geographic areas, with major cities reporting the largest absolute decline (2,161 fewer youth) and largely suburban CoCs reporting the largest percentage decline (15%).
- The overall decline in unaccompanied youth homelessness was driven by a reduction in unsheltered homelessness, in which 3,953 fewer unaccompanied youth were reported between 2020 and 2022 (a 22% decline). Reductions in unsheltered homelessness among unaccompanied youth were reported across all geographic categories except largely urban CoCs, which increased by 25 youth.

EXHIBIT 4.11: CoCs with the Largest Numbers of Unaccompanied Youth Experiencing Homelessness
By CoC Category, 2022

CoC Name	All Unaccompanied Youth	CoC Name	All Unaccompanied Youth
Major City CoCs		Other Largely Urban CoCs	
New York City	2,094	Santa Rosa, Petaluma/Sonoma County, CA	521
Los Angeles City and County, CA	2,042	Little Rock/Central Arkansas	138
San Jose/Santa Clara City & County, CA	1,155	Anchorage, AK	133
Seattle/King County, WA	1,129	Spokane City & County, WA	116
San Francisco, CA	1,073	New Orleans/Jefferson Parish, LA	103
Largely Suburban CoCs		Largely Rural CoCs	
Riverside City & County, CA	313	Texas Balance of State	442
Watsonville/Santa Cruz City & County, CA	222	Oregon Balance of State	432
Richmond/Contra Costa County, CA	209	Washington Balance of State	333
Santa Ana, Anaheim/Orange County, CA	183	Ohio Balance of State	253
San Bernardino City & County, CA	141	Georgia Balance of State	244

4 Estimates by CoC

Unaccompanied Youth Experiencing Homelessness

EXHIBIT 4.12: CoCs with the Highest Percentages of Unaccompanied Youth Experiencing Homelessness Who are Unsheltered

By CoC, 2022

CoC Name	All Unaccompanied Youth	Percent Unsheltered	CoC Name	All Unaccompanied Youth	Percent Unsheltered
Major City CoCs			Other Largely Urban CoCs		
San Jose/Santa Clara City & County, CA	1,155	90.6%	Santa Rosa, Petaluma/Sonoma County, CA	521	96.2%
Raleigh/Wake County, NC	132	84.8%	Little Rock/Central Arkansas, AK	138	57.2%
San Francisco, CA	1,073	84.1%	Spokane City & County, WA	116	37.9%
Tucson/Pima County, AZ	179	81.0%	Eugene, Springfield/Lane County, OR	100	32.0%
Austin/Travis County, TX	168	79.8%	New Orleans/Jefferson Parish, LA	103	29.1%
Largely Suburban CoCs			Largely Rural CoCs		
Watsonville/Santa Cruz City & County, CA	222	97.3%	Chattanooga/Southeast Tennessee, TN	190	96.8%
Marin County, CA	126	75.2%	Salinas/Monterey, San Benito Counties, CA	214	94.4%
Richmond/Contra Costa County, CA	209	83.3%	Oregon Balance of State	432	76.2%
Riverside City & County, CA	313	74.8%	Georgia Balance of State	244	75.0%
Honolulu City and County, HI	136	67.6%	Central Oregon	103	73.8%

- Sheltered unaccompanied youth homelessness declined by 166 youth between 2020 and 2022. The declines reported in major cities, largely urban CoCs, and largely suburban CoCs were offset by an eight percent increase in largely rural CoCs (which reported 263 more youth).

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EXHIBIT 4.13: Demographic Characteristics of Unaccompanied Youth Experiencing Homelessness in Each CoC Category 2022

	Major City CoCs	Other Largely Urban CoCs	Largely Suburban CoCs	Largely Rural CoCs
All Unaccompanied Youth	14,858	2,343	6,646	6,160
Age				
Under 18	8.5%	10.4%	6.9%	11.9%
18 to 24	91.5%	89.6%	93.1%	88.1%
Gender				
Female	38.6%	39.8%	42.3%	43.1%
Male	56.2%	56.4%	54.7%	53.3%
Transgender	2.6%	2.1%	1.4%	1.4%
A Gender that is not Singularly 'Female' or 'Male'	2.2%	1.5%	1.2%	1.6%
Questioning	0.5%	0.2%	0.3%	0.6%
Ethnicity				
Non-Hispanic/Non-Latin(a)(o)(x)	68.7%	79.0%	78.7%	83.6%
Hispanic/Latin(a)(o)(x)	31.3%	20.4%	23.3%	16.4%
Race				
American Indian, Alaska Native, or Indigenous	3.8%	8.6%	1.7%	5.7%
Asian or Asian American	1.7%	0.6%	1.0%	0.7%
Black, African American, or African American	46.1%	32.2%	36.2%	17.4%
Native Hawaiian or Pacific Islander	1.5%	1.4%	2.0%	1.0%
White	39.1%	45.8%	51.3%	68.7%
Multiple Races	8.6%	11.4%	7.7%	6.4%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

EXHIBIT 4.14: Change in Unaccompanied Youth Experiencing Homelessness By Sheltered Status and CoC Category, 2020-2022

	All People in Families with Children		Sheltered		Unsheltered	
	#	%	#	%	#	%
All Unaccompanied Youth	-4,136	-12.1%	-166	-1.0%	-3,970	-23.5%
Major Cities	-2,161	-12.7%	-176	-2.2%	-1,985	-22.2%
Other Largely Urban CoCs	-40	-1.7%	-65	-4.6%	25	2.6%
Largely Suburban CoCs	-1,188	-15.2%	-188	-4.3%	-1,000	-28.7%
Largely Rural CoCs	-747	-10.8%	263	7.7%	-1,010	-29.0%



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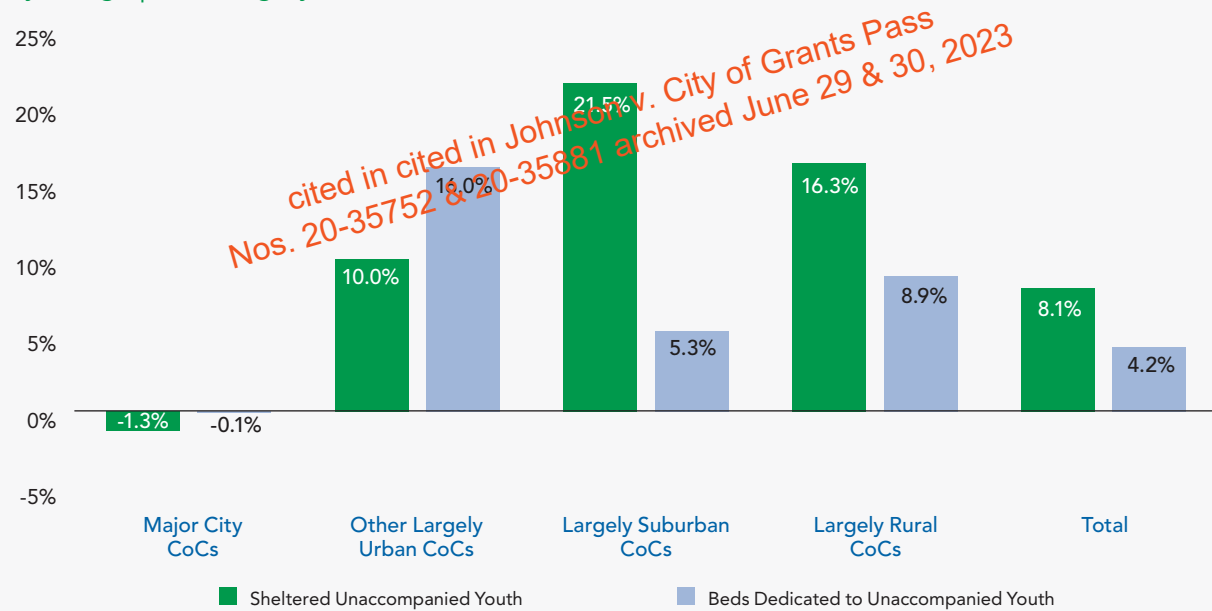
Changes in Sheltered Unaccompanied Youth during the Pandemic (2021-2022)

Between 2021 and 2022, the number of sheltered unaccompanied youth increased by nine percent (1,341 more people). Increases were observed across nearly all demographic categories. The percentage increase in sheltered unaccompanied youth slightly outpaced the increase in the number of beds dedicated to unaccompanied youth experiencing homelessness, which increased by four percent nationally between 2021 and 2022.

The number of unaccompanied youth experiencing homelessness increased in all geographic categories except for major cities between 2021 and 2022. Increases were most pronounced in largely suburban areas, which experienced a 22 percent increase. Largely urban areas that did not contain one of the nation's largest cities experienced the largest increase in the number of beds dedicated to unaccompanied youth (16%).

EXHIBIT 4.15: Change in Unaccompanied Youth in Sheltered Locations and Beds Dedicated to Youth

By Geographic Category, 2021-2022



*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

5 National Estimates Veterans Experiencing Homelessness

Data source: PIT 2009–2022

The 2021 national Point-in-Time (PIT) counts were considerably impacted by the COVID-19 pandemic. During the public health crisis, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. As a result, less than half of communities conducted a full sheltered and unsheltered count. While this report includes some data on all veterans in sheltered locations in 2021, incomplete unsheltered data is not included. Analysis of changes over time are generally limited to those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 will be included in text boxes at the end of each chapter.

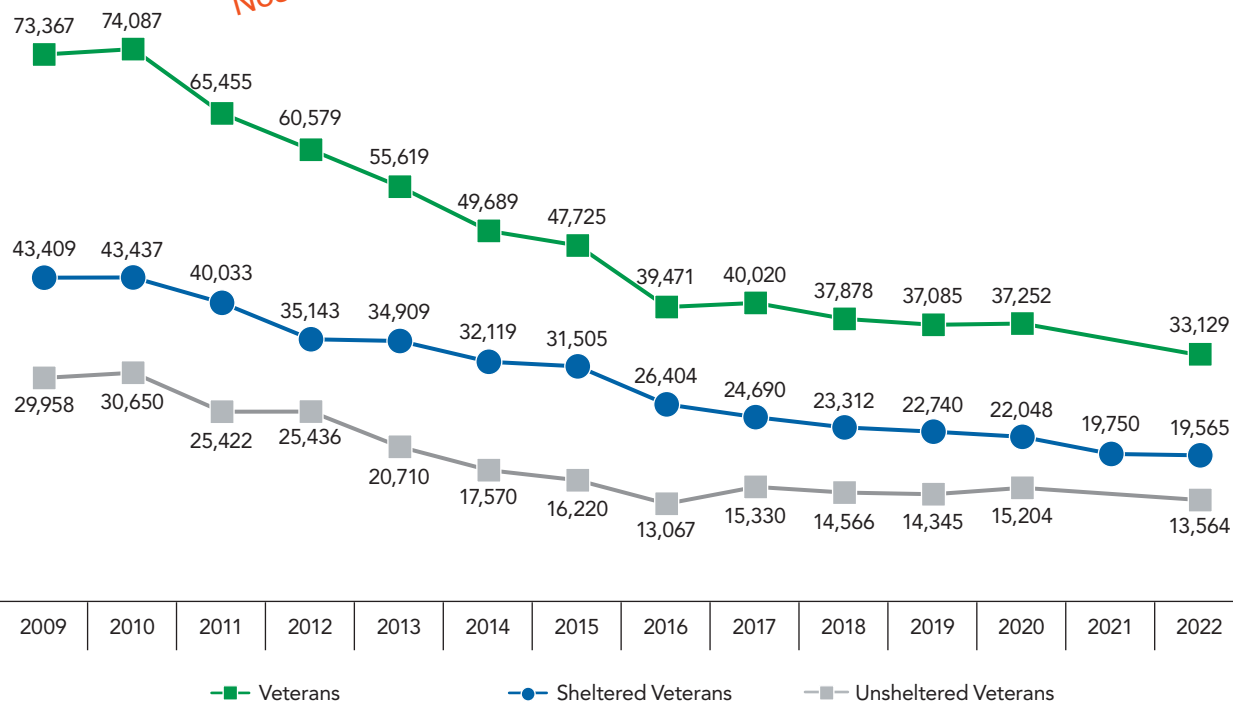
Communities began reporting PIT data on veterans experiencing homelessness in 2009. As such, this report uses 2009 as the baseline measure of veterans experiencing homelessness in the United States.

On a Single Night in 2022

- 33,129 veterans were experiencing homelessness in the U.S., approximately seven percent of all adults experiencing homelessness.
- Of every 10,000 veterans in the United States, 20 were experiencing homelessness. It is somewhat more common for veterans to experience homelessness than for all people in the United States (18 people out of every 10,000).
- Nearly all veterans were experiencing homelessness as individuals, 98 percent. Of those individuals, 28 percent (9,396 veterans) had chronic patterns of homelessness.
- About six in 10 veterans experiencing homelessness were staying in sheltered locations (59% or 19,565 veterans). This is higher than the share of all individuals experiencing homelessness who were sheltered, 49 percent.

EXHIBIT 5.1: PIT Estimates of Veterans Experiencing Homelessness

By Sheltered Status, 2009–2022



Note: The data for 2021 does not display the total count of veterans experiencing homelessness or the count of veterans experiencing unsheltered homelessness due to pandemic-related disruptions to counts. Additionally, estimates of the number of veterans experiencing sheltered homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.

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EXHIBIT 5.2: Proportion of Adults Experiencing Homelessness Who are Veterans By Sheltered Status, 2022

Sheltered Status	All Veterans Experiencing Homelessness	All Adults Experiencing Homelessness	Percent of Adults Experiencing Homelessness Who were Veterans
Total People	33,129	483,218	6.8%
Sheltered	19,565	260,670	7.5%
Unsheltered	13,564	223,548	6.1%

EXHIBIT 5.3: Change in the Number of Veterans Experiencing Homelessness 2009–2022

	Change 2020-2022		Change 2009-2022	
	#	%	#	%
All Veterans	-4,123	-11.1%	-40,238	-54.8%
Sheltered	-2,483	-11.3%	-23,844	-54.9%
Unsheltered	-1,640	-10.8%	-16,394	-54.7%

- Three percent of veterans experiencing homelessness (840 veterans) were in family households with children (representing 807 households). Overall, 36,754 people experiencing homelessness were in households that included a veteran.
- Veterans experiencing homelessness as families with children were sheltered at a higher rate than veterans experiencing homelessness as individuals (79% vs. 59%), but at a lower rate than all families with children experiencing homelessness (89%).

Changes in Veteran Homelessness over Time

Given that more than half of communities did not conduct full unsheltered counts in 2021, changes over time are limited to those between 2022 and 2020 or earlier. Notable changes in the sheltered veteran population between 2021 and 2022 are highlighted the text box at the end of this section.

- Between 2020 and 2022, the number of veterans experiencing homelessness decreased by 11 percent (4,123 fewer people). The decrease occurred in both

sheltered and unsheltered locations.

- HUD began collecting data on veterans experiencing homelessness in 2009. Overall, veteran homelessness decreased by 55 percent between 2009 and 2022 (40,238 fewer veterans). This decrease occurred across sheltered and unsheltered locations, both of which also decreased by 55 percent (23,844 fewer sheltered veterans and 16,394 fewer unsheltered veterans).

Demographic Characteristics

The AHAR has been reporting demographic information on people experiencing homelessness on a single night since 2017. In 2022, the ways in which people identified their gender changed considerably, expanding the gender identity categories to include “questioning” and allowing people to select more than one gender.¹⁰ As a result, any comparisons made to prior years should be viewed with caution as they are not exact comparisons.¹¹

- Men accounted for almost nine of every ten veterans experiencing homelessness in 2022 (89% or 29,392 veterans), which is close to the 90 percent of all

¹⁰ For more information on how gender was reported for the PIT, see: <https://files.hudexchange.info/resources/documents/Reporting-Gender-for-the-PIT-Count.pdf>

¹¹ For example, in previous years a person might only identify as “female” when they may have also identified as “questioning.” In 2022, that person was allowed to select both “female” and “questioning,” which was then categorized as “questioning.”

5 National Estimates Veterans Experiencing Homelessness

Data source: PIT 2009-2021

veterans in the U.S. who are men.

- Women veterans experiencing homelessness were much more likely to be in a household with a child under 18 years of age (11%) than their male counterparts (2%).
- In contrast to the population of individuals experiencing homelessness, in which women were more likely to be sheltered, women veterans experiencing homelessness were more likely to be found in unsheltered locations than their male counterparts (48% vs. 40%).
- The highest percentage of veterans experiencing homelessness were White (58%), followed by veterans who were Black, African American, or African (31%). This pattern is consistent across veterans experiencing sheltered or unsheltered homelessness.
- People who identify as Black, African American, or African were considerably overrepresented among veterans experiencing homelessness. Black veterans

comprised 34 percent of veterans experiencing sheltered homelessness and 26 percent of veterans experiencing unsheltered homelessness compared with 12 percent of all U.S. veterans. Conversely, while 58 percent of veterans experiencing homelessness were White, they were underrepresented compared to their share of all U.S. veterans (76%).

- The percentage of veterans experiencing homelessness who identify as Hispanic/Latin(a)(o) (x) was considerably smaller than the percentage of Hispanics among people experiencing homelessness as individuals (12% vs. 22%).

Changes in Demographics over Time

- Reductions in veteran homelessness included a 16 percent decrease in veterans who identify as Black, African American, or African (1,946 fewer veterans) and a 9 percent decrease in White veterans (1,805 fewer veterans).
- The number of veterans experiencing homelessness

EXHIBIT 5.4: Demographic Characteristics of Veterans Experiencing Homelessness 2022

	All Veterans		Sheltered Veterans		Unsheltered Veterans	
All Veterans	33,129	100%	19,565	100%	13,564	100%
Gender						
Female	3,440	10.4%	1,784	9.1%	1,656	12.2%
Male	29,372	88.7%	17,705	90.5%	11,687	86.2%
Transgender	141	0.4%	42	0.2%	99	0.7%
A Gender that is not Singularly 'Female' or 'Male'	118	0.4%	27	0.1%	91	0.7%
Questioning	38	0.1%	7	0.0%	31	0.2%
Ethnicity						
Non-Hispanic/Latin(a)(o)(x)	29,086	87.8%	17,897	91.5%	11,189	82.5%
Hispanic/Latin(a)(o)(x)	4,043	12.2%	1,668	8.5%	2,375	17.5%
Race						
American Indian, Alaska Native, or Indigenous	1,034	3.1%	414	2.1%	620	4.6%
Asian or Asian American	404	1.2%	159	0.8%	245	1.8%
Black, African American, or African	10,240	30.9%	6,733	34.4%	3,507	25.9%
Native Hawaiian or Pacific Islander	417	1.2%	153	0.8%	264	1.9%
White	19,355	58.4%	11,408	58.3%	7,947	58.6%
Multiple Races	1,679	5.1%	698	3.6%	981	7.2%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

The 2022 Annual Homelessness Assessment Report to Congress: Part 1

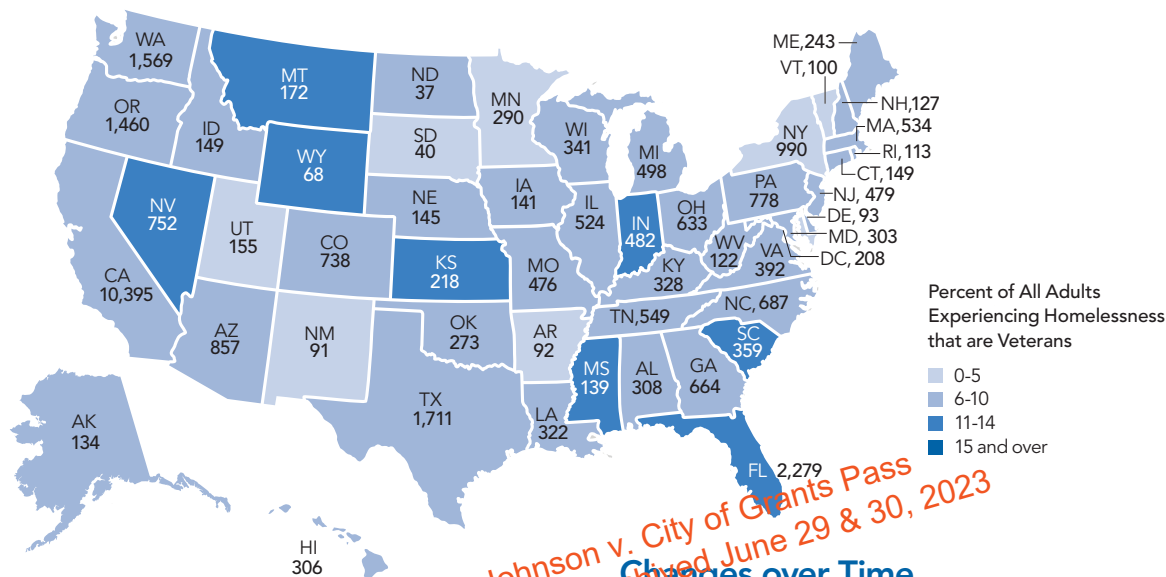
who were women increased by 10 percent (or 314 veterans). Increases in the number of unsheltered women veterans outpaced the increase of women staying in sheltered locations (13% compared to 7%).



5 State Estimates Veterans Experiencing Homelessness

Data source: PIT 2009-2022

EXHIBIT 5.5: Estimates of Veterans Experiencing Homelessness By State, 2022



On a Single Night in 2022

- California accounted for 32 percent of all veterans experiencing homelessness in the United States (10,395 veterans) and more than half of all unsheltered veterans (55% or 7,392 veterans).
- Florida accounted for the next largest percent share of veterans experiencing homelessness at 7 percent. Every other state's share was 5 percent or less, and 25 states' shares and the District of Columbia were less than 1 percent.
- More than seven in ten veterans experiencing homelessness in unsheltered locations were in four states: California (55%), Washington (6%), Florida (6%), and Oregon (5%).
- In five states, more than half of all veterans experiencing homelessness were unsheltered: Mississippi (75%) California (71%), Washington (55%), Georgia (55%), and Hawaii (52%).
- In 17 states, 90 percent or more of veterans experiencing homelessness were staying in sheltered locations. States with very small percentages of veterans who were unsheltered were Wisconsin (2%), Maine (3%), New York (3%), North Dakota (3%), and Nebraska (3%).
- Veteran homelessness decreased in 35 states and the District of Columbia between 2020 and 2022. California, Colorado, and Massachusetts had the largest absolute decreases. The largest percentage decrease was in New Mexico (64%), followed by Arkansas (51%) and Hawaii (37%).
- The number of veterans experiencing homelessness increased in 15 states between 2020 and 2022. The largest absolute and percentage increase was in Maine (140 more veterans or a 136% increase). The second largest absolute increase was in Oregon, which saw an increase of 131 veterans experiencing homelessness between 2020 and 2022 (10%). The second largest percentage increase was in Mississippi (104%).
- Since 2009, the number of veterans experiencing homelessness has increased in only three states: Oregon (by 183 people), Maine (by 120 people), and Vermont (by 39 people).
- Between 2009 and 2022, the number of veterans experiencing homelessness decreased in 47 states and the District of Columbia, with the largest absolute decreases in California (7,578 fewer veterans), New York (4,889), and Florida (4,856). States with large percentage decreases were Louisiana (84%), New York (83%), New Mexico (78%), and Georgia (76%).

The 2022 Annual Homelessness Assessment Report to Congress: Part 1

EXHIBIT 5.6: States with the Highest and Lowest Percentages of Veterans Experiencing Homelessness who were Unsheltered

2022

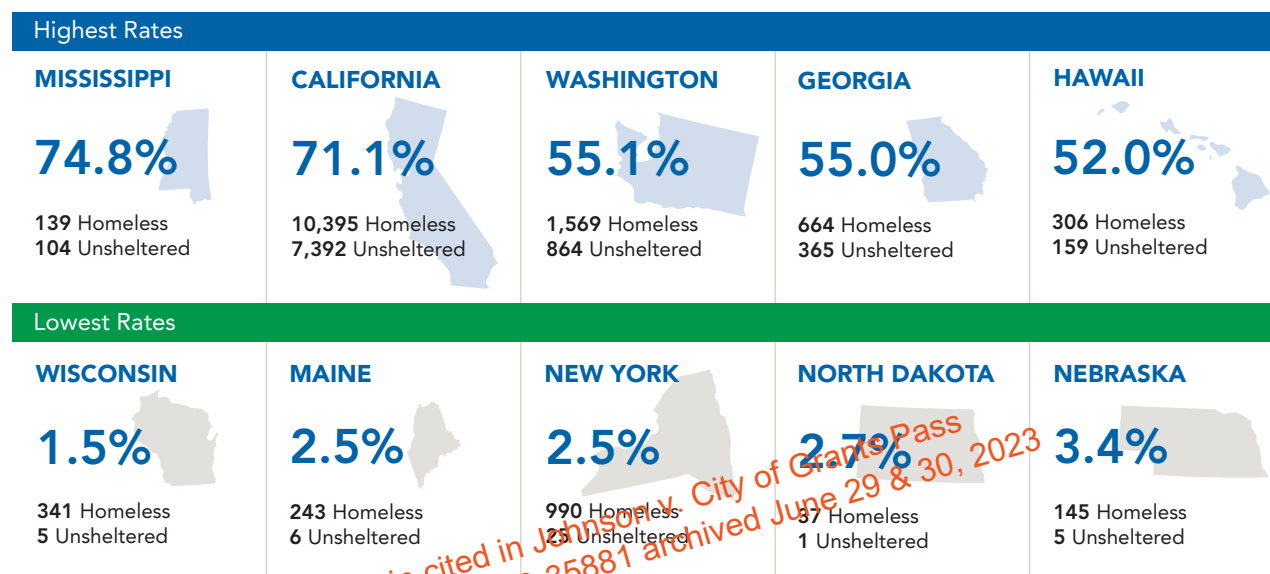


EXHIBIT 5.7: Largest Changes in the Number of Veterans Experiencing Homelessness By State, 2009-2022

2020–2022		2009–2022	
Largest Increases			
MAINE	140 / 135.9%	OREGON	183 / 14.4%
OREGON	131 / 9.9%	MAINE	120 / 97.5%
MISSISSIPPI	71 / 104.4%	VERMONT	39 / 63.4%
UTAH	41 / 36.0%	N/A	N/A / N/A
ALASKA	40 / 42.6%	N/A	N/A / N/A
Largest Decreases			
CALIFORNIA	-1,006 / -8.8%	CALIFORNIA	-7,578 / -42.2%
COLORADO	-306 / -29.3%	NEW YORK	-4,889 / -83.2%
MASSACHUSETTS	-302 / -36.1%	FLORIDA	-4,856 / -68.1%
NEW YORK	-261 / -20.9%	TEXAS	-3,780 / -68.8%
TEXAS	-237 / -12.2%	GEORGIA	-2,096 / -75.9%

Note: Figures from 2009-2022 exclude Colorado, North Dakota, South Dakota, Wyoming, and Michigan. All figures exclude Puerto Rico and the U.S. territories.

5 Estimates by CoC Veterans Experiencing Homelessness

Data source: PIT 2009-2022; Excludes Puerto Rico and U.S. territories

Continuums of Care (CoC) were divided into four geographic categories

- 1. Major city CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other largely urban CoCs (n=58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely suburban CoCs (n=167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely rural CoCs (n=109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For detailed information on how they were applied to CoCs, see the About the Report section of this report.

On a Single Night in 2022

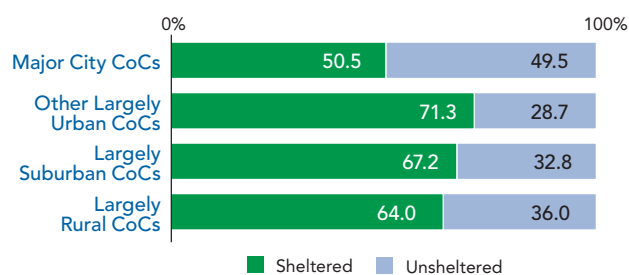
- Veterans were less likely than all people experiencing homelessness to be in major cities (47% vs. 50%). Still, major city CoCs accounted for nearly half of the veterans experiencing homelessness nationwide (47%) and more than half of unsheltered veterans (57%).
- Conversely, CoCs that were largely suburban accounted for just over one-quarter (26%) of veterans experiencing homelessness, similar to the 23 percent share for all individuals.
- About 19 percent of veterans experiencing homelessness were counted in largely rural CoCs, about the same share as all people experiencing homelessness (18%). Fewer unsheltered veterans

EXHIBIT 5.8: Share of Veterans Experiencing Homelessness

By CoC Category and Sheltered Status, 2022

	All Veterans Experiencing Homelessness	Sheltered	Unsheltered
Major Cities	46.7%	39.8%	56.6%
Other Largely Urban CoCs	9.0%	10.9%	6.3%
Largely Suburban CoCs	25.7%	29.2%	20.7%
Largely Rural CoCs	18.6%	20.1%	16.4%

EXHIBIT 5.9: Percent of all Veterans Experiencing Homelessness that are Sheltered and Unsheltered in Each CoC Category



experience homelessness in rural areas (16%) than all people experiencing unsheltered homelessness (19%).

- In major cities, 50 percent of all veterans experiencing homelessness were unsheltered. This is the highest rate of any of the geographic categories. In largely suburban areas one-third (33%) of veterans experiencing homelessness were unsheltered, and in largely rural areas just more than one third were unsheltered (36%). CoCs that were largely urban but did not contain one of the nation's largest cities reported the lowest rate of unsheltered homelessness among veterans, at 29 percent.
- The demographic characteristics of veterans experiencing homelessness varied by geography.

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EXHIBIT 5.10: Demographic Characteristics of Veterans Experiencing Homelessness

By CoC Category, 2022

	Major City CoCs	Other Largely Urban CoCs	Largely Suburban CoCs	Largely Rural CoCs
All Veterans	15,401	2,983	8,497	6,132
Gender				
Female	10.3%	8.0%	10.9%	10.9%
Male	88.5%	91.0%	88.5%	88.6%
Transgender	0.6%	0.7%	0.3%	0.2%
A Gender that is not Singularly 'Female' or 'Male'	0.5%	0.3%	0.2%	0.2%
Questioning	0.1%	0.0%	0.1%	0.1%
Ethnicity				
Non-Hispanic/Non-Latin(a)(o)(x)	83.8%	93.2%	90.0%	93.0%
Hispanic/Latin(a)(o)(x)	16.2%	6.8%	10.0%	7.0%
Race				
American Indian, Alaska Native, or Indigenous	3.1%	3.6%	2.2%	4.2%
Asian or Asian American	1.7%	0.6%	1.2%	0.4%
Black, African American, or African	37.7%	27.8%	30.2%	16.6%
Native Hawaiian or Pacific Islander	1.4%	0.6%	1.2%	0.8%
White	50.6%	61.7%	60.9%	73.4%
Multiple Races	5.4%	5.8%	4.4%	4.5%

Note: The demographic data for unsheltered may not sum to the total because three CoCs did not report complete demographic information for the unsheltered data used in this report.

Veterans who identified as White made up a larger share of all veterans experiencing homelessness in largely rural CoCs (73%) compared with major city CoCs (51%). Conversely, veterans who identified as Black, African American, or African made up a larger share of veterans experiencing homelessness in major cities (38%) than in largely rural CoCs (17%).

- Los Angeles, CA and Seattle/King County, WA, both major city CoCs, had the largest numbers of veterans experiencing homelessness, with 3,456 (or 10% of all veterans experiencing homelessness) and 855 veterans experiencing homelessness (or 3% of the national share).
- Four of the five major city CoCs with the highest percentages of veterans experiencing homelessness in unsheltered locations were in California, and all had unsheltered rates greater than 65 percent. San Jose/Santa Clara City and Los Angeles City and County had the highest percentages of unsheltered veterans at 79 percent each.
 - The major city with the lowest percentage of veterans experiencing unsheltered homelessness was Philadelphia (0%), followed by New York City (2%) and Boston (3%).
 - The CoC with the highest rate of veteran unsheltered homelessness was in a largely suburban CoC, Imperial County, CA at 99 percent.
 - Among largely rural CoCs, Hawaii Balance of State and Georgia Balance of State had the highest percentages of veterans experiencing unsheltered homelessness (82% and 81%).

