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Debtors' Prison Project

July 17, 2024

Agenda

1. Introductions
2. DPP Strategic Priorities
3. Case Study: Right 2 Hug (*M.M. v. King & S.L. v. Swanson*)
4. Case Study: LA Bail (*Urquidi v. City of Los Angeles*)
5. Case Study: Criminalization of homelessness (*Johnson v. Grants Pass*)
6. Questions & Answers



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Debtors' Prison Project: THE TEAM



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Strategic Priorities



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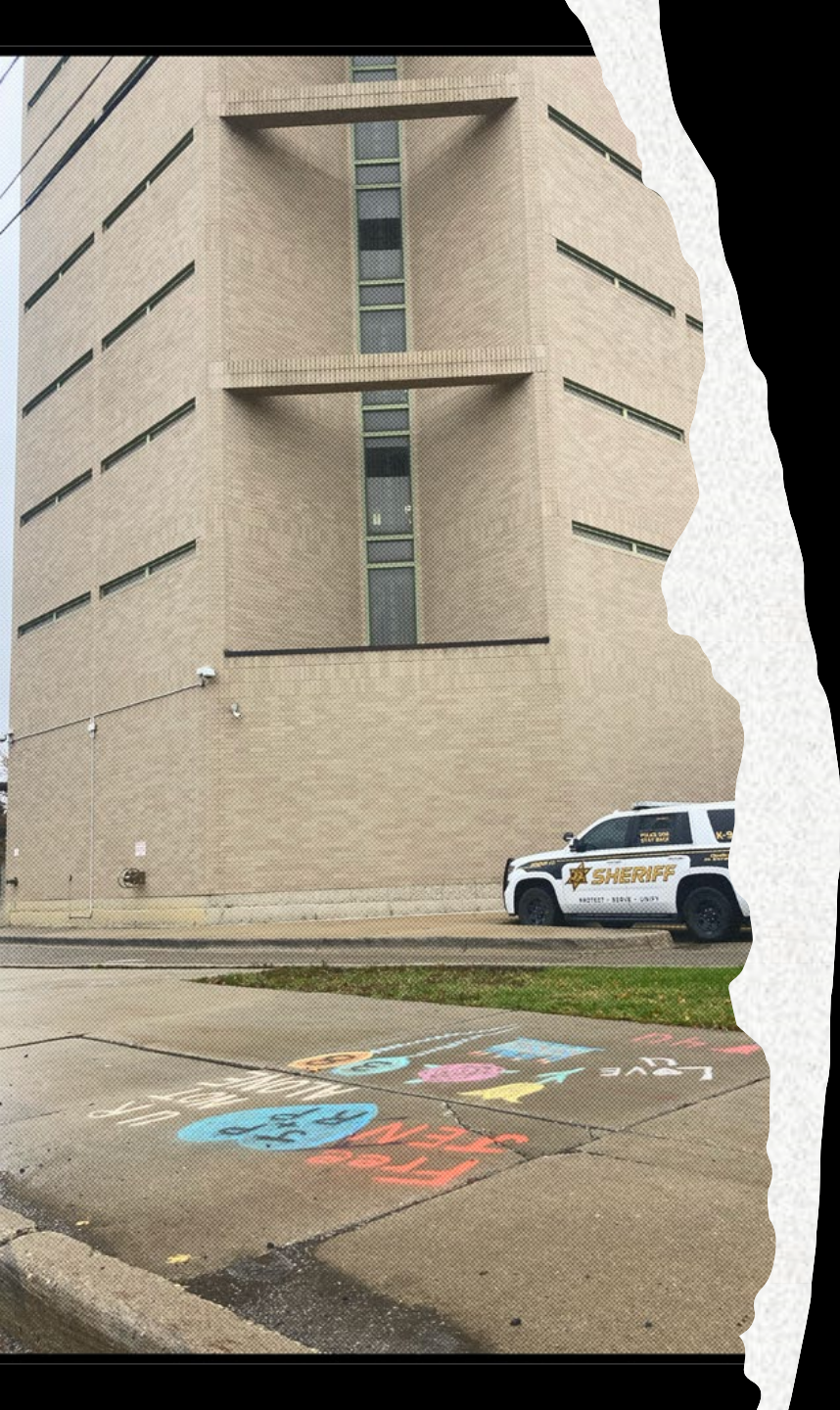
Strategic Priorities

