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SUMMARY

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Dave S. Sidhu
Legislative Attorney

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Criminal law marks a boundary between conduct that society deems permissible and behavior that it deems worthy of punishment. Courts have expressed that those who cross the line may be subject to penalty and social disapproval. In addition to fines and imprisonment, transgressors may face wide-ranging collateral consequences.

The authority of the government to impose criminal punishment is not unlimited. The Eighth Amendment to the U.S. Constitution serves as one restraint on that authority. As relevant here, the Eighth Amendment forbids the government from subjecting individuals to "cruel and unusual punishments." This prohibition applies on its own terms to federal criminal laws and, by operation of the Fourteenth Amendment, also applies to states and their political subdivisions.

Enacted in 1791, the "Cruel and Unusual Punishments" Clause operates to bar the imposition of some forms of punishments for particular offenses (e.g., death for non-murder offenses or treason) or classes of offenders (e.g., death for the intellectually disabled or juveniles). In the 1960s, the Supreme Court issued twin decisions—in *Robinson v. California*, 370 U.S. 660 (1962) and *Powell v. Texas*, 392 U.S. 514 (1968)—that also articulated a substantive component to the Cruel and Unusual Punishments Clause, limiting not only what punishments may follow a criminal conviction but also what a government may criminalize to begin with.

Robinson and *Powell* addressed whether imposing criminal punishment on individuals with an addiction to alcohol or narcotics violated the Cruel and Unusual Punishments Clause. These cases gave rise to confusion in the lower courts as to whether, among other things, the Clause created a status-conduct distinction, meaning the Clause outlaws only the punishment of an individual's status (e.g., "being an addict") but is not offended if a government punishes some identifiable conduct (e.g., "being intoxicated in public").

It was not until 2024, in *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024), that the Court returned to explain the substantive side of the Clause. In *Grants Pass*, the Court held that (1) the Cruel and Unusual Punishments Clause has historically been concerned with the methods or modes of punishment; (2) to the extent that the Clause exacts a substantive restriction on criminal laws, the Clause only proscribes governments from punishing status; and (3) that prohibition on punishing status does not extend to punishing conduct that purportedly defines a status.

The decision in *Grants Pass* clarifies the meaning of the Cruel and Unusual Punishments Clause, narrows the Clause's substantive component, and thereby expands the scope of government authority to enact certain criminal laws.

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In relevant part, the Eighth Amendment prohibits the government from subjecting individuals to "cruel and unusual punishments."[1] Throughout American history, the Cruel and Unusual Punishments Clause generally prohibited the imposition of some forms of punishments,[2] limited capital punishment to certain classes of offenses,[3] barred capital punishment for certain classes of offenders,[4] and insisted on proportionality between the offense and the punishment.[5] In the 1960s, the Court issued decisions in twin cases, *Robinson v. California*[6] and *Powell v. Texas*,[7] that described a substantive component to the Clause, limiting not only what punishments may follow a criminal conviction but what a government may criminalize to begin with.[8]

Robinson and *Powell* addressed whether imposing criminal punishment on individuals with an addiction to alcohol or narcotics violated the Cruel and Unusual Punishments Clause.[9] In subsequent rulings, seven circuits understood these cases to establish a status-conduct distinction: that is, the government may not criminalize "a mere status" (e.g., possessing an addiction), but it may punish individuals for their conduct (e.g., public intoxication).[10] The U.S. Courts of Appeals

[1] U.S. CONST. amend. XIII. The Eighth Amendment reads in full: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.* For information on the Excessive Bail Clause, see Cong. Rsch. Serv., *Historical Background on Excessive Bail*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-2-1/ALDE_00000960/ (last visited Aug. 20, 2025); Cong. Rsch. Serv., *Modern Doctrine on Bail*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-2-2/ALDE_00000961/ (last visited Aug. 20, 2025). For information on the Excessive Fines Clause, see Cong. Rsch. Serv., *Excessive Fines*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-3/ALDE_00000962/ (last visited Aug. 20, 2025). This report draws from CRS Legal Sidebar LSB11203, *The Eighth Amendment and Homelessness: Supreme Court Upholds Camping Ordinances in City of Grants Pass v. Johnson*, by Whitney K. Novak and Dave S. Sidhu (2024).

[2] *See* Cong. Rsch. Serv., *Historical Background on Cruel and Unusual Punishment*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-1/ALDE_00000963/ (last visited Aug. 20, 2025); *see also* City of Grants Pass v. Johnson, 603 U.S. 520, 542 (2024) ("In the 18th century, English law still 'formally tolerated' certain barbaric punishments like 'disemboweling, quartering, public dissection, and burning alive,' even though those practices had by then 'fallen into disuse.' The Cruel and Unusual Punishments Clause was adopted to ensure that the new Nation would never resort to any of those punishments or others like them." (quoting Bucklew v. Precythe, 587 U.S. 119, 130 (2019))).

[3] *See* Cong. Rsch. Serv., *Gregg v. Georgia and Limits on Death Penalty* n.3, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-9-4/ALDE_00000970/ (last visited Aug. 20, 2025) (observing that capital punishment is authorized, for example, when the offense involves the deliberate taking of the life of another and when the individual commits a significant offense against the state, such as treason or terrorism).

[4] *See* Cong. Rsch. Serv., *Cognitively Disabled and Death Penalty*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-9-7/ALDE_00000972/ (last visited Aug. 20, 2025) (discussing restrictions against capital punishment for persons with intellectual disabilities); Cong. Rsch. Serv., *Minors and Death Penalty*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-9-7/ALDE_00000973/ (last visited Aug. 20, 2025) (discussing restrictions against capital punishment for juveniles).

[5] *See* Cong. Rsch. Serv., *Proportionality in Sentencing*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-3/ALDE_00001270/ (last visited Aug. 20, 2025) ("The Supreme Court has . . . held that the Eighth Amendment's prohibition against 'cruel and unusual punishments' applies to punishments that are disproportionate to the offense." (citing Solem v. Helm, 463 U.S. 277, 284 (1983))).

[6] 370 U.S. 660 (1962).

[7] 392 U.S. 514 (1968).

[8] *See* City of Grants Pass v. Johnson, 603 U.S. 520, 546 (2024).

[9] *Robinson*, 370 U.S. at 666; *Powell*, 392 U.S. at 532.