5 Estimates by CoC Veterans Experiencing Homelessness

EXHIBIT 5.11: CoCs with the Largest Numbers of Veterans Experiencing Homelessness
By CoC Category, 2022

CoC Name	Veterans Experiencing Homelessness	CoC Name	Veterans Experiencing Homelessness
Major City CoCs		Other Largely Urban CoCs	
Los Angeles City & County, CA	3,456	St. Petersburg, Clearwater, Largo/Pinellas County, FL	310
Seattle/King County, WA	855	Eugene, Springfield/Lane County, OR	283
San Diego City and County, CA	686	Santa Rosa, Petaluma/Sonoma County, CA	191
San Jose/Santa Clara City & County, CA	660	Reno, Sparks/Washoe County, NV	148
Sacramento City & County, CA	625	St. Louis City, MO	123
Largely Suburban CoCs		Largely Rural CoCs	
Watsonville/Santa Cruz City & County, CA	332	Texas Balance of State CoC	465
Santa Ana, Anaheim/Orange County, CA	280	Washington Balance of State CoC	389
Honolulu City and County, HI	198	Indiana Balance of State CoC	315
San Bernardino City & County, CA	196	Georgia Balance of State CoC	278
Riverside City & County, CA	195	Oregon Balance of State CoC	259

EXHIBIT 5.12: CoCs with the Highest Percentages of Veterans Experiencing Homelessness who were Unsheltered
By CoC Category, 2022

CoC Name	Veterans Experiencing Homelessness	Percent Unsheltered	CoC Name	Veterans Experiencing Homelessness	Percent Unsheltered
Major City CoCs			Other Largely Urban CoCs		
San Jose/Santa Clara City & County, CA	660	78.8%	Santa Rosa, Petaluma/Sonoma County, CA	191	76.4%
Los Angeles City & County, CA	3,456	78.7%	Eugene, Springfield/Lane County, OR	283	71.0%
Oakland, Berkeley/Alameda County, CA	550	78.2%	Oxnard, San Buenaventura/Ventura County, CA	120	59.2%
Seattle/King County, WA	855	71.0%	Spokane City & County, WA	111	40.5%
San Francisco, CA	605	66.8%	St. Petersburg, Clearwater, Largo/Pinellas County, FL	310	26.1%
Largely Suburban CoCs			Largely Rural CoCs		
Imperial County, CA	101	99.0%	Hawaii Balance of State CoC	108	81.5%
Watsonville/Santa Cruz City & County, CA	332	93.4%	Georgia Balance of State CoC	278	80.9%
San Bernardino City & County, CA	196	84.7%	Humboldt County CoC, CA	202	65.3%
Jackson/Rankin, Madison Counties, MS	105	81.0%	Oregon Balance of State CoC	259	58.3%
Santa Maria/Santa Barbara County, CA	117	75.2%	Salinas/Monterey, San Benito Counties CoC, CA	160	51.3%



cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

5 Estimates by CoC Veterans Experiencing Homelessness

EXHIBIT 5.13: Change in Veterans Experiencing Homelessness By Sheltered Status and CoC Category, 2020-2022

	All Veterans Experiencing Homelessness		Sheltered		Unsheltered	
	#	%	#	%	#	%
Total Veterans	-4,108	-11.1%	-2,484	-11.3%	-1,624	-10.8%
Major City CoCs	-2,610	-14.5%	-2,041	-20.8%	-569	-6.9%
Other Largely Urban CoCs	-57	-1.9%	-44	-2.0%	-13	-1.5%
Largely Suburban CoCs	-1,211	-12.5%	-653	-10.3%	-558	-16.7%
Largely Rural CoCs	-230	-3.6%	254	6.9%	-484	-18.0%

Changes over Time by CoC Category

- Veteran homelessness declined across all geographic areas between 2020 and 2022. Nearly half of the decline in overall veteran homelessness (4,108 fewer veterans) was driven by a decline in the number of veterans experiencing sheltered homelessness within major cities (2,041 fewer veterans).
- Across all CoC categories, the largest decrease in the number of veterans experiencing homelessness

occurred in major cities and largely suburban CoCs, which saw decreases of 15 percent (2,610 fewer veterans) and 13 percent (1,211 fewer veterans).

- The number of veterans staying in sheltered locations declined across all CoC types with the exception of largely rural CoCs, which reported an increase of 254 sheltered veterans between 2020 and 2022. There were fewer unsheltered veterans in all geographic types in 2022 than there were in 2020.

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Changes in the Sheltered Population during the Pandemic (2021-2022)

While the larger sheltered population experienced increases between 2021 and 2022 due, in large part, to a restoration of shelter capacity, these changes did not result in a significant change in the number of veterans experiencing sheltered homelessness. Between 2021 and 2022 the number of veterans experiencing sheltered homelessness declined by one percent (185 fewer people). However, this year-to-year decline in sheltered veterans is more modest than those experienced in recent years.

The decrease in the number of veterans experiencing sheltered homelessness was driven entirely by decreases in major cities. There were 10 percent fewer veterans in shelter programs there in 2022 than in 2021.

By comparison, the number of sheltered veterans increased by 13 percent in rural areas, by six percent in urban areas that did not contain one of the nation's largest cities, and by one percent in largely suburban CoCs. Overall inventory dedicated to veterans among programs serving people experiencing homelessness remained relatively stable between 2021 and 2022 (decreasing by less than one percent). The number of emergency shelter, transitional housing, and safe haven beds set aside for veterans increased by seven percent in largely rural areas and declined in all other geographic categories. However, this does not account for key resources aimed at ending veteran homelessness, such as Supportive Services for Veterans and their Families (SSVF), VASH, and other permanent housing programs.

EXHIBIT 5.14: Recent Changes in the Number of Sheltered Veterans

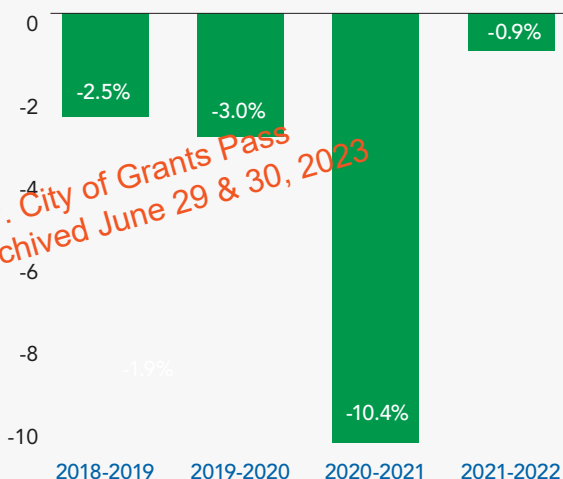
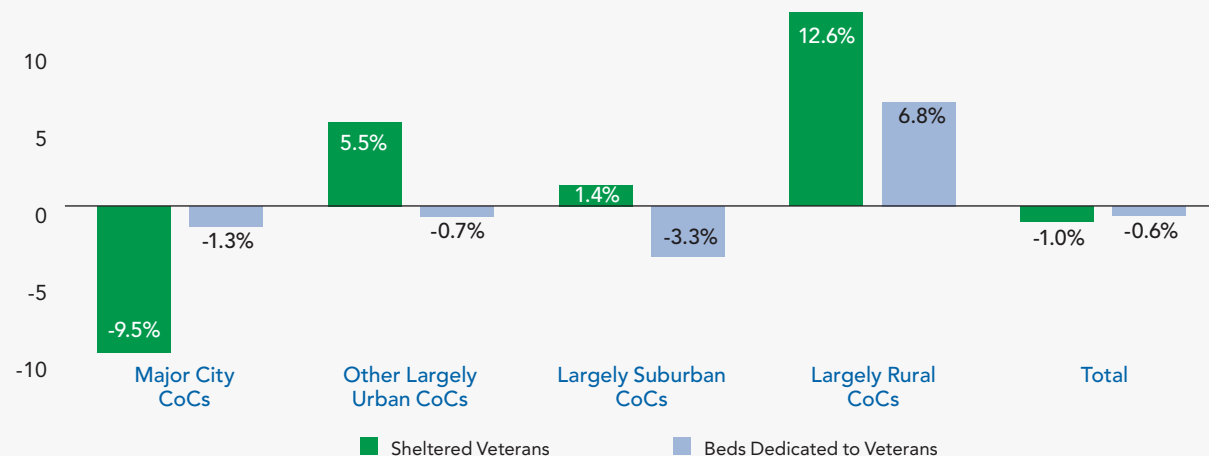


EXHIBIT 5.15: Change in Sheltered Veterans and Dedicated Veteran Beds By Geographic Category, 2021-2022



6 National Estimates Individuals Experiencing Chronic Patterns of Homelessness

Data source: PIT 2007–2022

The 2021 national Point-in-Time (PIT) counts were considerably impacted by the COVID-19 pandemic. During the public health crisis, HUD encouraged communities to determine whether conducting an unsheltered PIT count posed a high risk of exacerbating COVID-19 transmissions, given the lack of widespread access to COVID-19 vaccines at the time. As a result, less than half of communities conducted a full sheltered and unsheltered count. While this report includes some data on all people with chronic patterns of homelessness in sheltered locations in 2021, incomplete unsheltered data is not included. Analysis of changes over time are generally limited to those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 will be included in text boxes at the end of each chapter.

On a Single Night in 2022

- 127,768 people experiencing homelessness as individuals in January 2022 were reported to have chronic patterns of homelessness, nearly one-third (30%) of all individuals experiencing homelessness. This represents the highest share of individuals with chronic patterns of homelessness since these data were first reported in 2007.
- Two thirds of individuals with chronic patterns of homelessness were counted in unsheltered locations (62% or 78,615).

Changes over Time

Given that more than half of communities did not conduct full unsheltered counts in 2021, changes over

**EXHIBIT 6.1: PIT Estimates of Individuals Experiencing Chronic Homelessness
By Sheltered Status, 2007-2022**



Notes: The data for 2021 does not display the total count of individuals with chronic patterns of homelessness or the count of individuals experiencing unsheltered chronic homelessness due to pandemic-related disruptions to counts. Additionally, estimates of the number of individuals experiencing sheltered chronic homelessness at a point in time in 2021 should be viewed with caution, as the number could be artificially depressed compared with non-pandemic times, reflecting reduced capacity in some communities or safety concerns regarding staying in shelters.

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EXHIBIT 6.2: Change in the Number of Individuals Experiencing Chronic Homelessness 2007-2022

	Change 2020-2022		Change 2010-2022		Change 2007-2022	
	#	%	#	%	#	%
Total Individuals Experiencing Chronic Homelessness	17,240	15.6%	21,706	20.5%	7,955	6.6%
Sheltered Individuals Experiencing Chronic Homelessness	12,042	32.4%	5,845	13.4%	7,385	17.7%
Unsheltered Individuals Experiencing Chronic Homelessness	5,198	7.1%	15,882	25.3%	570	0.7%

time described throughout this report are primarily those between 2022 and 2020 or earlier. Key changes in the sheltered population between 2021 and 2022 are included at the end of each chapter.

- The number of individuals with chronic patterns of homelessness increased by 16 percent (17,240 more people) between 2020 and 2022. This overall increase reflects increases in both the sheltered population (32%) and the unsheltered population (7%).
- There has been a steady rise in the number of individuals experiencing chronic homelessness in recent years. Since 2016, the number of individuals with chronic patterns of homelessness increased by about 25,000 people in both sheltered and unsheltered locations. These increases reflect a 50 percent rise for the unsheltered population and a doubling of the number of individuals with chronic patterns of homelessness staying in sheltered locations since 2016.
- The numbers of individuals with chronic patterns of homelessness in both sheltered and unsheltered locations were higher in 2022 than they were in 2007 when these data were first reported. Overall, chronic homelessness increased by seven percent since 2007. There were about 600 more individuals with chronic patterns of homelessness (or 1%) staying outdoors in 2022 and 18 percent more individuals with chronic patterns staying in sheltered locations.

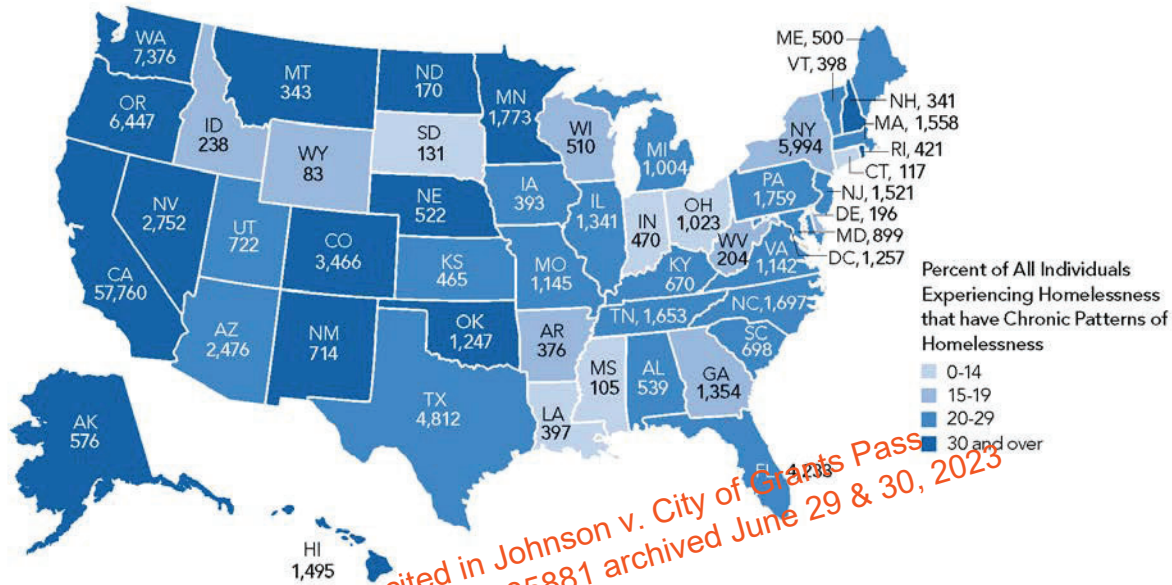
*cited in Johnson v. City of Grants Pass
Nov 20-35752 & 20-35881 archived June 29 & 30, 2023*

6 State Estimates

Individuals Experiencing Chronic Patterns of Homelessness

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

EXHIBIT 6.3: Estimates of Individuals with Chronic Patterns of Homelessness
By State, 2022



On a Single Night in 2022

- Nearly half (45%) of individuals with chronic patterns of homelessness in the United States were in California (57,760 people). California also accounts for 56 percent of all unsheltered individuals with chronic patterns of homelessness in the United States (44,120 people).
- In five states, more than 70 percent of individuals experiencing homelessness were staying in unsheltered locations: Mississippi (85%), California (76%), Tennessee (76%), Hawaii (76%), and Georgia (71%).
- Two states sheltered more than 90 percent of individuals experiencing chronic patterns of homelessness: Vermont (96%) and North Dakota (92%).
- The extent to which individuals experiencing homelessness have chronic patterns varies by state. The highest rate was in Oregon, where more than four of every ten individuals experiencing homelessness had chronic patterns (44%). The lowest rate was in Connecticut, where less than one of every twenty individuals experiencing

homelessness had chronic patterns (6%).

Changes over Time

- Between 2020 and 2022, 35 states experienced an increase in the number of individuals with chronic patterns of homelessness. This confirms that these increases are not the experiences of just a few places. The increase in individuals with chronic patterns of homelessness is a nationwide issue.
- California had the largest absolute increase: in 2022, 8,948 more individuals experiencing chronic patterns of homelessness were counted than in 2020. The next largest absolute increase was in Oregon, where 2,324 more individuals experiencing chronic patterns of homelessness were counted than in 2020. Vermont had the largest percentage increase (141%, or 233 individuals), followed by Maine (119% or 272 individuals), Rhode Island (115% or 225 individuals), and Nevada (107%, or 1,421 more people).
- Fifteen states and the District of Columbia experienced a decrease in the number of individuals with chronic patterns of homelessness between

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EXHIBIT 6.4: States with the Highest and Lowest Percentages of Individuals with Chronic Patterns of Homelessness who were Unsheltered

2022

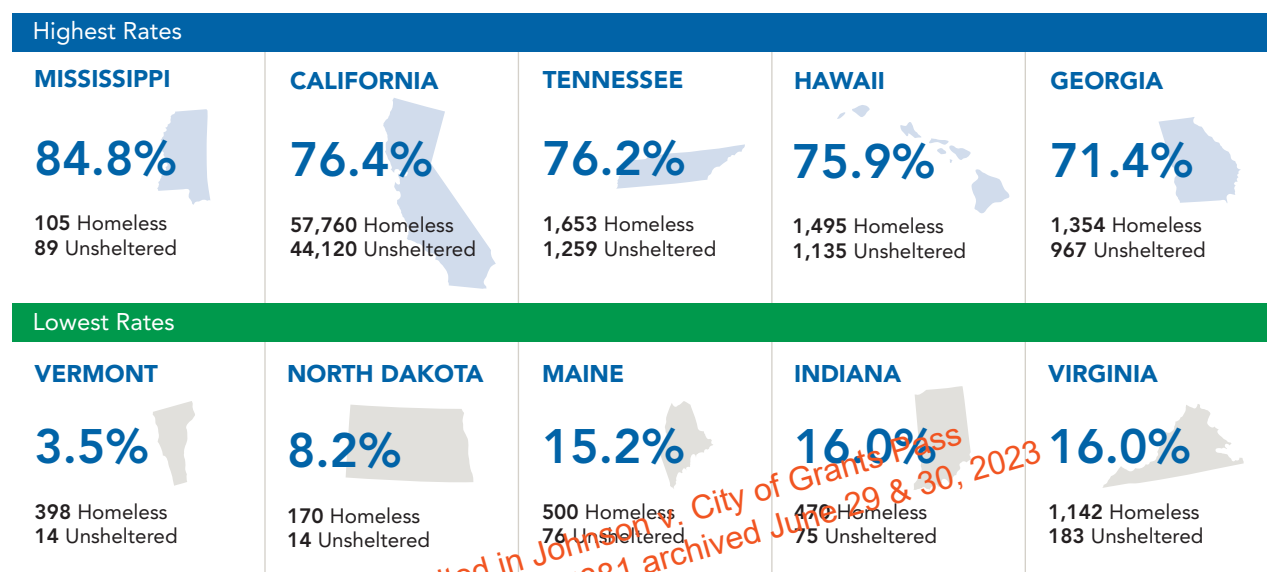


EXHIBIT 6.5: Largest Changes in the Number of Individuals Experiencing Chronic Patterns of Homelessness

By State, 2007–2022

	2020-2022	2007-2022
Largest Increases		
CALIFORNIA	8,948 / 18.3%	CALIFORNIA 17,419 / 43.2%
OREGON	2,324 / 56.4%	WASHINGTON 4,773 / 183.4%
WASHINGTON	1,433 / 24.1%	OREGON 3,618 / 127.9%
NEVADA	1,421 / 106.8%	NEVADA 1,881 / 216.0%
TEXAS	950 / 24.6%	HAWAII 717 / 92.2%
Largest Decreases		
ILLINOIS	-717 / -34.8%	FLORIDA -3,254 / -43.6%
NEW MEXICO	-582 / -44.9%	TEXAS -3,119 / -39.3%
FLORIDA	-441 / -9.5%	ILLINOIS -1,340 / -50.0%
NEW YORK	-433 / -6.7%	OHIO -1,285 / -55.7%
MARYLAND	-304 / -25.3%	MASSACHUSETTS -1,232 / -44.2%

Notes: Puerto Rico and U.S. territories were excluded. Due to methodological changes, Colorado, North Dakota, South Dakota, Wyoming, and Michigan were excluded from the list of largest changes 2007-2022.



State Estimates Individuals Experiencing Chronic Patterns of Homelessness

Data source: PIT 2007-2022; Excludes Puerto Rico and U.S. territories

2020 and 2022. The largest absolute decreases occurred in Illinois, where 717 fewer people were experiencing chronic patterns of homelessness in 2022 than in 2020, followed by New Mexico with 582 fewer people experiencing chronic homelessness. The largest percentage decrease also occurred in the New Mexico (45%).

- Between 2007 and 2022, 26 states and the District of Columbia recorded decreases in individuals experiencing chronic patterns of homelessness. Florida experienced the largest decline, with 3,230 fewer individuals experiencing chronic patterns of homelessness counted in 2022 than in 2007. Texas had the next absolute largest decline, with 3,119 fewer individuals experiencing chronic patterns of homelessness. Connecticut, West Virginia, and Montana had the largest percentage declines (89%, 82%, and 82%) over this longer period.
- Of the 25 states that experienced increases in the number of individuals with chronic patterns of homelessness between 2007 and 2022, the largest absolute increase occurred in California, with 17,419 more individuals experiencing chronic patterns of homelessness in 2022 than in 2007. Other states with large absolute increases were Washington (4,773 more chronically homeless individuals) and Oregon (3,618).
- In twelve states, the number of individuals experiencing chronic patterns of homelessness has more than doubled between 2007 and 2022, with the largest increases in Maine (416% more individuals with chronic patterns of homelessness), Montana (313%), Nevada (216%), Rhode Island (214%), and Kansas (193%).

*Not cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

6 Estimates by CoC

Individuals Experiencing Chronic Patterns of Homelessness

Data source: PIT 2007-2022, Excludes Puerto Rico and U.S. territories

Continuums of Care (CoC) were divided into four geographic categories

- 1. Major city CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other largely urban CoCs (n=58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely suburban CoCs (n=167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely rural CoCs (n=109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For detailed information on how they were applied to CoCs, see the About the Report section of this report.

or largely rural areas than all individuals. Just over one-fifth of all individuals experiencing chronic patterns of homelessness were in largely suburban CoCs, similar to the share of all individuals (22%). Rural areas accounted for 18 percent of all individuals and only 14 percent of individuals with chronic patterns of homelessness.

- The distribution of sheltered and unsheltered homelessness among individuals with chronic patterns of homelessness varied by geographic region. Within major cities, 65 percent of individuals with chronic patterns of homelessness were unsheltered. Largely rural and largely suburban CoCs also had rates of unsheltered homelessness

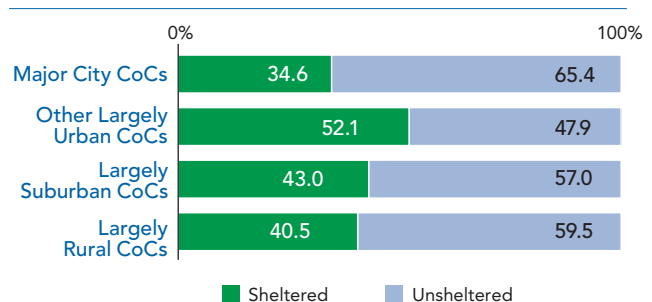
EXHIBIT 6.6: Share of Individuals with Chronic Patterns of Homelessness by CoC Category and Sheltered Status, 2022

	All Individuals Experiencing Chronic Homelessness	Sheltered	Unsheltered
Major City CoCs	57.6%	51.8%	61.2%
Other Largely Urban CoCs	7.3%	9.8%	5.7%
Largely Suburban CoCs	21.5%	24.1%	20.0%
Largely Rural CoCs	13.6%	14.3%	13.2%

On a Single Night in 2022

- Individuals with chronic patterns of homelessness were more likely to be found in major city CoCs than all individuals. Fifty-seven percent of individuals with chronic patterns of homelessness were counted in CoCs that include one of the nation's 50 largest cities, compared with 51 percent of all individuals.
- While six of every ten individuals experiencing chronic patterns of homelessness in unsheltered locations were in major cities, just six percent of individuals experiencing unsheltered chronic homelessness did so in urban areas that do not contain one of the 50 largest cities.
- Fewer individuals experiencing chronic patterns of homelessness were staying in largely suburban

EXHIBIT 6.7: Percent of all Individuals with Chronic Patterns of Homelessness who are Sheltered and Unsheltered by CoC Category, 2022



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EXHIBIT 6.8: CoCs with the Largest Numbers of Individuals Experiencing Chronic Homelessness

By CoC Category, 2022

CoC Name	Individuals Experiencing Chronic Homelessness	CoC Name	Individuals Experiencing Chronic Homelessness
Major City CoCs		Other Largely Urban CoCs	
Los Angeles City & County, CA	25,583	Eugene, Springfield/Lane County, OR	1,169
New York City, NY	4,963	Santa Rosa, Petaluma/Sonoma County, CA	711
Seattle/King County, WA	4,027	Saint Paul/Ramsey County, MN	632
Sacramento City & County, CA	3,955	Oxnard, San Buenaventura/Ventura County, CA	600
Portland, Gresham/Multnomah County, OR	2,970	Spokane City & County, WA	545
Largely Suburban CoCs		Largely Rural CoCs	
Santa Ana, Anaheim/Orange County, CA	2,361	Washington Balance of State CoC	1,607
Richmond/Contra Costa County, CA	1,510	Texas Balance of State CoC	1,085
San Bernardino City & County, CA	1,101	Oregon Balance of State CoC	909
Watsonville/Santa Cruz City & County, CA	896	Hawaii Balance of State CoC	745
Riverside City & County, CA	812	Humboldt County, CA	715

among individuals with chronic patterns of homelessness that exceeded 50 percent (59% and 57%). In other largely urban CoCs (without one of the nation's largest cities) this rate was less than half, 48 percent.

- Los Angeles had, by far, the largest number of individuals with chronic patterns of homelessness in the country (25,583 people or 20% of the national total). New York City had the second largest number of individuals experiencing chronic patterns of homelessness, 4,963 people (or 4% of the total). In Los Angeles, more than 8 in 10 individuals experiencing chronic patterns of homelessness are unsheltered, while in New York City less than one-fifth (17%) are unsheltered.
- Largely suburban and largely rural CoCs reported some of the highest rates of unsheltered homelessness among individuals with chronic patterns of homelessness. The highest was in Imperial County, CA (nearly 100%), a largely

suburban CoC, and Tehama County, CA (99%), a largely rural CoC.

- Thirty-four CoCs reported that no individuals found in unsheltered locations had chronic patterns of homelessness.

Changes over Time by CoC Category

- Chronic homelessness increased in each geographic category between 2020 and 2022. Major city CoCs experienced the largest increase in individuals with chronic patterns of homelessness (11,555 more people or 19%). This increase was experienced by both unsheltered (5,389 more individuals) and sheltered individuals with chronic patterns of homelessness (6,166 more individuals).
- Largely suburban CoCs had the second largest increase overall (2,331 more individuals with chronic patterns or 9%). This increase was driven by a rise in individuals with chronic patterns of homelessness living in sheltered locations (2,813

6 Estimates by CoC

Individuals Experiencing Chronic Patterns of Homelessness

more individuals or 31%). A small decrease in the number of unsheltered individuals experiencing chronic patterns of homelessness only slightly offset this rise (482 fewer people or 3%). Largely

suburban CoCs were the only geographic area to report a decline in unsheltered homelessness among individuals with chronic patterns of homelessness.

EXHIBIT 6.9: CoCs with the Highest Percentages of Individuals Experiencing Chronic Homelessness Who are Unsheltered

By CoC Category, 2022

CoC Name	Individuals Experiencing Chronic Homelessness	Percent Unsheltered	CoC Name	Veterans Experiencing Homelessness	Individuals Experiencing Chronic Homelessness
Major Cities			Other Largely Urban CoCs		
Kansas City, Independence, Lee's Summit/Jackson, Wyandotte Counties, MO & KS	343	89.5%	Topeka/Shawnee County, KS	129	87.6%
Raleigh/Wake County, NC	275	88.0%	Savannah/Chatham County, GA	103	86.4%
Los Angeles City & County, CA	25,583	85.9%	Huntsville/North Alabama, AL	112	84.8%
Long Beach, CA	1,277	83.3%	Eugene, Springfield/Lane County, OR	1,169	75.9%
Tucson/Pima County, AZ	661	82.5%	Santa Rosa, Petaluma/Sonoma County, CA	711	70.5%
Largely Suburban CoCs			Largely Rural CoCs		
Imperial County, CA	493	99.6%	Tehama County, CA	112	99.1%
San Bernardino City & County, CA	1,101	93.3%	Chattanooga/Southeast Tennessee CoC	440	97.5%
Murfreesboro/Rutherford County, TN	120	91.7%	Amador, Calaveras, Mariposa, Tuolumne Counties, CA	217	92.6%
Palm Bay, Melbourne/Brevard County, FL	288	91.0%	Redding/Shasta, Siskiyou, Lassen, Plumas, Del Norte, Modoc, Sierra Counties, CA	546	89.0%
Pensacola/Escambia, Santa Rosa Counties, FL	250	90.0%	Hawaii Balance of State CoC	745	88.5%

EXHIBIT 6.10: Change in Individuals Experiencing Chronic Homelessness

By Sheltered Status and CoC Category, 2020-2022

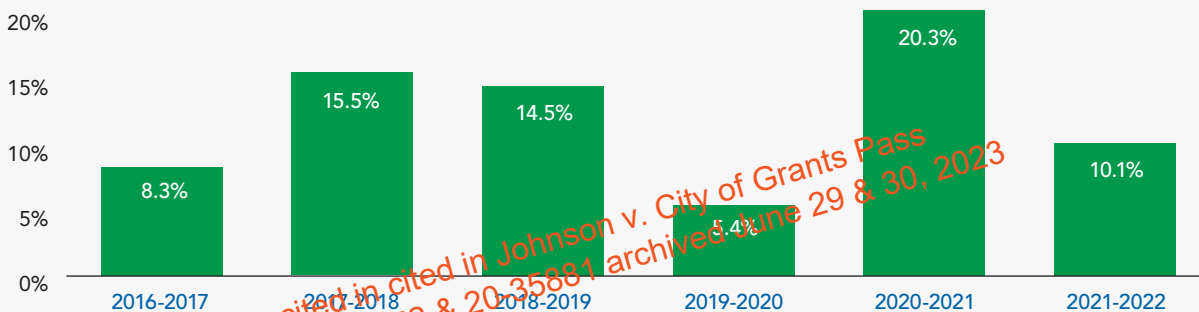
	All Individuals Experiencing Chronic Homelessness		Sheltered		Unsheltered	
	#	%	#	%	#	%
Total	17,751	16.2%	12,066	32.6%	5,685	7.8%
Major Cities	11,555	18.7%	6,166	32.0%	5,389	12.6%
Other Largely Urban CoCs	1,677	22.1%	1,310	37.3%	367	9.0%
Largely Suburban CoCs	2,331	9.3%	2,813	31.2%	-482	-3.0%
Largely Rural CoCs	2,188	14.4%	1,777	33.9%	411	4.1%

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Changes in Sheltered Individuals with Chronic Patterns of Homelessness during the Pandemic (2021-2022)

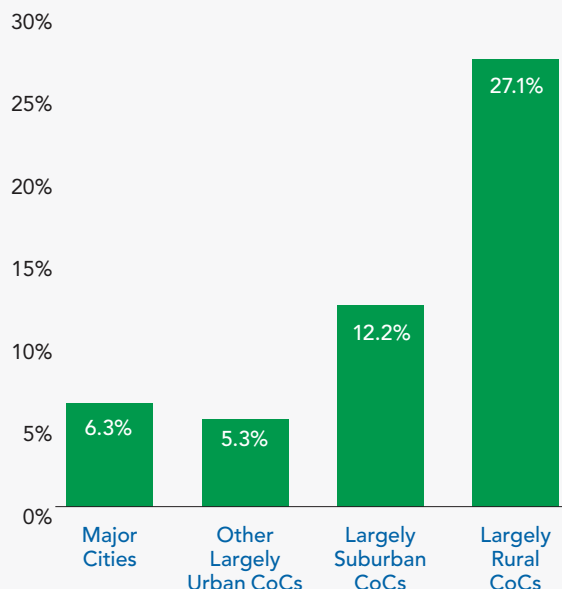
Since 2016, there have been steady increases in the number of sheltered individuals with chronic patterns of homelessness. The number of individuals with chronic patterns of homelessness staying in sheltered locations in 2022 was 10 percent higher than it was in 2021 (4,506 more people). While a considerable increase, it was outpaced by increases in the number of individuals experiencing chronic patterns of homelessness in shelter between 2020 and 2021 (20%).

EXHIBIT 6.11: Year to Year Increases in Sheltered Individuals with Chronic Patterns of Homelessness



Increases in the number of individuals experiencing chronic homelessness occurred across geographic categories and, by percent, was most pronounced in rural areas, which experienced a 27 percent rise. Largely suburban areas had the second largest increase, with 12 percent more sheltered individuals with chronic patterns of homelessness in 2022 than in 2021.