- **Shrink the carceral system by ending the criminalization of poverty.**
- **Use litigation, advocacy, and education to ensure no one is punished simply because they can't pay.**
- **Aim to stop governments and for-profit companies from treating people impacted by the system as a revenue source.**



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CASE STUDY
Right2Hug
S.L. v. Swanson
&
M.M. v. King



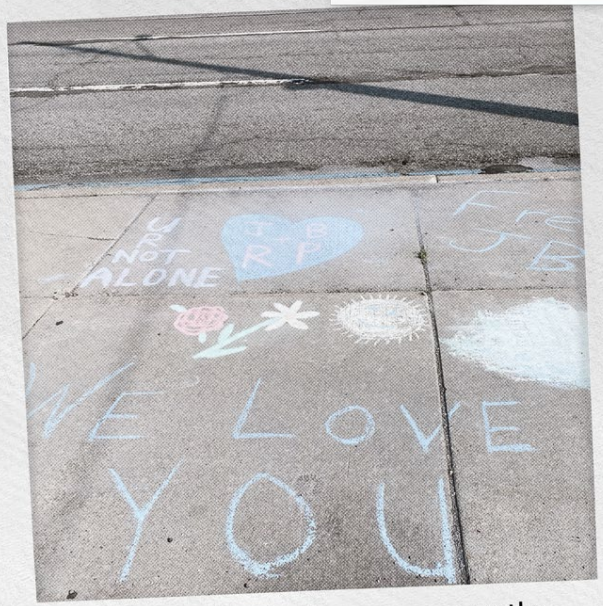
Right2Hug logo
designed by Toyo Ubaldo

Right2Hug: Family Separation for Profit

Background

- Every year, millions of children can't hug their parents because of corporate greed.
- Jails across the United States have stopped allowing children to visit their parents, forcing families to pay hundreds of millions of dollars to companies for expensive phone and video calls.





In Flint, children write messages on the sidewalk outside the jail for their parents who are locked up there to see. In an act of cruelty, the Sheriff washes them away.



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Right2Hug: Litigation

S.L. v. Swanson (Genesee)

- **Defendants:** Genesee County, Sheriff Chris Swanson, Global Tel*Link (GTL), Deb Alderson.

Claims:

- Kids have a constitutional right to hug their parents
- Ban on visits violates fundamental right to family integrity under the Michigan Constitution
- Conspiracy between county and private actors to violate constitutional rights

Co-counsel:

