RECENT COURT FILING

CRIMINAL LAW — EIGHTH AMENDMENT PROHIBITION ON CRUEL AND UNUSUAL PUNISHMENT — DEPARTMENT OF JUSTICE SUBMITS STATEMENT OF INTEREST ARGUING THAT CITY ORDINANCES PROHIBITING CAMPING AND SLEEPING OUTDOORS VIOLATE THE EIGHTH AMENDMENT. — Statement of Interest of the United States, *Bell v. City of Boise*, No. 1:09-cv-540 (D. Idaho Aug. 6, 2015).

Homelessness continues to be a serious social problem in the United States, with more than half a million people estimated to be homeless in 2014.[1] A recent report indicates that thirty-four percent of cities impose citywide bans on camping in public, and eighteen percent of cities similarly ban sleeping in public.[2] Such bans are a cause for concern because they criminalize activity that the homeless have no meaningful choice but to conduct in public.[3] Moreover, the constitutionality of such bans has long been unclear.[4] Recently, in *Bell v. City of Boise*,[5] the Department of Justice (DOJ) filed a Statement of Interest (SOI) arguing that, where shelter space is unavailable, compliance with these ordinances has become impossible for the homeless, such that their "enforcement . . . amounts to the criminalization of homelessness, in violation of the Eighth Amendment."[6] The DOJ urged the court to adopt the reasoning of *Jones v. City of Los Angeles*,[7] where the Ninth Circuit held unconstitutional the enforcement of a Los Angeles ordinance that criminalized sitting, lying, or sleeping in public when there

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[1] *See* U.S. DEP'T OF HOUS. & URBAN DEV., THE 2014 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 6 (2014) [hereinafter AHAR 2014], https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf [http://perma.cc/LS66-AD34] (estimating that in January 2014, 578,424 people were homeless).

[2] *See* NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 7 (2014), http://www.nlchp.org/documents/No_Safe_Place [http://perma.cc/G8C5-SBUM]. The National Law Center surveyed 187 cities to derive its figures. *See id.* at 16 & n.21.

[3] More worryingly still, these bans are becoming more common — the National Law Center report found that, since 2011, bans on public camping have increased by sixty percent, *id.* at 8, and bans on sitting or lying down in public places like sidewalks and parks, often called "sit/lie laws," by 119 percent, *id.* at 22. Bans on sleeping in public, at least, have remained constant since 2011. *Id.* at 8. For more discussion on the concerns implicated by such criminalization, see, for example, Tanene Allison, *Confronting the Myth of Choice: Homelessness and* Jones v. City of Los Angeles, 42 HARV. C.R.-C.L. L. REV. 253, 257 (2007).

[4] The question has generated a circuit split dating from the 1960s. *See* Statement of Interest of the United States at 6–9, Bell v. City of Boise, No. 1:09-cv-540 (D. Idaho Aug. 6, 2015) [hereinafter SOI].

[5] No. 1:09-cv-540, 2014 WL 3547224 (D. Idaho July 16, 2014). This case was subsequently recaptioned *Martin v. City of Boise*, No. 1:09-cv-540, 2015 WL 5708586 (D. Idaho Sept. 28, 2015).

[6] *See* SOI, *supra* note 4, at 4; *see also* U.S. CONST. amend. VIII.

[7] 444 F.3d 1118 (9th Cir. 2006), *vacated after settlement*, 505 F.3d 1006 (9th Cir. 2007).

was inadequate shelter space.[8] In so doing, the DOJ held up *Jones* as the relevant legal standard through which to interpret and apply the Eighth Amendment.[9] While a positive move forward, this argument perpetuates an inadequate limiting principle in Eighth Amendment jurisprudence on criminalizing homelessness. To address this concern, the DOJ would do well to advance a reading of another case, *Pottinger v. City of Miami*,[10] that includes a focus on the harmlessness of the conduct in question.

