No. 21-55395
(Consolidated with Nos. 21-55404 and 21-55408)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LA ALLIANCE FOR HUMAN RIGHTS, et al.

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES, et al.

Defendants-Appellants.

Appeal From The United States District Court
Central District of California, Case No. 2:20-cv-02291
Hon. David O. Carter

APPELLANT COUNTY OF LOS ANGELES' REPLY BRIEF

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I. INTRODUCTION

Appellees believe the City and County should handle the homelessness crisis differently. They do not like the County's "Care First" model, which prioritizes people based on their medical acuity, or the emphasis on permanent supportive housing, which creates a path to ending the cycle of homelessness. Instead, they want a geography-based approach with a focus on short-term shelter. Specifically, appellees want all people experiencing homelessness ("PEH") out of the Skid Row area and for the City to enforce its anti-vagrancy ordinances when people will not move voluntarily.

The County, intervenors, and multiple *amici curiae* (including subject matter experts) have explained why appellees' proposed path would be bad policy and contrary to the public interest. But this difference of opinion illustrates the County's point. The *law* does not allow one set of plaintiffs, or one district court, to substitute their judgment for the judgment of elected officials when it comes to making public policy decisions. The doctrine of separation of powers stands in the way, and for good reason. The divergent opinions expressed in this case demonstrate why politically accountable elected officials must make these challenging decisions.

Appellees support their position with legal arguments that are neither tethered to their complaint nor grounded in facts. At its core, the injunction shifts

control of key aspects of the homelessness services system for Los Angeles County from elected officials to the district court. There is no "significant nexus" between a lawsuit about graffiti, crime, and waste on the streets and an injunction taking over the functions of municipal government based on a purported race-based equal protection violation nowhere alleged in the complaint.

Federal courts decide "cases or controversies." U.S. Const. art. III, § 2. The U.S. Supreme Court reiterated this just last week in *California v. Texas*, 593 U.S. ___ (2021) (holding that plaintiffs did not have standing because they did not show a past or future injury fairly traceable to defendants' conduct). Federal courts are not to "engage in policymaking properly left to elected representatives." *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013). By wading into disputes about how local government should approach homelessness, that is exactly what the district court has done here.

This Court need not follow plaintiffs and the district court down the road of deciding whether the County's policies are the best approach, nor does it need to decide whether the County could do more. The County already more than meets its legal obligations and is committed to doing more. The issue before this Court is whether the district court abused its discretion in issuing a mandatory injunction that is not grounded in appellees' complaint or motion for preliminary injunction, is untethered from any injuries plaintiffs have suffered, is not "fairly traceable" to

the County, and is not supported by evidence of constitutional or statutory violations. The County respectfully submits the district court did abuse its discretion and this Court should reverse the preliminary injunction in its entirety.

II. APPELLEES HAVE NOT SATISFIED ARTICLE III

Appellees do not address separation of powers or Article III's case or controversy requirement. This is a fundamental jurisdictional requirement. The Supreme Court has described this threshold requirement as "an essential limit on our power . . . It ensures that we act *as judges*, and do not engage in policymaking properly left to elected representatives." *Hollingsworth*, 570 U.S. at 700.

A. Appellees Do Not Have A "Concrete And Particularized Injury"

For there to be an actual case or controversy, the plaintiffs must have standing—which requires "a concrete and particularized injury." *Hollingsworth*, 560 U.S. at 700. "[I]t is not enough that the party invoking the power of the court have a keen interest in the issue." *Id*. Allowing plaintiffs to proceed without standing would allow a federal court to issue "an advisory opinion without the possibility of any judicial relief," which "would threaten to grant unelected judges a general authority to conduct oversight of decisions of the elected branches of Government." *California v. Texas*, 593 U.S. ___ (2021).

Appellees gloss over this foundational issue, concluding that "a right and a violation have been shown." (AB at 27.) But they do not answer the question: what is the injury they will suffer or have suffered?

Buried in their answering brief, appellees attempt to address standing. (AB at 48.) They refer not to the complaint, but to the declarations submitted in support of the motion for preliminary injunction. (*Id.* at 49-50.) Appellees contend this is proper, while simultaneously asking for leave to file "a supplemental pleading or amended complaint."[1] (*Id.* at 50 n.7.)