Civil Rights Corps, Pitt McGehee Palmer Bonnani & Rivers

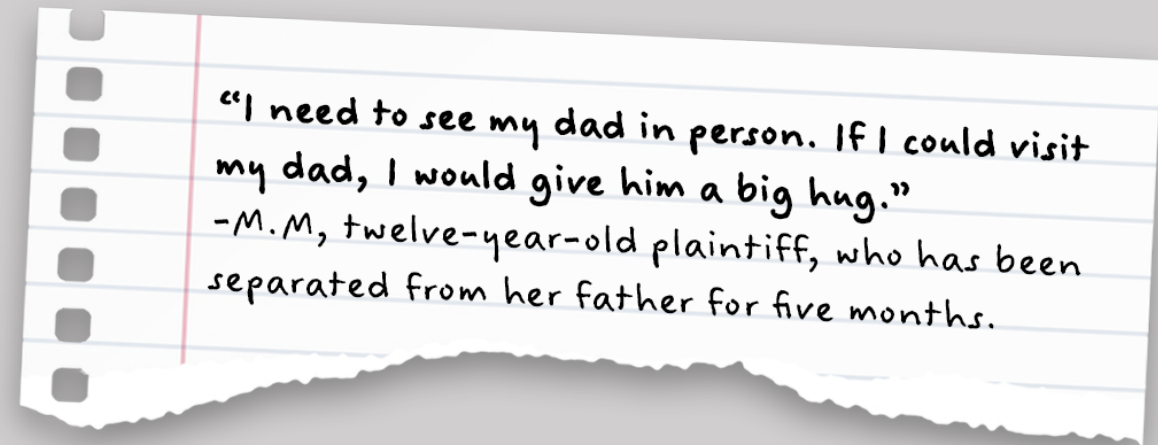
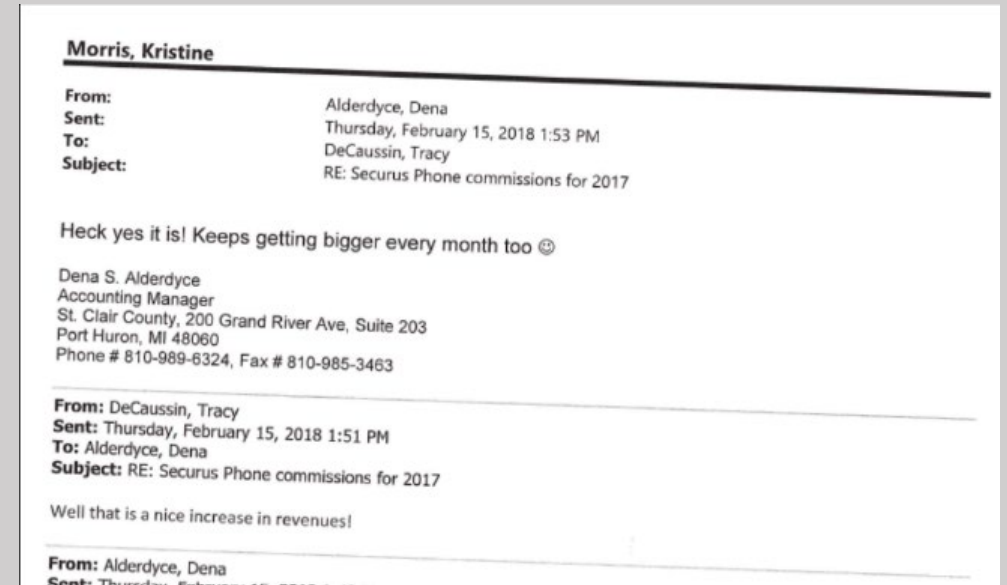
M.M. v. King (St. Clair)

- **Defendants:** St. Clair County, Sheriff Mat King, Securus Technologies, Platinum Equity (private equity firm whose funds own Securus); Tom Gores (billionaire owner of Platinum Equity).




Right2Hug: Litigation

- Motion for preliminary injunction – restore family contact visits
- Evidence shows:
 - Visits make jails *safer* and *reduces rearrest*
 - Banning visits harms kids and families
 - Jails banned visits to *make money*



Right2Hug

Campaign Highlights



“

When I got into trouble at school, he called everyday worrying about me and wanting me to stay on track. But it's been really hard focusing on school stuff since he's been gone. I have to take care of a lot more things at home to help out my mom, and I feel really sad constantly about not being able to see him.

- S.L., seventeen year old girl whose dad is jailed in Genesee County

- On May 9, 2024, Public Justice and Civil Rights Corps launched the official Right2Hug Campaign.
- This website and public education campaign's goals are to:
 - **redefine incarceration as family separation,**
 - **reinforce our claim that children have a right to hug their parents,**
 - **and highlight how profiteering off family separation is wrong.**