[10] *See* Petition for Writ of Certiorari at 20–21, *Grants Pass*, 603 U.S. 520 (No. 23-175) [hereinafter Petition for Writ of Certiorari] (collecting cases).

for the Fourth Circuit and Ninth Circuit[11] ruled, however, that criminalizing conduct tied to one's status is also constitutionally off limits.[12]

In 2024, the Supreme Court explored the substantive side of the Clause for the first time since *Robinson* and *Powell* were decided decades earlier.[13] In *City of Grants Pass v. Johnson*,[14] the Court faced three questions on the meaning of the Cruel and Unusual Punishments Clause: (1) whether the Clause prohibits only the method of punishment;[15] (2) whether the Clause contains a substantive limit on criminal laws, specifically precluding the government from imposing a criminal law that punishes status in the absence of some conduct;[16] and (3) if so, whether the prohibition against punishing status includes punishing conduct that is a necessary manifestation or extension of status.[17]

The *Grants Pass* case emanated from the Ninth Circuit, which held that a municipality may not criminally sanction homeless persons for the natural conduct of sleeping, where their status of homelessness is involuntary due to the lack of adequate housing alternatives.[18] In 2024, the Supreme Court reversed.[19] The Court held that (1) the Cruel and Unusual Punishments Clause has historically been concerned with the methods or modes of punishment, and the maximum punishments in this case (i.e., fines and up to thirty days in jail) are neither cruel (in that they are not designed to "superad[d]" "terror, pain, or disgrace" to the punishment itself) nor unusual (in that similar sanctions are commonly employed);[20] (2) to the extent the Clause exacts a substantive restriction on criminal laws, the Clause only proscribes governments from punishing status;[21] and (3) prohibition on punishing status does not extend to punishing conduct that purportedly defines a status.[22]

This report summarizes the Supreme Court's Cruel and Unusual Punishments Clause caselaw and the *Grants Pass* decision. The report begins by outlining the historical origins of the Clause and the Court's early jurisprudence on the Clause, focusing on the *Robinson* and *Powell* decisions. It then discusses modern Cruel and Unusual Punishments Clause caselaw through the lens of criminal laws enforced against homeless individuals, highlighting the Court's *Grants Pass* ruling and the decisions leading up to *Grants Pass*. It concludes with potential considerations for Congress.

[11] This report references a significant number of decisions by federal appellate courts of various regional circuits. For purposes of brevity, further references to a particular circuit in the body of this report (e.g., the Ninth Circuit) refer to the U.S. Court of Appeals for that particular circuit.

[12] *See* Petition for Writ of Certiorari, *supra* note 10, at 22–23 (collecting cases).

[13] Prior to the Fourth and Ninth Circuit rulings generating the circuit split, the Court did not revisit *Robinson* or *Powell* as the dissent in the Fourth Circuit case recognized. *See* Manning v. Caldwell for City of Roanoke, 930 F.3d 264, 291 (4th Cir. 2019) (en banc) (Wilkinson, J., dissenting).

[14] 603 U.S. 520 (2024).

[15] *Id.* at 542–43.

[16] *Id.* at 546–47.

[17] *Id.* at 547–56.

[18] Johnson v. City of Grants Pass, 72 F.4th 868, 875 (9th Cir. 2023), *rev'd and remanded*, 603 U.S. 520 (2024).

[19] *Grants Pass*, 603 U.S. at 560–61.

[20] *Id.* at 541–42 (quoting *Bucklew*, 587 U.S. at 130).

[21] *Id.* at 546–47.

[22] *Id.* at 549–50.

Historical Origins of the Cruel and Unusual Punishments Clause

The Eighth Amendment reads in full, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[23] The Eighth Amendment's "venerable lineage" may be traced to at least the Magna Carta of 1215.[24] The Magna Carta provided that, "[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement . . . ."[25] The Supreme Court cited examples in scholarship interpreting this language in the Magna Carta to mean that any economic penalties imposed by the government must "be proportioned to the wrong" and "not be so large as to deprive [the defendant] of his livelihood."[26] The proportionality principle of the Magna Carta was also codified in the English Bill of Rights of 1689, which expanded the concern about economic sanctions to punishment generally, stating that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[27]

In the 1700s, these protections from the Magna Carta and the English Bill of Rights persisted at British common law.[28] "Across the Atlantic," the Supreme Court recounted, these protections were adopted "almost verbatim" in the colonies.[29] At least eight colonies had some version of a prohibition concerning permissible punishments: five states prohibited "cruel or unusual" punishments, two barred "cruel" punishments, and Virginia banned "cruel and unusual" punishments.[30] Virginia largely copied the language found in the English Bill of Rights; its Declaration of Rights read, in relevant part, "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[31]

At the time of the ratification of the Bill of Rights, the Eighth Amendment received "little debate."[32] Over time and in the modern era, the prohibition against cruel and unusual punishments has been interpreted to encompass several subsidiary principles:

- that capital punishment is reserved for those who commit certain homicide offenses or certain offenses against the government;[33]

[23] U.S. CONST. amend. XIII. The Eighth Amendment's prohibitions apply to laws enacted by the federal government, and by state governments and their local subdivisions by operation of the Fourteenth Amendment. *See* Cong. Rsch. Serv., *Modern Doctrine on Selective Incorporation of Bill of Rights*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt14-S1-4-3/ALDE_00013746/ (last visited Aug. 20, 2025). The Eighth Amendment does not apply to civil offenses. *See* Cong. Rsch. Serv., *Limitation to Criminal Punishments*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-5/ALDE_00001272/ (last visited Aug. 20, 2025).

[24] *See* Timbs v. Indiana, 586 U.S. 146, 151 (2019).

[25] *Id.* (quoting Magna Carta, 9 Hen. III, ch. 14, § 10 (1225)).

[26] Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 271 (1989).

[27] Bill of Rights, 1 W. & M., ch. 2, § 10 (1689).

[28] *See* 4 WILLIAM BLACKSTONE, COMMENTARIES 372 ("[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear . . . .").

[29] *Timbs*, 586 U.S. at 152.

[30] Harmelin v. Michigan, 501 U.S. 957, 966 (1991).

[31] *See* VA. DECLARATION OF RIGHTS art. I, § 9 (1776).

[32] Weems v. United States, 217 U.S. 349, 368 (1910).

[33] *See* Cong. Rsch. Serv., *Gregg v. Georgia and Limits on Death Penalty* n.3, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-9-4/ALDE_00000970/ (last visited Aug. 20, 2025). The Court (continued...)

- that certain classes of individuals, such as juveniles and individuals with intellectual disabilities, are exempt from capital punishment, even if they commit a qualifying capital offense;[34]
- that sentences imposed shall not be disproportionate to the offense of conviction;[35]
- that conditions of confinement cannot be cruel and unusual;[36]
- that certain modes or forms of punishment cannot be applied;[37] and
- that the government cannot criminalize certain behavior in the first place.[38]

It is this last Eighth Amendment principle—termed a *substantive limitation on criminal laws*—that is discussed in the remainder of the report.[39]

Early Development of a Substantive Limitation on Criminal Laws

As indicated above, prior to its 2024 decision in *City of Grants Pass v. Johnson*, the Supreme Court had issued two prior decisions identifying Eighth Amendment substantive limits on what a government may criminalize: *Robinson v. California*[40] and *Powell v. Texas*.[41]

has not squarely determined whether certain "offenses against the State," including treason and espionage, may be punished by death. *See* Kennedy v. Louisiana, 554 U.S. 407, 437 (2008).