The complaint did not allege plaintiffs were injured by the County's actions. Instead, the complaint alleges that the presence of PEH in the Skid Row area caused plaintiffs to suffer monetary loss and prevented use and enjoyment of their properties, and the City and County are to blame, despite dedicating significant resources and money to the homelessness crisis. [12-ER-2830 ¶ 75.] None of the individuals who appellees described as "representative of the membership" were

[1] Appellees declined to amend the complaint in connection with the County's motion to dismiss. They also misconstrue Federal Rule of Civil Procedure 15(d). That rule allows a district court, on motion and reasonable notice, to allow a party to "serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." It does not contemplate an order from this Court deeming a motion and its supporting evidence to be "considered a supplemental pleading." (AB at 50 n.7.) Appellees also ignore the County's authority holding that a plaintiff cannot use declarations to "retroactively confer standing." (AOB at 38 (citing *Int'l Longshore & Warehouse Union v. Nelson*, 599 F. App'x 701, 701 (9th Cir. 2015) (mem.)).)

currently experiencing homelessness. There are no allegations any of the plaintiffs were denied County services.

Appellees now point to Gary Whitter, a named plaintiff who lives in a shelter and receives a general relief check from the County's Department of Public Social Services. [AB at 48 n.5; *see* 12-ER-2858-59 ¶ 122.] Mr. Whitter himself acknowledges "permanent housing is difficult to find." [12-ER-2858 ¶ 121.] Assuming *arguendo* Mr. Whitter has standing, this injunction would not help him find permanent housing, and thus would not redress the injuries of which he complains of.

Appellees' attempt to establish associational standing for LA Alliance also misses the mark. Appellees must demonstrate that LA Alliance's "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

The motion for preliminary injunction argues plaintiffs were harmed by a City and County "containment policy" that concentrated people in Skid Row. [8-ER-1709-11.] Appellees contend that LA Alliance included PEH in the Skid Row area. They submitted declarations in support of the motion from people who had been offered shelter placements, but declined because of the shelter conditions. [9-

ER-2020 ¶ 6; 9-ER-2028 ¶¶ 3-4; 9-ER-2033 ¶ 10.] These people have not been harmed. They have no injury. Furthermore, LA Alliance's goal of sweeping people from Skid Row into temporary shelters, instead of finding them permanent housing, actually runs contrary to the interests of these people. These declarants do not show they suffered a "concrete and particularized injury." They cannot resurrect LA Alliance's lack of standing.

Appellees rely on *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012). But *Lavan* highlights what this case is not: a civil rights class action brought by PEH who themselves suffered a concrete and particularized harm. Specifically, the plaintiffs in *Lavan* had their personal possessions seized and detained by the City in connection with the City's enforcement of Los Angeles Municipal Code section 56.11. The *Lavan* plaintiffs were awarded relief in the form of an order enjoining the City from "*unlawfully* seizing and destroying personal property that is not abandoned without providing any meaningful notice and opportunity to be heard." *Id*. at 1024.

Unlike the *Lavan* plaintiffs, appellees have not established: (i) that LA Alliance has associational standing; or (ii) what "concrete and particularized" injuries LA Alliance, its members, or the individual plaintiffs suffered.

B. The Alleged Injuries Are Not "Fairly Traceable" To Wrongdoing By The County

Appellees must also show "that the injury they will suffer or have suffered is 'fairly traceable' to the 'allegedly unlawful conduct' of which they complain." *California v. Texas*, 593 U.S. ___ (2021). Appellees purport to trace their alleged injuries to the County's "long history of statutory and constitutional failures [that] has led to significant harm . . . including . . . violence, disease, unhealthy conditions, fires, and unspeakable conditions, and causing financial and emotional harm to residents and businesses." (AB at 53.) However, these generalities and conclusory statements do not suffice. *See Hollingsworth*, 570 U.S. at 704, 706.[2]

Lavan is again a useful comparison. There, PEH filed a class action lawsuit against the City because the City was enforcing a local ordinance that allowed it to seize and dispose of their discarded property in an unconstitutional manner. *Lavan*, 693 F.3d at 1025-26. Appellees do not connect the historical information detailed in the district court's order to the allegations in the complaint. (AB at 52-53.) Appellees fail to cite a single specific County action that has harmed them. Nor could they, as their own complaint acknowledges that the County provides

[2] There is no evidence connecting the County to redlining, construction of freeways, the "containment zone" in the 1970s, or what the district court called organized abandonment in housing. (AOB at 61.) Moreover, the district court used inaccurate information. (*Id*. at 61-62.)