EXHIBIT 6.12: Percentage Change in Individuals with Chronic Patterns of Homelessness 2021-2022



7 National Inventory of Beds For People Currently Experiencing Homelessness and People Transitioning Out of Homelessness

Data source: HIC 2007–2022

EXHIBIT 7.1: Project Types for People Currently Experiencing Homelessness and People Transitioning Out of Homelessness

SHELTER FOR PEOPLE EXPERIENCING HOMELESSNESS

Emergency Shelter (ES): provides temporary or nightly shelter beds to people experiencing homelessness

Transitional Housing (TH): provides people experiencing homelessness a place to stay combined with supportive services for up to 24 months

Safe Haven (SH): provides private or semi-private temporary shelter and services to people with severe mental illness and are limited to serving no more than 25 people within a facility

PERMANENT HOUSING FOR PEOPLE TRANSITIONING OUT OF HOMELESSNESS

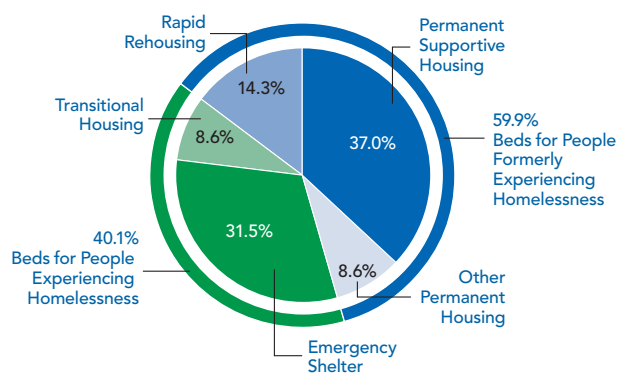
Rapid Rehousing (RRH): a housing model designed to provide temporary housing assistance to people experiencing homelessness, moving them quickly out of homelessness and into permanent housing

Permanent Supportive Housing (PSH): a housing model designed to provide housing assistance (project- and tenant-based) and supportive services on a long-term basis to people who formerly experienced homelessness. HUD’s Continuum of Care program, authorized by the McKinney-Vento Act, funds PSH and requires that the client have a disability for eligibility.

Other Permanent Housing (OPH): a housing model with or without services that is designed specifically for people who formerly experienced homelessness. OPH does not have a disability requirement.

cited in Johnson v. City of Gramma Pass, Nos. 20-35752 & 20-35881 archived June 29, 2023

EXHIBIT 7.2: Distribution of the National Bed Inventory By Program Type, 2022



Note: A small percentage of safe haven beds (0.3%) are in the national inventory but not included in the exhibit. Rapid Re-housing includes Demonstration Programs.

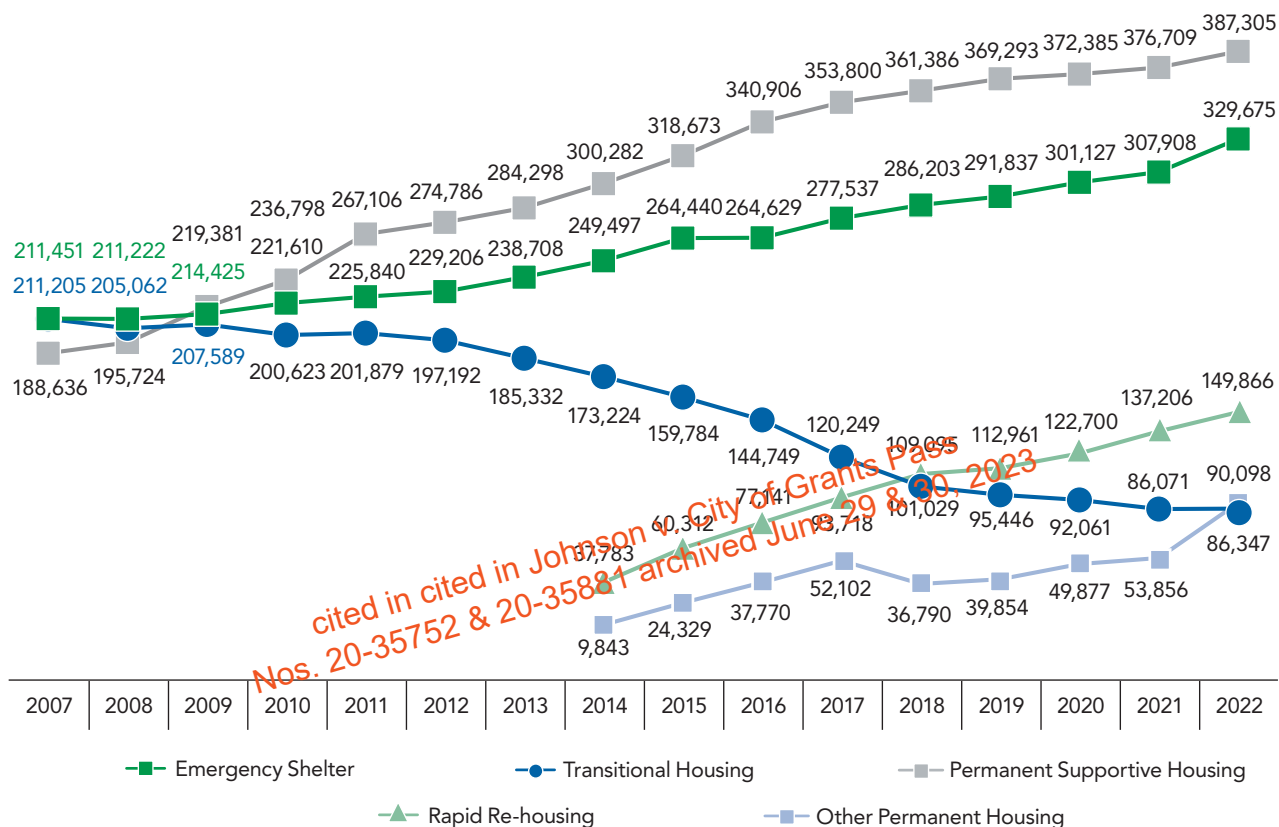
Types of Programs in the National Inventory

Communities across the country submit data each year on their residential programs for people experiencing homelessness and their programs that help people end their experiences of homelessness/move into housing. The two basic types of programs are shelter programs for people experiencing homelessness and housing programs for people formerly experiencing homelessness. Communities report the number of beds that are available for both types of programs at the same time each January when they conduct Point-in-Time counts. The national inventory is the total number of beds in all communities, as reported through the housing inventory count (HIC), that are available for both types of programs.

1. **Shelter** is intended to serve people currently experiencing homelessness and is comprised of two main types of programs, emergency

The 2022 Annual Homelessness Assessment Report to Congress: Part 1

EXHIBIT 7.3: Inventory of Beds in Shelters and Permanent Housing
2007-2022



cited in cited in Johnson City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

Note: The small share of Safe Haven beds (0.3%) is not included in this exhibit. Rapid Re-housing includes Demonstration Programs.

shelters (ES) and transitional housing programs (TH). Conceptually, ES is shorter-term and provides less intensive services than TH.¹² Shelter also includes a small number of programs for individuals who have been identified as having higher needs (such as severe mental illness), called safe havens (SH). The sheltered data only reports on beds that are available during the entire year. While the HIC includes information on beds available during severe weather events (storms, fires, extreme cold), seasonal

timeframes (open during a specific period of time), and beds made available when the number of people seeking shelter exceeds capacity (overflow beds), the focus of this analysis is on the year-round inventory for people experiencing homelessness. This information reflects the planned capacity communities rely on to meet the current needs of people experiencing homelessness.

2. Permanent housing is intended to serve people who were experiencing

¹² Some transitional housing programs provide housing in which the individual or family may be able to stay after the transitional period with intensive services ending (sometimes called "transition-in-place"), and some emergency shelters have intensive services. Communities decide how to categorize their programs when reporting data to HUD.

7 National Inventory of Beds For People Currently Experiencing Homelessness and People Transitioning Out of Homelessness

Data source: HIC 2007–2022

EXHIBIT 7.4: Change in National Inventory of Year-Round Beds for Shelters and Permanent Housing 2007-2022

	Change 2020-2022		Change 2007-2022	
	#	%	#	%
Total Beds	105,459	11.2%	434,619	71.1%
Emergency Shelter	28,548	9.5%	118,224	55.9%
Transitional Housing	-5,714	-6.2%	-124,858	-59.1%
Safe Haven	318	13.8%		
Rapid Re-housing	27,166	22.1%		
Permanent Supportive Housing	14,920	4.0%	198,669	105.3%
Other Permanent Housing	40,221	80.6%		

Note: Based on year-round beds and does not include seasonal or overflow beds.

EXHIBIT 7.5: Emergency Shelter Beds (Year-Round, Seasonal, and Overflow) By Bed Type, 2020-2022

	2020 ES Beds	2022 ES Beds	Change 2020-2022
Total ES Beds	336,618	373,507	11.0%
Facility-based ES beds	304,561	306,693	0.7%
Voucher-based beds	14,232	48,810	243.0%
Other ES beds	17,825	18,004	1.0%

Note: Beds based on total beds (year-round beds and seasonal/overflow beds)

EXHIBIT 7.6: Emergency Shelter Beds (Year-Round, Seasonal, and Overflow) Funded by ESG-CV 2021-2022

	Total ES Beds 2021*	Total ES Beds 2022	Change 2021-2022
ESG-CV funded beds	67,814	90,808	33.9%
Total ES beds	356,712	373,507	4.7%
Percent of ES beds funded with ESG-CV	19.0%	24.3%	5.3%

Note: Beds based on total beds (year-round beds and seasonal/overflow beds)
*Uses 2021 as a comparison year as ESG-CV funding was not available in 2020.

homelessness at the time they were enrolled in a permanent housing program. Once the program assists them in finding a housing unit, that housing is considered permanent in the sense that they have a lease (or similar agreement) and may be able to stay in the same housing unit long-term. This category includes rapid rehousing (RRH), a short-term subsidy in housing the individual or family may be able to remain in after the subsidy ends; permanent supportive housing (PSH), housing with supportive services for people with disabilities who

are transitioning out of homelessness; and other permanent housing (OPH), which also is intended for people transitioning out of homelessness but is not restricted to people with disabilities. The information reflects the planned capacity of communities to use these targeted programs to help people no longer experience homelessness. Only programs considered by the Continuum of Care to be part of the homeless services system are included in the HIC as OPH. Communities may use other programs to help people leave homelessness.¹³

13 For example, assisted housing such as Housing Choice Vouchers and public housing may be used to help people leave homelessness but are not always included in the HIC.

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The National Inventory as of 2022

- A total of 1,045,911 year-round beds were dedicated to serving people who are currently experiencing homelessness or transitioning out of homelessness in communities across the nation.
- Six of every ten beds, 60 percent, were in permanent housing for people transitioning out of homelessness. Four in ten beds, 40 percent, provided shelter for people currently experiencing homelessness.
- Of the 418,642 beds for people currently experiencing homelessness, 79 percent were in emergency shelters, and 21 percent were in transitional housing programs. Less than one percent (0.6%) were provided through safe havens. There is about a 160,000 bed shortfall in the national inventory for people currently experiencing homelessness compared to the total number of people experiencing homelessness on a single night in the United States (582,462 people).
- Of the 627,269 beds in programs that helped people leave homelessness, 62 percent were in permanent supportive housing, 24 percent were in rapid re-housing programs, and 14 percent were in other permanent housing. Other permanent housing programs include two types of permanent housing projects: housing that also provides connection to support services but does not require the person to have a disability to receive housing, and permanent housing with no built-in support services.

Changes to National Inventory

The COVID-19 pandemic resulted in significant changes to the national inventory. At the time of the 2021 HIC, precautions taken to reduce the spread of the COVID-19 virus resulted in considerable changes to the capacity of homeless service providers. To reduce the risk of COVID-19 transmission, facility-based emergency shelters with congregate settings took measures to increase physical distancing by reducing the number of beds available for occupancy. In some cases, this reduced capacity was reported through the Housing Inventory Count (HIC), but in other communities it was not. By the time of the 2022 HIC, Congress had appropriated significant funding to support additional emergency shelter, rapid re-housing, other permanent housing, and permanent supportive housing (see the box at the end of this chapter for more information). As such, the discussion on changes to the national inventory is broken up into two sections. The first compares changes to the national inventory pre-pandemic (2007-2020). The second compares changes to the national inventory since the start of the pandemic (2020-2022).

Changes to the National Inventory, 2007-2020

- The total national inventory for people experiencing homelessness (i.e., emergency shelter, transitional housing, and safe have inventory) remained about

EXHIBIT 7.7: Inventory of Year-Round Beds for Individuals and Families 2022

	Beds for Individuals		Beds for People in Families		Beds for Child-Only Households		Total Year-Round Beds	
	#	%	#	%	#	%	#	%
Emergency Shelter	181,786	55.1%	145,159	44.0%	2,730	0.8%	329,675	100.0%
Transitional Housing	46,303	53.6%	39,514	45.8%	530	0.6%	86,347	100.0%
Safe Haven	2,620	100.0%			0	0.0%	2,620	100.0%
Rapid Rehousing	60,430	40.3%	89,356	59.6%	80	0.1%	149,866	100.0%
Permanent Supportive Housing	262,593	67.8%	124,672	32.2%	40	0.0%	387,305	100.0%
Other Permanent Housing	43,366	48.1%	46,713	51.8%	19	0.0%	90,098	100.0%
Total Beds	597,098	57.1%	445,414	42.6%	3,399	0.3%	1,045,911	100.0%

Note: Safe haven beds are only available for individuals, which may include child-only households.

National Inventory of Beds For People Currently Experiencing Homelessness and People Transitioning Out of Homelessness

Data source: HIC 2007–2022

the same between 2007 and 2020. However, the type of housing assistance changed over that period. Between 2007 and 2020, the number of beds in emergency shelters rose by 42 percent or 89,676 beds. This increase was matched by a 56 percent decrease in the number of beds in transitional housing programs, which dropped by 119,144 beds. Safe haven inventory increased by 268 beds since it was first reported in 2008.

- The inventory of permanent supportive housing more than doubled, rising from 188,636 beds in 2007 to 372,385 beds in 2020.
- Communities began reporting data on other permanent housing programs and rapid re-housing programs in 2014, when rapid rehousing was a relatively new program model. The number of beds in other permanent housing programs increased from 9,843 beds in 2014 to 49,877 beds in 2020, while the number of beds in rapid rehousing rose from 37,783 beds in 2014 to 122,700 beds in 2020.

Recent Changes to the National Inventory, 2020–2022

In January 2022, communities were still responding to the ongoing COVID-19 public health crisis. Many emergency shelters relied on hotels, motels, and other voucher-based shelter beds to reduce the possibility of transmission and keep people staying in shelter programs safe. These policies are reflected in the changes in the national inventory between 2020 and 2022.

- Emergency shelter beds continued to increase between 2020 and 2022, by more than 28,500 beds or 9 percent, while beds in transitional housing programs continued to drop, by 5,714 beds or six percent. In 2022, about one-quarter of emergency shelter beds were funded with a one-time infusion of ESG-CV funding (see box at the end of the section for more discussion on this), a funding source used specifically during the COVID-19 pandemic to help communities address homelessness during the pandemic. This represents an increase over 2021, during which 19 percent of ES inventory used ESG-CV funding.

- Another indication of the impact of the pandemic on the national inventory is the type of emergency shelter beds communities relied on in 2022. There are three types of emergency shelter beds: facility-based beds, representing most beds across the country, voucher-based beds (such as hotels and motels used by programs with their own facilities), and other beds, such as those in church basements or other private locations not funded by HUD. Between 2020 and 2022, the number of facility-based beds remained relatively flat while the number of voucher beds increased by 243 percent, representing the increased need for non-congregate shelter driven by the pandemic and pandemic-related funding opportunities.
- Rapid rehousing saw significant growth between 2020 and 2022 by 22 percent, or 27,166 beds. Many communities used their ESG-CV funding to increase their rapid rehousing programs. In 2022, 35,825 rapid rehousing beds reported in the HIC were partially or fully funded using Emergency Solutions Grants Coronavirus (ESG-CV) funds.
- Other permanent housing saw a more marked increase over the same time period, growing by 81 percent or more than 40,221 beds. This largely reflects communities including some of their Emergency Housing Voucher (EHV) funding in the HIC as other permanent housing (in 2022, 30,362 OPH beds were funded using EHV funds). The EHV program, another federal response to the COVID-19 pandemic, is administered through memoranda of understanding between CoCs and public housing agencies.
- Permanent supportive housing also continued to grow between 2020 and 2022, by four percent or 14,920 beds.

Beds Serving Individuals and Families in 2022

Just as this report has separate sections on people in families with children (households with at least one adult and one child under 18) and on individuals (people experiencing homelessness who are not part of a family with children), communities report on their

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EXHIBIT 7.8: Inventory of Year-Round Beds for Special Populations
2022

Bed Type	Total Beds #	Beds for People with Chronic Patterns of Homelessness		Beds for Veterans		Beds for Youth	
		%	#	%	#	%	#
Emergency Shelter	329,675	N/A		4,175	1.3%	7,540	2.3%
Transitional Housing	86,347			12,676	14.7%	9,518	11.0%
Safe Haven	2,620			1,588	60.6%	10	0.4%
Rapid Rehousing	149,866			12,985	8.7%	7,867	5.2%
Permanent Supportive Housing	387,305	178,545	46.1%	109,143	28.2%	5,080	1.3%
Other Permanent Housing	90,098	N/A		2,266	2.5%	1,463	1.6%
Total Beds	1,045,911	178,545	17.1%	142,833	13.7%	31,478	3.0%

Note: Only permanent supportive housing programs funded by HUD can report dedicated beds for people experiencing chronic patterns of homelessness on the HIC. Per the Fiscal Year 2022 HMIS data standards, “a dedicated bed is a bed that must be filled by a person in the subpopulation category (or a member of their household) unless there are no persons from the subpopulation who qualify for the project located within the geographic area.” For more information, see page 62 of the HMIS Data Standards Manual: <https://files.hudexchange.info/resources/documents/FY-2022-HMIS-Data-Standards-Manual.pdf>

program inventory in those categories.

- Slightly more emergency shelter beds across the nation were intended for individuals (55%) compared to beds for people experiencing homelessness as families with children (44%). Less than one percent were for people experiencing homelessness as children under 18 without a parent present.
- Similarly, 54 percent of transitional housing beds were targeted to individuals and 46 percent to families with children. Fewer than one percent were for child-only households.
- While rapid rehousing was originally designed as an intervention to help families avoid going to shelters or leave shelters for permanent housing quickly, it has increasingly been used by communities to help individuals. As of 2022, nearly six of every ten rapid rehousing beds (60%) were targeted to people in families with children, and the remaining four in ten beds (40%) were for individuals. Individuals usually are experiencing homelessness on their own, so the number of beds available for individuals is often similar to the number of housing units (e.g., apartment units). Rapid rehousing for families, on the other hand, requires multiple beds per unit, so the share of rapid rehousing units, as distinct from beds, for individuals is even greater.

- Over two-thirds (68%) of permanent supportive housing beds were for individuals. Individuals were more likely to have had chronic patterns of homelessness in 2022 (30% of individuals compared to 7% of families). About a third of PSH beds (32%) are targeted to families.
- A higher share of beds in other permanent housing programs—programs without a restriction to assist people with disabilities—were for families, 52 percent.

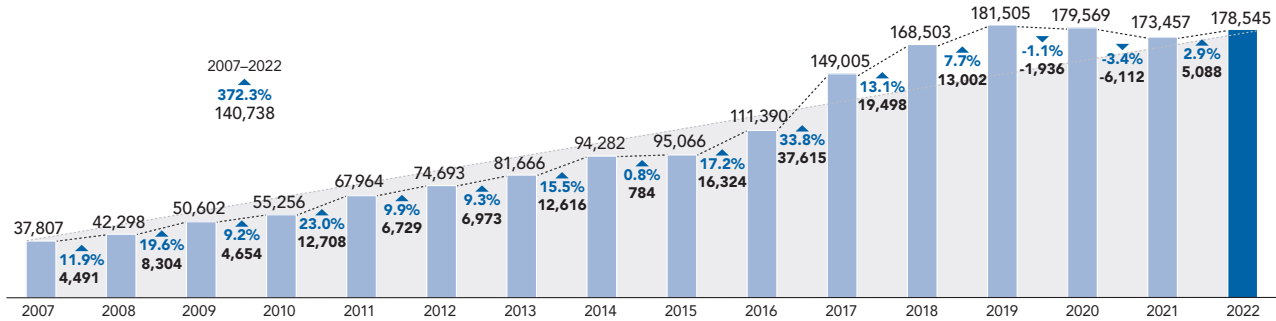
Beds Dedicated to Veterans and Youth

- Fourteen percent of all beds in the national inventory (142,833 beds in total) were dedicated to veterans experiencing homelessness and their family members. Nearly four in five beds for veterans (76%) were in permanent supportive housing programs. Although the number of safe haven beds was small (2,620 beds in total), three of every five safe haven beds (60%) were dedicated to veterans.
- In 2022, 31,478 beds were dedicated to unaccompanied youth or families with young parents (all members of the household are under the age of 25). Of these beds, 54 percent were for youth currently experiencing homelessness, with 30 percent in transitional housing projects and

National Inventory of Beds For People Currently Experiencing Homelessness and People Transitioning Out of Homelessness

Data source: HIC 2007–2022

**EXHIBIT 7.9: Inventory of PSH Beds for People Experiencing Chronic Homelessness
2007-2022**



24 percent in emergency shelters. Overall, beds dedicated to youth represented only three percent of the total inventory of beds available for people experiencing homelessness.

- The total number of beds dedicated to veterans continued to increase between 2020 and 2022, by 4,428 beds overall. This increase largely reflected increases in veteran-dedicated beds among permanent supportive housing and other permanent housing programs.
- The total number of beds for youth also increased between 2020 and 2022, by 4,240 beds, or nearly 16 percent. This increase largely reflected increases in youth-dedicated beds in emergency shelter, rapid re-housing, and other permanent housing programs.

Beds Targeted to Individuals with Chronic Patterns of Homelessness

- Permanent supportive housing programs may dedicate all or a portion of their beds to people with chronic patterns of homelessness, and (if funded by the federal government) must serve people with disabilities. In 2022, 46 percent of beds in permanent supportive housing programs (178,545 of the 387,305 total beds) were explicitly targeted to people experiencing chronic homelessness.
- Despite a slight decline in the number of permanent supportive housing beds for people with chronic patterns of homelessness between 2020 and 2022 (a decline of 1,024 beds), there has been an almost four-fold increase (372%) in the number of beds dedicated to people experiencing chronic homelessness since these data were first collected in 2007.

cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

7 National Inventory of Beds For People Currently Experiencing Homelessness and People Transitioning Out of Homelessness

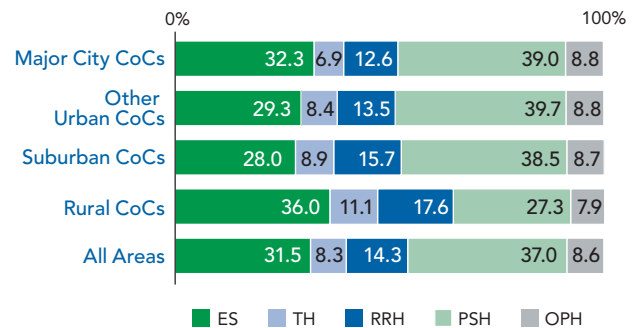
Data source: HIC 2007–2022

Continuums of Care (CoC) were divided into four geographic categories

- 1. Major city CoCs (n=48)** are CoCs that contain one of the 50 largest cities in the United States. In two cases, Phoenix and Mesa, AZ, and Arlington and Fort Worth, TX, two of the largest US cities are located in the same CoC.
- 2. Other largely urban CoCs (n=58)** are CoCs in which the population lives predominately in an urbanized area within the CoC's principal city or cities, but the CoCs does not include one of the nation's 50 largest cities.
- 3. Largely suburban CoCs (n=167)** are CoCs in which the population lives predominantly in suburban areas, defined as urbanized areas outside of a principal city or urban clusters within 10 miles of urbanized areas.
- 4. Largely rural CoCs (n=109)** are CoCs in which the population lives predominantly in urban clusters that are more than 10 miles from an urbanized area or in Census-defined rural areas.

Note: These definitions have been adapted from definitions used by the US Department of Education's National Center for Education Statistics to characterize the locations of schools. For detailed information on how they were applied to CoCs, see the About the Report section of this report.

EXHIBIT 7.10: Inventory of Beds By Program Type and CoC Category, 2022*



*Excludes safe haven inventory, which accounts for between 0.1% and 0.3% of beds across the four CoC categories.

Beds by CoC Category, 2022

- The distribution of beds for people currently experiencing homelessness varies modestly across categories of CoCs. All communities had many more emergency shelter beds than they did transitional housing beds in 2022. The difference was greatest in major city CoCs, where 82 percent of beds for people experiencing homelessness were in emergency shelters and only 18 percent in transitional housing programs. Largely suburban CoCs had the highest percentage of transitional housing beds, accounting for 24 percent of beds for people experiencing homelessness.
- Across all CoC categories, permanent supportive housing was the dominant type of permanent housing for people who were formerly experiencing homelessness included in the HIC. Major cities had the highest percentage of PSH beds among the permanent housing inventory, with 65 percent, followed closely by other largely urban CoCs with 64 percent. Unlike the other project types, OPH beds accounted for a higher share of the overall bed inventory in all CoC types in 2022 than they did in 2020.
- Rapid rehousing accounted for a larger share of beds in largely rural areas (18%) than any other geographic category. By comparison, in major cities rapid rehousing accounts for 13 percent of all beds.

The 2022 Annual Homelessness Assessment Report to Congress: Part 1

Key Changes in the National Inventory, 2021-2022

In response to the COVID-19 pandemic, the U.S. Government passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in March 2020. As part of the CARES Act, Congress appropriated \$4 billion to the Emergency Solutions Grants - Coronavirus (ESG-CV) program to help communities to support additional homeless assistance and prevention activities. CoCs could use ESG-CV funds to support additional sponsor-based rental assistance, hotel or motel costs for people experiencing homelessness, and temporary emergency shelters. In 2021, 14 percent of all inventory for people currently experiencing homelessness was funded using ESG-CV funds and by 2022, 19 percent was. ESG-CV funds were also used to support an increase in rapid rehousing inventory. In 2021, 10 percent of all rapid rehousing inventory was funded using ESG-CV funds and by 2022 this had increased to 34 percent.

In March 2021, Congress passed the American Rescue Plan Act (ARPA) which included \$1.1 billion in funding to support Emergency Housing Vouchers (EHV). EHV's can be used to provide permanent housing support to people experiencing homelessness or at risk of homelessness. The HIC captures data on other permanent housing (OPH) and permanent supportive housing (PSH) that was supported using EHV funds. At the time of the 2022 HIC, 34 percent of all OPH and one percent of PSH inventory was supported by EHV funding.

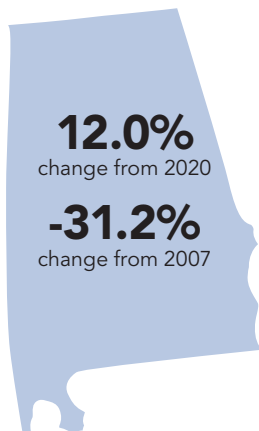
EXHIBIT 7.11: Inventory of Beds Funded by Coronavirus Relief-Related Funding 2021-2022

	2021		2022		
	Bed Inventory	ESG-CV Funded	Bed Inventory	ESG-CV Funded	EHV Funded
	#	%	%	#	%
ES, SH, and TH Inventory	396,466	14%	418,245	19%	
RRH Inventory	137,206	10%	149,819	34%	
OPH Inventory	53,856		90,052		34%
PSH Inventory	376,709		387,053		1%

Note: ESG-CV funding is only available to ES and RRH inventory and was in use by the time of the 2021 HIC. EHV funding can be used to support OPH and PSH housing and was in use by the time of the 2022 HIC.