[34] *See* Cong. Rsch. Serv., *Cognitively Disabled and Death Penalty*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-9-7/ALDE_00000972/ (last visited Aug. 20, 2025); Cong. Rsch. Serv., *Minors and Death Penalty*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-9-7/ALDE_00000973/ (last visited Aug. 20, 2025).

[35] *See* Cong. Rsch. Serv., *Proportionality in Sentencing*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-3/ALDE_00001270/ (last visited Aug. 20, 2025).

[36] *See* Cong. Rsch. Serv., *Conditions of Confinement*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-7/ALDE_00000966/ (last visited Aug. 20, 2025) ("The Court explained that '[c]onditions [in prison] must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment.' . . . prison conditions, 'alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities' and thus violate the Eighth Amendment." (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981))).

[37] *See* Cong. Rsch. Serv., *Evolving or Fixed Standard of Cruel and Unusual Punishment*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-2/ALDE_00000964/ (last visited Aug. 20, 2025) ("[T]he Court has generally viewed the Eighth Amendment to prohibit punishments that 'involve the unnecessary and wanton infliction of pain' . . . [and that] present[] a 'substantial risk of serious harm' or an 'objectively intolerable risk of harm.'" (quoting Baze v. Rees, 553 U.S. 35, 50, 55 (2008)).

[38] *See* Cong. Rsch. Serv., *Addiction, Alcoholism, and Homelessness Under the Eighth Amendment*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-6/ALDE_00000965/ (last visited Aug. 20, 2025) ("The Supreme Court has recognized violations of the Clause . . . [in] situations in which the government punishes an individual for their 'status' rather than their overt actions.").

[39] Unless otherwise noted, this report hereinafter refers to the substantive strand of the Cruel and Unusual Punishments Clause, not other components of the Clause.

[40] 370 U.S. 660 (1962).

[41] 392 U.S. 514 (1968).

Robinson v. California

In Robinson, the Supreme Court heard a Fourteenth Amendment challenge to a California law that made it a misdemeanor offense for an individual to "be addicted to the use of narcotics."[42] The defendant was put on trial for violating this law.[43] Two Los Angeles police officers testified that they had observed discoloration, scabs, and needle marks on the defendant's arms, which, to them, were indicative of the use of narcotics.[44] An officer further added that he had observed the defendant using narcotics in the past, but that the defendant "was neither under the influence of narcotics nor suffering withdrawal symptoms at the time he saw him."[45] A jury convicted the defendant, and a state appeals court upheld the conviction.[46]

The Supreme Court reversed. The majority expressed concern that the defendant was convicted on the basis of his "status"—specifically, possessing the "'chronic condition' . . . of being 'addicted to the use of narcotics'"—and not "upon proof of the actual use of narcotics."[47] The majority thus ruled that, under the Eighth and Fourteenth Amendments, an individual may not be punished for a status in the absence of some conduct (or "*actus reus*").[48] "This statute," the Court explained, "is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration," but instead is "a statute which makes the 'status' of narcotic addiction a criminal offense."[49] The Court accepted that addiction is an "illness," concluding that "[e]ven one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold."[50]

Reflecting these principles, Justice Harlan in concurrence seemed similarly concerned that the defendant could be found guilty for possessing a "bare desire" to commit the criminal act of using narcotics.[51] Justice Douglas also concurred, questioning "how under our system *being an addict* can be punished as a crime,"[52] as addiction is a "disease" and, as such, treatment would be a more constitutionally sound course for individuals addicted to narcotics.[53]

Two Justices dissented. Justice Clark posited that Robinson was an "incipient" addict[54] who retained self-control and thus posed an inherent "threat of future harmful conduct."[55] In this case, criminal punishment was justified, he added, because it might deter and prevent that risky conduct.[56] Justice White, separately dissenting, asserted that Robinson was not convicted due to

[42] *Robinson*, 370 U.S. at 662.

[43] *Id.* at 661–64.

[44] *Id.* at 661–62.

[45] *Id.* at 662.

[46] *Id.* at 663–64.

[47] *Id.* at 665.

[48] *Id.* at 666 ("in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.").

[49] *Id.*

[50] *Id.* at 667.

[51] *Id.* at 679 (Harlan, J., concurring).

[52] *Id.* at 674 (Douglas, J., concurring).

[53] *Id.* at 674–75.

[54] *Id.* at 681 (Clark, J., dissenting).

[55] *Id.* at 683.

[56] *Id.* at 684.

any status, but rather "for the regular, repeated or habitual use of narcotics."[57] Justice White further claimed that he "would have other thoughts about this case" if the defendant had lost control and the conduct was compelled on account of his addiction.[58]

Powell v. Texas

In *Powell v. Texas*, the Supreme Court heard an argument from a defendant that his Texas conviction for public intoxication, where the defendant claimed that he was "afflicted with the disease of chronic alcoholism" and that being intoxicated in public was "not of his own volition,"[59] violated the Eighth Amendment (applicable to Texas by way of the Fourteenth Amendment). The case produced fractured opinions from the Justices. The plurality opinion—authored by Justice Thurgood Marshall and joined by three other Justices—determined that "Texas . . . has not sought to punish for a mere status, as California did in *Robinson*," but rather "for public behavior which may create substantial health and safety hazards, both for [the defendant] and for members of the general public."[60] That is, the plurality indicated that the government may criminalize an individual on the basis of conduct, but not status.

Justice Black wrote a concurring opinion, joined by Justice Harlan, emphasizing, among other things, the penological purposes of punishment in this case: it "gets the alcoholics off the street, where they may cause harm in a number of ways to a number of people, and isolation of the dangerous has always been considered an important function of the criminal law."[61] Justice Black also asserted that "punishment of chronic alcoholics can . . . give potential alcoholics an additional incentive to control their drinking."[62] These purposes may be served, Justice Black continued, even if "his action was 'compelled.'"[63] Justice Black closed by stating that *Robinson* established a status-conduct distinction, forbidding punishment when the individual has not committed a "wrongful act."[64]

Justice White concurred in the result. Citing *Robinson*, Justice White opined that, "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."[65] Justice White pointed out that the statute did not punish intoxication alone, but rather being in public while intoxicated; there was no evidence, he adduced, that the defendant was compelled to be in public.[66] Accordingly, Justice White was not prepared to "say that the chronic alcoholic who proves his disease and a compulsion to drink is shielded from conviction . . . [for] the [additional] act of going to or remaining in a public place."[67]

[57] *Id.* at 686 (White, J., dissenting).

