Case Nos. 21-55395, 21-55404, 21-55408

IN THE 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
for the Central District of California
Case No. 2:20-cv-02291-DOC-KES
The Honorable David O. Carter, United States District Judge

APPELLEES' ANSWERING BRIEF

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INTRODUCTION

Nine years ago—in a different case related to homelessness in Los Angeles—this Court wrote:

> This appeal does not concern the power of the federal courts to constrain municipal governments from addressing the deep and pressing problem of mass homelessness or to otherwise fulfill their obligations to maintain public health and safety. In fact, this court would urge Los Angeles to do more to resolve that problem and to fulfill that obligation.

Lavan v. City of Los Angeles, 693 F.3d 1022, 1033 (9th Cir. 2012). Since then, the City of Los Angeles ("City") and the County of Los Angeles ("County") have done little to nothing to fulfill that obligation or actually resolve the problem of mass homelessness. To the contrary, the problem has intensified, and Los Angeles has careened into a homelessness crisis of constitutional proportions.

The crisis is no act of God and it is no accident. It is the consequence of conduct by the City and County of Los Angeles stretching back decades and continuing to this day. And the crisis crescendos—unhoused persons now perish at rate of five per day on the streets of one of the wealthiest cities in the world. The City and County's failures to address this self-created crisis are so endemic one City councilmember admitted "[t]he only way we can respond to this . . . we need the Court's help." (1-ER-83.).

In the face of such extreme and dire consequences created by City and County conduct, the district court issued a thorough, carefully considered order informed by more than a year of fact-finding, hearings, and settlement efforts. That order included detailed factual findings—which neither the City nor the County disputed—concerning the history of homelessness in Los Angeles, the dysfunctional response of local government to the crisis, and its tragic human cost. The order also catalogued the constitutional and statutory violations that caused and contributed to the crisis of homelessness in Los Angeles:

- triggered a state-created danger in Skid Row by concentrating homelessness in a defined area in downtown Los Angeles, resulting in dangerous, squalid conditions that threaten the well-being of the homeless and those who live, work, and own property there, *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006) (state-created danger arises when government employees "'affirmatively place[ ] the plaintiff in a position of danger,' that is, where [their] action[s] create[ ] or expose[ ] an individual to a danger which he or she would not have otherwise faced") (citation omitted);
- violated the Equal Protection Clause through decades of systemic racism, including policies that have rendered a disproportionate number of Black citizens homeless, *Swann v. Charlotte-Mecklenburg*

Bd. of Educ., 402 U.S. 1, 10 (1971) ("Nearly 17 years ago this Court held, in explicit terms, that state-imposed segregation by race in public schools denies equal protection of the laws. At no time has the Court deviated in the slightest degree from that holding or its constitutional underpinnings.");

- flouted their statutory obligations to provide medical care to indigent persons under section 17000 of the California Welfare and Institutions Code. *City & Cty. of San Francisco v. Super. Ct.*, 57 Cal. App. 3d 44, 50 (Ct. App. 1976) (if the County fails to meet its 17000 obligation, a court "must intervene to enforce compliance."); and
- defied the Americans with Disabilities Act by failing to maintain unobstructed sidewalks in a manner that makes them readily accessible to those with disabilities. *Willits v. City of Los Angeles*, 925 F. Supp. 2d 11089, 1093 (C.D. Cal. 2013) (holding city is responsible for maintenance of sidewalks to comply with ADA guidelines); 36 C.F.R. § 1191, App. D. § 403.5.1 (ADA guideline requiring "the clear width of walking surfaces shall be 36 inches [] minimum.").

In light of these violations, the order concluded with a preliminary injunction designed to put the crisis on pause pending further litigation in this matter. While robust, the injunction is specifically tailored to the order's factual

findings, legal conclusions, and the public emergency facing persons experiencing homelessness in Los Angeles:

1. In light of the dangers posed to homeless persons living in Skid Row, the court required the City and the County to offer shelter/housing and support services to unhoused individuals living in Skid Row within 180 days.
2. Due to its findings of fraud, waste, corruption and mismanagement of funds intended to address the homelessness crisis, the court demanded an audit of homelessness-related funding and funds related to mental health and substance abuse treatment along with detailed spending plans for existing funds.
3. Because the City and County failed to make use of available government properties for shelter or housing, the court sought a report on available land throughout the City of Los Angeles, a temporary cessation of transfers of City properties, and reports on the use of hotel rooms for shelter and housing, mental health and substance abuse services, and housing policy.

