



March 31, 2020

Via E-Filing

Francis V. Kenneally
Clerk of the Supreme Judicial Court
Supreme Judicial Court
1 Pemberton Square
Boston, MA 02108

Re: *In the Matter of J.P.*, SIC-12872, Amicus Letter in Support of Plaintiff/Appellant, J.P.

Dear Clerk Kenneally:

Veterans Legal Services (VLS) hereby submits this letter as amicus curiae in support of the Plaintiff/Appellant, J.P., in the above-titled action. Pursuant to Mass. R. App. P. 17, VLS simultaneously moves that the Court accept this letter despite its untimely submission due to the exigencies caused by the COVID-19 pandemic.

VLS is a non-profit legal services organization dedicated to the promotion of self-sufficiency, stability, and financial security of homeless and low-income veterans through free and accessible civil legal services. Many of VLS's clients have experienced homelessness or are at risk of homelessness and many have mental health diagnoses. In the course of representation, VLS staff become aware of the underlying bases for their clients' lack of permanent housing. The typical reasons VLS's clients are homeless do not define our clients as people or justify the deprivation of their liberty.

VLS writes specifically to respond to the question certified by this Court of “[w]hether homelessness itself may present a ‘very substantial risk of harm to a person,’ for purposes of G. L. c. 123, § 1.” This issue appears to have arisen from that portion of the decision in *In the Matter of J.P.*, 2019 Mass. App. Div. 37, in which the Court opined, at note 10, that homelessness alone creates a “very substantial risk of harm to the person” sufficient to justify civil commitment.

This broad conclusion raises multiple concerns for the veterans' community served by VLS. There is no dispute that homelessness comes with certain attendant risks, but those risks are a product of our community's broader failure to meet the basic needs of its citizens, particularly for safe and affordable housing and adequate supportive services. The Lower Court ruling, however well intentioned, effectively conflates homelessness “in and of itself” with an inability to exercise good judgment or care for oneself, something VLS has plainly seen is not true.

People living in poverty, and especially military veterans, are some of the great alchemists of our time – they manage to improvise, adapt, and overcome to create an existence out of almost nothing for themselves and their families each day. That our military veterans, often due to lasting trauma arising from their service, have consistently composed a disproportionate number of our homeless population should serve as a source of national shame.¹ Our society’s greater failure to give them the resources they need to succeed should not also be misused as a reason to deprive them of autonomy in civil commitment matters.

In this case, the statute is clear that a generalized risk of harm alone is not enough for civil commitment. G. L. c. 123, § 1 defines likelihood of serious harm as:

(1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

Homelessness alone is plainly not a threat of physical harm to oneself comparable to threats or attempts of suicide, such that it would justify depriving a person of their liberty and autonomy. Indeed, VLS has seen firsthand that many homeless people would not, and do not, choose to remain so when affordable housing options are made available. Frequently obtaining such affordable housing is also a factor in improved mental and physical health outcomes by reducing many of the outward risks the Lower Court identified.² Likewise, homelessness does not, in and of itself, indicate a person poses a risk of violence or serious harm to others such that fear of violent behavior and serious physical harm is reasonable. Indeed, it is important that this Court fight those forms of harmful assumptions and stereotypes.

Careful parsing of the statute then leaves us with the final option that the Lower Court concluded that homelessness is an indication “that such person's *judgment is so affected* that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community [emphasis added].” This conclusory connection between homelessness and judgment so seriously impaired that it poses a “very substantial” risk is not justified or supported by evidence. In reality, homelessness is sometimes the most rational choice between a host of bad options.

¹ See, Department of Housing and Urban Development, Annual Homeless Assessment Reports, 2007 – 2019, available at <https://www.hudexchange.info/homelessness-assistance/ahar/#2019-reports>

²Paula N Goering, RN, PhD¹ and David L Streiner, PhD, CPsych², Putting Housing First: The Evidence and Impact, *Can J Psychiatry*. 2015 Nov; 60(11): 465–466, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4679126/>

Homelessness typically arises due to circumstances beyond a person's control. "Poverty, unemployment, and lack of affordable housing are commonly recognized causes of homelessness. These risk factors can be exacerbated by personal vulnerabilities such as mental and substance use disorders, trauma and violence, domestic violence, justice-system involvement, sudden serious illness, divorce, death of a partner, and disabilities."³ Homelessness also disproportionately impacts communities of color. "Roughly 45% of all homeless veterans are African American or Hispanic, despite only accounting for 10.4% and 3.4% of the U.S. veteran population, respectively."⁴