[58] *Id.* at 685.

[59] Powell v. Texas, 392 U.S. 514 (1968) (plurality).

[60] *Id.* at 532.

[61] *Id.* at 539 (Black, J., concurring).

[62] *Id.*

[63] *Id.* at 540.

[64] *Id.* at 548.

[65] *Id.* (White, J., concurring in the judgment) (citation omitted).

[66] *Id.* at 549.

[67] *Id.* at 550.

Four Justices dissented. They contended that the defendant was "powerless to avoid drinking,"[68] had an "'uncontrollable compulsion to drink' to the point of intoxication,"[69] and that once in this state "he could not prevent himself from appearing in public places."[70] In other words, they suggested that, here, drinking and appearing in public were both involuntary acts, making criminal punishment inappropriate.

Diverging Interpretations of *Robinson* and *Powell*

Following *Robinson* and *Powell*, seven federal appellate courts—the First, Second, Third, Seventh, Tenth, Eleventh, and D.C. Circuits—interpreted those decisions as establishing a status-conduct distinction and rejected claims that "involuntary" conduct stemming from an addiction was beyond the reach of criminal law.[71] The Eleventh Circuit, for example, wrote of the Cruel and Unusual Punishments Clause's substantive limits that "[a] distinction exists between applying criminal laws to punish conduct, which is constitutionally permissible, and applying them to punish status, which is not."[72]

Not all courts embraced this approach. The en banc Fourth Circuit in *Manning v. Caldwell for City of Roanoke* adopted a different reading of *Robinson* and *Powell* in a case brought by individuals challenging a Virginia statute that made it unlawful for any person with a prior driving-while-intoxicated conviction or who "has shown himself to be an habitual drunkard" to use or possess alcohol, or to be intoxicated in public.[73] While seven of the fifteen circuit judges would have adopted the status-conduct distinction,[74] the majority of eight judges determined that, in light of Justice White's approach and the views of the four dissenting Justices in *Powell*, the Eighth Amendment bars the government from punishing an individual for an involuntary status as well as an involuntary action stemming from that status.[75]

Across the country, the Ninth Circuit, like the Fourth Circuit, also did not adopt the status-conduct distinction drawn by some courts from *Robinson* and *Powell*. Further, several Ninth Circuit rulings on the subject, discussed in the next section, prompted the Supreme Court to revisit the substantive scope of the Cruel and Unusual Punishments Clause in its 2024 ruling in *Grants Pass*.

[68] *Id.* at 567 (Fortas, J., dissenting).

[69] *Id.* at 568 (citation omitted).

[70] *Id.*

[71] *See* Petition for Writ of Certiorari, *supra* note 10, at 20–21.

[72] Joel v. City of Orlando, 232 F.3d 1353, 1361 (11th Cir. 2000) (affirming summary judgment for the city in case brought by a homeless man claiming that the city's ordinance prohibiting sleeping on public property violated, among other things, the Eighth and Fourteenth Amendments).

[73] Manning v. Caldwell, 930 F.3d 264, 268 (4th Cir. 2019) (en banc) (citing VA. CODE ANN. § 4.1-333(A) (2019)).

[74] *Id.* at 288–89 (Wilkinson, J., dissenting); *Id.* at 307 (Diaz, J., dissenting).

[75] *Id.* at 281–84 (majority opinion) (en banc).

Grants Pass: Clarifying the Substantive Limitation on Criminal Laws

Relevant Cases Leading Up to *Grants Pass*

Grants Pass generally concerned the constitutionality of applying the City of Grants Pass, Oregon's anti-camping ordinances to homeless individuals.[76] In the context of Eighth Amendment cases implicating homelessness, the Ninth Circuit had previously interpreted *Robinson* and *Powell* to forbid the government from criminalizing conduct intertwined with the status of homelessness, where the homelessness is involuntary.

Two particular cases involving Eighth Amendment challenges to such homelessness policies, *Jones v. City of Los Angeles*[77] and *Martin v. City of Boise*,[78] formed the backdrop for the Supreme Court's ruling in *Grants Pass*. In 2006, the Ninth Circuit in *Jones* held that Los Angeles's enforcement of an ordinance forbidding "involuntarily sitting, lying, and sleeping in public" violated the Eighth Amendment as long as the number of homeless individuals exceeded the number of available beds for the homeless in shelters.[79] The Ninth Circuit vacated this opinion following a settlement, rendering it nonbinding on the court and lower courts in its jurisdiction.[80]

In 2018, in *Martin*, the Ninth Circuit adopted and "agree[d] with *Jones*'s reasoning and central conclusion."[81] In *Martin*, the City of Boise made it a crime to use "any of the streets, sidewalks, parks, or public places" for "camping."[82] Following a federal district court ruling for the City, a panel of the Ninth Circuit reversed. Quoting *Jones*, the panel asserted that in *Powell*, "five Justices"—Justice White in concurrence and the four dissenting Justices—interpreted *Robinson* to mean "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."[83] Applying this amalgamated reading to the ordinances, the panel concluded that the City could not punish an individual for conduct, including sleeping, that is "biologically compelled"[84] and that is a "universal and unavoidable" byproduct of being human,[85] adding that the City could not criminalize homeless individuals on the "false premise they had a choice in the matter" given the shortage of sufficient available sleeping alternatives.[86]

[76] *See* Blake v. City of Grants Pass, No. 1:18-CV-01823, 2020 WL 4209227, at *4–5 (D. Or. July 22, 2020) (listing the challenged ordinances).

[77] 444 F.3d 1118 (9th Cir. 2006), *vacated on other grounds*, 505 F.3d 1006 (9th Cir. 2007)).

[78] 920 F.3d 584 (9th Cir. 2019), *abrogated by* City of Grants Pass v. Johnson, 603 U.S. 520 (2024).

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

[80] Jones v. City of Los Angeles, 505 F.3d 1006 (9th Cir. 2007).

[81] *Martin*, 902 F.3d at 1035.

[82] *Id.*

[83] *Id.* at 1048 (quoting *Jones*, 444 F.3d at 1135).

[84] *Id.* (quoting *Jones*, 444 F.3d at 1136).

[85] *Id.* (quoting *Jones*, 444 F.3d at 1136).