The City and County seek to escape this narrowly tailored injunction by claiming they aren't to blame and are doing all they can. Their own clients beg to differ.

> Decades of willful ignorance on behalf of the City and County of Los Angeles has brought us to this moment where tens of thousands of people spend their days as well as their nights on the streets and sidewalks.
>
> Now, I use the word "willful" because our unhoused community in the concentration of both men and women, especially young children, and entire families who now find themselves on Skid Row is no accident.
>
> We know that this neighborhood was designed to be an open-air prison, established through a collective effort of public officials, politicians, at both the county and city levels, who worked out a containment plan for marginalized people but, in particular, people of color.
>
> Homelessness services, housing services, and shelters were concentrated in Skid Row. The City turned law enforcement into de facto prison guards who patrol the border of Skid Row to make sure that this shameful reality stayed hidden.
>
> To those who found themselves having to cross the border into Skid Row searching for help and finding hell instead, it was more of just the same—institutional racism layers on top of structural racism, designed as—or should I say disguised as solutions.

LA City Councilmember Kevin DeLeon, (2-ER-164–65.)

Hilda Solis, Chairperson of the LA County Board of Supervisors, stated:

> [T]hank you, Honorable Judge Carter, for allowing us to be here today to testify and elevating the history of structural racism and its impacts on the homeless crisis here in this preliminary injunction. . . .
>
> [A]s Chair of the L.A. County Board of Supervisors, I want to acknowledge this very historic injustice that we know must be corrected. Past trauma has to be addressed, an oppressive system must be destructed in order to tackle the region's homelessness crisis.

LA County Supervisor Hilda Solis, (2-ER-148–49.)

> [H]istoric harms must be corrected, past trauma must be addressed, and oppressive systems must be deconstructed. The County is committed to partnering with the Skid Row Advisory Council and communities of color across the County to address the underlying structural and systemic factors which have contributed to disproportionate rates of Black people experiencing homelessness in Los Angeles. . . .
>
> I welcome additional feedback on how County policies and systems can be improved to correct mistakes of the pasts [sic]. By centering the voices of community advocates and people experiencing homelessness, I am confident that, together, we can effectively address the impacts of systemic racism and oppression in our County.

Supervisor Solis, (1-SER-2–3.)

> "We can end homelessness and how do we know this? **Because we created it.** Policy choices and underinvestment brought us to where we are today."

Heidi Marston, Executive Director of LAHSA, (8-ER-1706.)

These are the very type of sentiments that led the LA Alliance for Human Rights to file this case in hopes of altering the status quo and seeking relief for the unhoused and housed together. The Alliance is a broad coalition of individuals who range from unsheltered homeless persons living in Skid Row, to non-profits and community groups, to small business owners and residents who are themselves affected by the homelessness crisis. Arrayed against the Alliance are the forces of the status quo—a City and County that claim to be doing what they can despite all evidence to the contrary, Intervenors who claim to advocate for the homeless while

opposing an order that would save lives and shelter thousands, and amici who defend the insufficient and indefensible efforts of the City and County.

Nearly a decade has passed since this Court urged Los Angeles "to do more to resolve the problem" of homelessness and declined to address a district court's power to address "the deep and pressing problem of mass homelessness." *Lavan,* 693 F.3d at 1033. Here, a district court has carefully crafted a preliminary injunction designed to limit further human suffering and loss of life pending further proceedings concerning this deep and pressing problem. *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) ("Mandatory injunctions are most likely to be appropriate when 'the status quo . . . is exactly what will inflict the irreparable injury upon complainant.'") (citation omitted). Because no party seriously disputes the district court's findings of facts, and because serious questions of law have been raised and the balance of hardships tips in the plaintiffs' favor, there was no abuse of discretion, and the preliminary injunction should be affirmed. *A & M Records, Inc. v. Napster, Inc.,* 239 F.3d 1004, 1013 (9th Cir. 2001).

ISSUES PRESENTED

Whether a limited and deferential review of the district court's undisputed factual findings and detailed legal conclusions supports the district court's determination that:

a. extreme or serious damage to persons experiencing homelessness in Los Angeles—including human suffering and loss of life—will result if the preliminary injunction is not granted;

b. there are serious questions concerning the City and County's liability for constitutional and statutory violations that cause or contributed to the homelessness crisis in Los Angeles;

c. the balance of the hardships concerning homelessness in Los Angeles is borne more heavily by those experiencing homelessness and its effects on the community, as opposed to the City or the County; and

d. the public interest favors the immediate action and accountability ordered by the district court in order to protect the lies ad health of those experiencing homelessness in Los Angeles.