The decision to avoid staying in a particular place is not always an irrational one. There is no right to housing or shelter for single adults in the Commonwealth and these resources exist on a space-available basis. The victim of domestic violence who sleeps in their car and moves it each night to avoid their abuser; the veteran who, trained during their service to live in an austere environment, lives in a tent in the woods; or the person in recovery who cannot get a bed in a dry shelter and sleeps on the street to avoid being around those who are actively using drugs or alcohol; may be making a quite rational, albeit heartbreakingly unfortunate, decision.

A decision to be homeless may be based on factors peculiar to individual situations. VLS staff often see clients make a well thought out election to remain in a homeless shelter, continue sleeping in a place not meant for human habitation like their car, or stay in another difficult situation, to avoid costly shelter expenses until they can pay off child support arrears or save enough funds to improve their situation longer term. Due to the lengthy delays in VA benefits appeals, some VLS clients have even been able to go from living in a homeless shelter to buying their own homes, once they have received retroactive payment of their benefits.

Even if someone else might decide differently, such judgments do not suggest that persons who make them are incapable or not able to protect themselves. Rather, each individual is often in the best position to assess their own needs and the risks associated with a range of exceedingly poor options – options most of us cannot even fathom.

The Lower Court's ruling is likely to have a negative chilling effect on those who most need mental and physical health intervention. Homeless and at-risk veterans need to freely access numerous providers of services to meet their housing, employment, mental health, medical, financial, and legal needs. For example, many veterans are eligible for and receive veterans benefits for disabilities incurred in service. To access these benefits, they must interact with doctors and mental health professionals at the Department of Veterans Affairs (VA), among others. If veterans fear the possibility of being committed based on their homelessness, it will undoubtedly cause them to be reluctant to seek care, or to openly express to providers when they have feelings of shame, hopelessness, and despair. The possibility that homelessness, in and of

³ Substance Abuse and Mental Health Administration website, <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/housing-shelter>, last accessed March 31, 2020.

⁴ National Coalition for Homeless Veterans website, http://nchv.org/index.php/news/media/background_and_statistics/, last accessed March 31, 2020.

itself, could lead to civil commitment will also only add to the longstanding issues of distrust between veterans and the VA that often forms a barrier to veterans seeking the care they need.⁵

Additionally, if the Lower Court's ruling were allowed to stand, some veterans undoubtedly would choose to not pursue or enforce their legal rights. Homeless or at risk veterans may be very reluctant or even unwilling to appear in Court; deterred from defending crucial interests out of internalized shame and fear that their homelessness will be raised during the proceedings in an effort to embarrass them by equating poverty with dangerousness or inability to be a good parent or tenant.

Finally, upholding the Lower Court's ruling would further stigmatize a population that already is highly victimized by implicit bias and misunderstood. It would lend legitimacy to the incorrect impression that homeless people are inherently dangerous and should be removed from the company of others.

For these reasons, Veterans Legal Services respectfully submits this letter in support of the Plaintiff/Appellant, J.P., in the above-titled action.

In accordance with Mass. R. Civ. P 17(c), no party or party's counsel authored or funded this amicus curiae letter; no person or entity other than the listed organizations contributed in any way to the preparation or submission of this letter; and neither the amicus curiae nor its counsel represents or has represented any of the parties to the present appeal in this proceeding or any another proceeding. Please do note, however, that the undersigned counsel, Anna Richardson, serves on the board of the Mental Health Legal Advisors Committee by appointment of this Court.

Respectfully submitted,



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⁵ Cheney, A.M., Koenig, C.J., Miller, C.J. et al., Veteran-centered Barriers to VA Mental Healthcare Services Use, BMC Health Serv Res 18, 591 (2018), available at <https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-018-3346-9>

CERTIFICATE OF SERVICE

I, Anna Richardson, hereby certify under the pains and penalties of perjury that on March 31, 2020 I have filed and served the forgoing *Amicus Letter in Support of Defendant/Appellee, J.P.* on all parties via the Court's e-filing system.