[86] *Id.*

Grants Pass: Background

The City of Grants Pass, Oregon, adopted ordinances generally prohibiting sleeping in public, camping in public, and camping in a city park.[87] Prior to the Ninth Circuit's decision in *Martin*, described above, the City functionally equated sleeping in public parks with camping.[88] After *Martin*, however, the City amended the definition of camping to capture the use of bedding or the placement of a stove or fire to "maintain[] a temporary place to live."[89] The City adopted an escalating penalty structure for violations. An individual who violated these ordinances faced civil citations and fines and could be temporarily barred from a city park for receiving two relevant citations.[90] If an individual returned to a city park while under such an exclusion order, they faced potential prosecution for criminal trespass.[91]

A class of homeless individuals filed suit in federal court in Oregon, claiming that the ordinances constituted cruel and unusual punishment.[92] Applying *Martin*, the district court agreed. The court acknowledged that the City revised its ordinances to prohibit camping, not sleeping, but found that this amendment made no constitutional difference, as there is a "basic life sustaining need to keep warm and dry while sleeping."[93] The district court also agreed with *Martin* that camping outside is involuntary when "there is a greater number of homeless individuals in [a city] than beds available [in shelters]."[94]

A divided panel of the Ninth Circuit affirmed.[95] As in *Martin*, the panel stated that the general principle from the fractured *Powell* ruling was the "narrow" one endorsed by five Justices: "a person cannot be prosecuted for involuntary conduct if it is an unavoidable consequence of one's status."[96] The panel concluded that a homeless individual with no viable alternatives may not be punished for the involuntary "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."[97] After the full Ninth Circuit declined to rehear the case,[98] the Supreme Court granted the City's petition for review on January 12, 2024.[99]

[87] *See* Blake v. City of Grants Pass, No. 1:18-CV-01823, 2020 WL 4209227, at *4–5 (D. Or. July 22, 2020) (listing the challenged ordinances).

[88] *See id.* at *6.

[89] *See id*. (quoting GRANTS PASS MUN. CODE § 5.61.010(B) (2020)).

[90] *See id.* at *4–5 (citing GRANTS PASS MUN. CODE §§ 5.61.020(C), 6.46.350 (2020)).

[91] *See id*. at *10.

[92] *See id.* at *6; Third Amended Complaint at 15–16, Blake v. City of Grants Pass, No. 1:18-CV-01823 (D. Or. Oct. 5, 2020).

[93] Blake v. City of Grants Pass, No. 1:18-CV-01823, 2020 WL 4209227, at *6 (D. Or. July 22, 2020).

[94] *Id.* (quoting *Martin*, 920 F.3d at 617) (alterations in original).

[95] Johnson v. City of Grants Pass, 50 F.4th 787 (9th Cir. 2022), *amended and superseded on denial of rehearing en banc*, 72 F.4th 868 (9th Cir. 2023), *rev'd and remanded*, City of Grants Pass v. Johnson, 603 U.S. 520 (2024).

[96] *Johnson*, 50 F.4th. at 811.

[97] *Id.* at 813.

[98] Johnson v. City of Grants Pass, 72 F.4th 868 (9th Cir. 2023).

[99] City of Grants Pass v. Johnson, 144 S. Ct. 679 (2024) (Mem.).

Grants Pass: The Supreme Court's Ruling

Considerations Before the Court

To sharpen the issues and arguments before the Court, the Justices held oral argument[100] on April 22, 2024.[101] The parties—the City and the individuals challenging the ordinances—agreed that *Robinson* held that it is unconstitutional for the government to punish an individual for their status.[102] The oral argument revealed that a primary focus of the dispute was whether the ordinances complied with *Robinson*, specifically whether the ordinances, in text or application, implicated a "status" under *Robinson*.

Chief Justice Roberts questioned whether homelessness was a "status" within the meaning of *Robinson*, as homelessness can change,[103] in contrast to addiction, which is, as the challengers admitted, "immutable."[104] The challengers contended that a temporary status—such as having active cancer, which may later go into remission—still cannot be punished.[105] Justice Thomas indicated his view that the ordinances did not punish status, as the law in *Robinson* made it unlawful "to be addicted" to certain drugs, whereas the ordinances did not make it unlawful "to be homeless."[106]

Even accepting that homelessness is a "status" under *Robinson*, the City argued that the ordinances were nonetheless consistent with *Robinson* in that they prohibited the conduct of sleeping outside with certain items.[107] The challengers countered that to punish sleeping outside with certain items is effectively to punish the status of being homeless, as the ordinances defined the relevant conduct in a manner that functionally described the status of homelessness.[108] The United States, participating in the case as amicus,[109] similarly argued that the ordinances violated *Robinson* by effectively punishing status.[110] Justice Barrett suggested that to arrest homeless

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[100] Justices of the Court have remarked that oral argument is an important part of the decisional process, where arguments "begin to crystallize," where the Justices "separate the wheat from the chaff," and where Justices may emerge feeling differently about a case. John G. Roberts, Jr., *Oral Advocacy and the Re-emergence of a Supreme Court Bar*, 30 J. SUP. CT. HIST. 68, 70, 70 n.8 (2005) (citing ROBERT L. STERN ET AL., SUPREME COURT PRACTICE 578 (6th ed. 1986)). While oral argument is not itself part of the eventual decision, it may shed light on the thinking—and the "doors" that remained open and closed—leading up to the decision. *Id.* at 70.

[101] Transcript of Oral Argument, City of Grants Pass v. Johnson, 603 U.S. 520 (2024) (No. 23-175).

[102] *See id*. at 61–62 (petitioner), 131 (respondent). As the City filed the petition seeking Supreme Court review, it is termed the "petitioner" before the Supreme Court. The challengers, who prevailed in the case being appealed, are termed the "respondents." *See Supreme Court Procedures*, U.S. COURTS (last visited Aug. 20, 2025), https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-court-procedures.

[103] Transcript of Oral Argument, *supra* note 101, at 37.

[104] *Id.* at 135.

[105] *Id.* at 136.

[106] *Id.* at 133.

[107] *Id.* at 13–14, 18, 22–23, 41.

[108] *Id.* at 131–33.

[109] An "amicus" is not a primary party to the case, but instead is generally someone (*e.g.*, an organization, scholar, member of Congress, or governmental entity) that has an interest in the case and participates to bring a particular perspective to the attention of the Court that is not already covered by a primary party. *See generally* SUP. CT. R. 37.1 (2023).