In 2006, the Boise City Council passed an ordinance prohibiting "disorderly conduct," which it defined to include, inter alia, sleeping in public without the permission of the owner or person in control of the space.[11] In 2009, it passed another ordinance criminalizing "camping" — "the use of public property as a temporary or permanent place of dwelling . . . or as a living accommodation at anytime between sunset and sunrise . . . ."[12] That same year, several individuals who either were or had been homeless in Boise, and who had been cited or arrested for violating one or both of these ordinances,[13] filed suit in the U.S. District Court for the District of Idaho.[14] They alleged that the City's enforcement of the Camping and Sleeping Ordinances against the homeless violated the Eighth Amendment's prohibition on cruel and unusual punishment.[15]

The district court granted summary judgment in favor of the City, finding that the Ordinances did not violate the Eighth Amendment.[16] It did so by adopting a reading of *Jones* that advanced a framework with two requirements: first, that the homeless have no choice but to be out in public and, second, that the City's enforcement of the ordinance at issue penalizes the homeless for activity that does not warrant punishment, thus effectively criminalizing the status of being home-

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[8] *See Jones*, 444 F.3d at 1138.

[9] *See* SOI, *supra* note 4, at 4.

[10] 810 F. Supp. 1551 (S.D. Fla. 1992).

[11] BOISE, IDAHO, CODE § 6-01-05(A) (2015) [hereinafter the Sleeping Ordinance], http://cityclerk.cityofboise.org/media/223588/0601.pdf [http://perma.cc/URC5-YEHD].

[12] BOISE, IDAHO, CODE § 9-10-02 (2015) [hereinafter the Camping Ordinance], http://cityclerk.cityofboise.org/media/223779/0910.pdf [http://perma.cc/5KWT-B3RL].

[13] *See* Bell v. City of Boise, 709 F.3d 890, 893 (9th Cir. 2013). The plaintiffs are named as Robert Anderson, Janet Bell, Brian Carson, Pamela Hawkes, Basil Humphrey, Robert Martin, and Lawrence Lee Smith, and the citations and arrests occurred between 2006 and 2009. *See id.*

[14] *See generally* Complaint for Injunctive and Declaratory Relief, and Monetary Damages, Bell v. City of Boise, 834 F. Supp. 2d 1103 (D. Idaho 2011) (No. 1:09-cv-540).

[15] *Bell*, 834 F. Supp. 2d at 1106. The plaintiffs also brought three other constitutional claims — namely, that the enforcement of the Ordinances violated the Equal Protection Clause by "impeding the homeless individuals' fundamental right to travel," that the Camping Ordinance violated the Due Process Clause by being unconstitutionally vague, and that both Ordinances violated the Due Process Clause by being unconstitutionally overbroad as applied to the Plaintiffs' "essentially innocent conduct." *Id.*

[16] *See id.* at 1116.

less.[17] The court then found that the plaintiffs had failed to prove that "there [wa]s a class of homeless people in Boise who [were] unable to find shelter."[18] Therefore, the plaintiffs could not demonstrate that they were being prosecuted for "merely being present in public."[19] In making this finding, the court found it dispositive that the City provided a "safe harbor" to the homeless in its city parks throughout the day, and had a Special Order in place ensuring that no citations would be issued for camping or sleeping in public on nights when shelter space was not available.[20] These facts effectively mooted the plaintiffs' claims, according to the district court.

The Ninth Circuit reversed. Writing for the panel, Judge Black[21] held that the Special Order, which was no more than an internal policy set by the Boise Chief of Police that "purport[ed] to curb the discretion of officers" and "not a formal written enactment of a legislative body," had not met the "heavy burden" for mooting a claim.[22] The court did not decide the merits of the Eighth Amendment challenges.[23] On remand, the district court dismissed all claims but the request for a declaratory judgment stating that the enforcement of the Ordinances violated the Eighth Amendment and the Idaho Constitution.[24] The DOJ submitted its SOI on August 6, 2015 to support the plaintiffs' argument that *Jones* "is the appropriate legal framework for analyzing [the plaintiffs'] Eighth Amendment claims."[25]

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[17] *Id.* at 1108.

[18] *Id.*

[19] *Id.*

[20] *Id.* The Special Order, which the Boise Police Department adopted in January 2010, stated that "[o]fficers have discretion to enforce camping/sleeping in public ordinances *except* when, [1] Person is on public property and [2] There is no available overnight shelter." *Id.* at 1111 (quoting affidavit of local sergeant).