services and funding, and describes the County's efforts as "impressive and commendable." [12-ER-2800 ¶ 18.[3]]

The evidence in the record demonstrates the County's substantial efforts to respond to the homelessness crisis in Los Angeles, which includes: the creation of the Homeless Initiative; the adoption of 47 strategies developed through a collaborative process which included experts, academics, public interest groups, homeless advocates, and other stakeholders; the declaration of a local emergency; the passage of Measure H; and the allocation of over $350 million annually to accelerate the critical work of the Homeless Initiative. [5-ER-932-933 ¶¶ 6-9; 2-ER-343-358.] The Homeless Initiative's 2021 performance evaluation, which was prepared by Dr. Halil Toros (Statistical Analytics Consultant, USC Price Center for Social Innovation), Dr. Dennis Culhane (Professor, University of Pennsylvania, Social Policy & Practice), and Dr. Stephen Metraux (Assistant Professor, University of Delaware, Biden School of Public Policy & Administration), determined the Homeless Initiative was responsible for 30,900 permanent housing placements and 52,201 interim housing placements, funded in whole or in part

[3] Appellees' ability to tie alleged injuries to the County faces an insurmountable stumbling block given the County's jurisdiction and role in the City of Los Angeles. Appellees complain that the City has not enforced its anti-vagrancy laws equally, in part due to this Court's holding in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), but those are *City* laws. [12-ER-2805-2806 ¶ 31.]

through the Homeless Initiative, since its creation. [4-ER-667-68; 5-ER-933-32 ¶¶ 12-13; 6-ER-1350; 6-ER-1355; 6-ER-1415.]

Tyler v. Cuomo, 236 F.3d 1124 (9th Cir. 2000), highlights the tenuous connection between the County and any injuries appellees contend they suffered. In *Tyler*, homeowners were impacted by the construction of a new project. *Id*. at 1133. The city had accepted federal funding, issued environmental reports, and assisted with the subject construction. *Id*. There was an obvious and direct connection between the city's actions and the homeowners' injuries. *Id*. Here, appellees cannot connect their alleged injuries to any conduct by the County.[4]

C. Federal Courts Do Not Redress General Grievances About Government

Appellees contend that redressability "only requires that some relief may be available to address their claims." (AB at 54.) This ignores well established law that "there is no redressability if a federal court lacks the power to issue such relief." *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018).

Federal courts lack the power to issue the relief granted here: an injunction supplanting policymaking decisions by elected officials with the prerogative of the district court. *Juliana v. United States*, 947 F.3d 1159, 1172 n.8 (9th Cir. 2020)

[4] Appellees attack the County for "concentrating" services used by homeless individuals in the Skid Row area. (AB at 58-59.) It is nonsensical to suggest the County has *harmed* LA Alliance or its members by *providing resources* to PEH.

(explaining that decisions that involve "the exercise of discretion," "trade-offs," and similar "value judgements" are "ill-suited for an Article III court").

Appellees' and the district court's frustration with an alleged "[f]ailure of political will does not justify constitutional remedies." *Id*. at 1175 (citation omitted). As *amici curiae* aptly explained, addressing homelessness "rests squarely on the shoulders of . . . elected officials." (Dkt. 38 at 13 (quoting *Murray v. City of Philadelphia*, 481 F. Supp. 3d 461, 466 (E.D. Pa. 2020).)

Appellees contend that the district court was right to follow the model in the school desegregation and PLRA contexts. (AB at 27-40.[5]) The County's opening brief explained in detail why neither offers the right roadmap. (AOB at 26-34.)

III. THERE IS NO "SIGNIFICANT NEXUS" AMONG APPELLEES, THE COMPLAINT, AND THE INJUNCTION

Appellees proclaim the injunction has a "significant nexus" to their complaint, while conceding that "[t]he specific issue of historical and ongoing discrimination is not raised in the complaint . . . ." (AB at 54-58.)

[5] Appellees rely on yet another PLRA case. (AB at 33 (quoting *Armstrong v. Brown*, 768 F.3d 975, 985 (9th Cir. 2014) (holding that modified injunction, issued after State failed to comply with previous injunction, did not violate the PLRA)).) It does not help their arguments here.

Appellees make two arguments: (i) race was discussed in the preliminary injunction motion and in an amicus brief, and (ii) the district court can adopt its own legal theory. (AB at 54-55.) Both miss the point.