[110] Transcript of Oral Argument, *supra* note 101, at 66. The United States differed from the challengers' position in that the United States argued that the Ninth Circuit's remedy was incorrect; that is, the United States posited that the court was wrong to issue broad injunctive relief without insisting upon or explaining the contents of a particularized showing (continued...)

individuals while they were "just standing outside the bus stop" would violate *Robinson* in that the individuals would be punished for possessing a status rather than any active conduct reflective of camping.[111]

Turning to practicalities, Justice Kavanaugh explored whether the ordinances had put a dent in the homelessness problem.[112] The Justices also delved into the City's argument that the Ninth Circuit's rule was unworkable. For example, Justice Alito cautioned that, if the Ninth Circuit ruling was to be affirmed, local police would have to determine, on a nightly basis, how many individuals were genuinely homeless versus how many beds were available.[113] Justices Kavanaugh and Gorsuch suggested, respectively, that this outcome would amount to federal courts "micromanaging" homelessness policy[114] and deciding when countervailing public health concerns supported the government regulation.[115] Justice Jackson pointed out that *Grants Pass* stemmed from *Martin*, which had been in effect since 2018 and had not generated these administrability issues.[116] If a homeless person had no choice but to sleep outside, the City suggested that the person could raise a necessity defense, averting the need for the Court to reach the constitutional question.[117] The challengers countered that it was "unclear" whether and how such a defense would apply.[118] The United States similarly questioned the necessity defense, characterizing it as "speculative."[119]

Majority Opinion

In a 6-3 decision authored by Justice Gorsuch, the Court sided with the City, ruling that the ordinances did not violate the Eighth Amendment—in other words, the Grants Pass criminal punishments were not "cruel and unusual."[120] The Court first reasoned that although other constitutional provisions may limit what conduct a government may criminalize, the Cruel and Unusual Punishments Clause focuses on the "'method or kind of punishment' a government may 'impos[e] for the violation of criminal statutes.'"[121] The history behind the Clause suggests the Founders were concerned with the imposition of "certain barbaric punishments" that were "calculated to 'superad[d]' 'terror, pain, or disgrace'" and had "long fallen out of use," the Court added.[122] The criminal punishments that the City imposed for violation of its anti-camping ordinances—fines and a maximum 30-day jail sentence for repeat offenders—were not cruel or unusual under these standards, according to the Court.[123]

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of involuntary homelessness. *Id.* at 67. Accordingly, the United States asked the Court to vacate and remand the case to fix the remedial part of the decision. *Id.* at 76, 94. By contrast, the challengers sought affirmance on the substantive part of the Ninth Circuit ruling, adding that the City did not challenge the remedial part and thus the injunctive relief ordered was not before the Court. *Id.* at 145.

[111] *Id.* at 61.

[112] *Id.* at 51–53.

[113] *Id.* at 86–97.

[114] *Id.* at 115.

[115] *Id.* at 109.

[116] *Id.* at 125–26.

[117] *Id.* at 26.

[118] *Id.* at 150.

[119] *Id.* at 114–15.

[120] *Grants Pass*, 603 U.S. at 543.

[121] *Id.* at 542 (citing *Powell*, 392 U.S. at 531–32).

[122] *Id.* (citing *Bucklew*, 587 U.S. at 130).

[123] *Id.* at 543.

The Court next rejected the challengers' theory that the ordinances criminalized status under *Robinson* because they singled out activities for criminalization—such as sleeping outside on public property—that effectively define the status of being homeless.[124] The Court explained that the *Robinson* Court held that California "went too far" in making the "mere status of being an addict a crime."[125] In other words, the Court recounted that "*Robinson* stressed [that] California had taken a historically anomalous approach toward criminal liability."[126] Here, the Grants Pass ordinances do not prohibit status, the Court concluded, because the ordinances prohibit certain acts related to camping in public.[127] Further proving that the ordinances do not criminalize status, the Court pointed out that the ordinances were applicable generally, not just to homeless individuals.[128]

The Court went on to address the challengers' argument that *Robinson* should reach "laws that don't proscribe status as such but that proscribe acts, even acts taken with some required mental state, the defendant cannot help but undertake."[129] Relying on the *Powell* plurality opinion, the Court rebuffed this proposed extension of the substantive limits on criminal law. As in *Powell*, according to the Court, the challengers here have sought to expand *Robinson*'s "small intrusion" into substantive criminal law beyond "mere status" offenses to "actions that, even if undertaken with the requisite *mens rea*, might 'in some sense' qualify as 'involuntary.'"[130] The Court explained that the *Powell* plurality declined to extend the Eighth Amendment in this way and, in the Court's view, there was no reason to depart from that decision.[131]

Despite determining that the Grants Pass ordinances were not cruel and unusual punishments under any of the challengers' theories, the Court acknowledged that other legal doctrines may be available to protect "those in our criminal justice system from a conviction."[132] The Court observed that many jurisdictions recognize defenses to criminal charges—such as necessity, insanity, diminished capacity, and duress—that defendants could assert if charged under anti-camping ordinances like those in Grants Pass.[133] The Court also recognized that the Constitution provides additional limits on prosecutorial power—such as due process proof requirements, fair notice of criminal laws, equal protection under the law, and prohibitions on selective prosecution.[134]

In reaching its conclusion, the Court asserted the Ninth Circuit's decision created an "unworkable" rule that left important questions unaddressed. The Court took note that the Ninth

[124] The Court admitted that it was not being asked to "reconsider" *Robinson*. *Id.* at 546. It thus applied *Robinson* "[w]hatever its persuasive force." *Id.*

[125] *Id.* at 544.

[126] *Id.* at 546.

[127] *Id.*

[128] *Id.* at 546–47.

[129] *Id.* at 547.

[130] *Id.* at 549; *see also* United States v. Young, No. 23-13967, 2025 WL 327283, at *5 (11th Cir. Jan. 1, 2025) ("[The defendant] was not punished for his status as a person experiencing mental illness; rather, he was punished for his act of firing upon the officers with, at a minimum, callous disregard for their safety. Such acts, even if committed as result of mental distress, can be constitutionally criminalized."); Leliaert v. City of South Bend, No. 3:22-CV-359, 2024 WL 3876146, at *8 (N.D. Ind. Aug. 20, 2024) (rejecting apparent Eighth Amendment claim where the plaintiff was "arrested for trespass . . . .").

[131] *Grants Pass*, 603 U.S. at 549–50.

[132] *Id.* at 550.

[133] *Id.*

[134] *Id.* Some scholars have argued that voluntariness should be added as an element that must be proven by a prosecutor beyond a reasonable doubt. *See* Omavi Shukur, *Punishing Involuntary Resistance*, 113 GEO. L.J. 1 (2004).