[21] Judge Black was sitting by designation from the Eleventh Circuit. She was joined by Judges Graber and Rawlinson.

[22] Bell v. City of Boise, 709 F.3d 890, 900 (9th Cir. 2013). For the claim to be moot, the City would have had to make it "absolutely clear that the allegedly wrongful behavior . . . could not reasonably be expected to recur." *Id.* at 901 (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000)).

[23] *Id.* at 893.

[24] Bell v. City of Boise, 993 F. Supp. 2d 1237, 1239 (D. Idaho 2014). The plaintiffs have filed an amended complaint centering on the Eighth Amendment claim, and the case remains pending. Revised Second Amended Complaint for Injunctive and Declaratory Relief, *Bell*, 2014 WL 3547224 (D. Idaho July 16, 2014) (No. 1:09-cv-540).

[25] SOI, *supra* note 4, at 4. The DOJ has statutory authority under 28 U.S.C. § 517 to "attend to the interests of the United States in any case pending in a federal court." *Id.* In this case, the DOJ's asserted interests were ensuring that individuals "be free from unconstitutional and abusive policing" pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (2012), that "justice [be] applied fairly," and that "the cycle of poverty and criminalization" be broken. SOI, *supra* note 4, at 4–5.

The SOI began by addressing the scale of the homelessness problem in the United States.[26] It went on to note that "finding a safe and legal place to sleep can be difficult or even impossible."[27] Where this is the case, the SOI argued, ordinances like Boise's, which criminalize sleeping or camping outside, effectively ban the *status* of being homeless in violation of the Eighth Amendment.[28] The SOI noted that, in *Robinson v. California*,[29] the Court struck down a state statute criminalizing addiction to narcotics on the ground that it made an addicted person "continuously guilty of [the] offense, whether or not he has ever used or possessed any narcotics within the State."[30] A few years later, in *Powell v. Texas*,[31] the Court fractured on the question of the constitutionality of a statute that criminalized public intoxication.[32] The SOI found *Powell* to represent a five-Justice agreement that "if . . . the prohibited conduct was involuntary due to one's condition, criminalization of that conduct would be impermissible under the Eighth Amendment."[33]

Nonetheless, without a clear majority ruling in *Powell*, the SOI continued, circuits have split on the question of whether acts rendered involuntary by a condition can be criminalized.[34] The SOI sought to

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[26] SOI, *supra* note 4, at 2.

[27] *Id.* National statistics support the DOJ's assertion — approximately thirty percent of the homeless are unsheltered. *See* AHAR 2014, *supra* note 1, at 1.

[28] SOI, *supra* note 4, at 11–12.

[29] 370 U.S. 660 (1962).

[30] *Id.* at 666. Such a statute, the *Robinson* Court declared, would be akin to a law "mak[ing] it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease," and would "be universally thought . . . an infliction of cruel and unusual punishment." *Id.*

[31] 392 U.S. 514 (1968).

[32] A four-Justice plurality read *Robinson* narrowly to forbid criminalizing only statuses, distinguishing the statute at issue on the basis that it prohibited the *act* of public intoxication. *See id.* at 532–37. Four dissenting Justices understood the statute to criminalize "being 'in a state of intoxication' in public," a pattern of behavior characteristic of the disease of chronic alcoholism, *id.* at 558 (Fortas, J., dissenting), and which the defendant "had no capacity to change or avoid," *id.* at 568. Justice White, the crucial fifth vote for the conviction, based his concurrence on his understanding that the defendant was not powerless to resist being intoxicated in public: "[N]othing in the record indicates that he could not have done his drinking in private or that he was so inebriated at the time that he had lost control of his movements and wandered into the public street." *Id.* at 553 (White, J., concurring in the result). Justice White, however, disavowed criminalization of "irresistible urge[s]," *id.* at 549, and explicitly noted that the ability to stay off the streets would *not* apply to the homeless, those "unfortunates" who have "no place else to go" such that "avoiding public places [would be] impossible," *id.* at 551.

[33] *See* SOI, *supra* note 4, at 7.