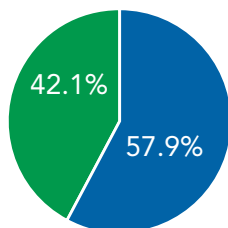
Appendix

ALABAMA



Total Homeless, 2022
3,752

7.4 in every **10,000**
people were experiencing
homelessness



■ Sheltered (2,172)
■ Unsheltered (1,580)

Estimates of Homelessness

2,482 individuals

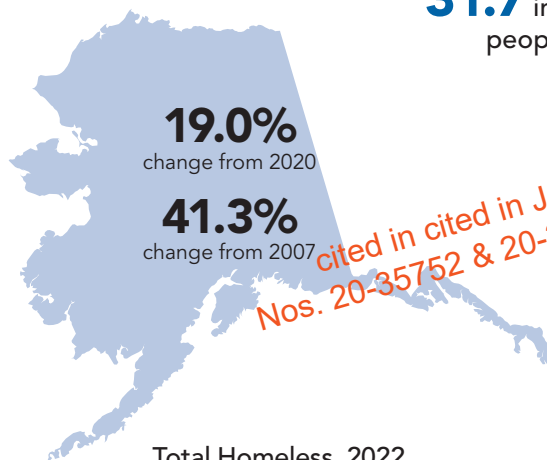
1,270 people in families
with children

169 unaccompanied
homeless youth

308 veterans

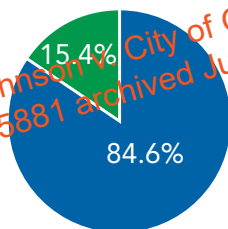
539 chronically homeless
individuals

ALASKA



Total Homeless, 2022
2,320

31.7 in every **10,000**
people were experiencing
homelessness



■ Sheltered (1,963)
■ Unsheltered (357)

Estimates of Homelessness

1,760 individuals

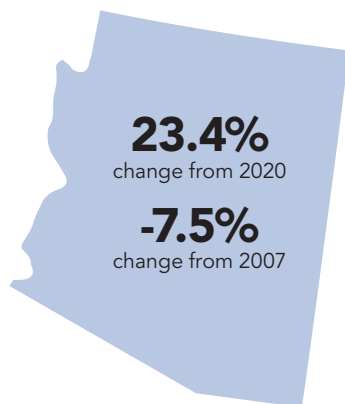
560 people in families
with children

186 unaccompanied
homeless youth

134 veterans

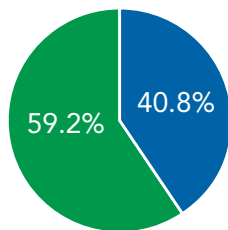
576 chronically homeless
individuals

ARIZONA



Total Homeless, 2022
13,553

18.6 in every **10,000**
people were experiencing
homelessness



■ Sheltered (5,526)
■ Unsheltered (8,027)

Estimates of Homelessness

10,707 individuals

2,846 people in families
with children

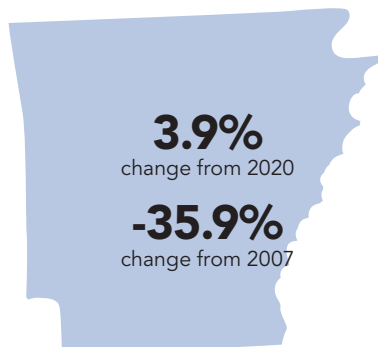
917 unaccompanied
homeless youth

857 veterans

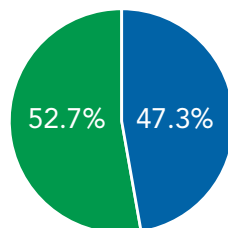
2,476 chronically homeless
individuals

Appendix

ARKANSAS



8.1 in every **10,000** people were experiencing homelessness



■ Sheltered (1,163)
■ Unsheltered (1,296)

Total Homeless, 2022
2,459

Estimates of Homelessness

2,131 individuals

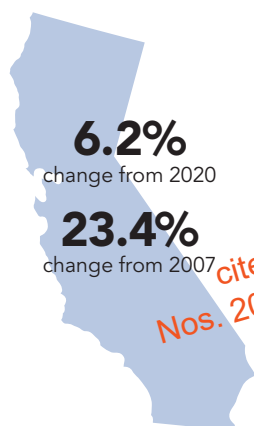
328 people in families with children

251 unaccompanied homeless youth

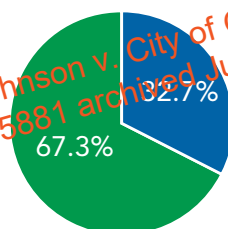
92 veterans

376 chronically homeless individuals

CALIFORNIA



43.7 in every **10,000** people were experiencing homelessness



■ Sheltered (56,030)
■ Unsheltered (115,491)

Total Homeless, 2022
171,521

Estimates of Homelessness

145,983 individuals

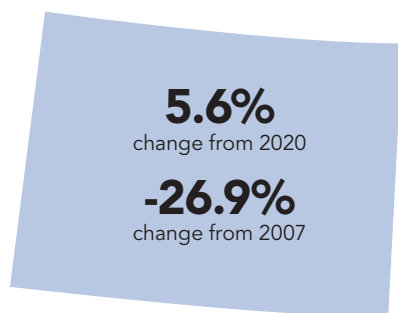
25,538 people in families with children

9,590 unaccompanied homeless youth

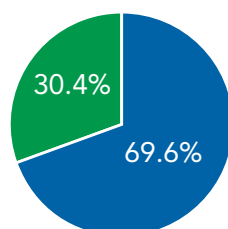
10,395 veterans

57,760 chronically homeless individuals

COLORADO



17.9 in every **10,000** people were experiencing homelessness



■ Sheltered (7,241)
■ Unsheltered (3,156)

Total Homeless, 2022
10,397

Estimates of Homelessness

8,246 individuals

2,151 people in families with children

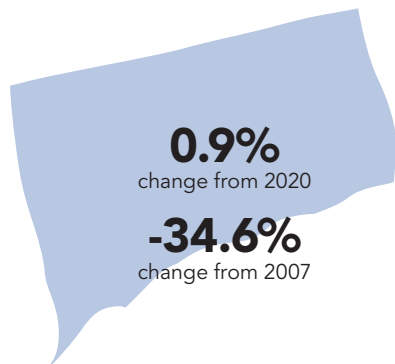
453 unaccompanied homeless youth

738 veterans

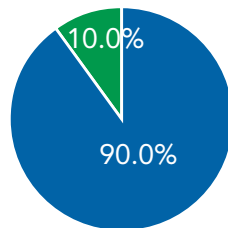
3,466 chronically homeless individuals

Appendix

CONNECTICUT



8.1 in every **10,000** people were experiencing homelessness



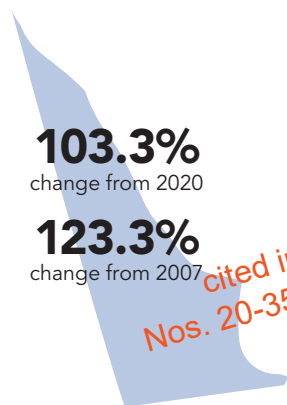
■ Sheltered (2,636)
■ Unsheltered (294)

Total Homeless, 2022
2,930

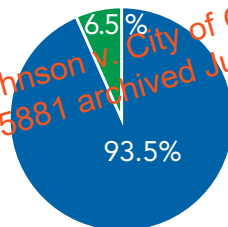
Estimates of Homelessness

- 2,007** individuals
- 923** people in families with children
- 113** unaccompanied homeless youth
- 149** veterans
- 117** chronically homeless individuals

DELAWARE



23.6 in every **10,000** people were experiencing homelessness



■ Sheltered (2,215)
■ Unsheltered (154)

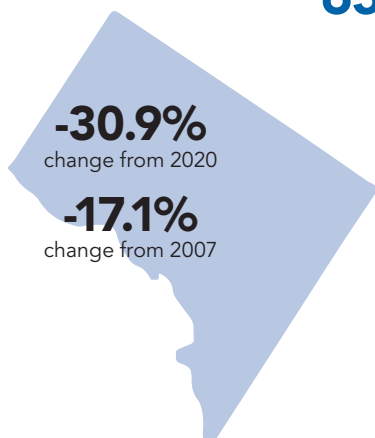
Total Homeless, 2022
2,369

Estimates of Homelessness

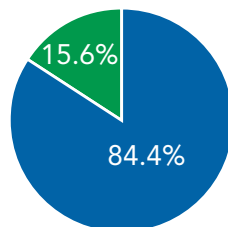
- 1,065** individuals
- 1,304** people in families with children
- 65** unaccompanied homeless youth
- 93** veterans
- 196** chronically homeless individuals

cited in Johnson v. City of Grants Pass Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

DISTRICT OF COLUMBIA



65.8 in every **10,000** people were experiencing homelessness



■ Sheltered (3,720)
■ Unsheltered (690)

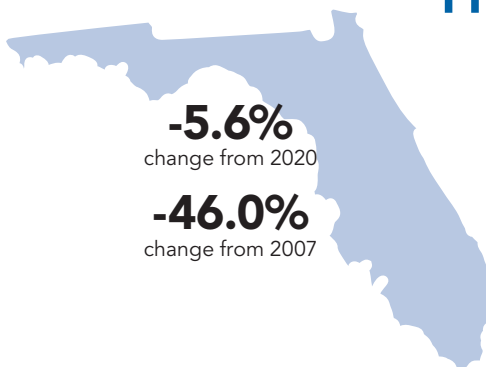
Total Homeless, 2022
4,410

Estimates of Homelessness

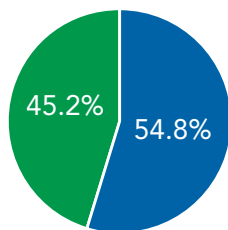
- 3,406** individuals
- 1,004** people in families with children
- 360** unaccompanied homeless youth
- 208** veterans
- 1,257** chronically homeless individuals

Appendix

FLORIDA



11.9 in every **10,000** people were experiencing homelessness



■ Sheltered (14,213)
■ Unsheltered (11,746)

Total Homeless, 2022
25,959

Estimates of Homelessness

19,519 individuals

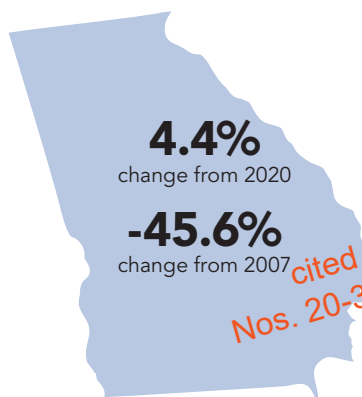
6,440 people in families with children

1,011 unaccompanied homeless youth

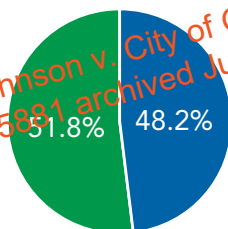
2,279 veterans

4,233 chronically homeless individuals

GEORGIA



9.9 in every **10,000** people were experiencing homelessness



■ Sheltered (5,154)
■ Unsheltered (5,535)

Total Homeless, 2022
10,689

Estimates of Homelessness

7,905 individuals

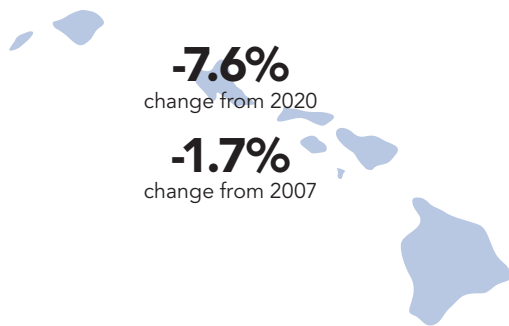
2,784 people in families with children

479 unaccompanied homeless youth

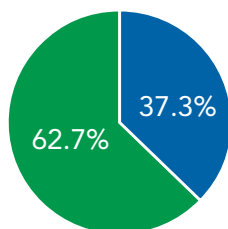
664 veterans

1,354 chronically homeless individuals

HAWAII



41.4 in every **10,000** people were experiencing homelessness



■ Sheltered (2,224)
■ Unsheltered (3,743)

Total Homeless, 2022
5,967

Estimates of Homelessness

4,479 individuals

1,488 people in families with children

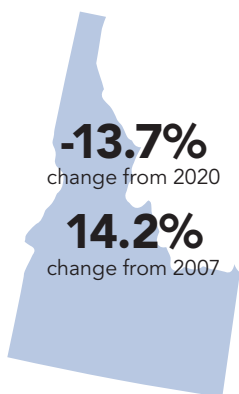
184 unaccompanied homeless youth

306 veterans

1,495 chronically homeless individuals

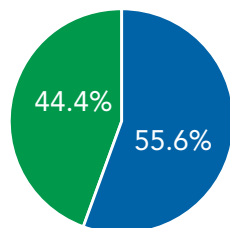
Appendix

IDAHO



Total Homeless, 2022
1,998

10.5 in every **10,000**
people were experiencing
homelessness



■ Sheltered (1,110)
■ Unsheltered (888)

Estimates of Homelessness

1,233 individuals

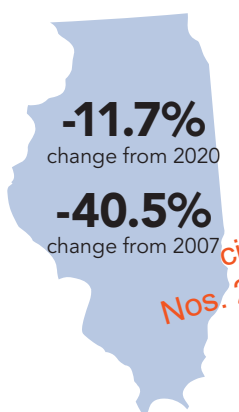
765 people in families with children

84 unaccompanied homeless youth

149 veterans

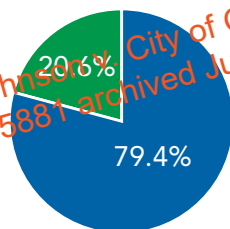
238 chronically homeless individuals

ILLINOIS



Total Homeless, 2022
9,212

7.3 in every **10,000**
people were experiencing
homelessness



■ Sheltered (7,311)
■ Unsheltered (1,901)

Estimates of Homelessness

8,244 individuals

2,968 people in families with children

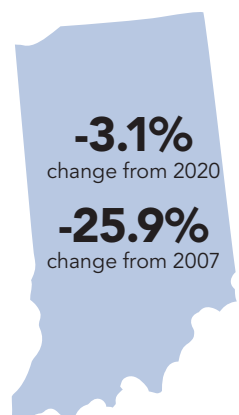
628 unaccompanied homeless youth

524 veterans

1,341 chronically homeless individuals

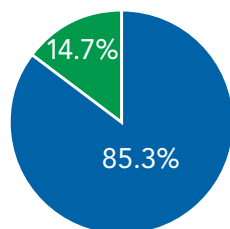
*cited in Johnson City of Grants Pass, Oregon
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

INDIANA



Total Homeless, 2022
5,449

8.0 in every **10,000**
people were experiencing
homelessness



■ Sheltered (4,650)
■ Unsheltered (799)

Estimates of Homelessness

3,926 individuals

1,523 people in families with children

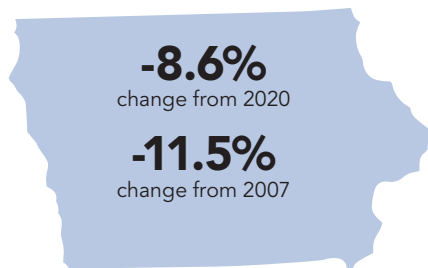
267 unaccompanied homeless youth

482 veterans

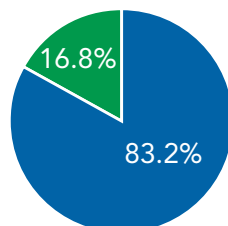
470 chronically homeless individuals

Appendix

IOWA



7.6 in every **10,000** people were experiencing homelessness



■ Sheltered (2,013)
■ Unsheltered (406)

Total Homeless, 2022
2,419

Estimates of Homelessness

1,666 individuals

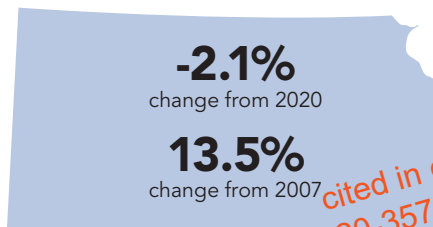
753 people in families with children

124 unaccompanied homeless youth

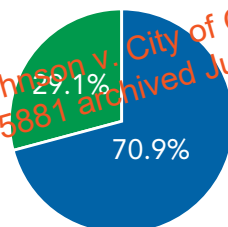
141 veterans

393 chronically homeless individuals

KANSAS



8.2 in every **10,000** people were experiencing homelessness



■ Sheltered (1,699)
■ Unsheltered (698)

Total Homeless, 2022
2,397

Estimates of Homelessness

1,754 individuals

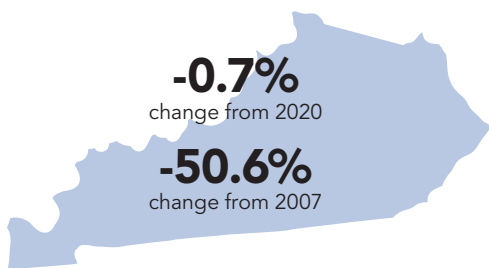
643 people in families with children

126 unaccompanied homeless youth

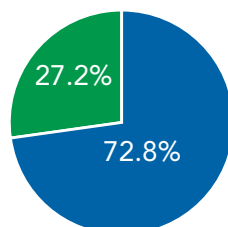
218 veterans

465 chronically homeless individuals

KENTUCKY



8.8 in every **10,000** people were experiencing homelessness



■ Sheltered (2,900)
■ Unsheltered (1,084)

Total Homeless, 2022
3,984

Estimates of Homelessness

2,991 individuals

993 people in families with children

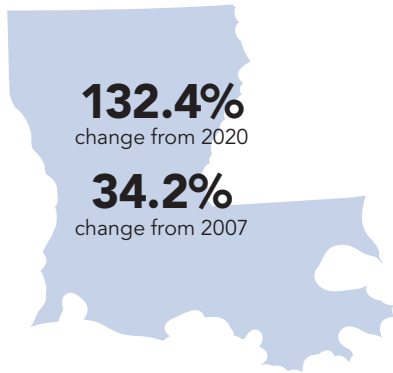
223 unaccompanied homeless youth

328 veterans

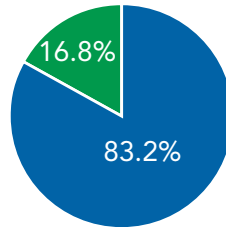
670 chronically homeless individuals

Appendix

LOUISIANA



15.9 in every **10,000** people were experiencing homelessness



■ Sheltered (6,138)
■ Unsheltered (1,235)

Total Homeless, 2022
7,373

Estimates of Homelessness

3,059 individuals

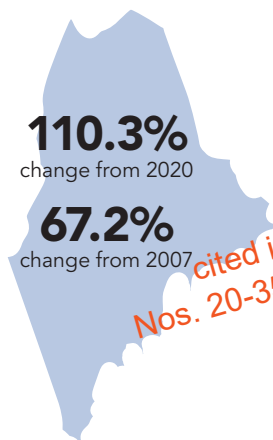
4,314 people in families with children

191 unaccompanied homeless youth

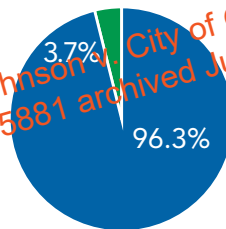
322 veterans

397 chronically homeless individuals

MAINE



32.1 in every **10,000** people were experiencing homelessness



■ Sheltered (4,247)
■ Unsheltered (164)

Total Homeless, 2022
4,411

Estimates of Homelessness

2,457 individuals

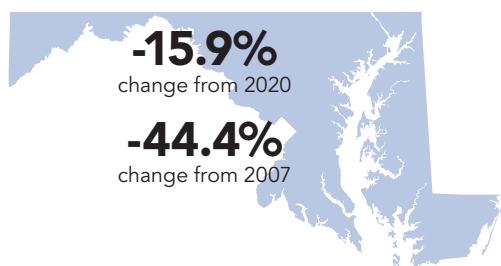
1,954 people in families with children

209 unaccompanied homeless youth

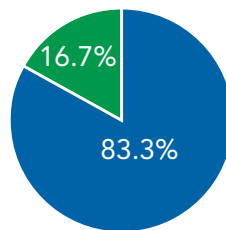
243 veterans

500 chronically homeless individuals

MARYLAND



8.7 in every **10,000** people were experiencing homelessness



■ Sheltered (4,458)
■ Unsheltered (891)

Total Homeless, 2022
5,349

Estimates of Homelessness

3,591 individuals

1,758 people in families with children

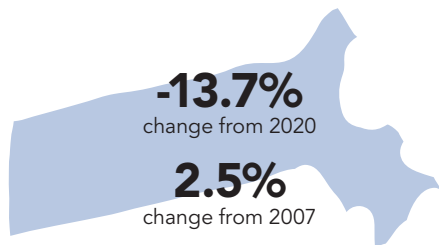
232 unaccompanied homeless youth

303 veterans

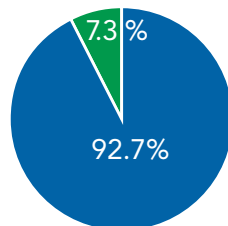
899 chronically homeless individuals

Appendix

MASSACHUSETTS



22.2 in every **10,000** people were experiencing homelessness



■ Sheltered (14,372)
■ Unsheltered (1,135)

Total Homeless, 2022
15,507

Estimates of Homelessness

5,531 individuals

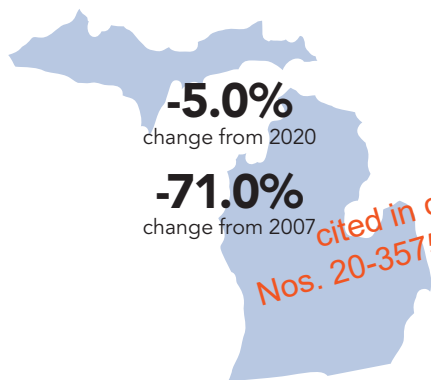
9,976 people in families with children

365 unaccompanied homeless youth

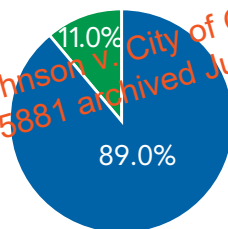
534 veterans

1,558 chronically homeless individuals

MICHIGAN



8.2 in every **10,000** people were experiencing homelessness



■ Sheltered (7,306)
■ Unsheltered (900)

Total Homeless, 2022
8,206

Estimates of Homelessness

4,904 individuals

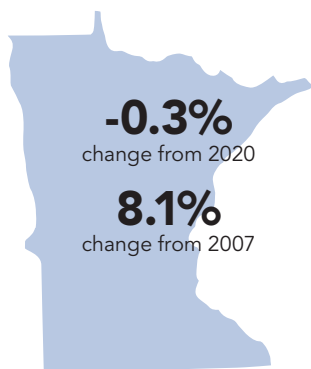
3,302 people in families with children

451 unaccompanied homeless youth

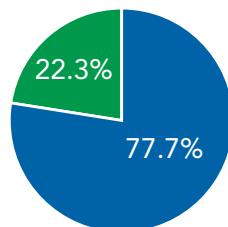
498 veterans

1,004 chronically homeless individuals

MINNESOTA



13.9 in every **10,000** people were experiencing homelessness



■ Sheltered (6,148)
■ Unsheltered (1,769)

Total Homeless, 2022
7,917

Estimates of Homelessness

4,957 individuals

2,960 people in families with children

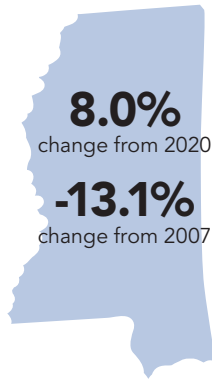
604 unaccompanied homeless youth

290 veterans

1,773 chronically homeless individuals

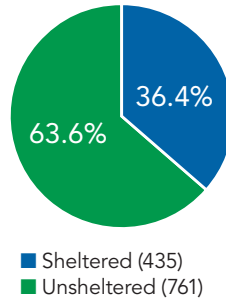
Appendix

MISSISSIPPI



Total Homeless, 2022
1,196

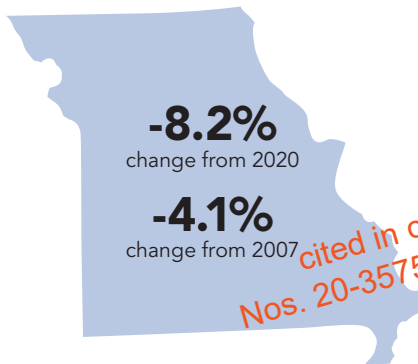
4.1 in every **10,000** people were experiencing homelessness



Estimates of Homelessness

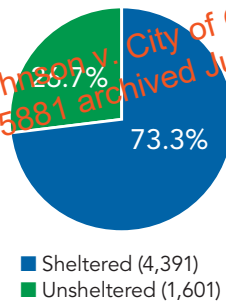
- 1,091** individuals
- 105** people in families with children
- 126** unaccompanied homeless youth
- 139** veterans
- 105** chronically homeless individuals

MISSOURI



Total Homeless, 2022
5,992

9.7 in every **10,000** people were experiencing homelessness

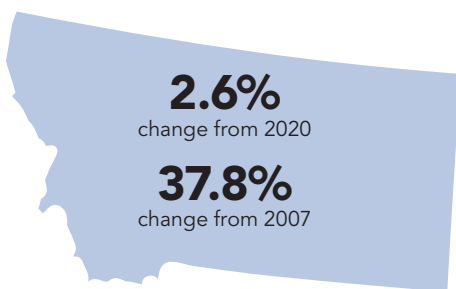


Estimates of Homelessness

- 4,312** individuals
- 1,680** people in families with children
- 466** unaccompanied homeless youth
- 476** veterans
- 1,145** chronically homeless individuals

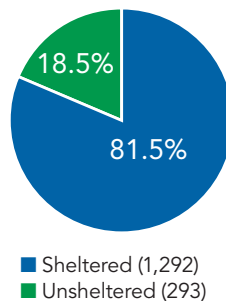
cited in Johnson v. City of Grants Pass, Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

MONTANA



Total Homeless, 2022
1,585

14.4 in every **10,000** people were experiencing homelessness



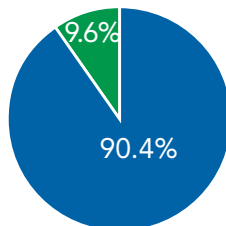
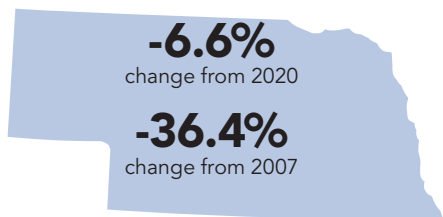
Estimates of Homelessness

- 1,162** individuals
- 423** people in families with children
- 104** unaccompanied homeless youth
- 172** veterans
- 343** chronically homeless individuals

Appendix

NEBRASKA

11.4 in every **10,000** people were experiencing homelessness



■ Sheltered (2,030)
■ Unsheltered (216)

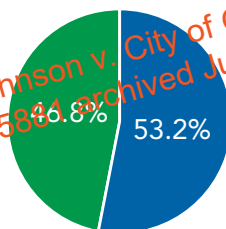
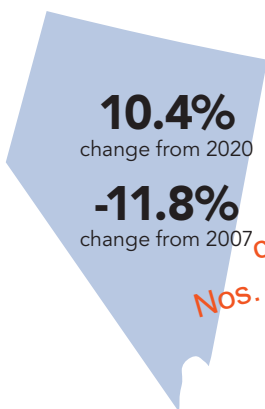
Total Homeless, 2022
2,246

Estimates of Homelessness

- 1,672** individuals
- 574** people in families with children
- 121** unaccompanied homeless youth
- 145** veterans
- 522** chronically homeless individuals

NEVADA

24.2 in every **10,000** people were experiencing homelessness



■ Sheltered (4,051)
■ Unsheltered (3,567)

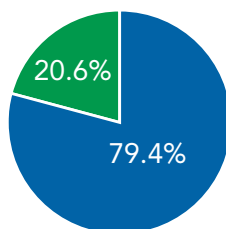
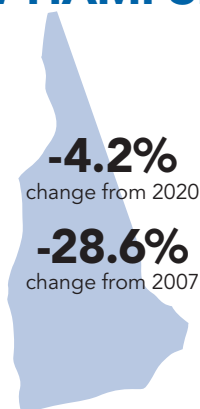
Total Homeless, 2022
7,618

Estimates of Homelessness

- 8,820** individuals
- 798** people in families with children
- 376** unaccompanied homeless youth
- 752** veterans
- 2,752** chronically homeless individuals

NEW HAMPSHIRE

11.6 in every **10,000** people were experiencing homelessness



■ Sheltered (1,274)
■ Unsheltered (331)

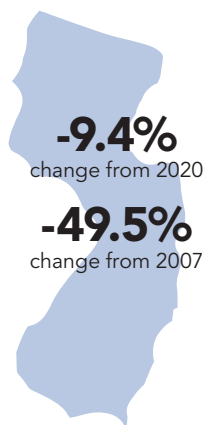
Total Homeless, 2022
1,605

Estimates of Homelessness

- 1,064** individuals
- 541** people in families with children
- 88** unaccompanied homeless youth
- 127** veterans
- 341** chronically homeless individuals

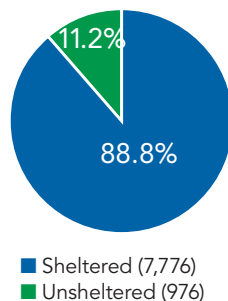
Appendix

NEW JERSEY



Total Homeless, 2022
8,752

9.4 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

5,807 individuals

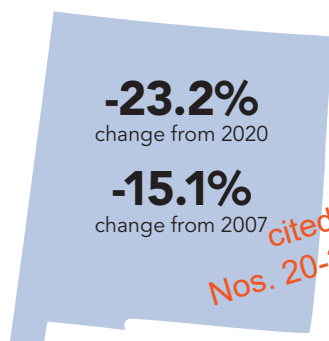
2,945 people in families
with children

438 unaccompanied
homeless youth

479 veterans

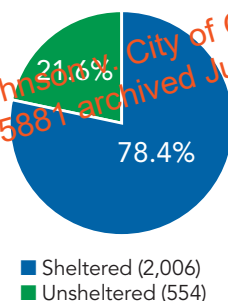
1,521 chronically homeless
individuals

NEW MEXICO



Total Homeless, 2022
2,560

12.1 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

1,786 individuals

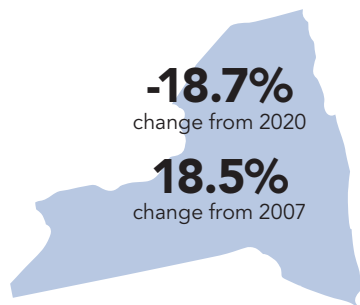
774 people in families
with children

140 unaccompanied
homeless youth

91 veterans

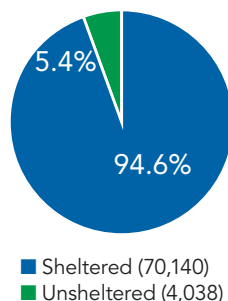
714 chronically homeless
individuals

NEW YORK



Total Homeless, 2022
74,178

37.4 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

39,373 individuals

34,805 people in families
with children

2,762 unaccompanied
homeless youth

990 veterans

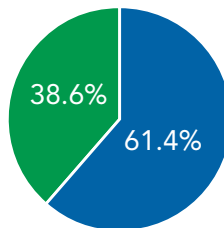
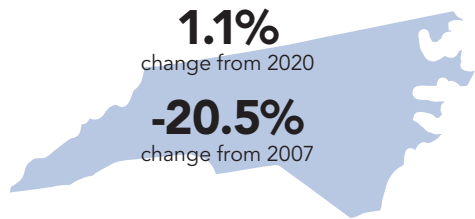
5,994 chronically homeless
individuals

*cited in Johnson City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

Appendix

NORTH CAROLINA

8.9 in every **10,000** people were experiencing homelessness



■ Sheltered (5,757)
■ Unsheltered (3,625)

Total Homeless, 2022
9,382

Estimates of Homelessness

6,652 individuals

2,730 people in families with children

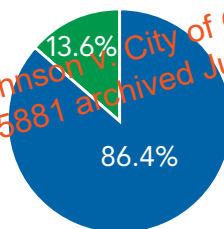
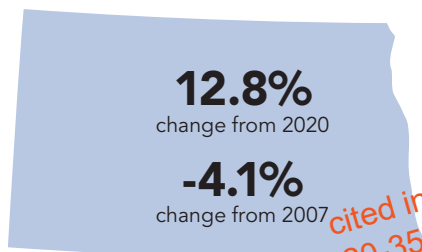
415 unaccompanied homeless youth

687 veterans

1,697 chronically homeless individuals

NORTH DAKOTA

7.9 in every **10,000** people were experiencing homelessness



■ Sheltered (527)
■ Unsheltered (83)

Total Homeless, 2022
610

Estimates of Homelessness

439 individuals

171 people in families with children

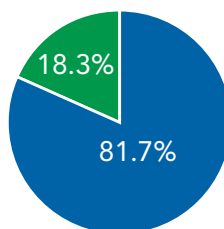
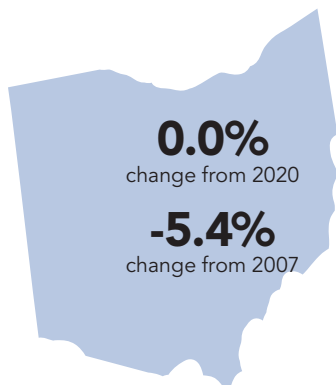
36 unaccompanied homeless youth

37 veterans

170 chronically homeless individuals

OHIO

9.0 in every **10,000** people were experiencing homelessness



■ Sheltered (8,706)
■ Unsheltered (1,948)

Total Homeless, 2022
10,654

Estimates of Homelessness

7,440 individuals

3,214 people in families with children

703 unaccompanied homeless youth

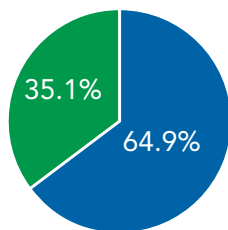
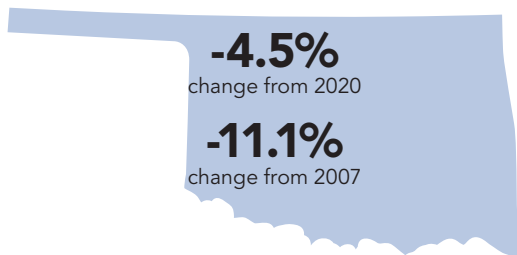
633 veterans

1,023 chronically homeless individuals

Appendix

OKLAHOMA

9.4 in every **10,000** people were experiencing homelessness



■ Sheltered (2,437)
■ Unsheltered (1,317)

Total Homeless, 2022
3,754

Estimates of Homelessness

2,966 individuals

788 people in families with children

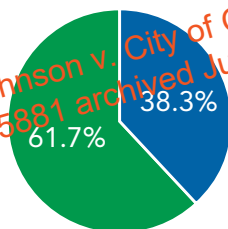
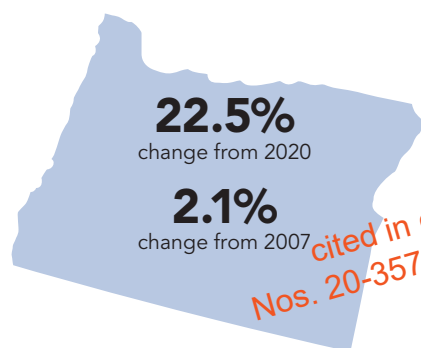
374 unaccompanied homeless youth

273 veterans

1,247 chronically homeless individuals

OREGON

42.3 in every **10,000** people were experiencing homelessness



■ Sheltered (6,871)
■ Unsheltered (11,088)

Total Homeless, 2022
17,959

Estimates of Homelessness

14,586 individuals

3,373 people in families with children

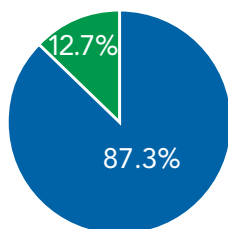
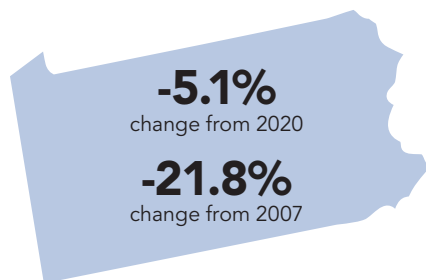
1,066 unaccompanied homeless youth