Circuit's *Martin* decision—holding that an ordinance prohibiting sleeping in public offends the Cruel and Unusual Punishments Clause when and if there are more homeless individuals than the number of available shelter beds for the homeless—requires courts to determine what it means to be "involuntarily homeless" or to decide when "adequate" shelter space is available.[135] Answers to these questions, according to the Court, "cannot be found in the Cruel and Unusual Punishments Clause."[136] Instead, echoing comments at oral argument, the Court emphasized that homelessness is a "complex" issue that is best left to policymakers, not federal judges.[137]

Concurring Opinion

In a brief concurring opinion, Justice Thomas expressed his view that *Robinson* eventually should be overruled because its interpretation of the Eighth Amendment is not based on the plain text or history of the Cruel and Unusual Punishments Clause.[138] He wrote, "we need not reconsider *Robinson* to resolve this case . . . . Still, rather than let *Robinson*'s erroneous holding linger in the background of our Eighth Amendment jurisprudence, we should dispose of it once and for all" in an "appropriate case."[139]

Dissenting Opinion

In her dissenting opinion, Justice Sotomayor, joined by Justices Kagan and Jackson, would have held that the ordinances violate *Robinson*'s command that the government may not punish an individual for their status.[140] She reasoned that "the Ordinances criminalize conduct (sleeping outside) that defines a particular status (homelessness)."[141] Because the ordinances punished a status, in the dissenting Justices' view, the Court did not need to compel law enforcement to determine whether that conduct was in any sense "involuntary," any more than an officer would be expected to probe whether the status of alcoholism was involuntary.[142] She further pointed out that, while the majority suggested that the ordinances apply to anyone, the application of law

[135] *Grants Pass*, 603 U.S. at 552–53.

[136] *Id.* at 552. To constitutionalize these difficult questions, the Court observed, "would interfere with 'essential considerations of federalism' that reserve to the States primary responsibility for drafting their own criminal laws,'" *Id.* at 551 (quoting *Powell*, 392 U.S. at 535), and is a matter that "should be left for resolution through the democratic process, and not by 'freez[ing]' any particular, judicially preferred approach 'into a rigid constitutional mold.'" *Id.* (alteration in original) (quoting *Powell*, 392 U.S. at 537). Accordingly, it seems that the Court believes that the proper place to resolve these questions lies with the states. *See also* Kahler v. Kansas, 589 U.S. 271, 296 (2020) ("Defining the precise relationship between criminal culpability and mental illness" involves complex considerations and "is a project for state governance, not constitutional law."). As a sign of conflicting value judgments, *compare* Karen M. Tani, *Foreword: Curation, Narration, and Erasure: Power and Possibility at the U.S. Supreme Court*, 138 HARV. L. REV. 1, 84 (2024) ("In *Grants Pass*, . . . people without access to housing appeared not as the deserving beneficiaries of social provision but rather as nuisances—obstacles to local governments' efforts to advance the health and welfare of their communities and impediments to private businesses."), *with* Robin Paul Malloy, *Network Capabilities in Land Use and Disability Law*, 74 AM. U. L. REV. 461, 465–66 (2024) ("[*Grants Pass*] means, in effect, that the rights of people with disabilities to access and use public sidewalks trumps the claims of homeless people seeking to occupy that same space. Communities will now be able to lawfully remove homeless encampments from sidewalks and thereby preserve the functionality of their sidewalk networks.").

[137] *Grants Pass*, 603 U.S. at 560.

[138] *Id.* at 561–62 (Thomas, J., concurring).

[139] *Id.* at 562.

[140] *Id.* at 585 (Sotomayor, J., dissenting).

[141] *Id.*; *id.* at 587 ("The Court wrongly concludes that the Eighth Amendment permits Ordinances that *effectively* criminalize being homeless.") (emphasis added).

[142] *Id.* at 584.

appeared to target only the homeless.[143] The dissent also made clear that the case was not over: on remand, the respondents could bring other claims, such as excessive fines claims and due process challenges.[144]

Considerations for Congress

Grants Pass left some matters settled and others unresolved. In the homelessness context, courts following *Grants Pass* have dismissed cases against local municipalities raising substantially similar arguments that were foreclosed in *Grants Pass*.[145] As these decisions seemingly confirm, the Court's decision in *Grants Pass* may provide flexibility for local policymakers to determine how best to approach issues related to public spaces and homelessness.

The decision may be of interest to Congress, as the federal government is the "largest real property owner in the United States"[146] in its management of public spaces, including national park and forest lands.[147] Some federal regulations already prohibit camping on federal public property[148] and, as the Court observed in *Grants Pass*, the federal government has in the past exercised its authority to clear "dangerous" encampments.[149] The Court also suggested that jurisdictions may add "additional substantive protections" for defendants charged under criminal laws.[150] For example, the Court cited an Oregon law that specifically addresses "how far its municipalities may go in regulating public camping."[151] These protections may inform congressional and federal regulatory activities with respect to homelessness and camping on federal public lands.

As an alternative to criminal measures to address homelessness, Congress could, as some amici proposed in *Grants Pass*, provide greater Medicaid and other federal funding to states in the areas of rental assistance programs and subsidized housing; support services pertaining to medication management, finances, and other needs; mobile crisis services; job searches and training; and peer support.[152] Congress could consider such ideas in any homelessness policies on federal lands or in working with states through grant programs and collaborative federalism enterprises.

Grants Pass may be relevant to other criminal contexts, including federal drug and firearms laws. For example, 21 U.S.C. § 841(a)(1) prohibits the possession, unlawful use, distribution, and

[143] *Id.* at 579–81.

[144] *Id.* at 588–91.

[145] *See, e.g.*, Coalition on Homelessness v. City and County of San Francisco, 758 F.Supp.3d 1102, 1120 (N.D. Cal. 2024) (dismissing Eighth Amendment claim); Wills v. City of Monterey, No. 21-CV-01998, 2024 WL 4565089, at *2 (N.D. Cal. Oct, 23, 2024) (same); Bounce v. City of Miami Beach, No. 1:25-CV-20937, 2025 WL 720928, at *2 (S.D. Fl. Mar. 6, 2025) (same); People v. Garcetti, No. LA CV 21-06003, 2025 WL 819666, at *10 (C.D. Cal. Feb. 26, 2025) (granting summary judgment for the defendants on Eighth Amendment claim); Potter v. City of Lacey, No. 21-35259, 2024 WL 4511612, at *2 (9th Cir. Oct. 17, 2024) (mem.) (affirming dismissal of Eighth Amendment claim).

[146] U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-57, FEDERAL REAL PROPERTY ASSET MANAGEMENT: AGENCIES COULD BENEFIT FROM ADDITIONAL INFORMATION ON LEADING PRACTICES 1 (2018).

[147] *See id.* at 13, tbl. 1.

[148] *See, e.g.*, 36 C.F.R. § 7.96 (2025) (prohibiting camping in most parks within the National Park Service's National Capital Region).

[149] *Grants Pass*, 603 U.S. at 533.

[150] *Id.* at 550.

[151] *Id.* (citing OR. REV. STAT. § 195.530(2) (2023)).