[34] *See id.* at 8–9 (listing cases from various circuits that have reached different conclusions on divergent reasoning); *see also* Joel v. City of Orlando, 232 F.3d 1353 (11th Cir. 2000) (finding on factual grounds that the behavior at issue was not involuntary because a large homeless shelter had never reached maximum capacity); Lehr v. City of Sacramento, 624 F. Supp. 2d 1218 (E.D. Cal. 2009) (expressing "reluctan[ce] to . . . extend the original *Robinson* rationale any further than is absolutely necessary," *id.* at 1229, and refusing to read a mens rea requirement into the Constitution, *id.* at 1234); Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992) (holding that

resolve this uncertainty by arguing that Eighth Amendment claims should be analyzed through the framework developed in *Jones*, which held that the constant enforcement of an anticamping ordinance was unconstitutional under the Cruel and Unusual Punishment Clause.[35] In that case, the Ninth Circuit found that inadequate shelter space gave plaintiffs no choice but to sleep in public, so that sleeping in public was "involuntary and inseparable from" the condition of being homeless.[36] The SOI argued that *Jones* presents the best reading of *Powell*, linking the latter's dissent and concurrence to stand for the proposition that the Eighth Amendment prohibits punishing "truly involuntary or unavoidable conduct resulting from status."[37] Laws that seek to criminalize sleeping in public, a "life-sustaining activity" that is "universal and unavoidable" for homeless individuals without shelter,[38] are thus tantamount to a criminalization of the status of homelessness, and thereby unconstitutional.

The SOI made a powerful argument about the unconstitutionality of anti–public sleeping laws. Moreover, as the first brief filed in twenty years by the United States seeking to clarify the Eighth Amendment analysis of anticamping laws,[39] the SOI has generated considerable media interest.[40] If the SOI's argument is adopted, it may significantly impact the way that courts throughout the country approach anti–public sleeping laws. It is clear, too, why the SOI advanced the reasoning from *Jones* — it is a Ninth Circuit decision, vacated for reasons irrelevant to its merits.[41] The government's reliance on *Jones*, however, is suboptimal because that case's reasoning has long drawn criti-

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ordinances criminalizing acts that homeless plaintiffs were powerless to prevent were unconstitutionally overbroad).

[35] 444 F.3d 1118, 1138 (9th Cir. 2006).

[36] *Id.* at 1136.

[37] SOI, *supra* note 4, at 11.

[38] *Id.* at 12.

[39] *Id.* at 9–10.

[40] *See, e.g.*, Emily Badger, *It's Unconstitutional to Ban the Homeless from Sleeping Outside, the Federal Government Says*, WASH. POST: WONKBLOG (Aug. 13, 2015), http://www.washingtonpost.com/news/wonkblog/wp/2015/08/13/its-unconstitutional-to-ban-the-homeless-from-sleeping-outside-the-federal-government-says [http://perma.cc/4W5Y-ZDEE]; *Feds Fight Against Idaho Law Banning the Homeless from Sleeping in Streets*, RT.COM (Aug. 7, 2015, 4:11 AM), http://www.rt.com/usa/311808-feds-fight-idaho-homeless-law [http://perma.cc/JKY4-WCVX]; Ryan J. Reilly, *The Federal Government Says Being Homeless Should Not Be a Crime*, HUFFINGTON POST (Aug. 6, 2015, 11:38 AM), http://www.huffingtonpost.com/entry/homeless-crime-sleeping_55c3742ee4b0923c12bbb772 [http://perma.cc/5W56-Z32X]. Not all of the attention has been favorable. *See, e.g.*, David Davenport, *Ordinances Banning Public Sleeping Are Unconstitutional Cruel and Unusual Punishment? Seriously?*, FORBES (Aug. 17, 2015, 6:48 PM), http://www.forbes.com/sites/daviddavenport/2015/08/17/ordinances-banning-public-sleeping-are-unconstitutional-cruel-and-unusual-punishment-seriously.

[41] *See* Jones v. City of Los Angeles, 505 F.3d 1006 (9th Cir. 2007) (vacating *Jones*, 444 F.3d 1118, following a settlement agreement between the parties).

cism for its lack of a satisfactory limiting principle. Given the broad scope of the SOI's claim, courts considering implementing its views should do so while also referencing *Pottinger*, which identified harmlessness of the conduct at issue, in addition to mere involuntariness, as a limiting principle. Advancing this additional legal standard would provide a sounder principle for determining when the Eighth Amendment's prohibition on criminalizing a status extends to criminalizing an act. By addressing the chief criticism levied against *Jones*'s reading of *Powell*, this bolstered approach may yield greater support for advocates seeking to protect and advance the interests of some of society's most vulnerable members.