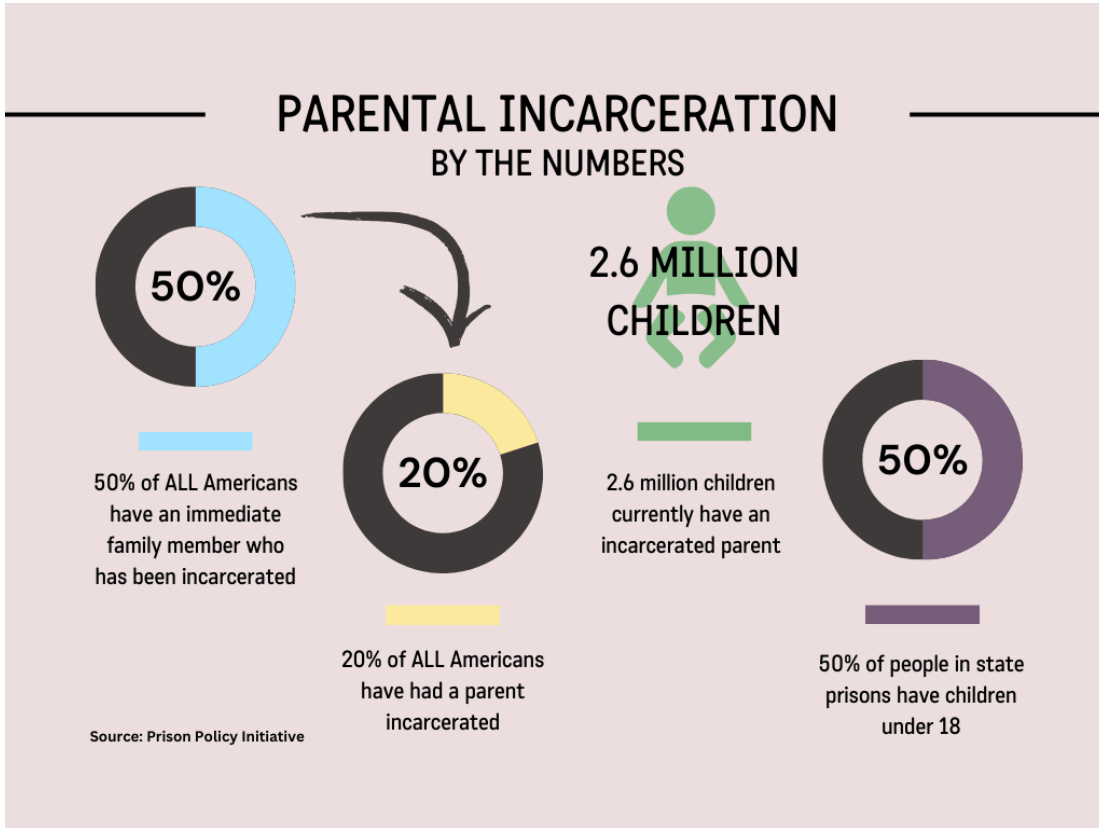
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Right2Hug

Campaign Highlights



IMPACT OF PARENTAL INCARCERATION ON CHILDREN: BY THE NUMBERS

MENTAL HEALTH

Compared to their peers, children with incarcerated parents are:

- 3.3x** more likely to report self-injurious behaviors
- 2.9x** as likely to report suicidal ideation

Source: Davis & Shlafer, 2017. "Mental health of adolescents with currently and formerly incarcerated parents."

PHYSICAL HEALTH

Compared to their peers, children with incarcerated parents are:

- LESS** likely to report good sleep and healthy eating habits
- LESS** likely to report overall good health

Source: Hiloski, Eisenberg, & Shlafer, 2019. "Youth Self-Reported Health and Their Experience of Parental Incarceration."

SUBSTANCE USE

Compared to their peers, children with incarcerated parents are:

- 2.7x** more likely to report alcohol use
- 2.8x** more likely to report binge drinking
- 5.3x** more likely to report tobacco use
- 4.1x** more likely to report marijuana use
- 4x** more likely to report prescription drug abuse

Source: Davis & Shlafer, 2017. "Substance Use among Youth with Currently and Formerly Incarcerated Parents"

BEHAVIOR

Compared to their peers, children with incarcerated parents are:

- 4.1x** more likely to report stealing
- 3.8x** more likely to report physical fighting

Source: Ruhland et al., 2019. "Externalizing behaviors among youth with a current or formerly incarcerated parent."



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Infographics designed by Kayla DeHoniesto


Right2Hug: Campaign Highlights

The New York Times

Lawsuits Accuse 2 Michigan Jails of Banning Family Visits to Increase Revenue

The suits contend that two counties entered into agreements with telecommunications companies that would bring more money because of increased use of phone calls and electronic messaging.

Listen to this article · 5:38 min [Learn more](#) [Share full article](#) [Share](#) [Bookmark](#)



NEW ARTICLE

RIGHT 2 HUG 

The New Yorker

May 13, 2024

Do Children Have a "Right to Hug" Their Parents?