[152] Brief of the National Alliance to End Homelessness at 16–28, *Grants Pass*, 603 U.S. 520 (No. 23-175).

trafficking of controlled substances.[153] Following *Grants Pass*, a district court cited the decision for the proposition that the government may still punish an individual for opioid use and possession even if the defendant has an opioid addiction.[154] Consider also a firearms case involving 18 U.S.C. § 922(g)(4), which bans individuals from possessing firearms who have "been adjudicated as a mental defective or who ha[ve] been committed to a mental institution."[155] At sentencing, the defendant argued before a district court that an enhancement was inappropriate because the Eighth Amendment forbids a judge from punishing him for experiencing a mental illness.[156] Citing *Grants Pass*, the Eleventh Circuit rejected this contention, holding that he was punished for his conduct and that conduct can be punished even if it was "committed as [a] result of mental distress."[157]

Grants Pass may leave unaffected federal criminal laws containing an *actus reus* notwithstanding that some of the use may be attributed to addiction to a controlled substance or to mental illness. In other words, *Grants Pass* provides guidance on the Eighth Amendment's reach by appearing to limit *Robinson*'s holding to laws that criminalize only "status" without an *actus reus*.[158] At least where addiction is an element of the criminal offense, however, some courts have insisted upon a temporal nexus between the use of drugs and alcohol and the *actus reus*. A provision of the Gun Control Act codified at 18 U.S.C. § 922(g)(3) prohibits individuals "addicted to any controlled substance" from possessing firearms.[159] Courts have routinely rejected arguments that § 922(g)(3) violates the substantive component of the Cruel and Unusual Punishments Clause, reasoning in relevant part that § 922(g)(3) satisfies *Robinson* by punishing the conduct of *possessing* firearms, not the status of being addicted to a controlled substance.[160] Some courts have required a temporal nexus between the ingestion of the controlled substance and the firearms possession, narrowing § 922(g)(3)'s application to recent or regular drug use. Limiting § 922(g)(3)'s application to actual or recent use, intoxication, or impairment may be consistent with *Robinson*, in which the Court observed that the defendant was not under the influence or experiencing withdrawal at the time of his arrest.[161] Requiring temporal nexus would align with Justice Barrett's suggestion at oral argument in *Grants Pass* that to arrest a homeless individual standing at a bus stop may be an impermissible punishment of status.[162]

[153] 21 U.S.C. § 841(a)(1). For more information on federal drug laws, primarily the Controlled Substances Act, see CRS Report R45948, *The Controlled Substances Act (CSA): A Legal Overview for the 119th Congress*, by Joanna R. Lampe (2025).

[154] *In re* Nelson, No. 3:24-cv-00115-SLG, 2024 WL 4119098, at *3 n.8 (D. Alaska Sept. 9, 2024).

[155] 18 U.S.C. § 922(g)(4); United States v. Young, No. 23-13967, 2025 WL 327283, at *1 (11th Cir. Jan. 29, 2025).

[156] *Young*, 2025 WL 327283, at *4.

[157] *Id.* at *5.

[158] *Grants Pass*, 603 U.S. at 547.

[159] Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (codified as amended at 18 U.S.C. § 922(g)(3)).

[160] *See, e.g.*, United States v. Moss, No. 18-CR-316, 2019 WL 3215960, at *5 (D. Conn. July 17, 2019).

[161] Robinson v. California, 370 U.S. 660, 662 (1962).

[162] Transcript of Oral Argument at 61–62, City of Grants Pass v. Johnson, 603 U.S. 520 (2024) (No. 23-175).

Congress also may keep *Grants Pass* in mind as the case may inform how courts will be performing constitutional assessments of any federal laws enacted by Congress. In recent years, the Supreme Court has clarified the standard to apply in certain constitutional challenges. In 2022, for example, the Court in *New York State Rifle & Pistol Association v. Bruen* announced a history-focused test to be used in evaluating whether a firearm law is consistent with the Second Amendment.[163] Some have suggested that *Grants Pass* has reinforced the importance of history in evaluating constitutional claims. For instance, in a case concerning whether limits on coordinated campaign expenditures were consistent with the First Amendment, a U.S. Court of Appeals for the Sixth Circuit judge cited *Grants Pass* and other cases for the proposition that "[i]n recent years, the Supreme Court has applied history and tradition to review the constitutionality of laws under many federal constitutional provisions, including the First Amendment."[164] *Grants Pass* thus has been invoked to signal a general trend in the test to be applied to other constitutional rights.

Grants Pass does leave unresolved issues. After *Grants Pass*, there remain questions as to how to properly conduct an Eighth Amendment Cruel and Unusual Punishments analysis.[165] It may not be clear when a law is punitive such that any Eighth Amendment limits are triggered;[166] whether the *Grants Pass* discussion of forbidden modes of punishment—such as punishment that may be considered "torture" and historic practices including "dragging the prisoner to the place of execution, disemboweling, quartering, public dissection, and burning alive"[167]—may be dispositive in an Eighth Amendment analysis of what constitutes "cruel and unusual" punishment; how the modes of punishment inquiry intersects with the proportionality principles of the Eighth Amendment;[168] and whether a status, or certain statuses, cannot be an element of a criminal offense.[169] These questions may be the next frontier of post-*Grants Pass* Eighth Amendment litigation. Congress may monitor how the courts navigate this potential new terrain of Eighth Amendment issues.

Author Information

Dave S. Sidhu
Legislative Attorney

[163] 597 U.S. 1, 17 (2022).

[164] Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n, 117 F.4th 389, 407 (6th Cir. 2024) (Bush, J., concurring), *cert. granted*, No. 24-621, 2025 WL 1787717 (U.S. June 30, 2025).

[165] *See Eighth Amendment – Cruel and Unusual Punishment Clause* – City of Grants Pass v. Johnson, 138 HARV. L. REV. 375, 382 (2024) ("[T]he Eighth Amendment's cruel and unusual punishment test going forward is uncertain.").

[166] *See* Hopkins v. Watson, 108 F.4th 371, 380–82 (5th Cir. 2024) (holding permanent felon disenfranchisement is not punishment), *cert. denied*, 145 S. Ct. 1138 (2025).

[167] *Bucklew*, 587 U.S. at 130 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES at 370 (1769)).

[168] *See* Cong. Rsch. Serv., *Proportionality in Sentencing*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt8-4-3/ALDE_00001270/ (last visited Aug. 20, 2025) ("The Supreme Court has . . . held that the Eighth Amendment's prohibition against 'cruel and unusual punishments' applies to punishments that are disproportionate to the offense." (citing Solem v. Helm, 463 U.S. 277, 284 (1983))).

[169] *See*, *e.g.*, Priscilla A. Ocen, *Birthing Injustice: Pregnancy as a Status Offense*, 85 GEO WASH. L. REV. 1163, 1220 (2017) (arguing that pregnancy is a status, the criminalization of which violates *Robinson*).

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