First, there are no allegations that plaintiffs are Black PEH in the Skid Row area—in the complaint, motion, or anywhere else. Indeed, appellees admit "[t]he specific issue of historical and ongoing discrimination is not raised in the complaint . . . ." (AB at 57.) On the issue of race, appellees can only point to statements made at the May 27 hearing, which took place over a month *after* the injunction issued. (*Id.* at 59-61.) Legally, they are irrelevant. *United States v. Walker*, 601 F.2d 1051, 1055 (9th Cir. 1979) ("We are here concerned only with the record before the trial judge when his decision was made."); *see Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077-78 (9th Cir. 1988) ("Papers submitted to the district court *after* the ruling that is challenged on appeal" were not properly considered on appeal) (citing *Walker*, 601 F.2d at 1055).[6]

Second, the district court may be able to adopt a different legal theory than the one advanced by appellees, but it cannot manufacture standing and evidence to

[6] At the May 27 hearing, there was no "testimony" or "evidence" presented by the parties. (*Cf.* AB at 58-62.) The hearing was about the district court restating its frustrations with appellants' operations and finances. (Dtk. 22 at 8-10.) The "factual findings" were not tethered to this case or the plaintiffs who filed it.

create an entirely new case grounded in claims that were not pleaded. That is not how the law works. Advisory opinions do not come within the ambit of Article III.

Kamen v. Kemper Financial Services, Inc., 500 U.S. 90 (1991), does not help appellees. In that case, respondent argued that petitioner did not raise state law (the focus was federal common law) until her reply brief. *Id*. at 99. However, the question here is not whether a court has independent power to construe the governing law. The question is whether a court can issue an injunction regarding claims and parties not before the court. The former is a function of the court; the latter is not. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) ("A court's equitable power lies only over the merits of the case or controversy before it.").

IV. THE INJUNCTION IS NOT NARROWLY TAILORED

Appellees contend the injunction "is tailored to the violations" and "largely leaves municipal discretion intact." (AB at 43-47.) The district court's mandatory injunction strips local government of its ability to exercise discretion and implement policy for the public good. Among other things, the order: (i) decrees the cessation of sales and transfers of any (not yet identified) County property that could be used for housing and sheltering PEH; (ii) orders the County to divert its resources from helping homeless people across the County (over 40,000), and focus them on sheltering or housing for PEH living in Skid Row (about 2,000); and

(iii) directs the County to audit all funds received from local, state, and federal entities, along with any funds committed to mental health and substance use disorder treatment.

Appellees state "the order for escrow of funds and cessation of property transfers, audits, and spending plans are directly tied to the unchecked fraud, waste, corruption, and general stagnation of homelessness systems in Los Angeles." (AB at 44.) These are brazen claims, with no support in the record. There are no findings of anything of the sort. This is clear error.

The same is true of the "orders for plans to address the effects of structural racism and reports on projects focusing on racial distribution" being tied to "findings on the historical and ongoing discriminatory policies." (AB at 44.) Appellees have not pointed to a single County policy that is discriminatory against plaintiffs.

Appellees claim that the "orders for immediate offers of shelter" are tied to alleged "city and county policies of concentrating homeless individuals in Skid Row." (AB at 44.) But appellees' only allegation against the County is its "concentration" of services where the people who need them reside. This is another disconnect. Ordering the County to offer shelter to over 2,000 PEH in Skid Row is not "narrowly tailored" to the County providing services to that same population.

Appellees claim the injunction leaves certain decisions "entirely up to defendants." (AB at 45.) By setting "clear timelines and benchmarks," the district court has made the decisions for the City and County. The "choice" is no choice at all. For example, the injunction requires the County to offer shelter to over 2,000 PEH within 180 days. This timeframe makes interim shelter the only option. There are not enough interim housing placements available, so existing interim housing sites would have to close in order to redirect resources to Skid Row. Over 2,000 households would have to exit existing sites to accommodate Skid Row. [3-ER-443-445 ¶¶ 9-14.]

Appellees' interpretation of the order regarding the County's ceasing transfers of public land is similarly misleading. (AB at 46.) The district court ordered a report on land potentially available for shelter because it was considering commandeering County property. The court wanted to use that property for large-scale shelters (like the "Marshall Plan" one *amicus* brief suggested), which subject matter experts and advocacy organizations have rejected as dangerous and demoralizing. [7-ER-1484 ¶ 6.]