As indicated above, much of the decision in *Jones* turned on the notion that sitting, lying, and sleeping are "universal and unavoidable consequences of being human," "involuntary and inseparable from status," and that criminalizing such activity requires "[the impossibility of] human beings . . . remain[ing] in perpetual motion" for compliance.[42] The court contrasted these acts with "conduct that is not an unavoidable consequence of being homeless, such as panhandling or obstructing public thoroughfares."[43] *Involuntariness* does the analytical work in the decision; the harmlessness of the conduct at issue is mentioned only in passing by the dissent.[44]

This emphasis on involuntariness, which springs from *Powell*, has come under considerable criticism.[45] In *Lehr v. City of Sacramento*,[46] the court rejected an Eighth Amendment challenge to an anticamping ordinance on the ground that an opposite result would allow "an onslaught of challenges to criminal convictions by those who seek to rely on the involuntariness of their actions" and would thus be "dangerous bordering on irresponsible."[47] The *Jones* dissent, too, found the "ramifications" of the majority's reasoning to be "extraordinary," arguing that the court "should not . . . immunize from criminal liability those who commit an act as a result of a condition that the government's failure to provide a benefit has left them in."[48] These concerns echo those of Justice Black in *Powell* itself: "I cannot think the States should

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[42] *Jones*, 444 F.3d at 1136.

[43] *Id.* at 1137.

[44] *See id.* at 1142 (Rymer, J., dissenting).

[45] *See, e.g.*, Sarah Gerry, Recent Development, Jones v. City of Los Angeles*: A Moral Response to One City's Attempt to Criminalize, Rather than Confront, Its Homelessness Crisis*, 42 HARV. C.R.-C.L. L. REV. 239, 248–49 (2007); Benno Weisberg, Comment, *When Punishing Innocent Conduct Violates the Eighth Amendment: Applying the* Robinson *Doctrine to Homelessness and Other Contextual "Crimes,"* 96 J. CRIM. L. & CRIMINOLOGY 329, 330 (2005); *see also* Recent Case, 120 HARV. L. REV. 829, 834–35 (2007) ("Because the court imposed no restrictions on its involuntariness inquiry, it is not clear how it can distinguish between Jones and the violent felon.").

[46] 624 F. Supp. 2d 1218 (E.D. Cal. 2009).

[47] *Id.* at 1234.

[48] *Jones*, 444 F.3d at 1139 (Rymer, J., dissenting).

be held constitutionally required to make the inquiry as to what part of a defendant's personality is responsible for his actions and to excuse anyone whose action was . . . the result of a 'compulsion.'"[49]

Pottinger, however, may offer relief from these concerns. More than a decade before the Ninth Circuit's decision in *Jones*, the Southern District of Florida confronted a similar issue, finding that Miami city ordinances prohibiting the homeless from lying down, sleeping, standing, or sitting in any public place at any time violated the Eighth Amendment.[50] Central to the *Pottinger* court's analysis was an understanding of *Powell* and *Robinson* that differed in key respects from *Jones*'s understanding of that precedent.[51] Most notably, *Pottinger* emphasized the "harmless" nature of the acts in question.[52] The conduct at issue was "otherwise innocent."[53] If anything, the court pointed out, "plaintiffs have not argued that the City should not be able to arrest them for public drunkenness or any type of conduct that might be *harmful* to themselves or to others."[54] Because the city was attempting to punish *innocent* conduct that the plaintiffs were powerless to avoid, the ordinances violated the Eighth Amendment.[55]

In emphasizing the harmless aspect of the behavior at issue, *Pottinger* provides a more robust limiting principle than "involuntariness" alone. As persuasively argued by one legal scholar, an innocence/culpability distinction has several benefits.[56] It avoids the "arbitrary distinction[] between status and act"[57] and allows for the criminalization of certain harmful behaviors, like public drinking,

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[49] Powell v. Texas, 392 U.S. 514, 541 (1968) (Black, J., concurring). Justice Black went on to note that "the sweep of that holding would . . . be startling." *Id.* at 545.