1,460 veterans

6,447 chronically homeless individuals

PENNSYLVANIA

9.8 in every **10,000** people were experiencing homelessness



■ Sheltered (11,085)
■ Unsheltered (1,606)

Total Homeless, 2022
12,691

Estimates of Homelessness

7,861 individuals

4,830 people in families with children

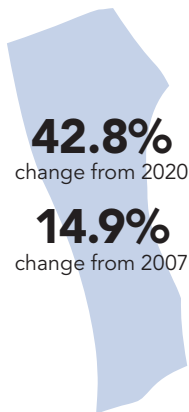
579 unaccompanied homeless youth

778 veterans

1,759 chronically homeless individuals

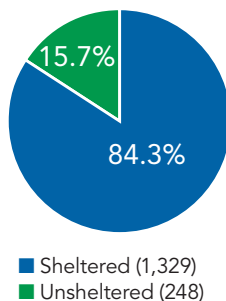
Appendix

RHODE ISLAND



Total Homeless, 2022
1,577

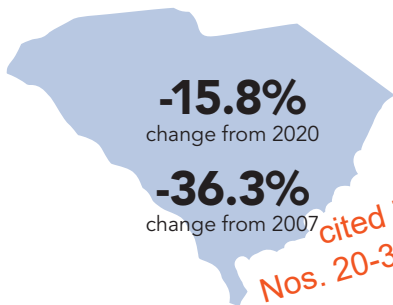
14.4 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

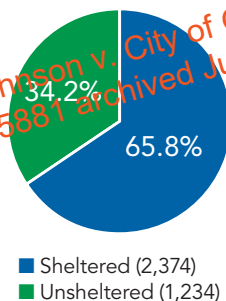
- 1,071** individuals
- 506** people in families with children
- 61** unaccompanied homeless youth
- 113** veterans
- 421** chronically homeless individuals

SOUTH CAROLINA



Total Homeless, 2022
3,608

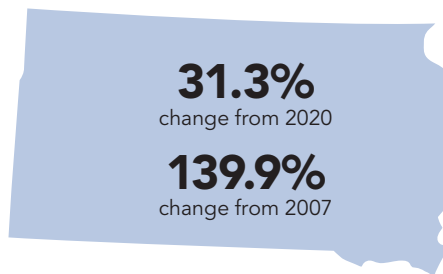
7.0 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

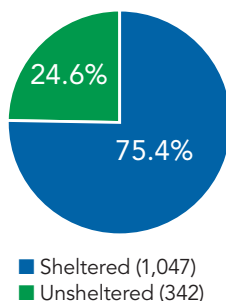
- 2,742** individuals
- 866** people in families with children
- 211** unaccompanied homeless youth
- 359** veterans
- 698** chronically homeless individuals

SOUTH DAKOTA



Total Homeless, 2022
1,389

15.5 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

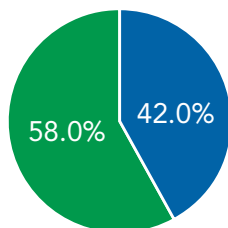
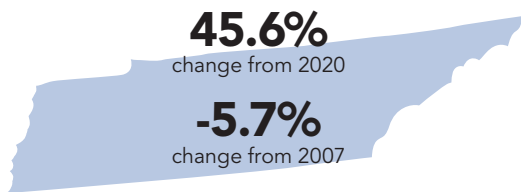
- 971** individuals
- 418** people in families with children
- 82** unaccompanied homeless youth
- 40** veterans
- 131** chronically homeless individuals

cited in Johnson v. City of Grants Pass, Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

Appendix

TENNESSEE

15.1 in every **10,000** people were experiencing homelessness



■ Sheltered (4,434)
■ Unsheltered (6,133)

Total Homeless, 2022
10,567

Estimates of Homelessness

8,207 individuals

2,360 people in families with children

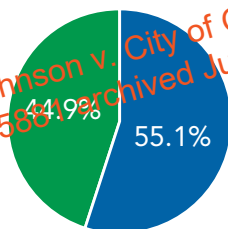
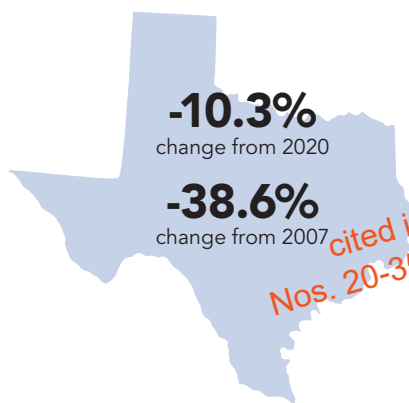
518 unaccompanied homeless youth

549 veterans

1,653 chronically homeless individuals

TEXAS

8.3 in every **10,000** people were experiencing homelessness



■ Sheltered (13,461)
■ Unsheltered (10,971)

Total Homeless, 2022
24,432

Estimates of Homelessness

18,579 individuals

5,853 people in families with children

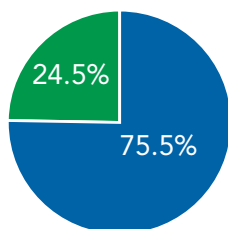
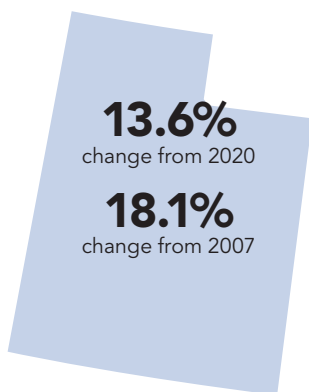
1,226 unaccompanied homeless youth

1,711 veterans

4,812 chronically homeless individuals

UTAH

10.7 in every **10,000** people were experiencing homelessness



■ Sheltered (2,684)
■ Unsheltered (873)

Total Homeless, 2022
3,557

Estimates of Homelessness

2,479 individuals

1,078 people in families with children

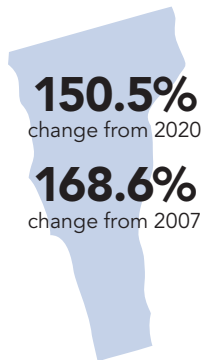
189 unaccompanied homeless youth

155 veterans

722 chronically homeless individuals

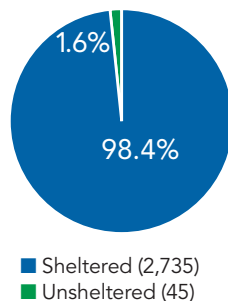
Appendix

VERMONT



Total Homeless, 2022
2,780

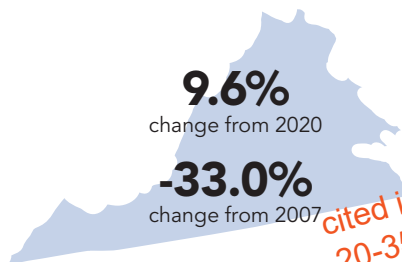
43.1 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

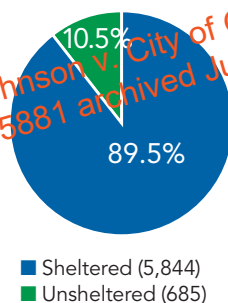
- 1,923** individuals
- 857** people in families with children
- 145** unaccompanied homeless youth
- 100** veterans
- 398** chronically homeless individuals

VIRGINIA



Total Homeless, 2022
6,529

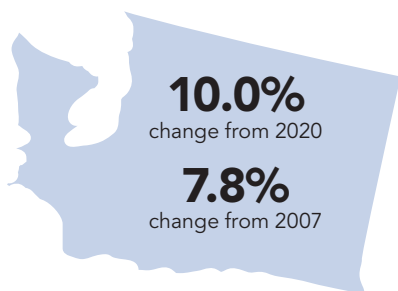
7.6 in every **10,000**
people were experiencing
homelessness



Estimates of Homelessness

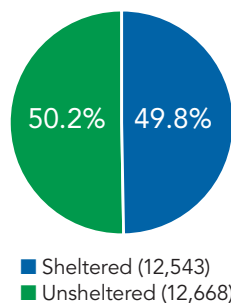
- 4,234** individuals
- 2,295** people in families with children
- 270** unaccompanied homeless youth
- 392** veterans
- 1,142** chronically homeless individuals

WASHINGTON



Total Homeless, 2022
25,211

32.6 in every **10,000**
people were experiencing
homelessness



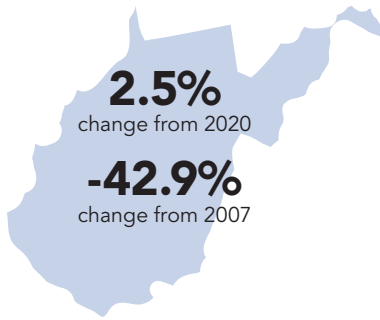
Estimates of Homelessness

- 18,725** individuals
- 6,486** people in families with children
- 1,802** unaccompanied homeless youth
- 1,569** veterans
- 7,376** chronically homeless individuals

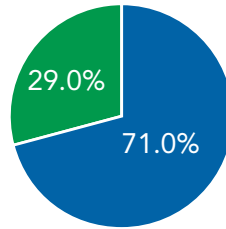
cited in Johnson v. City of Grants Pass, No. 20-35752 & 20-35881 archived June 29 & 30, 2023

Appendix

WEST VIRGINIA



7.7 in every **10,000** people were experiencing homelessness



■ Sheltered (976)
■ Unsheltered (399)

Total Homeless, 2022
1,375

Estimates of Homelessness

1,238 individuals

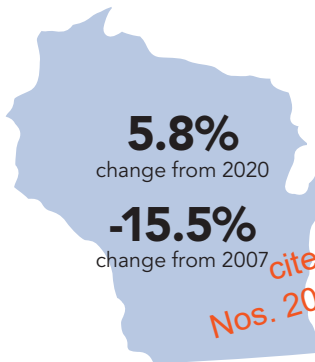
137 people in families with children

135 unaccompanied homeless youth

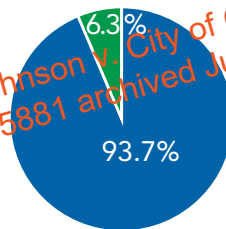
122 veterans

204 chronically homeless individuals

WISCONSIN



8.1 in every **10,000** people were experiencing homelessness



■ Sheltered (4,474)
■ Unsheltered (301)

Total Homeless, 2022
4,775

Estimates of Homelessness

2,886 individuals

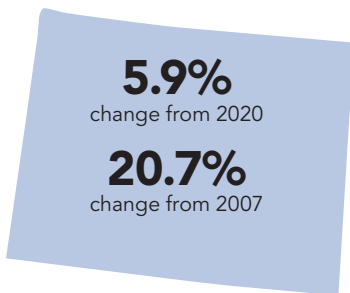
1,889 people in families with children

228 unaccompanied homeless youth

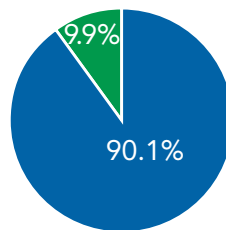
341 veterans

510 chronically homeless individuals

WYOMING



11.2 in every **10,000** people were experiencing homelessness



■ Sheltered (584)
■ Unsheltered (64)

Total Homeless, 2022
648

Estimates of Homelessness

458 individuals

190 people in families with children

64 unaccompanied homeless youth

68 veterans

83 chronically homeless individuals

cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023



*cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



The U.S. Department of
Housing and Urban Development
OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT



CALIFORNIA

Rand survey finds homelessness up 18% in L.A. hot spots where the official count recorded decreases



Sherman Jones, a homeless man, in Sacramento on Jan. 4, 2023. (Gary Coronado / Los Angeles Times)

BY DOUG SMITH | SENIOR WRITER

JAN. 26, 2023 5 AM PT

In a bit of welcome news that was immediately [met with skepticism](#), the Los Angeles Homeless Services Authority reported last summer that homelessness appeared to be [leveling off](#).

After climbing nearly 23% in two years, the county's street population grew only an additional 5% during two years of pandemic, the 2022 point-in-time count found, deflecting worries that [economic stress would drive large numbers of people from their homes](#).

Most surprisingly, LAHSA found significant decreases in three communities widely identified as hot spots of homelessness: [skid row](#), [Hollywood](#) and [Venice](#).

But a [survey released by the Rand Corp. on Thursday](#) casts doubt on those findings. Researchers who zeroed in on those three areas, returning dozens of times over a year, recorded large increases in unsheltered homelessness: 13% in skid row, 14.5% in Hollywood and 32% in Venice, averaging out at 18%.

The Rand study, conducted from September 2021 through October 2022, draws no conclusion on the accuracy of LAHSA's estimate of the total number of homeless people in Los Angeles County last year, 69,144.

Instead, it makes the case that the annual three-day count (this year's was held this week and concluded Thursday night) is subject to a gantlet of error — human, technological and statistical — as thousands of volunteers record their observations on cellphones while walking and driving streets across the county. The flaws in this approach, the researchers argue, limit its value as a measure of trends and as a tool in policy decisions.

Citing city actions to clear homeless people from [Echo Park](#) and [Venice](#) and a court order [requiring the city to provide shelters](#), study author Jason Ward concludes that “these policies and activities were formulated without the aid of any current, high-quality data on the number of people living unsheltered in these areas” or any data about their “specific housing experiences, need and preferences.”

By zeroing in on small areas known to be heavily populated by homeless people and

surveying them repeatedly over a year, the \$260,000 study gleaned insight that a sprawling one-time count could not.



CALIFORNIA

More L.A. Latinos falling into homelessness, shaking communities in ‘a moment of crisis’

Oct. 28, 2022

The study found, for example, that a three-day cleanup that [removed tents from Centennial Park in Venice](#) in June was followed by a 13% decline in the next month’s count. The decrease was driven by fewer tents and makeshift shelters, while the number of cars, vans and RVs remained the same. But by later that month, the population had rebounded to its former level.

This type of information would be valuable to public officials weighing policies such as the city’s anti-camping ordinance and new Mayor Karen Bass’ Inside Safe street cleanup program, Ward said in an interview.

“We came up with some interesting evidence on the kind of housing solutions that will work better,” he said.

More than 80% of respondents said they would accept offers of permanent supportive housing, a hotel or motel or a shelter if it offered privacy. Only 30% said they would go into a group shelter and 35% a sober living home. The most common reasons given for resisting shelter were lack of privacy, 40%, and concern over safety, 35%.

But two other forms of housing not widely advocated as solutions to homelessness proved unexpectedly promising. Just under half of respondents said they would live in an apartment or house with other people or in a safe camping site with organized tent spaces.

Many of Rand’s demographic findings were consistent with those LAHSA has perennially reported: The homeless population is predominantly male and disproportionately Black. About half of respondents reported either chronic health conditions or mental health issues or both. People living on the streets are predominantly from Los Angeles County.

But the Rand study found a much higher incidence of chronic homelessness. Nearly 80% told Rand surveyors they had been homeless more than a year and 57% for more than three years. LAHSA’s figure for chronic homelessness — either one year continuously homeless or a year over a three-year span — in the three neighborhoods was about 50%.

“It appears that most of the people living unsheltered in Los Angeles would qualify as chronically homeless on the basis of their current spell of homelessness alone,” the report said.



CALIFORNIA

The last days of a homeless encampment in San Pedro

May 26, 2022

*cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

A detailed comparison of Rand’s findings with LAHSA’s, Ward said, showed a “mixed bag, in some cases remarkably consistent, in others way off.”

In one Venice census tract, LASHA counters recorded more than twice as many RVs as Rand’s but in another, only half as many. The number of individuals counted were close in some Hollywood tracts by wildly different in others.

Ward, who has participated in annual counts, attributes such differences to training.

“To me, the training was 30 minutes on the app, 15 minutes on being safe and a

minute and a half on how to identify [people in different shelter types](#),” he said. “You really need to train people how to make these decisions, not just how to use the app and press the right button.”

To ensure accuracy and consistency, Rand’s paid surveyors received three days of training. Two counters worked independently on each block, then averaged their results. Significant discrepancies were rechecked.

In contrast to LAHSA’s study, the Rand report presents its estimates with upper and lower bounds, taking into account a fundamental ambiguity in LAHSA’s counting process: Counters are told to record every individual and every tent or shelter they see, leading to potential double-counting of people who are seen outside their tents or shelters.

Rand’s surveyors asked people where they slept. For its lower estimate, Rand adjusted the individual count downward by the percentage who said they slept in shelters or tents.

*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881, archived June 29 & 30, 2023*

Ward refrained from comparing the raw numbers from the two studies simply because the areas his covered were considerably smaller than those LAHSA uses to define the communities and because the official count covered two years. LAHSA canceled the 2021 count because of the COVID-19 pandemic.

But, in an interview, Ward said he felt confident that LAHSA’s count missed the increases his study found. The differences were too great to dismiss.

Publication of the Rand study on the final day of LAHSA’s three-day count for 2023 was largely coincidental, Ward said. The report was ready earlier, but its release was delayed in deference to the official count, which, despite its flaws, he considers valuable.

“We wouldn’t want it to throw cold water on the value of participating in the count,” Ward said.



Doug Smith

Los Angeles Times senior writer Doug Smith scouts Los Angeles for the ragged edges where public policy meets real people, combining data analysis and gumshoe reporting to tell L.A. stories through his 50 years of experience covering the city.

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Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



CALIFORNIA

Photos: An unflinching look at homelessness during the pandemic



People experiencing homelessness fill a tent camp near Los Angeles International Airport. (Luis Sinco / Los Angeles Times)

BY LUIS SINCO | STAFF PHOTOGRAPHER

MARCH 8, 2021 6 AM PT

Sometimes it can feel like driving through the Great Depression. Only, it's Southern California in the year 2021.

Homeless encampments — modern-day Hoovervilles — are [steadily spreading](#) across the vast sprawl of Los Angeles.

The scenes evoke John Steinbeck’s classic novel “The Grapes of Wrath.”



A man dances near an encampment in Wilmington. (Luis Sinco / Los Angeles Times)

*“There ain’t no sin and there ain’t no virtue.
There’s just stuff people do.”*

— John Steinbeck



Tents line the street near an encampment in Venice Beach. (Luis Sinco / Los Angeles Times)

The 2020 Greater Los Angeles Homeless Count indicated that more than 66,000 people in Los Angeles County were experiencing homelessness. Some are living on the streets of L.A., hunkered down in dilapidated campers, tents or makeshift hovels of cardboard, wooden pallets and plastic tarps.

Trash piles up beside skeleton frames of shopping carts and bicycles.



CALIFORNIA

Here are 8 bizarre scenes from empty downtown Los Angeles

March 27, 2020

*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



Debris from a homeless encampment piles up near the Hollywood Freeway (Luis Sinco/Los Angeles Times)

In 2016, voters approved Proposition HHH, the sale of \$1.2 billion in bonds to help finance thousands of units of housing for homeless and low-income people in Los Angeles.

In the four years since the first bonds were issued, only seven projects with a total of 489 units have been completed and occupied.

Project sites cause anxiety and animosity among neighbors.

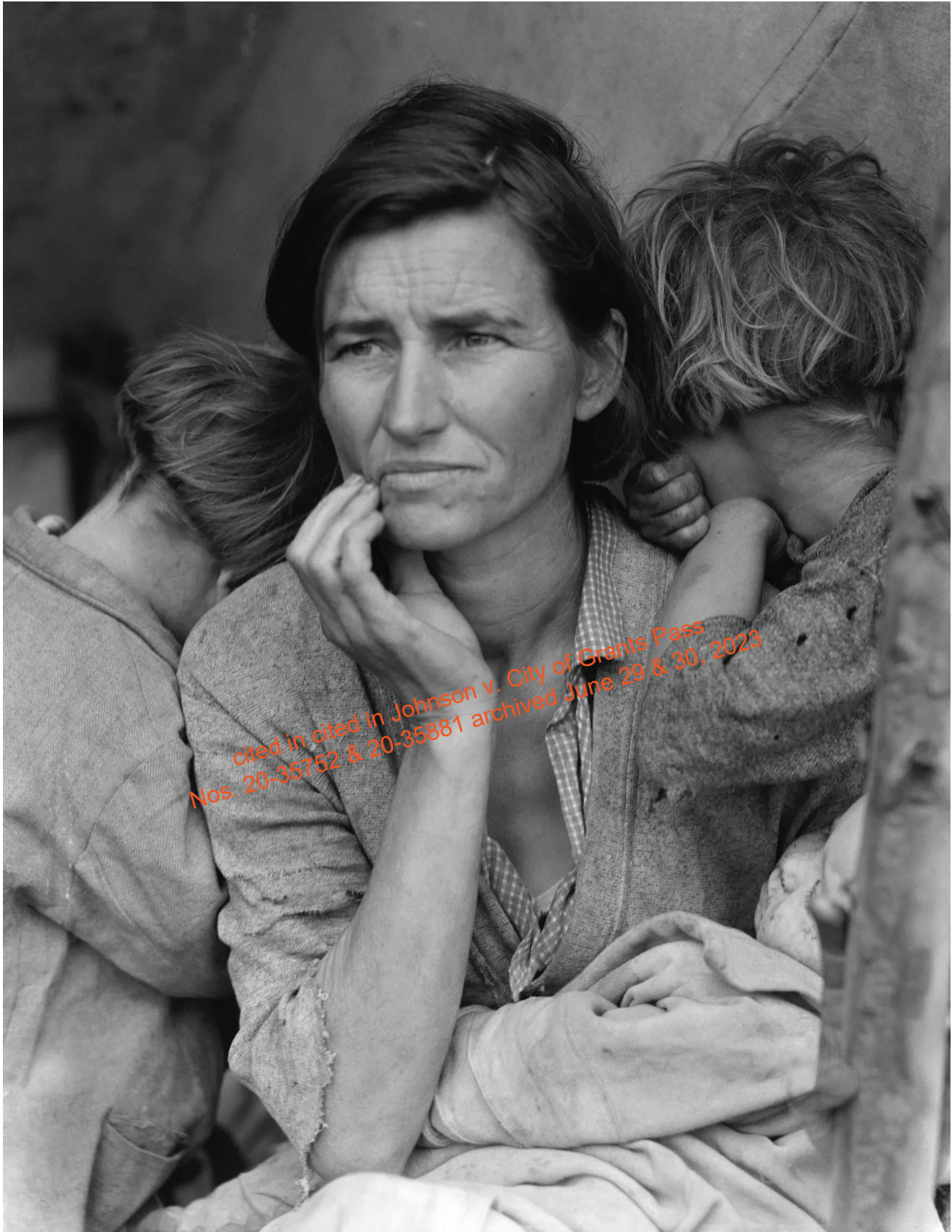


A woman skates by a homeless encampment in Venice Beach. (Luis Sinco/Los Angeles Times)

Photographer Dorothea Lange said the camera was an instrument that taught people how to see without a camera.

Lange worked with the Farm Security Administration to document the Great Depression in the 1930s.

Scenes reminiscent of her images of displacement and poverty are materializing all around us today.



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Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023

Dorothea Lange's iconic "Migrant Mother," taken in March 1936 in Nipomo, Calif. (Library of Congress)



The faces of homelessness in L.A. County. (Luis Sinco / Los Angeles Times)

“How can we live without our lives? How will we know it’s us without our past?”

— John Steinbeck

*cited in [Wed in Johnson v. City of Grants Pass](#)
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



People ride bike at sunset as they pass a homeless encampment in Venice Beach. (Luis Sinco/Los Angeles Times)



RV's used to house homeless in Boyle Heights. (Luis Sinco/Los Angeles Times)

*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



A homeless man and his belongs stand outside city hall in downtown Los Angeles (Luis Sinco/Los Angeles Times)

cited in cited in Johnson v. City of Grants Pass
NCE 20-35752 & 20-35881 archived June 29 & 30, 2023



CALIFORNIA

The coronavirus is changing life in California. These 20 photos show how

March 18, 2020

[More visual journalism from the Los Angeles Times](#)



Luis Sinco

Luis Sinco has been a staff photojournalist at the Los Angeles Times since 1997.



Car, Van, RV/Camper, Tent, and Makeshift Shelter (CVRTM)

Summary tables by Service Planning Area (SPA), LA County Supervisorial Districts (SDs), and City of LA Council Districts

This report presents the total number of vehicles, tents, and makeshift shelters and estimated persons in those dwellings counted during the 2022 Greater Los Angeles Homeless Count.

The number of vehicles, tents, and makeshift shelters were counted by volunteers according to prescribed methodology during the nights of February 22 – 24, 2022. Volunteers spread out in teams to census tracts

across the LA Continuum of Care and counted the number of vehicles, tents, and makeshift shelters that appeared to have persons residing in them. The Los Angeles Continuum of Care (CoC) is all of LA County, excluding Glendale, Long Beach and Pasadena CoCs.

To determine an estimated number of persons staying in these dwellings, researchers used demographic surveys from unsheltered persons (both individuals and families) from December 2021 to March 2022. As part of this survey, respondents were asked if they had slept in any of the various types of aforementioned dwellings and if so, how many people stayed with them in that dwelling at any given time. These responses were then used to get what are called multipliers, or an estimated average of how many persons reside in each type of dwelling by Service Planning Area (SPA) and household type (individuals or family households). These averages are multiplied by the number of counted dwellings and the proportion of each dwelling type occupied by each household type to estimate the total number of people residing in each type of dwelling by census tract. It is important to note that the estimated number of persons in vehicles, tents, and makeshift shelters accounts for only a share of the total unsheltered population that is counted. These estimates do not include unsheltered transitional age youth aged 18-24, persons counted on the street by volunteers, or persons staying in Safe Parking sites.

* Note, Los Angeles Continuum of Care includes LA County except the cities of Long Beach, Glendale, and Pasadena.



BY SPA DWELLINGS COUNT presents, by Service Planning Area, total cars, vans, RVs, tents, and makeshift shelters counted.

SPA	Cars	Vans	RVs	Tents	Makeshift shelters	Total Vehicles, Tents, and Makeshift shelters
1	528	79	1,266	181	582	2,636
2*	511	351	1,453	581	614	3,510
3*	204	92	207	233	393	1,129
4	539	399	1,023	2,053	1,822	5,836
5	248	344	303	384	228	1,507
6	790	671	1,933	435	635	4,464
7	231	196	363	187	284	1,261
8*	316	198	630	250	228	1,622
CoC Total	3,367	2,330	7,178	4,304	4,786	21,965

BY SPA ESTIMATED PERSONS IN DWELLINGS presents, by Service Planning Area, estimated people sleeping in the cars, vans, RVs, tents, and makeshift shelters counted.

SPA	Estimated Persons in Cars	Estimated Persons in Vans	Estimated Persons in RVs	Estimated Persons in Tents	Estimated Persons in Makeshift shelters	Total Estimated Persons in Vehicles, Tents, and Makeshift shelters
1	653	83	1,782	202	633	3,354
2*	754	523	2,115	731	1,035	5,158
3*	272	111	404	278	571	1,636
4	858	595	1,902	2,835	2,927	9,117
5	365	502	524	545	358	2,295
6	1,049	806	3,097	512	971	6,435
7	307	248	644	244	441	1,883
8*	376	334	1,094	354	291	2,449
CoC Total	4,636	3,202	11,564	5,699	7,226	32,327



The following tables use the LA County Supervisorial District boundaries from 2012-2021 and can be compared to past years data summaries by SD.

BY SD DWELLINGS COUNT presents, by Supervisorial District, total cars, vans, RVs, tents, and makeshift shelters counted.

SD	Cars	Vans	RVs	Tents	Makeshift shelters	Total Vehicles, Tents, and Makeshift shelters
1	579	429	1,048	1,320	1,372	4,748
2	1,227	913	2,579	1,542	1,554	7,815
3	544	535	1,466	941	914	4,400
4*	302	255	525	146	219	1,447
5*	715	198	1,560	355	727	3,555
CoC Total	3,367	2,330	7,178	4,304	4,786	21,965

BY SD ESTIMATED PERSONS IN DWELLINGS presents, by Supervisorial District, estimated people sleeping in the cars, vans, RVs, tents, and makeshift shelters counted.

SD	Estimated Persons in Cars	Estimated Persons in Vans	Estimated Persons in RVs	Estimated Persons in Tents	Estimated Persons in Makeshift shelters	Total Estimated Persons in Vehicles, Tents, and Makeshift shelters
1	851	597	1,936	1,770	2,140	7,295
2	1,675	1,181	4,248	2,061	2,403	11,568
3	807	791	2,216	1,250	1,506	6,570
4*	381	383	922	200	313	2,200
5*	922	251	2,241	418	863	4,695
CoC Total	4,636	3,202	11,564	5,699	7,226	32,327



The following tables use the City of LA Council District boundaries from 2012-2021 and can be compared to past years data summaries by CD.

BY CD DWELLINGS COUNT presents, by City of LA Council District, total cars, vans, RVs, tents, and makeshift shelters counted.

CD	Cars	Vans	RVs	Tents	Makeshift shelters	Total Vehicles, Tents, and Makeshift shelters
1	170	136	222	301	317	1,146
2	81	63	215	126	94	579
3	77	39	204	99	72	491
4	34	21	113	113	108	389
5	33	29	56	134	59	311
6	125	74	330	97	154	780
7	90	81	390	98	167	826
8	120	132	268	67	82	669
9	222	192	467	254	380	1,515
10	111	129	178	164	138	720
11	130	256	210	209	110	915
12	73	43	189	96	149	450
13	66	59	146	365	371	1,007
14	240	134	473	1,118	894	2,859
15	174	126	503	105	135	1,043
City Total	1,746	1,514	3,964	3,346	3,130	13,700

BY CD ESTIMATED PERSONS IN DWELLINGS presents, by City of LA Council District, estimated people sleeping in the cars, vans, RVs, tents, and makeshift shelters counted.

CD	Estimated Persons in Cars	Estimated Persons in Vans	Estimated Persons in RVs	Estimated Persons in Tents	Estimated Persons in Makeshift shelters	Total Estimated Persons in Vehicles, Tents, and Makeshift shelters
1	270	201	411	415	509	1,807
2	119	94	313	159	158	843
3	114	58	297	125	121	715
4	54	31	189	151	177	602
5	49	43	95	188	94	469
6	184	110	480	122	260	1,157
7	133	121	568	123	281	1,226
8	159	159	429	79	125	952
9	298	235	762	311	587	2,194
10	153	166	300	216	218	1,052
11	191	374	363	296	173	1,398
12	108	64	275	121	83	650
13	105	88	271	504	596	1,565
14	382	200	880	1,544	1,436	4,441
15	215	195	851	145	180	1,586
City Total	2,534	2,139	6,486	4,498	4,999	20,656



Attacked, abused and often forgotten: Women now make up 1 in 3 homeless people in L.A. County

By GALE HOLLAND ([HTTP://WWW.LATIMES.COM/LA-BIO-GALE-HOLLAND-STAFF.HTML](http://www.latimes.com/la-bio-gale-holland-staff.html))

OCT. 28, 2016



Krystle Marage, center, cleans up after eating dinner at a women's shelter run by Volunteers of America in Los Angeles.(Christina House / Los Angeles Times)

After Tonnietta Mauricico was stalked and raped in Minneapolis, her attacker went to jail.

Mauricico, now 40, was plunged into a three-year tailspin that drove her from homeless shelters in the Bay Area to downtown Los Angeles, where she was amazed to find rows of tents with women inside.

Skid row's encampments, enduring for decades, still have the power to astonish. But the women who live there are a new and eye-popping phenomenon.

One in three (<https://documents.lahsa.org/Planning/homelesscount/2016/factsheet/2016-HC-Results.pdf>) homeless people in Los Angeles County are women, according to government figures released this year. The total of more than 14,000 women is a 55% increase from 2013. The number of women camped out in RVs, tents and lean-tos doubled in the last three years.

Homeless women face staggering levels of violence, in shelters and homeless housing as well as on the streets. A survey released (<http://www.downtownwomenscenter.org/needsassessment>) this week by the Downtown Women's Action Coalition, a consortium of service providers and advocates, found that nearly half of skid row women had been attacked in the previous 12 months; more than a quarter of them were sexually assaulted.

"So many stories of the knife coming through the tent and ripping it open," said Cynthia Ruffin, a downtown resident and secretary of the women's coalition. "Women at the bus stop circled by men like sharks."

Several forces are driving the surge, advocates and researchers say: soaring rents, domestic violence and the graying of the homeless population.

But officials have not targeted women with the kind of concerted campaign that has helped homeless veterans and families, advocates say.