Appellees cite *Armstrong v. Davis*, 275 F.3d 849, 871 (9th Cir. 2001), *Garcia v. City of Los Angeles*, 481 F. Supp. 3d 1031, 1049 (C.D. Cal. 2020), and

Lavan. Plaintiffs[7] in *Garcia*, PEH and an advocacy group, moved for an order enjoining the City from enforcing a provision in the same ordinance at issue in *Lavan* (Los Angeles Municipal Code section 56.11). 481 F. Supp. 3d at 1036. An order stopping enforcement of a specific ordinance by a specific defendant where the ordinance was used to take property from specific plaintiffs is an example of a permissible preliminary injunction. *Id*. at 1051. However, an order taking over municipal functions of local government with no evidence the plaintiffs suffered concrete and particularized injuries, or that local government caused them, is not.

V. THERE ARE NO "LIKELY" CONSTITUTIONAL AND STATUTORY VIOLATIONS

Appellees argue the court's order was informed by 13 months of "fact-finding, hearings, and settlement efforts" that culminated in "detailed factual findings." (AB at 13.) The actual record negates this claim. (AOB at 16-18.)

The district court did not take judicial notice of any facts. (AB at 23 n.1.) It did not rely on appellees' evidence, and did not address any of the County's evidence. The facts in the injunction are lifted from newspaper articles and other publicly available sources, with a smattering of sound bites from status conferences—not evidentiary hearings. *Compare A&M Records, Inc. v. Napster*,

[7] The *Garcia* plaintiffs were represented by one of the intervenors in this case (Legal Aid Foundation of Los Angeles). It is telling that the Legal Aid Foundation of Los Angeles represents an intervenor that supports *appellants* in this appeal.

Inc., 239 F.3d 1004, 1017 (9th Cir. 2001) (discussing district court's "sound findings" and "careful consideration of defendant's objections" in connection with ordering injunctive relief).[8]

A. The State-Created Danger Claim Does Not Apply Here

Appellees dedicate over 19 pages to their state-created danger claim. (AB at 62-81.) But appellees cannot get past the legal standard. The first step is to identify an actual, particularized danger. *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011). Here, appellees do not cite to any actual, particularized danger the plaintiffs or members of LA Alliance are experiencing. They merely point to the general danger facing PEH in the City and County of Los Angeles. (AB at 62-65.)

The next step is to establish that the County's affirmative conduct *created* the specific danger and placed plaintiffs in a worse position than if the County had not acted at all. *Patel*, 648 F.3d at 974; *Johnson v. City of Seattle*, 474 F.3d 634, 639 (9th Cir. 2007). Appellees contend the County created the "danger" in several ways: (i) unidentified discriminatory policies; (ii) concentrating services in the

[8] Appellees have their burden wrong. They argue all they have to show is "serious questions going to the merits" because they contend they have satisfied the other elements for injunctive relief and the balance of hardships tips "sharply" in their favor. (AB at 25-26.) Appellees have *not* satisfied the other elements, let alone the much higher standard that applies to a mandatory injunction against a governmental entity. (AB at 26, AOB at 20-21.)

Skid Row area (where PEH live); (iii) focusing on permanent housing while also maintaining interim housing; and (iv) winding down Project Roomkey.[9]

Providing services and emphasizing the need for permanent housing do not put anyone in danger. They merely reflect policy decisions about solutions for homelessness. Appellees concede "these decisions may not, individually, constitute affirmative state action that rises to the level of a state created danger," but argue it is an "apathetic approach to solving homelessness." (AB at 77-78.) "Apathy" is not recognized in the case law.[10]

In any event, the County's approach to homelessness is far from apathetic. The County has dedicated billions of dollars to housing, shelter, services, and other resources for PEH. There is no evidence that the County "affirmatively places

[9] The County ramped down Project Roomkey in accordance with federal policy.

[10] Appellees cite *Kennedy v. City of Ridgefield*, 439 F.3d 1055 (9th Cir. 2006). There, the court held that an officer's actions placed plaintiff "in danger that she otherwise would not have faced." *Id*. at 1062-63. The officer had notified a neighbor that plaintiff had alleged the neighbor molested plaintiff's daughter. Less than eight hours later, the neighbor shot and killed plaintiff's husband and wounded plaintiff. That case, and *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989), and *Pauluk v. Savage*, 836 F.3d 1117 (9th Cir. 2016), underscore why the state-created danger doctrine does not apply here. In *Wood*, an officer allegedly left plaintiff in a dangerous area, where she was later assaulted. 879 F.2d at 590. In *Pauluk*, the plaintiff's death was allegedly caused by exposure to toxic mold, which county employees allegedly failed to remediate. 836 F.3d at 1125. Here, there are no allegations that the County or any of its officers did anything to plaintiffs—other than provide services in the Skid Row area (and countywide).