By Sarah Stillman

Hundreds of counties around the country have ended in-person jail visits, replacing them with video calls and earning a cut of the profits.

Link in bio [↗](#)



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Right2Hug: Campaign Highlights



In this case, the County Defendants' ban of in-person visits to inmates undoubtedly serves a legitimate penological interest of the County. The ban was implemented to promote increased internal security, and increased safety of faculty and inmates by way of reducing the entrance of contraband within the prison.



publicjustice_ 🚨 ALERT 🚨 Sometimes, it takes a lawsuit to get someone to admit they were wrong. In Michigan, Public Justice and Civil Rights Corps filed a case alleging that Genesee County and private telecom company Global Tel*Link conspired to ban children from visiting their jailed parents in order to profit from charging for phone and video calls. Now, in a new interview with Lester Holt of NBC Nightly News, Sheriff Chris Swanson admits "money" was the reason for the visitation ban – and that it is wrong and needs to change.

2h

CASE STUDY

Urquidi v. City of Los Angeles et al.



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Urquidi v. City of Los Angeles

Background on Money Bail

- Money bail enables a person to be released before trial...but only if they can pay.
- **Pretrial jailing** means that a person is jailed without having been found guilty of committing any crime.
 - Many people are jailed for days and then released after prosecutors decline to file any charges at all.
 - Many people in jails are there for many months awaiting trial—while they are presumed innocent under the law—simply because they cannot pay bail.
 - Being jailed for even a few days can upend people’s lives. They cannot care for their children, they lose jobs, they often cannot access necessary medicine or treatment, they lose their housing.



Urquidi v. City of Los Angeles

Money Bail: Theory vs. Practice

Money bail is supposed to simply ensure that:

- the person comes to court;
- the person does not commit new crimes while awaiting trial.

But money bail does not increase court appearances.

- Money bail can actually decrease future court appearance because it destabilizes people's lives.
- Court reminders and other services are far more effective at ensuring that people appear.

And money bail does not increase public safety.

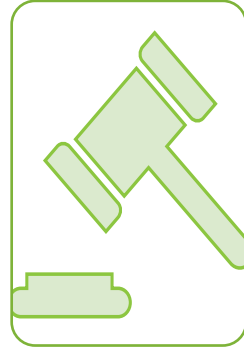
- People do not forfeit bail when charged with a new crime, only when they do not appear.
- And strong evidence indicates that pretrial detention of people who cannot pay bail actually *increases* new criminal activity.
- Rigorous studies controlling for dozens of factors have found that all else being equal, people jailed for even a short time pretrial are significantly more likely to be charged with a new felony after being released than are people released pretrial.



Urquidi v. City of Los Angeles

The Lawsuit

- This lawsuit challenges LA's use of money to decide who gets to stay at home with their families and who is jailed after an arrest.
- LA uses a preset bail schedule to set bail after arrest. Like a menu, the bail schedule sets the price of freedom for different arrest charges. People who cannot pay languish for days before any judge or even a lawyer has seen their case.



The California Supreme Court has ruled that requiring money bail without considering a person's ability to pay is *unconstitutional*.