[50] *See* Pottinger v. City of Miami, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992).

[51] The *Pottinger* and *Jones* courts' analyses nonetheless shared some similarities. Like *Jones*, *Pottinger* noted the importance of the fact that the conduct at issue was involuntary, and emphasized that homeless plaintiffs had "no choice" but to conduct activities like sleeping in public. *See id.* at 1564; *see also id.* at 1565 (observing that the need to perform life-sustaining activities is "impossible" to resist). Indeed, commentators often treat the two cases as parallel or even interchangeable. *See, e.g.*, Gerry, *supra* note 45, at 247 (characterizing the *Pottinger* court's interpretation of *Powell* as "similar" to the Ninth Circuit's in *Jones*). The SOI does the same. *See* SOI, *supra* note 4, at 9.

[52] *Pottinger*, 810 F. Supp. at 1564.

[53] *Id.* at 1565.

[54] *Id.* (emphasis added).

[55] *Id.* While *Pottinger*'s language does not compel a reading of the case as advocating for the harmful/innocent distinction as the new standard de rigueur in this area of the law, its emphasis on harmlessness is, at least, *available*, and a plausible principle to draw from the case.

[56] *See* Weisberg, *supra* note 45, at 362–64.

[57] *Id.* at 363. *Compare* Powell v. Texas, 392 U.S. 514, 559 (1968) (Fortas, J., dissenting) ("Nor does [this case] concern the responsibility of an alcoholic for criminal *acts*. We deal here with the mere *condition* of being intoxicated in public."), *with id.* at 532 (plurality opinion) ("[The statute at issue] has not sought to punish a mere status . . . [but] has imposed upon appellant a criminal sanction for public behavior which may create substantial health and safety hazards . . . .").

while sparing others, like sleeping and eating.[58] A court might draw the distinction between innocence and culpability in a number of ways. For example, one scholar suggests the notion of "context crime[s]" as a litmus test, "draw[ing] a distinction between laws that criminalize specific conduct in all spacial and temporal contexts . . . and laws that criminalize conduct only when performed in certain contexts."[59] The incorporation of a harmlessness criterion in Eighth Amendment homelessness-criminalization jurisprudence would protect life-sustaining behavior while allaying concerns that extending Eighth Amendment prohibitions to laws criminalizing acts might undermine wider notions of criminal responsibility. The SOI itself recognized as much when it argued that "conduct that is essential to human life and wholly innocent" would not involve "knotty concerns" about criminal responsibility.[60] This awareness makes it surprising that the DOJ chose to make its argument through *Jones* alone and not also *Pottinger*.

The notion of harmlessness as a limiting principle is not without drawbacks. Setting a limit at the innocent/harmful divide is itself subject to some manipulation, and there will be hard cases. For example, a city might argue that eating outside leads to littering, an environmental harm. But a court could cabin that "harm" by finding that, while a city may criminalize *littering* specifically, it must continue to protect the fundamentally harmless conduct of eating. Activity like public urination presents a harder case, and there may be grounds to think that each city should be permitted to draw on its own legislative calculus when deciding whether to criminalize behavior that cannot be separated from a potential harm. Despite these foreseeable challenges, the harmlessness limiting principle still provides a preferable outcome to one where the homeless commit crimes by merely sleeping or feeding themselves. Moreover, this outcome would prevent challenges to criminal laws based on the asserted involuntariness of a person's actions when those actions are clearly associated with some harm to others or to society.

The DOJ's interpretation of Eighth Amendment precedent is a compelling one, but its insistence on *Jones* alone as the appropriate framework perpetuates an unsatisfactory line of argument for addressing camping bans. To that end, incorporating *Pottinger*'s innocent/harmful distinction into Eighth Amendment jurisprudence on criminalizing homelessness would provide a launching point for a more robust way of differentiating between the kinds of acts that may be criminalized and those that should remain unsanctioned by the law.

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[58] *See* Weisberg, *supra* note 45, at 359–64.

[59] *Id.* at 362.

[60] SOI, *supra* note 4, at 12–13.