[PEH] in a position of danger" or "exposes an individual to a danger which he or she would not have otherwise faced." *Johnson*, 474 F.3d at 639 (citation omitted).

The final step is determining whether the County acted with deliberate indifference to the known or obvious danger. *Patel*, 648 F.3d at 974. Appellees contend the County cannot deny that homelessness is a crisis. (AB at 78-81.) The County agrees. Homelessness is a crisis. And the County is addressing this crisis in partnership and collaboration with cities countywide, public agencies, community partners, and other stakeholders. [5-ER-932-34 ¶¶ 6-13.] The County and its partners have built a robust infrastructure to provide strategic services to PEH throughout the County. Appellees may disagree with the County's approach, but that is what the political process—not a federal lawsuit—is for. *Juliana*, 947 F.3d at 1175.

Appellees point to inapposite cases. In *Santa Cruz Homeless Union v. Bernal*, No. 20-cv-09425-SVK, 2021 WL 222005 (N.D. Cal. Jan. 20, 2021), a district court granted a motion for preliminary injunction to stop closure of one specific homeless encampment, in which the plaintiffs lived, because of Centers for Disease Control ("CDC") guidance advising against moving encampments. Here, the district court's injunction lacks that narrowly tailored specificity. It is, in essence, an order to allow the district court to dictate homeless policy in the Skid Row area.

Appellees also cite *Sausalito/Marin County Chapter of California Homeless Union v. City of Sausalito*, No. 21-cv-01143-EMC, 2021 WL 2141323 (N.D. Cal. May 26, 2021), which is similar to *Santa Cruz*. Plaintiffs, campers at a homeless encampment in a city park, also relied on CDC guidance to obtain a preliminary injunction enjoining the city defendant from enforcing its day camping prohibition and closing/clearing a specific encampment. *Id*. at *1. The district court later modified the injunction so the city could move the encampment to a different park, but it maintained the order enjoining the city from enforcing the day camping prohibition. *Id*. at *3.

Here, the district court is ordering appellants to offer shelter to everyone on Skid Row so the encampments can be cleared. This injunction is the very harm complained of in *Santa Cruz* and *Sausalito*, not the remedy.

B. The "Other Constitutional Grounds" Section Concedes The Weakness Of The Foundational Claims

Appellees dedicate three pages to "other constitutional grounds." (AB at 81-83.) For the equal protection claim (which is the crux of the injunction), they, for the first time, contend that four LA Alliance member are "African American persons experiencing homelessness." (AB at 81 n.13.) But they do not describe how the County has violated their constitutional rights. Instead, appellees flip the script and argue that race-neutral laws can still be discriminatory. (*Id.* at 81.)

This argument is perplexing. There are no allegations that the County is enforcing a race-neutral law in a discriminatory way, which is what happened in the cases appellees cite. *Yick v. Hopkins*, 118 U.S. 356, 374 (1886) (Chinese petitioner denied permit to operate a laundry); *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960) (Alabama legislature redefined city boundaries in a way that removed the majority of Black voters); *Rogers v. Lodge*, 458 U.S. 613, 615-16 (1982) (at-large electoral system used to dilute voting strength of Black population).

For the "severe inaction" theory, appellees argue the district court is not making new law. But the district court itself acknowledged it was doing just that. [1-ER-110 ("The court acknowledges that this conclusion advances equal protection jurisprudence.").] The case appellees cite, *United States v. Fordice*, 505 U.S. 717 (1992), says nothing about state inaction. Only a law review article does. [1-ER-110 at n.437.]

As for substantive due process, appellees walk back the injunction's focus on "disrupting unhoused Black families' constitutional right to family integrity." [1-ER-119.] They bring the argument back to "the City's policy of containment." (AB at 83.) There is no containment policy, and the provision of services to PEH in the Skid Row area does not constitute a "deprivation of liberty."

C. There Is No Evidence The County Violated WIC 17000

Appellees agree the County has discretion to determine how it provides relief. (AB at 85.) They contend that the County does not have the option to deny relief. (*Id*.) But the County is not denying relief. The County embraces its obligations under the statute: (i) to provide general assistance to the indigent; and (ii) to provide medically necessary care to "medically indigent persons." *Hunt v. Superior Court*, 21 Cal. 4th 984, 1002-03 (1999).