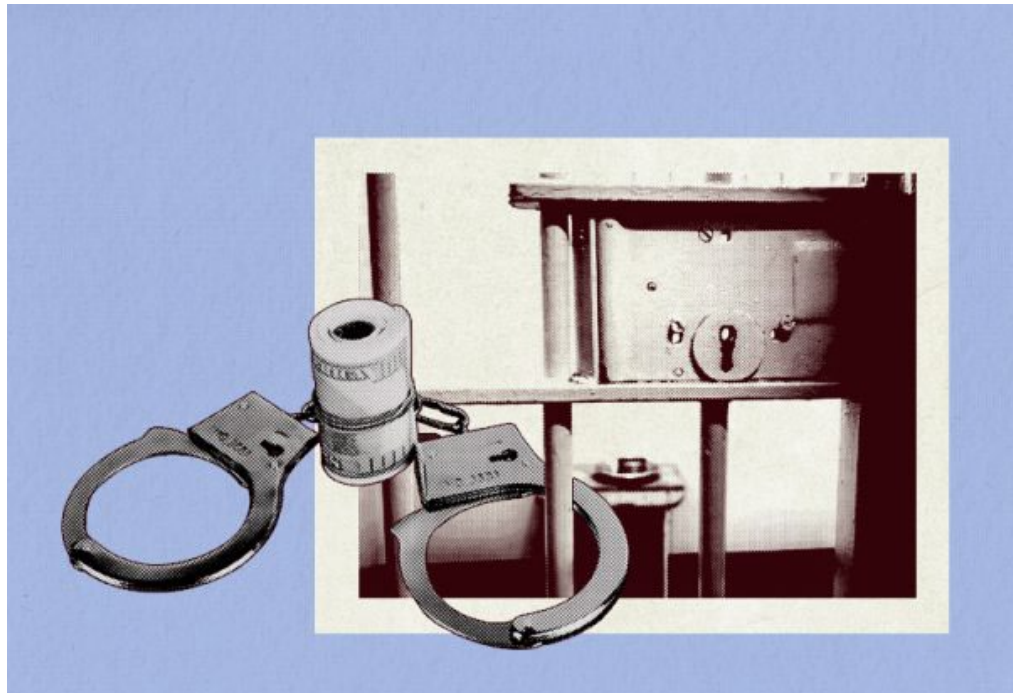
The goal of the lawsuit is:

- to end widespread constitutional violations that affect the most vulnerable people in LA;
- to force LA to stop jailing people based on access to cash;
- to develop more fair and effective pretrial policies;
- and to shift investment towards systems of support and care, not jails.



Urquidi v. City of Los Angeles

Preliminary Injunction



Pre-arraignment detention based solely on an inability to pay cash bail is unconstitutional.
(Graphic by Toyo Ubaldo/Public Justice)

- The Los Angeles Superior Court issued a historic preliminary injunction (PI) ensuring that people will no longer be detained because they are unable to pay cash bail.
- The injunction requires the LA Sheriff's Department and Los Angeles Police Department to simply **release people arrested for almost all misdemeanors**, as well as many felonies that are not serious or violent.
- This builds on the system in place in LA County during the pandemic.
- Following the injunction, the Los Angeles Superior Court issued an **updated bail schedule** that did away with money bail for these charges countywide.



Urquidi v. City of Los Angeles

Client Declarations

Since my car has been in the shop I have been sleeping outside a lot in the streets. I'm worried if I don't get out of here soon, the mechanic will put a lien on my car and I'll never get it back.

Since I have been jailed, I have lost access to the 2 prescription medications I take. No one has even asked me if I am taking medication or if I am OK without them.

I have two young children, ages 4 and 6. I try to see them as much as I can, but they now live with their father. I was making arrangements to see my children this weekend. But because I've been in jail since Wednesday, I missed that chance.

I had an interview for a construction job scheduled for yesterday - Friday, November 11. The starting pay was \$17 an hour, going up to \$22. This job would have meant steady income and the chance to get an apartment.

I missed the interview because I am in jail.

I DON'T HAVE ANY FRIENDS OR FAMILY WHO COULD PAY BAIL FOR ME AND I CAN'T AFFORD TO PAY A BONDSMAN. THEY CAN'T EITHER.



