

Right-wing Supreme Court majority approves making homelessness a crime

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30 June 2024

The US Supreme Court ruled 6-3 on Friday along its now familiar ideological divide that local governments can penalize and arrest unhoused people for sleeping in public, including in their own cars, even where there are no public shelters available and nowhere else to go.

There are more than 650,000 unhoused people in the United States, according to a 2023 count by the Department of Housing and Urban Development (HUD). The decision in *City of Grants Pass, Oregon v. Johnson* will vacate multiple injunctions presently in effect within the jurisdiction of the US Ninth Circuit Court of Appeals, which encompasses the nine western states and two Pacific territories, embracing a population of 65 million, almost double that of the next largest circuit.

Friday's ruling overturned a 2018 Ninth Circuit ruling, *Martin v. City of Boise*, which was itself grounded in the Supreme Court's own 1962 decision in *Robinson v. California* that the constitutional prohibition against "cruel and unusual punishments" found in the Eighth Amendment of the Bill of Rights prevents criminalizing someone's "status"—in that case drug addiction—rather than conduct. The Ninth Circuit ruled that this same principle applies equally to people compelled by circumstances beyond their control to sleep in public.

Prior to the decision Friday, courts in the Ninth Circuit interpreted *Robinson* and *Martin* to mean that the unhoused could not be arrested, their encampments cleared nor their meager possessions confiscated unless the local government could demonstrate the availability of public shelters or other realistic options.

Several federal judges, notably David O. Carter of Orange County, California, became deeply involved in working out complex and practical logistical arrangements between public officials and the

unhoused by issuing and then modifying detailed injunctions. Over the last year, following Judge Carter's intervention, the City of Los Angeles registered a more than two percent drop in its homeless population, the first decline since 2018.

Grants Pass, with a population around 40,000, has an estimated 600 unhoused, many of whom are long-time residents unable to find or afford a place to live, but who do not want to leave their family, work or friends. To force them out of the city limits and into nearby federal lands, in 2013 the City Council criminalized sleeping in public with any form of "bedding ... for the purpose of maintaining a temporary place to live." Penalties escalated from a \$300 fine and keep-out orders to 30 days in jail.

The only alternative to sleeping in public or leaving Grants Pass was 138 beds at Gospel Rescue Mission, where stays were limited and residents were required to attend religious services.

Two residents of Grants Pass who slept in their cars sued in federal district court, which enjoined enforcement based on testimony that Grants Pass police officers roused unhoused residents repeatedly and cited them for sleeping unless they could show they had a "place to live," thus subjecting them to fines, arrests, and criminal prosecutions.

Justice Neil Gorsuch wrote the majority opinion for the court's fascist wing. He began with sickening crocodile tears over "those experiencing homelessness," who are, supposedly, "as diverse as the Nation itself—they are young and old and belong to all races and creeds," and "become homeless for a variety of reasons, too, many beyond their control."

Of course, homelessness does not affect all equally. Gorsuch ignores the class divide in US society. What the homeless share in common is extreme

impoverishment in a society dominated by oligarchs with no interest whatsoever in homelessness, as long as encampments do not interfere with their privileged and sheltered life.

Writing that the Eighth Amendment was enacted to prohibit “barbaric” punishments such as “disemboweling, quartering, public dissection, and burning alive,” Gorsuch called that constitutional provision “a poor foundation” for the Ninth Circuit rulings protecting the unhoused. He attacked as well the Supreme Court of 60 years ago, criticizing it for “reading the Cruel and Unusual Punishments Clause to impose a limit not just on what punishments may follow a criminal conviction but what a State may criminalize to begin with.”

“Public camping ordinances like those before us are nothing like the law at issue in *Robinson*,” Gorsuch wrote, disingenuously adding:

“It makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest on the lawn of a municipal building.”

Setting aside Gorsuch’s ominous reference to college encampments, such as the recent mass protests against the Zionist genocide in Gaza, one cannot but help but hear the echoes of poet Anatole France’s famous aphorism:

The law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal loaves of bread.

Gorsuch attacked the lower court judges such as Carter who sought to balance local efforts to address homelessness with the constitutional rights of those affected, claiming without evidence that judicial efforts “to alleviate the homelessness crisis” may have “inadvertently contributed to it.”

“A handful of federal judges” cannot match “the collective wisdom the American people” when responding to “a pressing social question like homelessness,” Gorsuch concluded.

The last point is particularly rich, as the same six-justice right-wing bloc on the same day overruled the

Chevron doctrine, thus effectively transferring control over the regulation of United States industry and finance from agencies established by the executive branch to unelected federal judges, who, as this decision illustrates, cannot act without the approval of the right-wing Supreme Court.

In her dissent, Justice Sonia Sotomayor, joined by the other two moderate justices, wrote that “Sleep is a biological necessity, not a crime,” and for “some people, sleeping outside is their only option.”

Making it criminal for people to “sleep anywhere in public at any time, including in their cars, if they use as little as a blanket to keep warm or a rolled-up shirt as a pillow” punishes people for being homeless, in violation of the Eighth Amendment, Sotomayor concluded.

The unhoused population is not the result of local policy or misguided federal judges. It is the product of capitalist rule. A rational society based on principles of socialism would allocate resources to house the entire population, including the aged, infirm and mentally ill, and would institute humane and scientifically guided programs to minimize substance abuse.



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