The County provides (i) general assistance to the indigent (like the general relief check plaintiff Gary Whitter states he receives in paragraph 122 of the complaint); and (ii) medically necessary care (like the "regular access to medical and mental health clinics" plaintiff Gary Whitter describes in paragraph 121 of the complaint). Plaintiffs do not contend they have been denied general assistance or medically necessary care.[11]

Appellees argue again that "housing is healthcare." (AB at 88-89.) While the County agrees that the goal is for all County residents to have permanent

[11] *Madera Community Hospital v. County of Madera*, 155 Cal. App. 3d 136 (1984), *Rodde v. Bonta*, 357 F.3d 988 (9th Cir. 2004), and *Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754 (9th Cir. 2004), deal with the obligation to provide medically necessary care. Here, in contrast, plaintiffs make general allegations about the challenges PEH are experiencing. There are two significant problems: (i) LA Alliance and the individual Plaintiffs do not have standing to sue on behalf of all PEH in Los Angeles County; and (ii) while the County is committed to doing more, it is already satisfying its statutory obligations to provide general assistance and medically necessary care to its indigent residents.

housing, there is no statutory obligation to provide that housing. This is an issue for the legislature, not a court to mandate.

D. The ADA Claims Are Not Alleged Against The County

Although the injunction included the County in its discussion of the ADA claims, appellees concede that those claims apply only to the City. (AB at 90-95.)

VI. APPELLEES DO NOT CITE ANY IRREPARABLE HARM

Appellees try to satisfy the irreparable harm requirement by arguing they have established constitutional violations, which is enough to show irreparable injury, and then concluding that the "unhoused members of the Alliance and 66,000 other PEH daily risk death, disease, violent attack, and worsening physical and mental health." (AB at 95-96.) Rhetoric does not meet this burden.

There is *no evidence* that any LA Alliance members are at risk of dying. This is not a class action on behalf of all PEH in the County. If it were a class action, then appellees would not be asking the County to abandon a needs-based approach and focus solely on the Skid Row area.

VII. APPELLEES HAVE THE BALANCE OF EQUITIES OFF-KILTER

Appellees describe the balance of the equities as "sure death and decline of thousands—some of whom are Plaintiffs" on the one hand and "financial implications . . . and obligations to provide various reports and spending plans" on the other. (AB at 97.) Describing the County's interest here as purely financial

demonstrates that appellees do not understand the complexity of policymaking. The County explained the impact the injunction would have on its needs-based, countywide approach to homelessness in the opening brief, but appellees ignore that. (AOB at 68-69.) The impact is significant:

- Implementation would interfere with the provision of services, which are provided throughout the County (not just in Skid Row);
- To comply with the terms of the requested injunction, the County would have to pull homeless support resources from other areas;
- Diverting resources to emergency, interim housing would exacerbate the existing backlog of residents seeking permanent housing;
- Because the interim housing resources that exist are occupied, and because constructing 2,093 new beds in 90 days is not feasible, the injunction would require the County to move current residents out of their housing resources to move the Skid Row population in;
- Forcing relocation undermines the County's goal of achieving long-term results by building relationships with PEH and helping them find permanent housing and services; and
- Mandating that the County cease sales and transfers of certain properties would impact properties designated to be used for other public purposes (including shelter/housing for PEH, schools, etc.).

VIII. THE PUBLIC INTEREST CANNOT BE AN AFTERTHOUGHT

Neither appellees nor the district court adequately addressed the public interest. This injunction has serious public consequences, and the public interest *must* be considered. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (courts must "pay particular regard for the public consequences" of granting injunctions").

The County addressed the public interest in detail in its opening brief. (AOB at 62-67.) Six *amici curiae* took the time to explain why this injunction harms, rather than helps, the public. Each brings a unique perspective to this complex issue, which is why the County's policies are a product of community meetings, stakeholder input, and expert guidance.

Issues addressed by *amici curiae* include:

- The United Way of Greater Los Angeles ("UWGLA") explained that it has worked with the County, City, and Los Angeles Homeless Services Authority ("LAHSA") to create a coordinated entry system to match PEH to specific housing resources and services on a countywide basis. From UWGLA's perspective, the injunction would (i) divert resources away from permanent housing; (ii) focus an already scarce pool of resources on a single community, at the

expense of PEH countywide; and (iii) exacerbate the revolving door of PEH receiving temporary shelter and then returning to the streets.