CASE STUDY

Johnson v. Grants Pass & the future of homelessness litigation

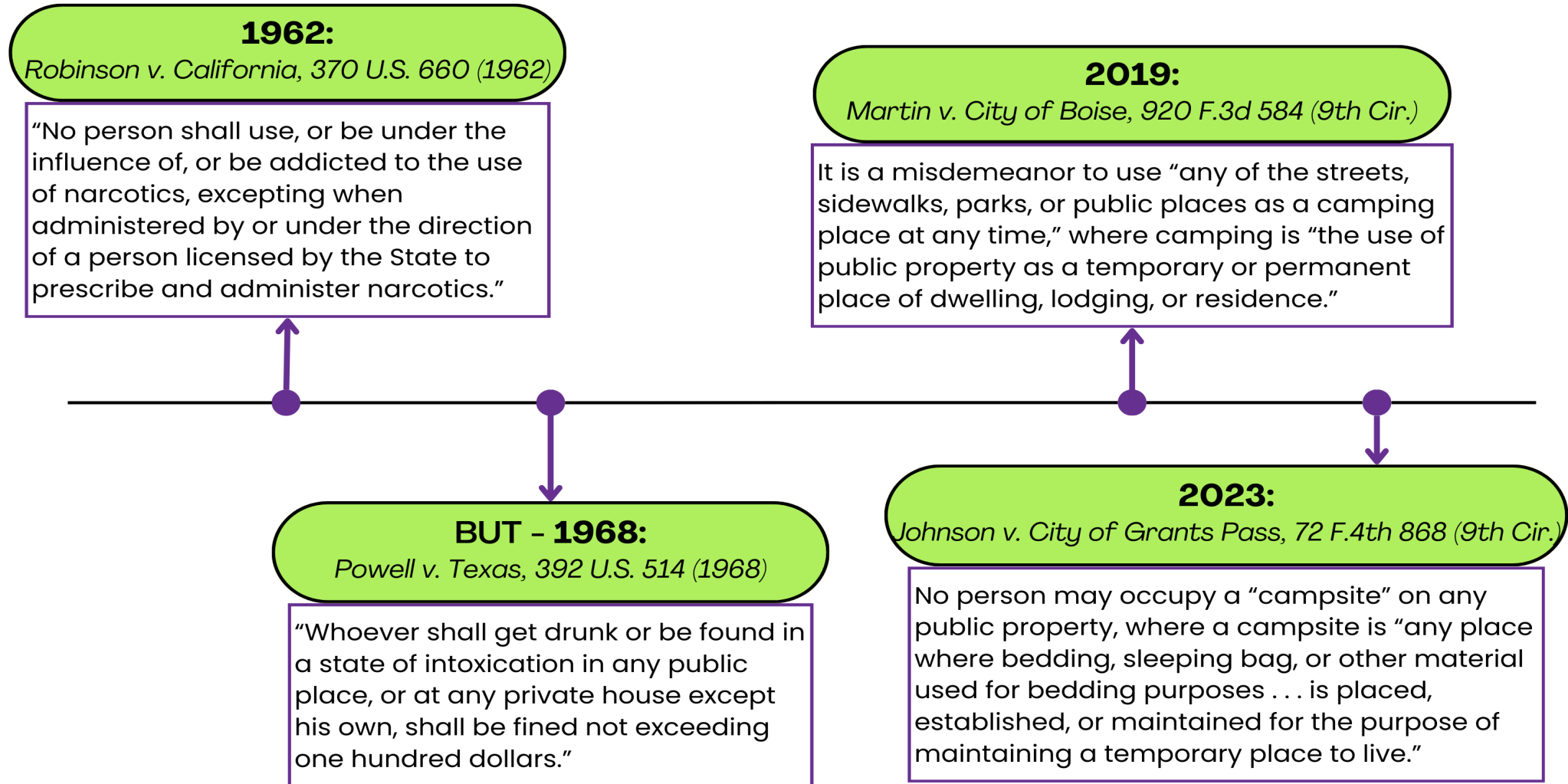


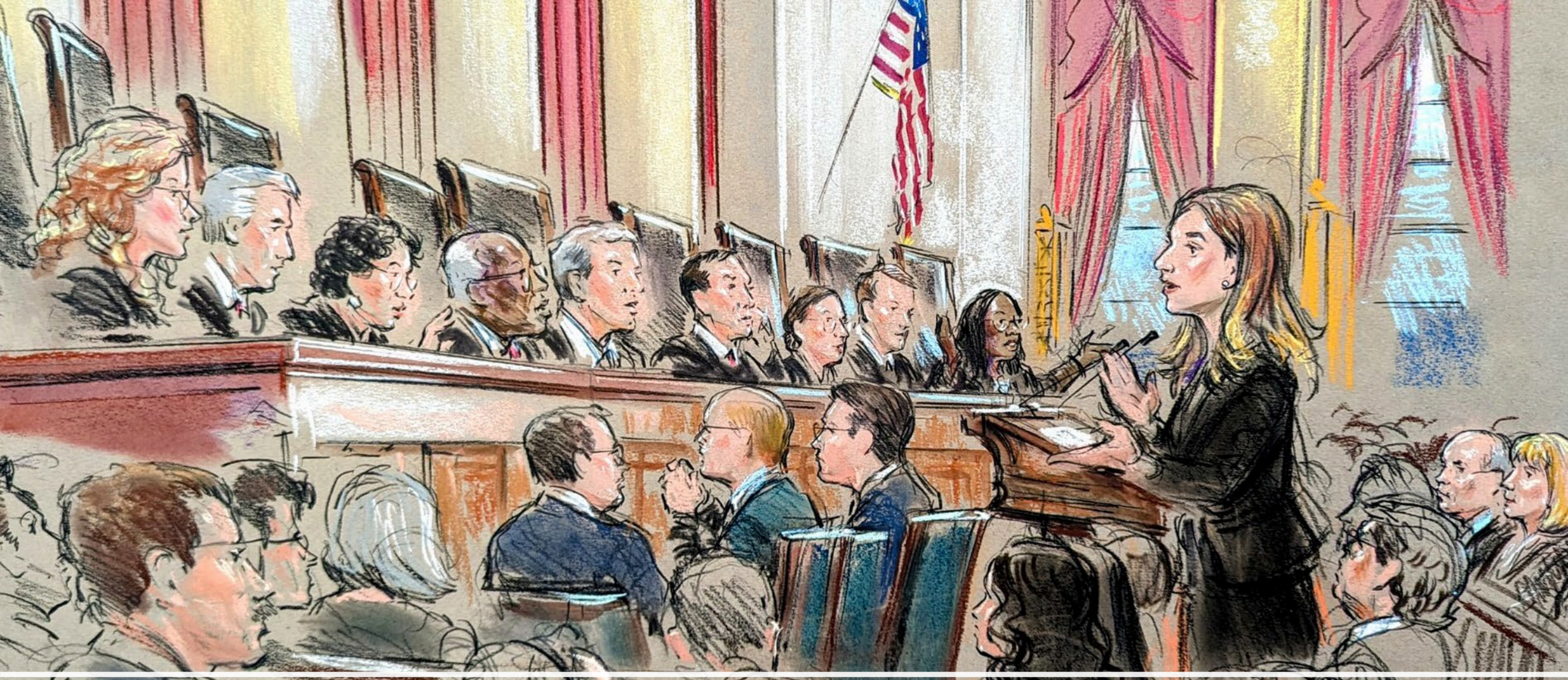
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Johnson v. Grants Pass: How Did We Get Here?

A brief history of status crimes

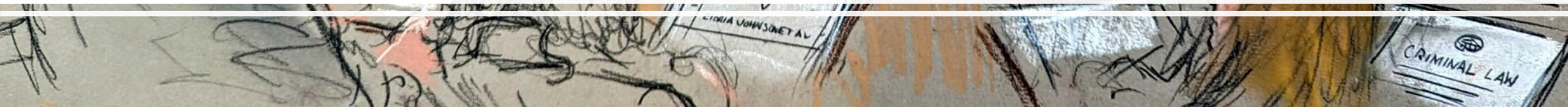
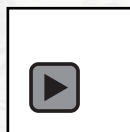




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Justice Kagan on *Robinson* during the *Grants Passoral* arguments:



Johnson v. Grants Pass

Decision

Top line:

- This is not a status crime because there is an act/actus reus. We don't have to decide *Robinson* today, but we think it probably overstated the Eighth Amendment.

Subtext:

- Disagreement driven primarily by policy
- Does “cruel and unusual” mean “disproportionate”? What about “excessive fines”? Is there any proportionality test left in the Eighth Amendment?



Johnson v. Grants Pass

Future Challenges

Robustly protect unhoused people's remaining rights rooted in the First, Fourth, and Fourteenth Amendments

- Illegal seizure of persons and property
- Lack of notice and due process in encampment clearances
- Arrests for constitutionally protected speech like panhandling

Possible *post hoc* defenses to camping arrests suggested by Justice Gorsuch

- Impossibility or reduced moral culpability, due process, selective prosecution, right to travel
- Ignores the practicalities that made injunctive relief so important here

Conflict between states and cities on Dormant Commerce Clause grounds.

- Grants Pass' intent was to banish!



Questions & Answers



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STAY IN TOUCH

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