"There's not been any approach that identifies, let alone prioritizes, gender," said Becky Dennison, executive director of Venice Community Housing.

Most shelters are designed for men, said Anne Miskey, chief executive officer of the Downtown Women's Center, whose staff coordinated and wrote the women's coalition report.

"Clients told us they have to ask a male security guard for feminine hygiene products, and they have sexual trauma," Miskey said.

The hidden worlds of homeless women

Videos by Jason Hanasik



Video | 2:28 Passing for a man

*cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



Video | 2:00 Losing her children



Video | 1:06 Pressure for sex

*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*



Video | 1:23 Using drugs to fit in

Local elected officials say they are responding strongly to the homeless women crisis. A new women's dorm opened downtown earlier this year at the Weingart Center, women-only housing vouchers have been made available, and the Los Angeles Homeless Services Authority has put a call out for more shelter space for women.

The city has put up \$2 million, and the county \$1 million, to provide beds to women with histories of domestic violence. A multiagency effort to close gaps between the domestic violence and homelessness systems is underway, and the U.S. Department of Housing and Urban Development is helping L.A. study the housing shortfall for women.

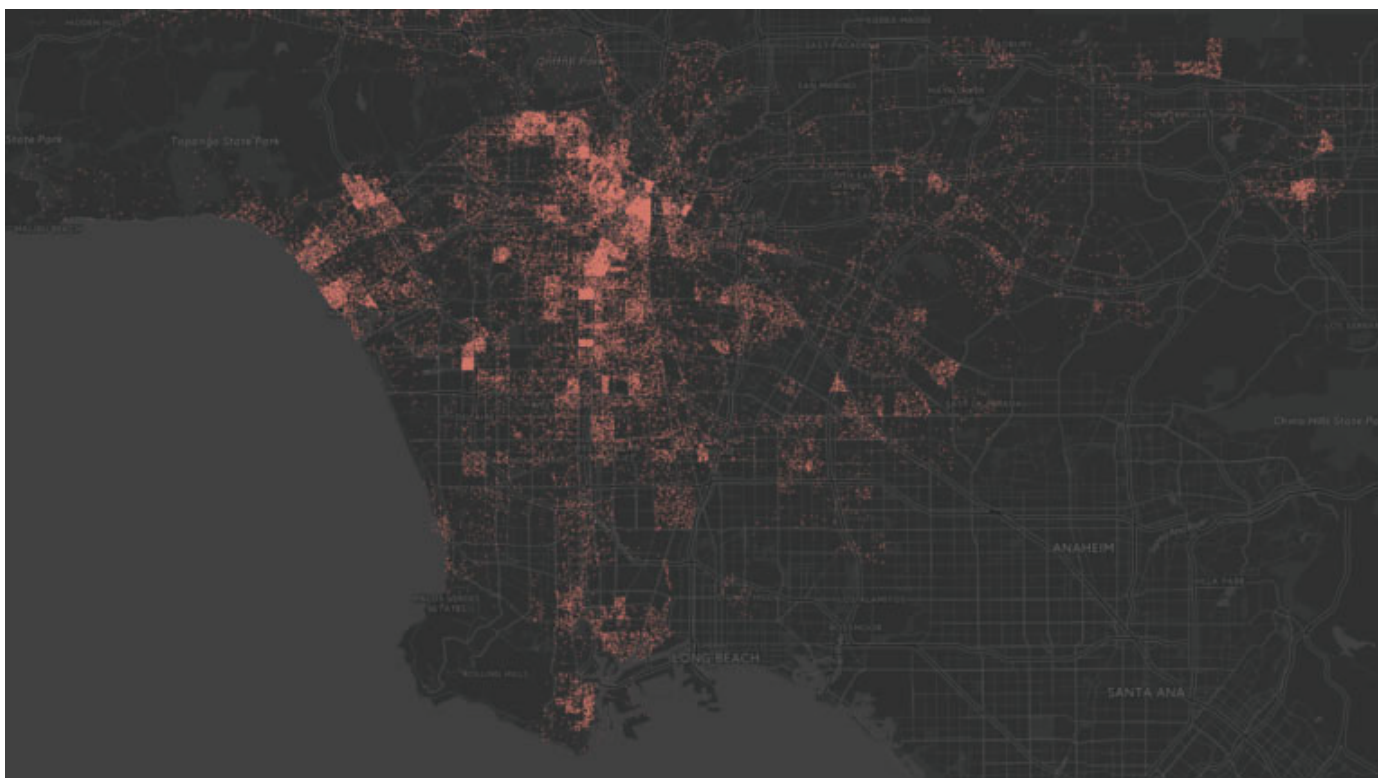
"The county is making herculean efforts and is very aware of increasing problems for women and families," Los Angeles County Supervisor Sheila Kuehl said this week.

Nonprofit providers say the resources are insufficient. "It's not enough, but it's what we have," said Christopher Callandrillo, director of programs at the homeless services authority.

Officials and advocates say the situation would improve with the passage of Proposition HHH — a \$1.2-billion city bond initiative on the Nov. 8 ballot to build homeless housing — along with expanded funding promised from the county and state.

Shelters can offer a short-term solution. In June, the homeless authority began funding overnight shelters round the clock, so women could stay off the streets. The city and county have also kept shelters going for victims of domestic violence.

*cited in Johnson v. City of Grants, Pass
Nos. 20-35752 & 20-25881 affirmed June 29 & 30, 2023*



Who are L.A. County's homeless? 71 (<http://www.latimes.com/projects/la-me-homeless-los-angeles-2016/>)

But shelters are not always a refuge. In a 2006 Rand Corp. study (<http://www.rand.org/pubs/reprints/RP1294.html>), nearly a quarter of skid row women reported being attacked while they were living in shelters.

Elderly homeless women are among the hardest to place in housing, providers said.

The women's coalition survey found that more than 60% of skid row women are over 50. As homeless women age, more are living without children or spouses, and can't get access to family shelters and welfare-to-work programs, the survey said.

While some older women have been homeless much of their lives, a Bay Area study last year found that close to half had lost their housing after they turned 50, said Margot Kushel, a UC San Francisco professor of medicine who worked on the project.

"These are people who had worked most of their lives, for low wages, often piecing together several different jobs," Kushel said. "Then something happened: the death of a spouse, a job loss, or their job was outsourced. They couldn't keep up the energy for very physical jobs."

The aging of L.A.'s homeless women was evident one evening this week, when women with canes, walkers and gray hair filed into the Center for Life shelter to claim one of 125 bunk beds.

"I get women literally dumped here. The other week I got a son wanting to dump his mother," said Kimberly Lewis, program coordinator for the women-only shelter in South Los Angeles. Lewis noted that some of these women suffer from dementia.

Other clients arrive pregnant, she said. There are places for them when the baby is born, but other women can wait more than a year for subsidized housing, she said.

One Center for Life resident, Barbara Siemens, 58, hasn't worked in her longtime occupation as an executive assistant since she was hit by a bus and seriously injured eight years ago. Siemens said her father sexually abused her as a child; losing her home and sleeping in the park "brought up all that vulnerability for me again."

A "staggering" two-thirds of skid row women in the women's coalition survey reported having been abused as children. That's considered another predictor of homelessness, experts said.

Lewis has brought in counseling, group meetings, gospel singers and art and fitness classes to address the aftereffects of physical and sexual trauma and lift the hopelessness that engulfs many shelter occupants. Still, Siemens' patience has been tried. She's been waiting at the shelter for a housing voucher since May 2015. "Quite a few programs I don't qualify for, for one reason or another," she said.

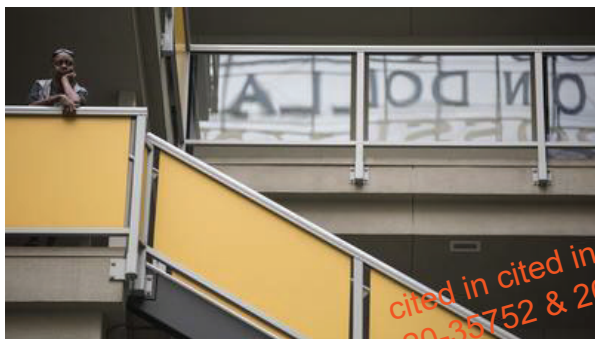
Mauricico, who found her way west from Minneapolis, sees a path to recovery. An avid Zumba fitness dancer, she's back in school and trying to get a room to share near her Glendale campus. If she fails, she may have to resort to what has become known as the "shelter shuffle." Many crisis centers limit homeless people's stays, and they end up migrating from shelter to shelter.

"I'm getting normal again," Mauricico said. "Being a homeless woman is no joke."

Follow Gale Holland (<https://twitter.com/geholland>) on Twitter. | Contact the reporter. (<mailto:gale.holland@latimes.com?subject=Homeless Women>)

Credits: Development by Armand Emamdjomeh. Video editing by Eben McCue.

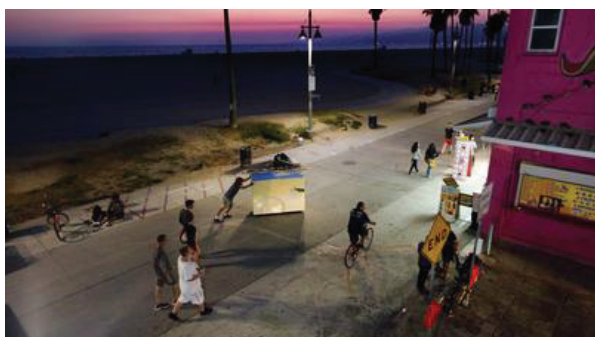
More from the Los Angeles Times



A fix for L.A.'s homeless crisis isn't cheap. Will voters go for \$1.2 billion in borrowing?

(<http://www.latimes.com/local/lanow/la-me-ln-homeless-tax-measure-20160913-snap-story.html>)

(<http://www.latimes.com/local/lanow/la-me-ln-homeless-tax-measure-20160913-snap-story.html>)



Fears mount over a homeless plan that residents say will 'end Venice as we know it'

(<http://www.latimes.com/local/lanow/la-me-ln-venice-boardwalk-homeless-20160906-snap-story.html>)

(<http://www.latimes.com/local/lanow/la-me-ln-venice-boardwalk-homeless-20160906-snap-story.html>)

cited in cited in City of Grants Pass 20-35752 & 20-35881 archived June 29 & 30, 2023



**Housing Orange County's homeless vets,
three shipping containers apiece**

(<http://www.latimes.com/local/lanow/la-me-ln-shipping-container-housing-20160914-snap-story.html>)

(<http://www.latimes.com/local/lanow/la-me-ln-shipping-container-housing-20160914-snap-story.html>)



**"On the Streets": A 12-part video series
about homelessness in Southern California**

(<http://www.latimes.com/local/california/la-me-biagiotti-onthestreets-20151118-htlmlstory.html>)

(<http://www.latimes.com/local/california/la-me-biagiotti-onthestreets-20151118-htlmlstory.html>)

*cited in cited in Johnson v. City of Grants Pass
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CALIFORNIA

L.A. County homeless deaths surged 56% in pandemic's first year. Overdoses are largely to blame



From April 1, 2020, to March 31, 2021, 1,988 deaths of homeless people were reported in L.A. County, including 715 overdose deaths. Above, a homeless encampment on skid row in downtown Los Angeles. (Luis Sinco / Los Angeles Times)

BY CHRISTIAN MARTINEZ, RONG-GONG LIN II

APRIL 22, 2022 7:06 PM PT

Deaths of homeless people in Los Angeles County soared by 56% in the year after the start of the pandemic, driven primarily by an increase in overdoses, according to a study published this month.

Between April 1, 2020, and March 31, 2021, 1,988 deaths of people experiencing homelessness were reported, up from 1,271 in the 12 months prior, pre-pandemic, according to the Department of Public Health study.

The numbers in L.A. County mirror figures recorded in San Francisco over a similar time period; between March 2020 and March 2021, 331 homeless people died in the city, more than twice the number reported in any previous year, according to a study coauthored by scientists at UC San Francisco, the San Francisco Department of Public Health and New York University.

The L.A. County report, unlike past years, does not provide a homeless death rate due to restrictions put on the annual homeless count.

“The findings in this report reflect a true state of emergency on the streets across our County,” First District Supervisor Hilda L. Solis said in a release. “In a civil society, it is unacceptable for any of us to not be profoundly disturbed by the shocking needs documented in this year’s homeless mortality report.”

In the year surveyed, 179 homeless people [died of COVID-19](#), accounting for about a quarter of the increase in overall deaths from the year prior.

Still, a surge in [fatal overdoses](#) was the primary driver of the increase. In the pre-pandemic year, the Department of Public Health reported just over 400 overdose deaths. In the year after the outbreak, that figure nearly doubled, to 715.

For some homeless advocates, the results are disturbing but not unexpected.

“Increases in overdoses are not surprising; we’ve seen it anecdotally,” said Homeless Healthcare Los Angeles medical director Dr. Susan Partovi. “We’re trying to [give everyone Narcan](#) [an overdose-reversing nasal spray] as much as possible.”



CALIFORNIA

Seven charged with distributing fentanyl that killed 10 in Orange County

April 22, 2022

The pandemic likely exacerbated an already growing overdose issue, driven primarily by the [prevalence of fentanyl](#), by making it more difficult for people experiencing homelessness to access care.

It's harder to make an appointment for Suboxone, a medication used to treat opioid addiction, and to access any type of resources, Partovi said.

Partovi called for the implementation of [safe injection sites](#), like those in New York City, to combat the opioid epidemic. Such sites allow the use of drugs while providing clean needles and other medical treatment as well as monitoring users for overdoses.

"We need to stop vilifying people who are addicted to drugs," Partovi said.

*cited in cited in Jones v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

Young, Latino and Black people experiencing homelessness bore the brunt of the increase in deaths, according to the report.

Overall deaths increased by more than 105% among those ages 18 to 29, by 69% among Latinos and by 58% among Black people.

Nearly 200 more Black homeless people died in the year after the start of the pandemic than in the year prior, while there were 334 more deaths among Latinos.



CALIFORNIA

'Alarming' disparities leave parts of L.A. County hit hard by COVID-19

March 2, 2022

Young, Latino and Black homeless people were also most affected by overdose deaths, with increases of more than 112% for both 18- to 29-year-olds and 30- to 49-year-olds, 84% for Latinos and 74% for Black people.

In addition, homicide deaths rose by nearly 50%, and deaths from traffic injuries rose by more than 30%.

The county has attempted to address barriers to care during the pandemic and worked to provide services and support to homeless people, including crisis response teams to connect unhoused people to coronavirus testing and vaccinations, said public health director Barbara Ferrer.

An estimated 65% of people experiencing homelessness in L.A. County have received at least one dose of vaccine, a decent but not ideal percentage, Ferrer said.

The county has made efforts to offer unhoused residents places where they can quarantine or be isolated, Ferrer said, and Project Roomkey hotel rooms can prevent medically vulnerable people from living in a situation that would create more danger for them because of COVID-19.

Not cited in Johnson v. City of Grants Pass No. 20-35752 & 20-35881 archived June 29 & 30, 2023



SCIENCE & MEDICINE

How many California lives were saved by COVID-19 vaccines? Scientists have an answer

April 22, 2022

“So I do want to give the county a lot of credit and all of the workers — and we’ve got a lot of private organizations as well helping — that have done everything we can,” she said. “But I still think the root of the problem of homelessness has, during the pandemic, led to an increase in mortality among people experiencing homelessness.”

The county plans to expand harm-reduction services with a focus on Latino and Black homeless people, increase the distribution of naloxone and expand investments in other areas of care.

But the report also notes that deaths of homeless people have been trending upward for years, without the aid of a pandemic.

“This recent increase, while notably large, is consistent with a longer-term trend ... since 2014,” the report said.



Christian Martinez

Christian Martinez is a Metro reporter covering breaking news at the Los Angeles Times. He previously wrote for the USA Today network of newspapers including the Ventura County Star, where he covered the Thomas and Woolsey wildfires and the Borderline mass shooting, the Spectrum & Daily News in Utah and the Lansing State Journal in Michigan. He was born and raised in Southern California and attended Saint Mary's College of California.



Rong-Gong Lin II

Rong-Gong Lin II is a Metro reporter based in San Francisco who specializes in covering statewide earthquake safety issues and the COVID-19 pandemic. The Bay Area native is a graduate of UC Berkeley and started at the Los Angeles Times in 2004.

L.A. typhus outbreak adds fuel to the debates over homelessness and housing



A homeless man pushes his shopping cart outside his tent located on 7th Street near Stanford Avenue in downtown Los Angeles. An outbreak of typhus has been linked to overcrowding and homelessness in the area. (Mel Melcon / Los Angeles Times)

A man hospitalized for dehydration a few months ago at Los Angeles County-USC Medical Center started suffering a severe fever, and doctors weren't sure why.

The patient was homeless, a clue to doctors that he might have typhus. Every year people contract flea-borne typhus in Southern California, mostly in Los Angeles County. Doctors did a blood test.

"We sent it off, and lo and behold — typhus," County-USC Chief Medical Officer Dr. Brad Spellberg said.

Since July, there have been nine cases of typhus in downtown Los Angeles, six of which infected homeless people, prompting health officials last week to [declare](#) an outbreak there. There have also been

20 cases in Pasadena this year, far more than the five typically seen there annually.

Typhus outbreaks are often associated with poor hygiene and overcrowding. Los Angeles officials say they're corralling stray animals that could carry fleas, cleaning streets and encouraging people to treat their pets for fleas and put away trash that may attract infected animals.

The outbreak has also fueled debates about homelessness and housing. L.A. Mayor Eric Garcetti this week pledged \$300,000 to increase street cleaning downtown. But many fear that won't be enough to curb the growing number of cases and clear out the trash that has accumulated as the city's homeless population has spread.

"The sidewalks weren't ever intended for habitation, our storm drains were never intended for human waste, and rats [are] crawling all over people," said Estela Lopez, executive director of the L.A. Downtown Industrial Business Improvement District. "This is unimaginable, that in such an advanced society we would be facing this problem."

More people have been falling sick with typhus in Los Angeles County over the last decade, though experts are unsure why. The rise in homelessness is prominent among the theories, which also include warmer temperatures and people spending more time outside.

There were five typhus cases in 2008, compared with 79 cases so far this year, according to the California Department of Public Health.

Typhus spreads when fleas become infected with bacteria known as *Rickettsia typhi* or *Rickettsia felis*. The illness reaches humans when fleas bite them or when infected flea feces are rubbed into cuts or scrapes in the skin, according to the U.S. Centers for Disease Control and Prevention.

"It's very hard to say — these microbes have a mind of their own. They come when they want, and they seem to go when they want," Spellberg said. "I don't think anybody really knows."

Typhus is distinct from typhoid fever, a foodborne illness that is rarely contracted within the United States and can be spread from person to person. Typhus, by contrast, cannot be passed between people.

Typhus causes fever, body aches, stomach pain and a rash. Most people recover on their own, but more severe cases can lead to damage to the heart, brain and lungs without treatment. The infection can lead to death in rare cases.

Alex Comisar, a spokesman for Garcetti, said the city and the county have formed a task force to address the outbreak and are stepping up cleaning efforts using the extra funding.

"We're deploying every available resource to help control and stop this outbreak," Comisar said.

Next week, city workers will begin picking up trash and cleaning within what has been designated the "typhus zone," a downtown area bounded by 3rd, 7th, Spring and Alameda streets.

Already, workers clean some streets in the zone encompassing parts of skid row as part of a program called Operation Healthy Streets. They are cleared of debris, washed and then misted with a liquid containing bleach every two weeks.

But the new effort will expand the cleaning area from 100 acres to 279, according to a map provided by Comisar. The new funding will last for nine months.

Enrique Zaldivar, director of the city's sanitation department, said the new effort will allow collaboration with private businesses that may help stem the outbreak in a way that would not have been possible before.

"There may be a privately owned building that is not being utilized, and it's a perfect place for rodents to nest, and that's totally outside the reach of our cleaning operations," he said.

But many expressed anger that the cleanup area would not extend south of 7th Street. Rena Leddy, executive director of the L.A. Fashion District Business Improvement District, said heaps of trash are accumulating south of the typhus zone, from 8th Street down to the edge of her district near 18th Street.

On Thursday, several tents lined an alleyway just south of 7th Street, surrounded by crates and trash. Pigeons pecked at food fallen on the sidewalk. At the corner of 8th Street and Central Avenue, also outside of the typhus zone, a large heap of trash had accumulated against a brick wall.

“There are other parts of downtown that also have mass amounts of accumulated garbage. That’s what we’ve all been told is collecting the rats that are then spreading the fleas,” Leddy said.

But officials say that although rats, cats and opossums can all carry fleas, different outbreaks have different causes.

The uptick in cases in Pasadena this year is probably linked to opossums and cats — not rats, said Levy Sun, public information officer for the San Gabriel Valley Mosquito and Vector Control District.

“Rats are kind of a red herring here,” Sun said.

Sun said that testing of rats in the region shows they don’t carry many fleas.

During the last typhus outbreak in Los Angeles County in 2015, a single opossum captured in a mobile home park in Pomona had 1,087 fleas on it. Three-fifths of the fleas tested from the cats and opossums that were trapped tested positive for typhus.

Health officials were able to control that outbreak by starting flea control, trapping feral animals in the area, offering free typhus tests and monitoring flea populations. People who lived in the mobile home community had to clear feeding sites and limit the number of pets to one, a rule dictated by the property owner that hadn’t been followed.

One person had 32 pets, according to an academic paper published about the response to the outbreak.

Sun encouraged people to clean up debris and buckets in their backyards and make sure their pets are treated for fleas. The solution, he said, is not to “shake typhus and wildlife from our environment, but shake the habits we have.”

Of the 945 typhus cases in California since 2001, 726 have been in Los Angeles County – and those numbers only seem to be going up.

“We’ve been thinking about typhus for a long time,” Spellberg said.



A pile of trash sits uncollected on Santee St. in between 18th St. and Washington Blvd in the fashion district of Los Angeles. An outbreak of typhus has been linked to overcrowding and homelessness in downtown Los Angeles. (Mel Melcon / Los Angeles Times)



People walk past a homeless encampment on 6th St., just west of Central Ave. in downtown Los Angeles. (Mel Melcon / Los Angeles Times)

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HEALTH

Medieval Diseases Are Infecting California's Homeless

Typhus, tuberculosis, and other illnesses are spreading quickly through camps and shelters.

By Anna Gorman and Kaiser Health News



Jennifer Millar receives a checkup from a Saban Community Clinic physician assistant. (Heidi de Marco / Kaiser Health News)

MARCH 8, 2019

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This article was updated at 4:23 p.m. ET on March 11, 2019.

Jennifer Millar keeps trash bags and hand sanitizer near her tent, and she regularly pours water mixed with hydrogen peroxide on the sidewalk nearby. Keeping herself and the patch of concrete she calls home clean is a top priority.

But this homeless encampment off a Hollywood freeway ramp is often littered with needles and trash and soaked in urine. Rats occasionally scamper through, and Millar fears the consequences.

“I worry about all those diseases,” said Millar, 43, who has been homeless most of her life.

Infectious diseases—some that ravaged populations in the Middle Ages—are resurging in California and around the country, and are hitting homeless populations

especially hard.

Los Angeles recently experienced an outbreak of typhus—a disease spread by infected fleas on rats and other animals—in downtown streets. Officials briefly closed part of City Hall after reporting that rodents had invaded the building.

People in Washington State have been infected with *Shigella* bacteria, which is spread through feces and causes the diarrheal disease shigellosis, as well as *Bartonella quintana*, or trench fever, which spreads through body lice.*

Hepatitis A, also spread primarily through feces, infected more than 1,000 people in Southern California in the past two years. The disease also has erupted in New Mexico, Ohio, and Kentucky, primarily among people who are homeless or use drugs.

Public-health officials and politicians are using terms like *disaster* and *public-health crisis* to describe the outbreaks, and they are warning that these diseases can easily jump beyond the homeless population.

Read: The next plague is coming. Is America ready?

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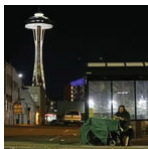
“Our homeless crisis is increasingly becoming a public-health crisis,” California Governor Gavin Newsom said in his State of the State speech in February, citing outbreaks of hepatitis A in San Diego County, syphilis in Sonoma County, and typhus in Los Angeles County.

“Typhus,” he said. “A medieval disease. In California. In 2019.”

The diseases have flared as the nation’s homeless population has grown in the past two years: About 553,000 people were homeless at the end of 2018, and nearly one-quarter of homeless people live in California.

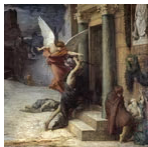
The diseases spread quickly and widely among people living outside or in shelters, helped along by sidewalks contaminated with human feces, crowded living conditions, weakened immune systems, and limited access to health care.

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Solving the Mystery of an Ancient Roman Plague

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America’s Tent Cities for the Homeless

ALAN TAYLOR



“The hygiene situation is just horrendous” for people living on the streets, says Glenn Lopez, a physician with St. John’s Well Child & Family Center, who treats homeless patients in Los Angeles County. “It becomes just like a Third World environment, where their human feces contaminate the areas where they are eating and sleeping.”

Those infectious diseases are not limited to homeless populations, Lopez warns: “Even someone who believes they are protected from these infections [is] not.”

At least one Los Angeles city staffer said she contracted typhus in City Hall last fall. And San Diego County officials warned in 2017 that diners at a well-known restaurant were at risk of hepatitis A.

There were 167 cases of typhus from January 1, 2018, through February 1 of this year, up from 125 in 2013 and 13 in 2008, according to the California Public Health Department.

Typhus is a bacterial infection that can cause a high fever, stomach pain, and chills but can be treated with antibiotics. Outbreaks are more common in overcrowded and trash-filled areas that attract rats.

The recent typhus outbreak began last fall, when health officials reported clusters of the flea-borne disease in downtown Los Angeles and Compton. They also have occurred in Pasadena, where the problems are likely due to people feeding stray cats carrying fleas.

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Last month, the county announced another outbreak in downtown Los Angeles that infected nine people, six of whom were homeless. After city workers said they saw rodent droppings in City Hall, Los Angeles City Council President Herb Wesson briefly shut down his office to rip up the rugs, and he also called for an investigation and more cleaning.

Hepatitis A is caused by a virus usually transmitted when people come in contact with the feces of infected people. Most people recover on their own, but the disease can be very serious for those with underlying liver conditions. There were 948 cases of hepatitis A in 2017 and 178 in 2018 and 2019, the state public-health department said. Twenty-one people have died as a result of the 2017–18 outbreak.

The infections are not a surprise, given the lack of attention to housing and health care for the homeless and the dearth of bathrooms and places to wash hands, says Jeffrey Duchin, the health officer for Seattle and King County, Washington, which has seen shigellosis, trench fever, and skin infections among homeless populations.*

“It’s a public-health disaster,” Duchin says.

New York City, where the majority of the homeless population lives in shelters rather than on the streets, has not experienced the same outbreaks of hepatitis A and typhus, says Kelly Doran, an emergency-medicine physician and assistant professor at New York University. But Doran says different infections occur in shelters, including tuberculosis, a disease that spreads through the air and typically infects the lungs.

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Read: How health and homelessness are connected—medically

The diseases sometimes get the “medieval” moniker because people in that era lived in squalid conditions without clean water or sewage treatment, says Jeffrey Klausner, a professor of medicine and public health at UCLA.

People living on the streets or in homeless shelters are vulnerable to such outbreaks because their weakened immune systems are worsened by stress, malnutrition, and sleep deprivation. Many also have mental illness and substance-abuse disorders, which can make it harder for them to stay healthy or get health care.

On one recent February afternoon, the Saban Community Clinic physician assistant Negeen Farmand walked through homeless encampments in Hollywood carrying a

backpack with medical supplies. She stopped to talk to a man sweeping the sidewalks. He said he sees “everything and anything” in the gutters and hopes he doesn’t get sick.

She introduced herself to a few others and asked if they had any health issues that needed checking. When she saw Millar, Farmand checked her blood pressure, asked about her asthma, and urged her to come see a doctor for treatment of her hepatitis C, a viral infection spread through contaminated blood that can lead to serious liver damage.

“To get these people to come into a clinic is a big thing,” she said. “A lot of them are distrustful of the health-care system.”

On another day, 53-year-old Karen Mitchell waited to get treated for a persistent cough by St. John’s Well Child & Family Center’s mobile health clinic. She also needed a tuberculosis test, as required by the shelter where she was living in Bellflower, California.

Mitchell, who said she developed alcoholism after a career in pharmaceutical sales, said she has contracted pneumonia from germs from other shelter residents. “Everyone is always sick, no matter what precautions they take.”

During the hepatitis-A outbreak, public-health officials administered widespread vaccinations, cleaned the streets with bleach and water, and installed hand-washing stations and bathrooms near high concentrations of homeless people.

But health officials and homeless advocates said more needs to be done, including helping people access medical and behavioral health care and affordable housing.

“It really is unconscionable,” says Bobby Watts, the CEO of the National Health Care for the Homeless Council, a policy and advocacy organization. “These are all preventable diseases.”

This post appears courtesy of [Kaiser Health News](#).

** This story previously misstated the name of the disease caused by shigella bacteria.*

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Meet the Press Blog

From the journalists at NBC News and the NBC News Political Unit

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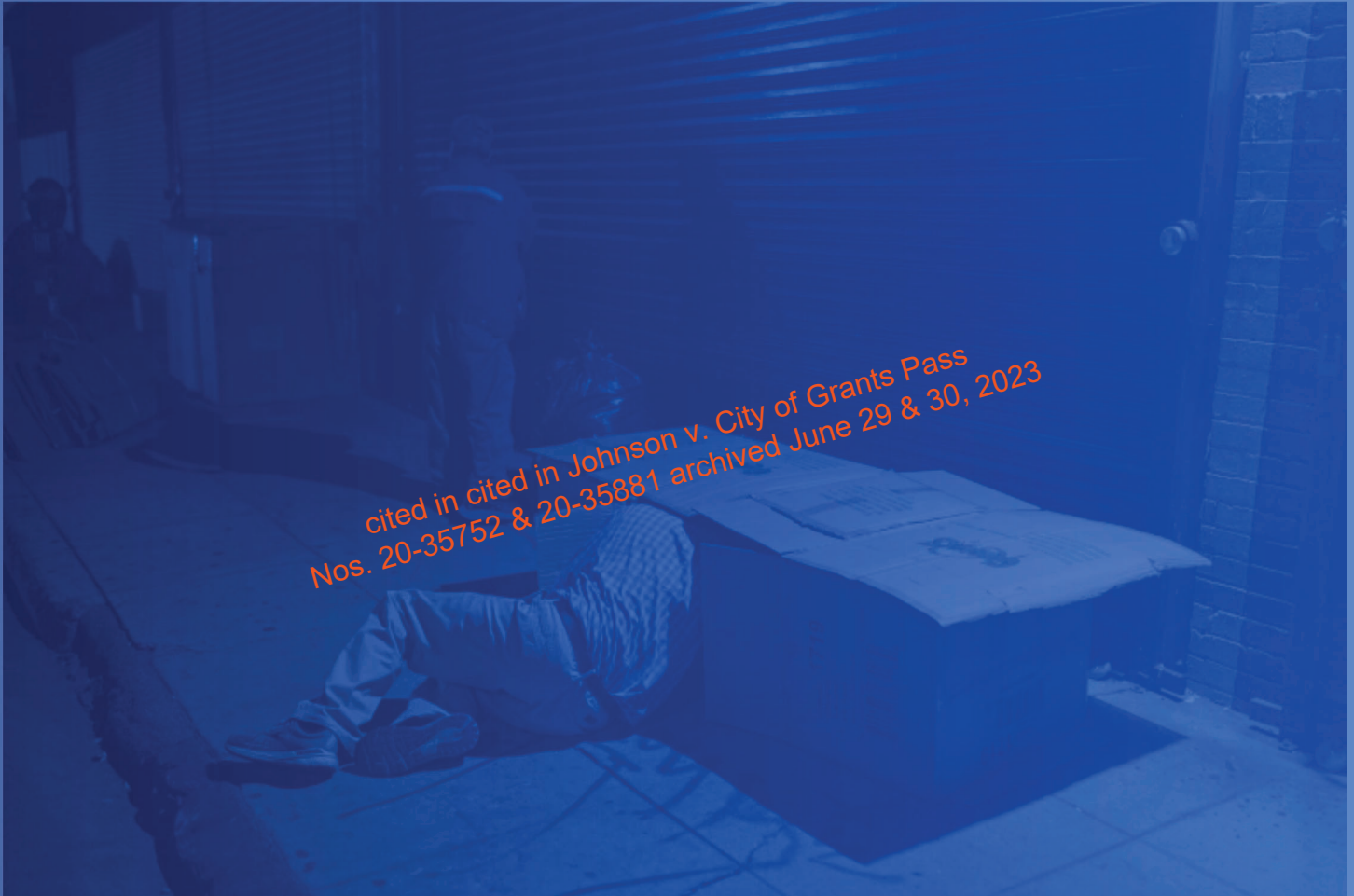
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David Hernandez, a 62-year-old homeless man, crawls into his bed made with cardboard boxes in Los Angeles on Dec. 14, 2022. [Jae C. Hong / AP file](#)

California poll: Homelessness is most urgent issue in the state

84% of all California voters believe homelessness is a very serious problem, new poll finds.