- LAHSA described its interest in promoting an evidence-based approach to homelessness. The evidence, according to LAHSA, favors a coordinated, regional response and data-driven allocation of resources. LAHSA is speaking from experience—it has helped place more than 64,658 people in permanent housing over the last three years. LAHSA explained that the injunction excludes essential aspects of the homelessness services system and will exacerbate the disproportionate impact of homelessness on communities of color.
- The Southern California Association of Non Profit Housing, Corporation for Supportive Housing, and various non-profit developers reiterated the concern with focusing on an immediate short-term solution, and explained that the injunction is creating uncertainty for the development of affordable, supportive housing.
- The International Municipal Lawyers Association, California State Association of Counties, League of Oregon Cities, Association of Washington Cities, Washington State Association of Municipal Attorneys, and Association of Idaho Cities stated that the injunction would only frustrate ongoing efforts to address homelessness and

other complex social issues by requiring local leaders to reallocate time and money to the district court's plan—at the expense of other citizens, other government programs, and other institutions.

- Women in Skid Row highlighted a key issue: the injunction fails to consider the nuanced needs of marginalized people. The organization also explained that the arbitrary timeline places business owners' needs over the rights and welfare of those most impacted. It echoed the concern that expanding the temporary shelter system at the expense of permanent housing will perpetuate the cycle of homelessness and exacerbate the harm it intends to remedy.

Rather than thoughtfully weighing the public interest or addressing the County's arguments or declarations (or the arguments of *amici curiae*[12]), appellees cast aspersions on public servants who have dedicated their careers to the residents of Los Angeles County. Appellees describe the City and County as "broken" and "dysfunctional." (AB at 97.) They suggest intervenors and *amici curiae* "have built their livelihood around producing permanent supportive housing" and "cannot admit what would be a perceived failure." (*Id.* at 98.)

[12] Appellees' only response to the *amici curiae* comes in the form of generalized critiques about "amici from all the typical sources." (AB at 97.)

As appellees correctly note, "the homeless community is not a singular group that speaks with a singular voice; nor does a single entity represent the entire homeless community." (AB at 99.) Thus, LA Alliance does not represent the entire community of PEH in the Skid Row area, let alone the entire community of PEH in Los Angeles County. That is why the County uses an individualized approach to addressing homelessness, and it does so on a countywide basis that emphasizes need over geography.

This injunction strips the County of the ability to continue its individualized approach. Under the terms of the injunction, if PEH do not accept offers of shelter, they will be subjected to criminal enforcement. Even if they do accept, they might be displaced from their chosen locations and communities, which will interfere with social connections and relationships with the outreach workers who work to help break the cycle of poverty and homelessness.

Appellees suggest that a diverse network of public entities, partner agencies, community-based organizations, and activists should be cast aside. They believe they have found the solution: immediate short-term shelters for the residents of the Skid Row area—even if it means putting non-Skid Row clients who are currently in those shelters back on the streets. This is not a solution to anything. And it comes at the expense of a homelessness services system focused on the entire community.

IX. CONCLUSION

The answering brief is heavy on rhetoric and critiques of local government but devoid of legal substance. Plaintiffs are not entitled to a mandatory injunction unless they establish standing, likelihood of success on the merits of the actual legal claims in their Complaint based on a robust evidentiary record, and irreparable harm. When an injunction has public consequences, the public interest must be considered.

Appellees do not meet their burden. They have not shown a "concrete and particularized injury" "fairly traceable" to any County actions, or that the district court had authority to redress their generalized grievances. They did not establish a likelihood of success on their claims, and thus there is no basis for the extraordinary equitable relief issued here.

As for irreparable harm, there is no evidence any members of LA Alliance will be injured if the injunction does not stand. Conversely, advocates have explained why the injunction is likely to harm PEH. The final factor, the public interest, weighs heavily in favor of vacating the preliminary injunction.

The County respectfully requests that the Court reverse the order granting the preliminary injunction in its entirety.

DATED: June 24, 2021

MILLER BARONDESS, LLP

By: /s/ Mira Hashmall
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COUNTY OF LOS ANGELES

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 21-55395, 21-55404 and 21-55408

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This brief contains 5,636 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Suite 1000, Los Angeles, CA 90067.

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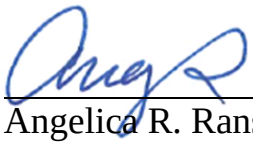

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