March 1, 2023, 12:50 PM PST

By Mark Murray

In the 2022 midterms, the national polls typically found that the economy, inflation and threats to democracy (especially in the NBC News survey) ranked as the public’s top issues and concerns.

But a new [Quinnipiac University poll](#) of California finds a different issue at the top of voters’ minds in the Golden State: homelessness.

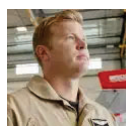
According to the survey, 22% of all California voters named homelessness as the state’s most urgent issue – followed by affordable housing at 17%, inflation at 10%, taxes at 9% and crime and climate change tied at 8% each.

By party, Democrats said that homelessness (26%) and affordable housing (24%) were their top issues; independents said it was homelessness (23%) and affordable housing (15%); and Republicans said it was immigration (17%), homelessness (14%) and taxes (14%).

A separate question in the Quinnipiac poll found 84% of all California voters saying that homelessness is a very serious problem in the state, and 69% said the state was doing too little to help homeless people.

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Top Republicans rally around Tim Sheehy in Montana Senate race




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Eyes on 2024: DeSantis’ work as governor spills onto the campaign

The Quinnipiac poll also found California Gov. Gavin Newsom’s job rating at 44% approve, 43% disapprove among all registered voters.

For President Biden, it was 48% approve, 47% disapprove.

And for retiring Sen. Dianne Feinstein, D-Calif., it was 37% approve, 44% disapprove, while for Sen. Alex Padilla, D-Calif., it was 38% approve, 29% disapprove.

The Quinnipiac University poll was conducted Feb. 23-27 of 1,091 registered voters in California, and it has a margin of error of plus-minus 3.0 percentage points. 



Mark Murray

Mark Murray is a senior political editor at NBC News.

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Chicago ad messages show divide on crime for final candidates

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CALIFORNIA

95% of voters say homelessness is L.A.'s biggest problem, Times poll finds. 'You can't escape it'



An exclusive poll done for the Los Angeles Times and Los Angeles Business Council Institute found that 95% of respondents believe homelessness is either a serious or very serious problem.

BY BENJAMIN ORESKES, DOUG SMITH, DAVID LAUTER

NOV. 14, 2019 6:41 AM PT

As people living in tents, RVs and makeshift shelters become a fact of life in neighborhoods far and wide, homelessness is now an all-consuming issue in Los Angeles County, with 95% of voters calling it a serious or very serious problem, according to a new poll conducted for the Los Angeles Times and the Los Angeles Business Council Institute.

The near-unanimous opinion that homelessness ranks as a top concern marks a sharp change from earlier surveys of Los Angeles voters over the past dozen years, said Fred Yang of Hart Research, the Washington, D.C., polling firm that conducted the survey.

Only traffic congestion and housing affordability — at 88% and 85%, respectively — came close to rivaling the near universal concern over homelessness.

“It’s all over L.A.,” said Justine Marine, a student who participated in a focus group tied to the countywide poll. “You can be in a good neighborhood, and it could be right around the corner. You can’t escape it.”

Respondents were, at various times, angry, frustrated and overwhelmed by the growing homelessness crisis.

The poll of 901 registered voters found widespread empathy for homeless people. It also revealed conflicting opinions on what should be done about those who sleep on the streets and about what government’s role should be at taxpayers’ expense.

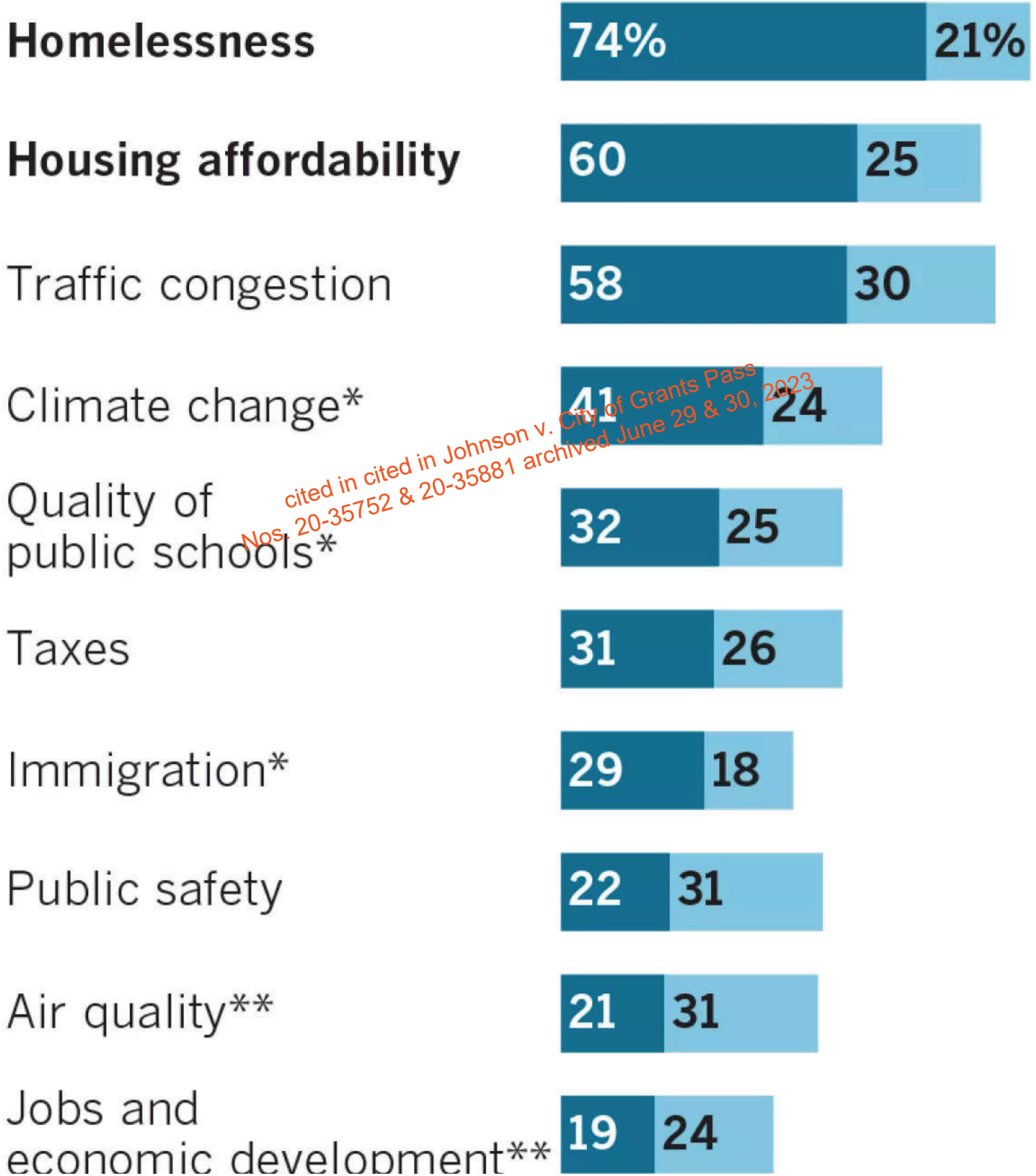
In answering one question, 49% said homelessness is “primarily” the result of a lack of affordable housing and wages that aren’t keeping up with the cost of living. By contrast, 26% said homelessness was “primarily” a result of “individual actions and decisions.”

In response to another question, 90% said they agreed that [mental illness and substance abuse](#) are among the underlying causes of homelessness and that government should expand treatment facilities to help. Just 6% disagreed with that view.

Three-quarters of L.A. County voters support adopting a law, similar to one in New York and some other states, that would require the government to “provide temporary shelter to any homeless person who wishes to come indoors.”

Poll: Homelessness, housing among most serious problems in L.A. County

Very serious Serious



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Availability of parks and open space**

15 13

* Asked of 50% of respondents.

** Asked of other 50% of respondents.

This poll was conducted by Hart Research, based in Washington, D.C., between Oct. 15 and 22, 2019, via telephone among 901 registered voters in L.A. County. Overall, 32% of respondents were contacted on a landline and 68% were contacted on a cellphone. The survey has an overall margin of error of plus or minus 3.2 percentage points at the 95% confidence level. Sample tolerances for subgroups are larger. The questionnaire was developed in partnership with the Los Angeles Times, the UCLA Luskin School of Public Affairs, and the Los Angeles Business Council Institute.

Los Angeles Times/Los Angeles Business Council Institute poll

(Chris Keller/Los Angeles Times)

Roughly a third say they have experienced homelessness or housing insecurity, or know someone who has. That rises to 54% among black respondents, who are disproportionately represented in the county's homeless population.

Andrea Kidd, another participant in the focus group, described meeting a man in her Bible study class who is homeless. Like several others in the 12-member group, she said she felt a great deal of empathy for people she sees who appear to be homeless.

Homelessness increased by 12% in Los Angeles County this year to just shy of 59,000 people, while in the city of Los Angeles, the number soared to more than 36,000 for a 16% increase. As in past years, most — about 75% — were living outside.

“We’re all one circumstance away from being there,” Kidd said.

Ten other participants agreed with this sentiment. Their responses added a deeper sense of the attitudes revealed by the survey data, showing that, for Angelenos,

homelessness isn't something that's an abstract concept. Residents are experiencing it personally.

“People are living with this on a daily basis,” said veteran pollster Peter Hart, who conducted the focus group. “It’s very direct and very personal. It’s not like crime, where people say it happened in this neighborhood or in this other part of town.”

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(Chris Keller / Los Angeles Times)

One member of the focus group said her father was homeless. Another said he had a friend who was living in an RV. Another knew a professor who lost his job, had a bad divorce and now lives in a car.

The poll showed broad agreement that societal problems — especially a lack of affordable housing and mental health resources — play a major role in causing homelessness. But the survey also showed that the public’s empathy has limits.

Some 60% of Los Angeles County voters disagreed with the idea that people should have a right to sleep or live on public property as long as the region lacks enough housing or shelters to house everyone. Forty-one percent said they disagreed “strongly.”

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(Chris Keller / Los Angeles Times)

However, the courts have upheld the rights of homeless people in recent years, saying that cities cannot ban sleeping in public unless they provide enough beds for those who want them. The city of L.A. has agreed to do the same in legal settlements following several lawsuits.

In response to another question, 30% of respondents said that society has gone “too far” in upholding the rights of homeless people, while 19% said society has struck about the

“right balance” and 24% said the balance had gone too far in upholding the rights of the housed.

White respondents older than 50 and those who do not have college degrees were significantly more likely than nonwhite voters and those with a college education to say society has gone too far in protecting homeless people. Those who expressed that view were also more likely to feel that homelessness was “primarily” a result of individuals’ own choices, not of broader problems in society.

The poll also found a willingness among residents to continue taxing themselves to pay for efforts to solve the problem with new shelters, services and housing.

But respondents also were frustrated with the lack of results from the hundreds of millions of dollars that the city and county have already put into addressing homelessness. Sixty-six percent of respondents said the money that the city and county had received from the Proposition HHH bond measure and the Measure H sales tax increase, respectively, had been spent ineffectively.”

“People don’t believe it goes fast enough, and I love hearing that because I agree with it,” Mayor Eric Garcetti said. “With H and HHH, I think what people are really saying is not whether they’ve been spent well — I know, that’s what the question is — but why isn’t homelessness gone?”

Like Garcetti, Los Angeles County Supervisor Mark Ridley-Thomas said the county sales tax measure had made a difference.

“The frustration that people are experiencing now, the angst that is being articulated with regularity here, there and everywhere, would be more profound in L.A. County had it not been for the resources and Measure H,” said Ridley-Thomas, who is co-chairman of Gov. Gavin Newsom’s state task force on homelessness. “And what I like about what I

did see ... is that people feel like government needs to be pushed to do more. I fully agree with that.”

CALIFORNIA

How was the poll conducted

Nov. 14, 2019

The poll revealed a lack of consensus about which level of government — local, state or federal — has the main responsibility for solving the problem of homelessness. Roughly 3 in 10 respondents put the responsibility on either state or local officials while 2 in 10 cited Washington. Others pointed to regional officials or said they were not sure.

A hot housing market and a lack of affordable housing have put intense pressure on Angelenos trying to make ends meet. At the same time, the city and county have struggled to keep up with the tide of people flowing to the streets, while also struggling to speed the construction of shelters and provide other services.

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More stories on the Times poll

**Majority says police should do more to clean
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**Majority of L.A. County voters say taxpayer
money on homelessness isn't spent effectively**

Of respondents to the poll, 6% said they had been homeless or housing insecure, and 27% said they knew someone who had been. Twenty-eight percent said homelessness affected them directly. The same percentage said it affected them indirectly, while 43% said it was a problem in the region, but didn't affect them personally.

As the homelessness crisis has worsened, encampments have become more visible, popping up far beyond skid row.

“It’s down the street from my house, the tent cities and the mess that they leave and the drug use,” said Tim Russell, a focus group member who works as a painter.

Three in 10 respondents said they feel sorry for those they see on the street, while 25% said they either think most homeless people have problems with drugs or worry about the mental health of those they encounter.

Seventy-six percent of respondents said homelessness should be treated like a natural disaster, but only 25% said they would support going beyond the current level of tax money devoted to addressing it.

Favrile Cohen, a hairdresser and lifelong L.A. resident, said that she sees the effects of mental illness and drugs playing out on the streets.

“I don’t mind if people are mentally ill, and I don’t mind if they need to get help. But why do I have to watch it happen,” she said during the focus group. “Put them somewhere and let the ones that need rehabilitation get rehabilitation.”

CALIFORNIA

Who sponsored the poll?

Nov. 14, 2019

Although homelessness has been a problem in Los Angeles for decades, the level of public concern has clearly increased. In early 2005, for example, as the mayoral primary that year heated up, The Times twice polled likely voters in the city. In both instances, voters were asked what should be at the top of the next mayor’s priority list, and homelessness barely made the list — far behind education, crime, traffic congestion and other issues.

In one poll, just 2% of likely voters said homelessness should be a top priority. In another, 7% said as much.

By 2016, homelessness had jumped to the top of residents' concerns in several polls taken to test the waters for Proposition HHH, which was adopted that year in the city, and for Measure H, which was adopted the following year countywide. A United Way poll found that 94% of likely voters in Los Angeles County considered homelessness a serious concern.

When taking stock of the public response, 36% of those surveyed in the new Times poll were generally optimistic that Los Angeles could address the problem of street homelessness, while 41% doubted it.

"I'm as outraged, I'm as heartbroken when I drive the streets and when I see it as well," Garcetti said. "I wear that hat first before I put on a mayor's hat. I'm a father. I'm a resident. ... I see stuff. I'm not moving around in some bubble."



Benjamin Oreskes

Benjamin Oreskes covers state and national politics for the Los Angeles Times. Previously, he covered City Hall, homelessness and wrote the Essential California newsletter. Before coming to The Times in February 2017, Oreskes covered foreign policy at Politico in Washington, D.C. He graduated from Northwestern University and looks forward to seeing the Wildcats play in the Rose Bowl sometime soon.



Doug Smith

Los Angeles Times senior writer Doug Smith scouts Los Angeles for the ragged edges where public policy meets real people, combining data analysis and gumshoe reporting to tell L.A. stories through his 50 years of experience covering the city.



David Lauter

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*cited in cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

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HOUSING & HOMELESSNESS

L.A. voters angry, frustrated over homeless crisis, demand faster action, poll finds



A homeless man named John sorts through his belongings before leaving MacArthur Park on Oct. 15 as city officials closed the park for renovations. (Luis Sinco / Los Angeles Times)

BY BENJAMIN ORESKES, DAVID LAUTER
DEC. 1, 2021 UPDATED 6:37 AM PT

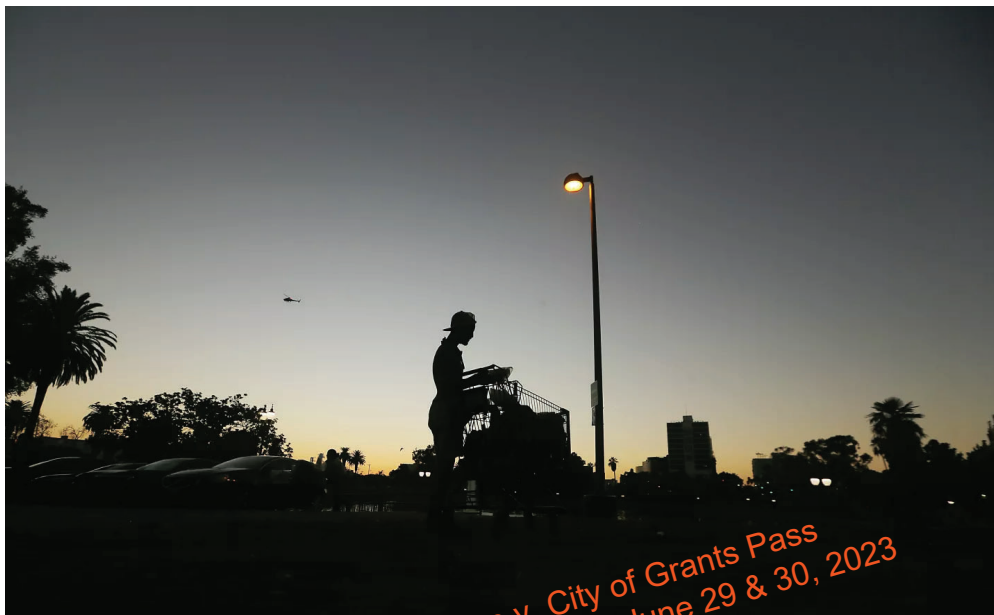


Amid deep frustration over widespread, visible homelessness, Los Angeles voters want the government to act faster and focus on shelter for people living in the streets,

even if those efforts are short-term and fall short of permanent housing, [a new poll of county voters shows](#).

Most voters continue to express empathy for homeless people, but also impatience and disappointment with the region’s leadership, according to the poll, conducted by the Los Angeles Business Council Institute in cooperation with The Times.

A key finding: Nearly four in 10 voters said that homeless people in their neighborhood made them feel significantly unsafe.



The 2020 point-in-time count found that 66,000 people in the county were homeless. (Luis Sinco / Los Angeles Times)

*cited in Johnson v. City of Grants Pass
Nos. 20-35752 & 20-35881 archived June 29 & 30, 2023*

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Asked to describe their concerns in their own words, voters repeatedly mentioned urine and feces in the streets, a rising sense of disorder, and concern for their children.

“I didn’t feel safe over there, especially raising my children,” said Amber Morino, a 35-year-old student and mother of seven who took part in a focus group done in conjunction with the poll. She moved this year to the San Fernando Valley from a home in Mar Vista after a camper caught fire near the park where her kids played.

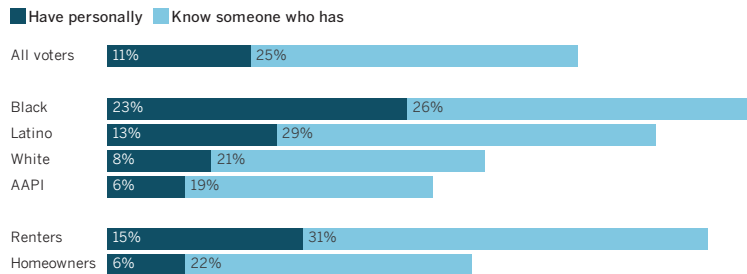
“I am also considering moving out of the state because it’s so bad,” she added. “Like, I just feel like every corner I turn here there are encampments — campers. It’s just terrible.”

Just over one in five voters said they had seriously considered moving because of homelessness in their neighborhoods.

For many Los Angeles residents, a fear of personally falling into homelessness or knowing someone who will looms as an urgent potential threat.

Personal experience of homelessness

The share of Los Angeles County voters who say they have experienced homelessness or housing insecurity in the past year or know someone who has differs widely by race and ethnicity and between owners and renters.



Hart Research for Los Angeles Business Council Institute

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Almost four in 10 voters said they either have experienced homelessness or housing insecurity in the past year (11%) or know someone who has (25%).

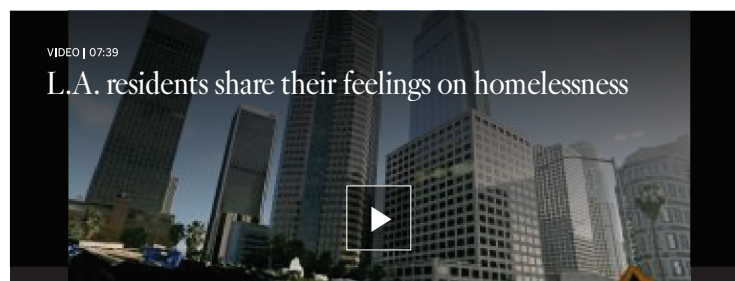
That rises to almost half of Black voters, [reflecting the racial inequity of the homeless population in Los Angeles](#).

The poll, which [surveyed 906 registered voters countywide](#) and has a margin of error of 3.3 percentage points, was designed to update a [similar survey](#) conducted by the Los Angeles Business Council and The Times two years ago. The new poll's findings are broadly consistent with several private polls done in recent months by candidates, advocacy groups and others involved in the region's debates over how to solve its persistent homelessness problem.

Despite two years of disruption caused by the COVID-19 pandemic, many attitudes about homelessness have not changed.

One that appears to have shifted involves the trade-off between spending money on temporary shelter or long-term housing.

Asked whether officials should focus on "short-term shelter sites" or "long-term housing for homeless people with services," voters by 57%-30% opted for the short-term solutions. In a similarly worded question two years ago, opinions were nearly evenly divided.





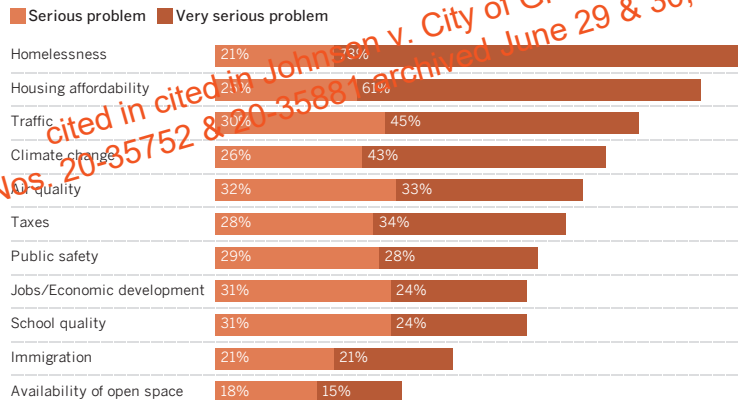
the street if they are permanently housed and provided with services to help address physical and psychological ailments. This sort of housing is in short supply in Los Angeles, and while more is being built, [progress has been slow and expensive.](#)

That has led many to say that the city and county cannot wait for enough such housing to be built and must proceed quickly with interventions that get people off the street and into shelters faster.

One thing that stayed constant is that homelessness ranks as the top problem facing the region, with 94% of voters viewing homelessness as a serious or very serious problem.

Most serious problems in L.A.

Homelessness tops voters' list of the most serious problems facing Los Angeles County, as it did in a similar poll in 2019. The list of concerns is fairly consistent across racial and ethnic groups and different parts of the region.



Answers marked "all," "none" or "don't know" were omitted from the graphic. Poll by Hart Research for the Los Angeles Business Council Institute

David Lauter LOS ANGELES TIMES

That's virtually identical to the level of concern two years ago despite hundreds of millions of dollars of state and federal money that the city and county have spent to deal with homelessness.

Officials have used the money to fund and support thousands of new units of interim housing.

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The added capacity has helped support efforts — predominantly by city officials — to clear large encampments in parks and at other [city landmarks such as the Venice boardwalk](#).

But the region’s voters overwhelmingly said [homelessness has gotten worse](#) — 79% said so, compared to 7% who said the situation has improved and 13% who said it has stayed the same.

Countywide poll seeks Angelenos’ opinions on homelessness

Dec. 3, 2021

It’s hard to know the true picture of how many people are homeless currently. The 2020 point-in-time count, mandated by the federal government, found that 66,000 people in the county were homeless. That occurred in January, before the COVID-19 pandemic had come into full force. [The 2021 count was canceled](#). Most experts in the region expect the number to jump when the count is conducted again this winter.

Countywide, pessimists about homelessness outnumber optimists, 44%-35%.

“I think it reflects how debilitated we all feel,” Mayor Eric Garcetti said in an interview about the poll results.

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How many years and how many new tents — even as we have successes — can we see in a neighborhood before we feel that we need some short-term places to stabilize people that are on the street?”

The widespread concern — and the deep frustration on the part of many voters — suggests that homelessness will be a top issue for candidates in next year’s elections. L.A. voters [will pick a new mayor](#) for the first time in eight years, and voters countywide will choose members of the board of supervisors.



A homeless man sleeps on the street in downtown Los Angeles on Nov. 15. (Luis Sinco / Los Angeles Times)

Lawrence “Drew” Whitlock, a 66-year-old painting contractor who lives in Playa del Rey and was another of the focus group participants, expressed the frustration many voters feel. His truck and his home have been burglarized, and he had a knife pulled on him by a homeless person recently, he said.

“I don’t resent them, I want the best for them,” he said of homeless people in his neighborhood.

“I would do whatever I can reasonably to help. But it’s interfering with the quality of my life,” he said.

Morino, the student and mom who left Mar Vista, is a former foster care youth who now has four foster children along with two kids she’s adopted and a newborn. She said the children she fostered had been homeless, and she has experienced housing insecurity as well. For her, homelessness is a “pandemic” that the government has failed to even attempt to cure — one that she has seen firsthand.

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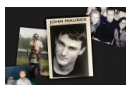
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“A lot of the mayors, governors, city people, they always say ‘vote for me, we’re going to get in the office and get the job done. We’re going to clean up this homeless problem, and you’re going to pay this amount of taxes,’” she said.

“It’s like nothing has been done. The taxes have increased. ...Our politicians need to step up and take some accountability for what’s happening in our streets.”



HOUSING & HOMELESSNESS

The toll of one man's mental illness: 17 criminal cases, six competency hearings, one failed conservatorship

Nov. 28, 2021

Candidates are keenly aware that homelessness will be top of mind, staking out positions on the issue and, in some cases, [preparing ballot measures](#) to highlight their stands.

Almost three-quarters of respondents said that homelessness should be the most important or a very strong priority for newly elected or reelected officials.

“It’s not just that people aren’t happy with their leaders. It’s that they don’t really even know what they’re doing or who the leader is, who is supposed to do something about this crisis,” said Aileen Cardona-Arroyo, a senior analyst at Hart Research.

Voters are “shaken and upset” and many are “close to the boiling point,” said veteran pollster Peter Hart, who helped oversee the survey. “There’s not a lot of optimism.”

Even with the anger surrounding the crisis, respondents to the poll appear to have a clear picture of what’s driving thousands of Angelenos to sleep on the streets and who is responsible for addressing the crisis.



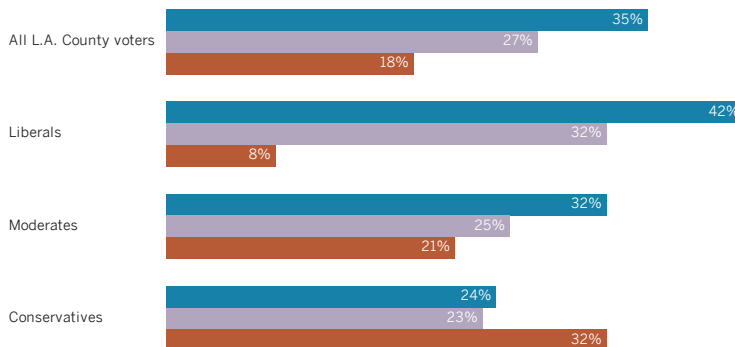
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The poll showed broad agreement that societal problems — especially a lack of affordable housing and mental health resources — play a major role in causing homelessness.

Root causes of homelessness

A powerful factor in shaping attitudes toward homelessness is whether a person mostly blames societal problems, such as a lack of affordable housing, or a homeless individual’s own choices.

■ Lack of affordable housing and low wages ■ Inadequate mental or physical healthcare
■ Individual actions and decisions



Answers marked "all," "none" or "don't know" were omitted from the graphic.
Hart Research for Los Angeles Business Council Institute

David Lauter LOS ANGELES TIMES

Just over 60% of respondents said that the primary cause of homelessness was either a lack of affordable housing and wages that aren’t keeping up with the cost of living (35%) or a failure to provide access to healthcare for mental and physical illness (27%).

Just 18% said that the primary cause of homelessness was a homeless person's own actions and decisions.

How a voter responded to that question strongly correlated with other views in the survey. Those who blame broad, societal problems for homelessness are significantly more likely to support government action to combat it.

Black and Latino voters were most likely to cite the cost of housing and low wages as a prime cause of homelessness. White voters more often cited healthcare. People who identified themselves as conservatives were more likely to point to an individual's own decisions.

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Encampments block nearly the entire sidewalk on 1st Street between Spring and Broadway. (Al Seib / Los Angeles Times)

Voters also expressed skepticism about clearing encampments without offering people a place to go, such as a hotel room or other temporary shelter, or services like medical care.

A majority, 64%, said that when an encampment is cleared, homeless people are most likely to move to other encampments in the region, rather than find shelter or permanent housing (19%) or leave the region (10%).

Recent efforts to clear encampments have had varying degrees of success in getting people into shelter or housing. Outreach officials have said their ability to get people off the street hinges on the availability of beds in shelters and hotel rooms, which the city and county rented for homeless people at the outset of the pandemic.

Fifty-two percent of voters said that providing services to individuals living within encampments should be a higher priority for officials than clearing encampments out of parks and neighborhoods, favored as the top priority by 39%.

On that question, as with several others, a significant difference exists along racial and ethnic lines.

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A large majority of Black voters, 66%, said officials should put a priority on providing services, while white voters were more closely divided on the question, 49%-40%. Latinos, by 56%-38%, favored providing services. Asian American voters were also closely divided, with 48% favoring clearing camps, and 41% providing services.



HOUSING & HOMELESSNESS

City Beat: When homeless people tell their own stories, we should listen and not turn away

Feb. 22, 2020

Over the past two years, the city has poured tens of millions of dollars into a range of interim housing solutions — some of which are not cheap and moved forward on creating areas of the city where homeless people cannot sit, lie or sleep.

[Theo Henderson](#), an activist and creator of the podcast “We the Unhoused,” said he thinks voters’ desire for quick solutions stems partially from their preference to sweep homelessness out of sight. He was encouraged to hear that the poll found that voters felt that broader structural forces were the main reason individuals became homeless.

His hope was that people would take this knowledge and advocate for less money to be [spent on the Los Angeles Police Department](#) and for more to be spent on things that help get people out of homelessness.

“They don’t want to see poverty,” he said of many voters. “They need to understand that these problems have been long in the making.”



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Benjamin Oreskes

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Benjamin Oreskes covers state and national politics for the Los Angeles Times. Previously, he covered City Hall, homelessness and wrote the Essential California newsletter. Before coming to The Times in February 2017, Oreskes covered foreign policy at Politico in Washington, D.C. He graduated from Northwestern University and looks forward to seeing the Wildcats play in the Rose Bowl sometime soon.



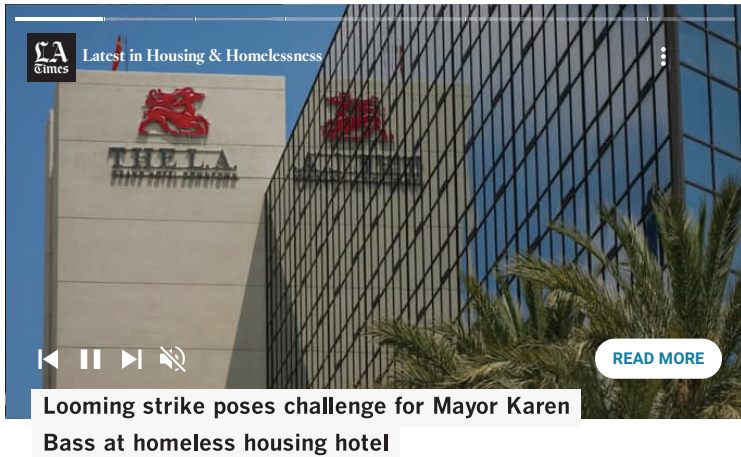
David Lauter

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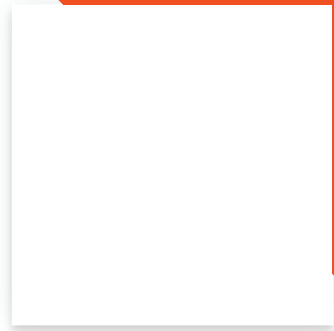
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Why hotel rooms for L.A.'s homeless sit empty

FEBRUARY 15TH, 2023 | 20:56 | E414

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EPISODE DETAILS / **TRANSCRIPT**

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Gustavo: More than 40,000 people are experiencing homelessness in Los Angeles right now. And yet right next to skid row, the city's historical epicenter for homelessness, hundreds of rooms sit empty.

Brian Lane: Literally there'll be people like sleeping outside on the street while you've got a completely vacant, brand-new building.

Gustavo: The building's name is the Cecil Hotel.

But even though the Cecil was redeveloped specifically as a place to house low-income and houseless folks, it's still struggling to fill rooms – even as L.A.'s homeless population grows.

I'm Gustavo Arellano, you're listening to The Times: Essential News from the L.A. Times.

It's Wednesday, Feb. 15, 2023.

Today: What the Cecil Hotel's struggles to fill empty rooms tells us about the crucial role SROs play in getting unhoused people off the street.

Jaimie Ding is a business reporter at the Los Angeles Times. Jaimie, welcome to The Times.

Jaimie: Thanks for having me.

Gustavo: So if people know about the Cecil Hotel in Los Angeles at all, it's probably because of its more sordid history. And that's mostly because of a Netflix documentary about the disappearance of a young woman there last decade. But what's the building's full history outside of just true crime?

Jaimie: So, the original Cecil Hotel actually opened in the 1920s as a rather fancy place, for business travelers and tourists. But that quickly changed when the Great Depression hit only a couple years later.

The hotel has been rebranded and changed ownership over the years, but in late 2015, Simon Baron Development, a New York-based real estate developer, acquired the hotel through a 99-year ground lease.

Matthew Baron: Our initial business plan, when we first acquired the property, was really to sort of rebuild it, fix it up and turn it into essentially half apartments and half a hotel.

Jaimie: So I talked to Matthew Baron, he's the president of Baron Property Group, which owns the building. And they were working with the Skid Row Housing Trust, a local group that manages affordable housing, to make 15% of those apartments affordable. But when the pandemic hit in 2020, that kind of blew up all the financing for the project.

Matthew Baron: That obviously upended the business plan. Hotels were shutting down left and right. It basically became impossible to finance.

Jaimie: They needed a new business plan, and figure out what to do with the building that they had in their hands.

Matthew Baron: At the time, Skid Row Housing Trust was a partner of ours. They were gonna be managing the sliver of affordable units that was gonna be in the building. They came to us and said, Hey, you know, would you guys consider doing this as a hundred percent affordable?

Jaimie: So that's 600 rooms all reserved for low-income residents.

Gustavo: So when all of this was announced, what was the reaction from folks who work with the unhoused in Los Angeles?

Jaimie: People were pretty excited for the project. It was pretty unique. It's a model that was not used before in the L.A. area where most projects have funding for rents already in place for people who are going to live in the building. This project had a tenant-based voucher model where any homeless person who has any sort of funding or subsidy could apply to live in the building. So a lot of people saw this as, you know, a promising new model for housing the homeless in L.A.

Gustavo: What was interesting too is that downtown L.A., especially over the past 20 years, has been very gentrified. A lot of developers there are getting these older buildings and hotels and making them into lofts, into live-work spaces. But what did these developers say about why they wanted to transform the Cecil into something specifically for low-income people?

Jaimie: Matthew Baron, the president of Baron Property Group, told me that it was sort of a combination of a business opportunity to save the building, the project that he had already invested in, as well as a way to work with a local group and help the local homeless population.

Matthew Baron: COVID really exacerbated the homelessness issue, not just in L.A. but throughout the country as a whole. And we started putting our heads together to try to figure out how we could make it work with private financing, to do a hundred percent of the building as affordable housing. There was obviously tremendous need, a tremendous demand for it.

Jaimie: So the model that Matthew Baron came up with was these single room occupancy units would all be reserved for residents who would have part or all of their rent be paid for by a voucher from the federal government. So traditionally, those vouchers are called Section Eight vouchers, although during the pandemic, the Biden administration announced a plan to distribute thousands more emergency housing vouchers to housing authorities across the country.

Gustavo: These single room occupancy units, or SROs, what are they exactly?

Jaimie: So SROs are a form of housing targeted to low-income individuals. It's a single tenant renting a single room, and they're often pre-furnished, but very small. Oftentimes, like in the Cecil, there are no

Tape: So this is the communal bathroom. Um, we have one shower here, the two bathrooms. One more shower here,

Jaimie: So I visited the Cecil Hotel a couple times and spoke with Leslie Morales. She's a woman of many hats, but mainly she's the outreach coordinator for the Cecil Hotel who helps lease out the rooms and organizes events.

Leslie Morales: Many ask, why isn't it filled? It has a reputation that many may not wanna be here, but once they get here and they have a door to close, even if they have to share a bathroom or a shower, they have their own privacy. They don't have a roommate and they have a key to lock when they leave. There's a door to lock, there's a door to close to go to sleep.

Jaimie: So the trend across the nation for a while now is that SROs are disappearing. The buildings are being bought and turned into condos, apartments, you name it. And in many cities you can't build them anymore because of building codes.

Brian Lane: When downtown started to develop further, there were a lot of market rate people coming along and they were buying up some of these things and basically taking this affordable housing stock off the market.

Jaimie: So I talked to Brian Lane, he's an architect in Los Angeles who's become an advocate for affordable housing policies. And he told me about how the city of L.A. has tried to protect SROs from being redeveloped into more expensive housing.

Brian: So the city of L.A. actually developed an ordinance around the loss of these SRO hotels, put a restriction on converting these things to solely market rate uses, cause the loss of these SROs was so great. The housing need got worse and worse and we needed more types of options for housing. And so what opened up was looking at all kinds of housing, and SROs came back into the picture.

Jaimie: A lot of homeless advocates say they're actually a very important part of a city stock of affordable housing. And the thing about affordable housing is once you destroy it, it doesn't get replaced. Because we are not adding to the affordable housing units as quickly as we are removing them from the market.

Gustavo: So how effective has this ordinance been? How common are SROs nowadays?

Jaimie: There are a lot of SROs in L.A. that are actually sitting empty, and some homeless advocate groups have brought attention to them recently. Some of them include the Morrison Hotel, the Hotel Clark and Embassy Hotel. They're all around downtown L.A. and could be used to house the homeless. But there are also challenges as well. So you have all these homeless people who are living in close proximity in one building, and they have to share bathrooms and kitchens. All these people have different acuity levels, they have different needs, and they all faced their own physical and mental health struggles that can make living with others difficult. But at the end of the day, folks that work at the Cecil say it's a good solution for housing folks who can't afford to live anywhere else or can't find landlords that will accept them anywhere else.

Cecil building manager: I don't think you will say living in your car is better than living in an SRO, or you will say living in a tent with rats all over the street is better than living in an SRO.

Jaimie: And the Cecil residents that I talked to, some of them said the same thing as the Cecil staffers.

Tenant: Cecil was a blessing. It may just be a SRO, it was very surprising to not have a room with your own bathroom still, and you're paying rent, if I can be honest. But still, it helped get over slightly some of the PTSD that you get from being in a shelter and being in that chaotic environment. You kind of had a sense of peace.

Gustavo: More after the break.

at the Cecil?

Jaimie: From the get-go, the Cecil project faced a lot of issues working with the city and the various agencies that deal with homelessness and housing. It's a pretty complicated and lengthy process for getting someone into the Cecil.

If you want to live at the Cecil, first, they have to apply to get the voucher, which is something that can take several months. Then after you have the voucher in hand, you file an application with the Cecil. The Cecil will send something called the RFTA or request for tenant approval to HACL A. That's the Housing Authority of the city of Los Angeles. Then HACL A has to send someone to the Cecil to perform a unit inspection, which can take anywhere from a couple business days to a couple of weeks. And after that unit inspection, HACL A then has to send a formal rent offer, which is taking from two to five months to get that approved.

One man named Scott, he applied to live at the Cecil in October, and he told me that he didn't hear back for weeks from HACL A. It wasn't until the end of December that his application was finally approved.

Scott: They did the inspection two weeks ago on, um, I, I don't know the exact date, but it was on Monday, two weeks ago.

So we're just waiting for their rent offer now.

Exactly. Which they promised would go down last week, but it never did. So, and then I asked again, well, when do you think an offer will go down? I got no response

Mm-hmm. . And you can't move in until the offer's made.

Correct.

Gustavo: What did HACL A and the other folks who get people connected with vouchers say when you asked them about all those delays?

Jaimie: When I first asked them about these delays, they responded that they were not aware of any EHV holders waiting as long as five months to get their rent offers. They asked me to refer to a specific case, so I gathered some names of folks at the Cecil and I went back to them, and when I pressed them further about a resident that had applied back in December 2021, but didn't get approved until June, which, six months, that's a six-month application process. They said there had been delays due to a lot of applications submitted at the same time, as well as understaffing and high turnover at the EHV office within HACL A.

Gustavo: What about the people who have actually gone through the process and now live at the Cecil? What's been their experience?

Jaimie: When I spoke to tenants, it was a mixed bag of experiences.

Cecil resident: I was living outside on the street. It was very bad for me. But Cecil Hotel's been really phenomenal. I've been here for about maybe 12 months now. Me and my husband, Roberto. And we really have no complaints about it.

Cecil resident: I feel like they opened this in a hurry without fully completing everything. I think, I guess they just wanted to open it up so people have places to stay, which is like, it's great that they're getting people off the street. But I feel like, like there's certain things that like, need to be finished.

Cecil resident: I think it's great. I think it's really nice. You know, the rooms are a little bit small and they have a sink in them. And I share a bathroom. I didn't get a bathroom. Uh, so I just have to go to the bathroom every once in a while and you know, sometimes they're a little dirty, but somebody comes to clean them all the time. Yeah.

Jaimie: Living there can, you know, be hard for folks who are relearning how to live on their own indoors for the first time in years.

stuff they put up with here, man, from, from people, man, I mean, it's so arcane and primitive, just something that people do, man. Like you see people just out of their minds, man. Um, through mental, chemical imbalances in their brains and stuff, man. And, and the anger. It's just, it's mind blowing...

Jaimie: Some people have built communities for themselves.

Cecil resident: I see them as family, even though I say I try to avoid certain people, it works like a family. You know, sometimes you don't wanna see your sister in the morning, but I'll see you in the afternoon. But I, I feel like we're all one at the end of the day.

Jaimie: They've made friends, they've found jobs, and others are struggling with some of the issues and tensions with other residents within the building.

When we were touring the Cecil and interviewing residents before Christmas, some said that there was amenities that needed to be fixed in the lower floors, and the fire alarm suddenly would go off.

TAPE: Mm-hmm, individual—
Yeah. Is that the fire alarm? Uh oh.

Jaimie: one resident we spoke to said that when things like this happen, it can make it hard for them to feel a sense of security in the building.

TAPE: That happens anytime of the night, day, any and like I said, you would get PTSD after a while thinking is there a fire or is there not? And then after a while you're like, well, I'm desensitized. Hopefully there's not a fire. You have to play mind tricks with your brain here.

Jaimie: Some women have said that they feel a little less safe in the building, compared to the men.

Woman: It just really sucks to live here. I would not recommend anyone to be living here...Outside and even inside the people are always smoking weed and they're always drunk and so it's not a safe area to live, especially for us girls, you know.

Jaimie: There's also an all-women's floor for residents that prefer that.

One resident named Tamara Elkadii that we spoke with said that she chose to move in with her boyfriend and a group of other people that she already knew in order to have that community already established, when she moved into the Cecil.

Tamara: I live on the same floor as my boyfriend. Thankfully. Because I just feel like there's a lot of different people, like different paths. So I just feel safest that me and like me, my boyfriend and a few of my friends that we like, they kind of kept us all together on the same floor, which is good. It's safer.

Jaimie: And ultimately with living in an SRO building, there have been many disagreements that have arisen with things like the laundry room, sharing bathrooms and just the challenges with maintaining a shared living environment.

Tamara: So I feel like people that like lived here, lived on the streets, they don't know how to live in an indoor or shared environment. Like some levels, the floors are extremely dirty, like really nasty.

Jaimie: Most of the residents we spoke to say they're planning to move out of the Cecil after a year. They see the building as sort of a stepping stone, the first place that they can have to get back on their feet, and after that they want to move into another apartment, perhaps with a bathroom and more space.

In a testament to how tenants are enjoying their time at the Cecil, I'd heard from the building's managers that the number one source of referrals is actually from tenants themselves. After moving in, they're telling people from their shelters or their friends on the streets that Cecil is a potential place for them to live.

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Nos. 20-35752 & 20-35884, archived June 29 & 30, 2023

financed. If all these rooms get filled, do you see more private developers trying to build affordable housing projects like the Cecil?

Jaimie: So publicly funded projects often cost more and take longer to construct. So it is good that we have this example of a project that's privately funded and operating in this manner. We need both public and privately financed projects if we're serious about getting people housed in L.A. But I spoke with Mike Neely, a former commissioner of the Los Angeles Homeless Services Authority, and he said what's happening with the Cecil is just another example of a broken system bogged down by bureaucracy. We have an innovative and cooperative project between the public and private sectors. All that's required is cooperation from a city agency for it to work. But unfortunately in my reporting, I haven't really seen much of that happening, and that might just be the lesson that other developers take away.

Gustavo: Finally, Jaimie, is the city stepping in at all to help get people into rooms at the Cecil?

Jaimie: So in July, L.A. City Council members Kevin de Leon and Bob Blumenfield proposed a solution to try to fill the hotel faster, a master lease agreement with the city of Los Angeles. Under their plan, the city could foot the entire bill for a number of rooms in the building, and potentially bypassing the red tape of dealing with federal government funded vouchers as well as their own agency's bureaucracy. Outreach workers could then offer housing to the people on the streets and potentially move them in on the same day. Unfortunately with everything that's been happening with the City Council, that plan has not really moved forward since it was proposed.

But the developers say that they are excited to work with the new mayor, Karen Bass, to figure out a plan to house people in the Cecil a lot quicker than it has been happening previously.

Gustavo: Jaimie, thank you so much for this conversation.

Jaimie: Thank you so much, Gustavo.

Gustavo: And that's it for this episode of The Times: Essential News from the LA Times, Helen Li was the jefa on this episode. It was edited by Kinsee Morlan, and Mark Nieto mixed and mastered it. Our show is produced by Denise Guerra, David Toledo, Ashlea Brown and Kasia Broussalian.

Our editorial assistants are Roberto Reyes and Nicolas Perez. Our fellow is Helen Li. Our engineers are Mario Diaz, Mark Nieto and Mike Heflin. Our executive producers are Shani Hilton, Jazmin Aguilera and Heba Elorbany, and our theme music is by Andrew Eapen.

I'm Gustavo Arellano. We'll be back Friday with all the news and desmadre. Gracias.

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CALIFORNIA

Bass wants to bring homeless people indoors. Can she secure enough beds?



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Rue Ryan, 32, sits on the sidewalk on Cahuenga Boulevard putting together a floral memorial. (Francine Orr / Los Angeles Times)

BY BENJAMIN ORESKES | STAFF WRITER

DEC. 22, 2022 5 AM PT

Seated on the hard sidewalk along Cahuenga Boulevard, Rue Ryan arranged a batch of red roses she had plucked from the trash into a memorial for her “street mom,” Hyper, who died two years ago.

The work was an escape from the activity around her, as friends and fellow encampment residents hurriedly prepared to move into nearby hotel rooms, choosing what to keep or toss.

Outreach workers had counted about 25 people living under a 101 Freeway overpass in Hollywood, and on Tuesday, 11 of them went to one of three nearby hotels. A hot shower, a good night’s rest — these are luxuries housed people take for granted, Ryan said, and would help her find a job, some security and a permanent place to live.

“It’s dangerous out here. People are getting trafficked. People are getting killed,” said Ryan, a 32-year-old Alabama native. “You can’t sleep if you’re staying on the streets. So you’re exhausted. You’re not going to work. You look filthy and smell. Nobody wants to deal with you. How can you move forward in life? That’s why people get stuck out here so long.”

Ryan hoped to get a hotel room of her own as part of Los Angeles Mayor Karen Bass’ “Inside Safe” initiative, which Bass unveiled Wednesday, nine days after she [declared](#) a citywide state of emergency on homelessness. The declaration she signed Wednesday formally

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kicks off a determined effort to clear encampments by offering people such as Ryan hotel and motel rooms.

Fellow politicians, nonprofit providers and some activists have applauded the urgency and focus that Bass is bringing to moving people off the street and into temporary housing, from which social workers can help them find permanent housing.

In the first two weeks of her administration, Bass has sought to centralize the work of identifying encampments with the most vulnerable people and which are the biggest sources of frustration for nearby residents. She has also focused on identifying the steps in the process that delay people going indoors, or housing from being built.

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Los Angeles, CA - December 21: Workers clean up a homeless encampment beneath the 101 overpass and Cahuenga Blvd on Wednesday, Dec. 21, 2022, in Los Angeles, CA. (Francine Orr/Los Angeles Times)

What occurred at the encampment on Cahuenga was effective, providers say, because they had hotel rooms rented and ready for people to occupy.

“The pace at which Inside Safe can bring people indoors from encampments across the city will largely depend on the availability of beds,” said Cheri Todoroff, executive director of Los Angeles County’s Homeless Initiative. “What the city is doing that will likely be a game

changer is accelerating housing placements, both in interim and permanent housing.”

More buildings master-leased — a process in which the city would take control of entire hotels or motels — means more people off the streets. But it remains to be seen whether the city can lease enough beds to meaningfully reduce or eliminate large encampments across Los Angeles.

Bass has made clear she wants to work closely with Todoroff’s bosses — the five Los Angeles County supervisors — appearing before them Tuesday to talk about the need for better partnership between the bureaucracies. The county does much of the funding and contracting of the outreach work taking place on city streets.

The county will be expanding some of these different outreach teams in the coming year, which will bolster the plans that Bass and council offices have to address large encampments across the city.



CALIFORNIA

An emergency declaration gives Karen Bass new powers. How will she use them?

Dec. 12, 2022

Still, providers say the work of gaining a homeless person’s trust to persuade them to move off the street is easier when a bed is available

along with transportation to it. Case in point: A city Dash bus idled in position Wednesday, poised to ferry people to a motel once they were ready and had packed the two bags they were allowed to bring.

As people moved out of their makeshift structures, sanitation workers quickly moved in to throw away large items and dispose of what was left behind. Homeless people have often complained that this work by the Sanitation Department causes them to lose personal items and important documents.

Bass appeared cognizant of this broader challenge Wednesday as she highlighted how this effort on Cahuenga followed the approach that had been developed at large encampment cleanups across the city in 2021. She made clear that these operations weren't being led by law enforcement and that she didn't want to see homeless people ticketed or punished for living on the street.

“We know that there are specific motels where people can go to,” she said of the Hollywood cleanup and effort to move people indoors. “In the best of all worlds, what I would like to see is us to be able to do this citywide. But we're not at that capacity just now. It's going to take us a minute to ramp up. I think this is day nine or day 10 of me being mayor.”



Los Angeles, CA - December 21, 2022 - Los Angeles Mayor Karen Bass, right, spoke during a press conference at The People's Concern on Wednesday, Dec. 21, 2022, in Los Angeles, CA. After the press conference workers from various local agencies took selfies with the new Mayor. (Francine Orr/Los Angeles Times)

Bass was flanked by outreach workers and social services providers at Wednesday's news conference, where she signed the executive order. Among other things, it directs city officials to compile a report by the end of March that will "create a unit acquisition strategy, including master leasing for both interim and permanent housing options."

The first goal, she sets out in the document, is to "decrease the number and size of encampments across the city."

Bass' emergency declaration, which the City Council authorized, gives her a lot more flexibility to quickly commit city funds toward leasing motel and hotel rooms. City officials said Bass currently has about \$20 million at her disposal that could be put toward leasing beds quickly.

More funds could be made available to her, but that would require more input from the council.

Bass credited Va Lecia Adams Kellum, chief executive of St. Joseph Center in Venice, with helping spearhead some of this work.

Last year, Adams Kellum's organization coordinated the outreach and renting of hotel rooms along Ocean Front Walk in Venice, where a massive encampment had sprung up, frustrating local residents and business owners.

*cited in Johnson v. City of Grants Pass
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HOUSING & HOMELESSNESS

Homeless camps, trash and crime have transformed Venice boardwalk, eluding easy solutions

June 10, 2021

The city gave her organization about \$5 million to do that work, and more than half of the funds went to renting motels for more than 200 people. Much of the rest went toward staff to supervise the outreach and operations of the hotels.

That operation was delayed in part because Adams Kellum's team had to wait for the City Council to sign off on the money being spent, recalled former Councilmember Mike Bonin, who represented the area and helped organize this work.

“There was a really drawn-out process then,” Bonin said. “Karen has the opportunity to say ‘let’s get moving’ and people will move. It’s a big difference from the usual legislative process.”

Both Bonin and Adams Kellum said the success of that work in Venice hinged on having beds available for people to quickly move into.

In an interview, Adams Kellum, who is on Bass' transition advisory team, said that of the 213 people moved off Ocean Front Walk, 109 have found permanent housing. She added that it's much easier to get people paired with a housing subsidy and into permanent housing if they're indoors already.

“She knows housing has to be a part of it,” Adams Kellum said of Bass and her team's work. “I know she's lining that up because she knows you can't go into an encampment sincerely without [the motel bed] in hand.”

Back on Cahuenga, Ryan waited for her case manager to arrive with her driver's license — a delivery that continued to be delayed. Some of Ryan's friends planned to stay on the street — uninterested in the

offers of a hotel room. She had also seen some people lose items they cared about during the cleanup Tuesday.

It was chaotic, she said, as sanitation workers struggled to separate what could be thrown out and what people wanted to save. For all the frustrations and stops and starts, an offer to go indoors was something she'd still jump at.

It could be the “first step to restart my life,” she said.



Benjamin Oreskes

Benjamin Oreskes covers state and national politics for the Los Angeles Times. Previously, he covered City Hall, homelessness and wrote the Essential California newsletter. Before coming to The Times in February 2017, Oreskes covered foreign policy at Politico in Washington, D.C. He graduated from Northwestern University and looks forward to seeing the Wildcats play in the Rose Bowl sometime soon.



CALIFORNIA

In downtown L.A., Bass' plan to clear encampments faces crime, addiction and resistance



David Ruther, who lives in a tent in downtown Los Angeles, says he turned down the offer of a hotel room from homelessness outreach workers. (Allen J. Schaben/Los Angeles Times)

BY DAVID ZAHNISER | STAFF WRITER

MAY 30, 2023 5 AM PT

Homeless outreach workers went to the streets of downtown Los Angeles last month and delivered what is now a seasoned sales pitch: Give up your spot on the sidewalk, and try living in a nearby hotel room instead.

David Ruther, who has a tent on Broadway near the 101 Freeway, had an emphatic response: No way.

Ruther denounced the rules that are in place at the L.A. Grand, one of the hotels being used by the city as homeless housing. He said it's not right that unhoused residents have had their bags inspected when they walk into that hotel.

“I told them I wasn't going to give up my constitutional rights, and have them search me every time I go to the store to buy a soda pop or a pack of beer,” said Ruther, sitting in an office chair, clutching a Starbucks cup of coffee and a Newport cigarette.

Since she took office, Mayor Karen Bass' Inside Safe initiative has moved more than 1,200 homeless people off the street in [Venice](#), North Hollywood, Del Rey, [Beverly Grove](#) and about a dozen other L.A. neighborhoods. In many cases, encampment residents went into the same motel or group of motels, leaving an area free of tents.

Yet Bass' initiative recently stalled in one part of downtown Los Angeles: the streets that surround the [El Pueblo de Los Angeles](#)

Historic Monument, the city’s birthplace and home to Olvera Street and other attractions.



CALIFORNIA

L.A. on the Record: Bass starts a new tussle over Inside Safe

May 27, 2023

In April, outreach workers with the Inside Safe program went to that neighborhood and persuaded an estimated 78 people to go indoors, according to figures provided by the mayor’s team.

Yet a month later, at least three dozen tents still populate the streets around El Pueblo, including Main, Spring, Cesar Chavez and Broadway, where Ruther keeps his tent.

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In some locations, new arrivals have taken the place of those who accepted hotel rooms. In others, longtime encampment residents have made clear to outreach workers that they’re not going anywhere.



Mayor Karen Bass' Inside Safe initiative targeted the streets around the El Pueblo de Los Angeles Historic Monument in April. A month later, at least three dozen tents can be found in the area. (Allen J. Schaben / Los Angeles Times)

Bass' team acknowledged the challenges in a [May 3 memo](#), telling City Council members the Inside Safe program had encountered drug addiction, serious mental health issues, criminal activity and “housing-resistant individuals” in that part of the city.

Despite the involvement of two county agencies and several nonprofit groups, “the array of needs did not allow us to get everyone into housing,” wrote Mercedes Marquez, the mayor’s homelessness czar.

The Inside Safe program, which just received \$250 million in next year's city budget, has targeted 17 locations since December. Bass, early in her tenure as mayor, [said](#) Angelenos will not view that initiative as a success until their communities are free of encampments. "They want the tents to go," she said at the time.

Still, Bass says she's not discouraged by the pace of progress at El Pueblo, pointing out that the vast majority of homeless people being contacted by her program are still saying yes.

In an interview last week, Bass said the Inside Safe program has faced an "intense" set of problems, particularly drug addiction, both at El Pueblo and on the streets that abut the 110 Freeway in South Los Angeles. Those locations have made up three of the last four Inside Safe operations.

"There were literally people that overdosed during the operation" at El Pueblo, she said. "And the only thing that saved them was the fact that we were with USC's street medicine [teams], and they had to administer Narcan."

Bass said her homelessness team will carry out a "deep dive" on Inside Safe in the coming days, examining the program's weakness and identifying strategies for improving it.

“We know we’re going to encounter some encampments where there’s resistance. I mean, I don’t think anybody’s been naive about that,” she said. “But then we’re gonna have to figure out — what do you do when people are resistant.”



Los Angeles Mayor Karen Bass signs the city budget, which provides \$1.3 billion for programs to address homelessness. (Christina House / Los Angeles Times)

Bass is not the first politician to try to get their arms around the encampments near El Pueblo. Then-Mayor Eric Garcetti [opened the city’s first A Bridge Home shelter](#) in 2018 on the neighborhood’s eastern edge, not far from Union Station. But that facility was not enough to meet the need.

After the outbreak of COVID-19, the number of people living near El Pueblo grew dramatically, occupying at least six streets in the area. As pandemic restrictions were scaled back, Councilmember Kevin de León, who represents much of downtown, took a two-pronged approach to the area.

De León's office, working with outreach teams, offered the area's unhoused residents beds inside two Bridge Home shelters, the L.A. Grand and Hilda L. Solis Care First Village, an interim housing facility. In December 2021, his office reported that 84 households there had moved indoors.

At the same time, De León designated some stretches of sidewalk near El Pueblo as "41.18 zones," named for the section of the Municipal Code that prohibits camping in locations chosen by the City Council. Homeless advocates [assailed](#) the new 41.18 zones, saying they criminalized poverty. Some branded the L.A. Grand and Solis Village, which require their inhabitants to follow certain rules, as "carceral," or prison-like.

Over the following year, the streets around El Pueblo slowly repopulated. Some of the holdouts moved their tents to locations just outside the 41.18 zones.

Among them was Philip, who frequently relies on a manual wheelchair and is now living on Cesar Chavez Avenue.

Philip, who is in his 70s and declined to give his last name, told The Times last year that he considered the L.A. Grand to be a “concentration camp.” He said he would rather be arrested than be forced into that facility, which had a curfew and regular room searches.

A year and a half later, the Inside Safe team has not changed his mind. Even though the L.A. Grand no longer has a curfew, Philip said he still has no interest in going there.

“Once they get in there, there are certain orders they give — you can’t do this, you can’t do that,” he said last week. “That’s not democracy. That’s a concentration camp.”

That type of hostility is at odds with the message the mayor has delivered since launching Inside Safe. During her State of the City address, Bass said the program had “finally dispelled the myth that people do not want to come inside.”

Bass, during her interview last week, said she always expected there would be some unhoused residents who refuse to move indoors. And she acknowledged the rules at the L.A. Grand are “very strict.”

The mayor said her team will be looking at the rules at Inside Safe’s hotels and motels, developing “consistent standards” for each location.

“When we encounter people who are resistant, we’re going to have to use different strategies, different services,” she said. “And we are trying to build those services out now.”



CALIFORNIA

Shape Your L.A. — on homelessness

You can help someone get on the path to housing — and make your voice heard on issues of housing and homelessness. Learn how with Shape Your L.A.

De León, who took office in 2020, said some of the challenges at El Pueblo can be attributed to its location. Unhoused people have settled in the area, he said, after being released from nearby jail facilities or arriving from the buses and trains that converge at Union Station.

De León also thinks the area has not received enough drug addiction and mental health services, which are the responsibility of Los Angeles County.

“We can house the homeless and clean up the area incessantly, but if L.A. County does not step up and provide the mental health and addiction services that are so urgently needed, it will be a never-ending story,” he said.

Cheri Todoroff, the county’s homeless initiative executive director, pushed back on that assertion, saying the county has been working

closely with the city at El Pueblo, sending mental health clinicians, substance use disorder counselors and healthcare professionals.

“To this day, they are continuing to engage clients at the site,” she said.



Beyanira Lopez, 58, moved into a nearby motel as part of the city’s Inside Safe program. She said she’s trying to persuade some of the holdouts to do the same. (Allen J. Schaben / Los Angeles Times)

El Pueblo is not the only location where the mayor’s program has seen slower progress than at its earlier operations.

In late April, the mayor's team took Inside Safe to a section of South Los Angeles that hugs the 110 Freeway, targeting encampments from 42nd Street south to Vernon Avenue.

Bass' team has estimated that about 50 people went indoors during that operation. On Monday, those streets still had 15 tents or tent-like structures, many near an elementary school.

Inside Safe went to another South L.A. location last week, focusing on streets along the 110 between 47th and 51st. During that operation, DASH buses whisked more than 50 homeless people to motels.

Still, not everyone got on the bus.

Willie Gutierrez, who has a tent on 51st, was initially interested, chatting up the outreach workers who set up folding chairs on a nearby overpass. But when it came time to move, he hadn't found a home for his ladder and his buckets of paint.

"If I'm not ready, I'm not ready," the 53-year-old said.

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Willie Gutierrez, 53, who has been living on 51st Street, said he was offered a motel room but wasn't ready to go. He's now planning to move to San Bernardino County. (Allen J. Schaben / Los Angeles Times)

Days later, Gutierrez told The Times he had dealt with his supplies and was pursuing a new plan: moving to San Bernardino County to live with his sister. Meanwhile, one of his unhoused neighbors now sounds like something of a booster for Inside Safe.

Beyanira Lopez, 58, said she recently moved into a "beautiful" motel room on Central Avenue. Lopez, who rode back to 51st Street on her

bicycle, said she has been trying to persuade two of the holdouts to come indoors as well.

“I get to shower every day. I get to cook inside with my little stove. I get to sleep when I want,” she said. “I’m very happy.”



David Zahniser

David Zahniser covers Los Angeles City Hall for the Los Angeles Times.

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