RELEVANT BACKGROUND

I. Plaintiffs Filed Their Complaint March 10, 2020

Plaintiff-Appellees (alternatively referred to herein as "Plaintiffs") filed the operative complaint March 10, 2020. Plaintiffs are LA Alliance for Human Rights (alternatively referred to herein as "LA Alliance" or "Alliance") and eight named individual plaintiffs, including Gary Whitter who is currently homeless and living

in an interim shelter facility after 13 years of unsheltered homelessness causing significant physical and mental health problems. (12-ER-2857–59.)

II. Nine Days Later, Litigation Was Stayed Pending Settlement Discussions

On March 19, 2020, the district court held an emergency status conference due to the unfolding COVID-19 pandemic, and the potential affects on the unhoused therefrom. (7-SER-1530–34.) The hearing was attended by, *inter alia,* Los Angeles Mayor Eric Garcetti, City Council President Nury Martinez, Chairperson of the County Board of Supervisors Kathryn Barger, Los Angeles City Attorney Mike Feuer, and Los Angeles County District Attorney Jackie Lacey. (*Id*.) Mayor Garcetti announced the hearing as "the first convening of the Judge Carter Fan Club meeting" and asked the court to "help us keep momentum." (*Id*. at 1530, 1538, 1546–47.) Supervisor Barger asked the district court to "help us navigate those waters" and thanked the court for having everyone there. (*Id*. at 1563–64.)

All parties recognized the tremendous opportunity this case afforded to come to an agreement on a comprehensive solution to a crisis defendants City and County heretofore had failed to produce. The parties collectively agreed to suspend litigation and engage in *ex parte* communications with the court in an attempt to reach a comprehensive settlement. (*Id*. at 1645–46.)

III. Defendants Reach Preliminary Agreement

By May 15, 2020, the district court held five hearings, and the freeways had become a focal point in the crisis. (7-SER-1519.) Los Angeles has a dearth of land immediately available for homeless housing projects, but much of this available area includes state-owned property underneath freeways. However, Intervenors and the City objected to its use because of state laws prohibiting residences under freeways in addition to concerns about pollution particulate matter. (*Id*. at 1519–20.) The district court issued an order for briefing on the public health risks of living near freeways and notified the parties that it was considering a preliminary injunction requiring alternate shelter and humane relocation of all persons experiencing homelessness ("PEH") living underneath or adjacent to freeways. (*Id*. at 1520–24.) On May 22, 2020, the Court issued the injunction. (11-ER-2504.) The City and County requested court-appointed mediation, which was done by District Court Judge Andre Birotte. (6-SER-1219.) On June 16, 2020, the City and County reached an agreement to jointly build and fund services for 6,700 beds within 18 months (6,000 of which would be done by April 15, 2021), and the district court vacated the injunction. (6-SER-1215–16; 10-ER-2478.)

IV. Thirteen Months After Litigation Was Stayed, Plaintiffs Filed Their Motion for Preliminary Injunction

Little progress was made on a global settlement over the next thirteen months, despite the stay of litigation for the purpose of allowing the City and County to come to an agreement, votes by the City and County's elected leadership to enter into settlement negotiations, and numerous hearings and settlement conferences held by the court. While the pandemic raged, the conditions of Los Angeles' streets worsened but still no comprehensive plan or agreement emerged. This culminated in a jurisdictional battle on the day of a torrential downpour in the Skid Row area where women were ultimately left freezing in the rain because "[t]here seemed to be more jockeying for position and control than a willingness to help the unhoused community in the area." (2-SER-458; 10-ER-2384.) This single day was a microcosm of the dysfunction of the homelessness response system in Los Angeles that leaves thousands subject to the elements and causes death after death.

After over a year of failed settlement negotiations, and the conditions on the streets becoming worse, not better, the court issued a series of orders requesting briefing on potential constitutional and statutory issues and the outer bounds of the court's authority should a constitutional or statutory violation be found. (10-ER-2255–56, 2452–53, 2454–58.) All parties submitted briefs, in addition to multiple amici letters and briefs. (9-ER-2125–2214, 10-ER-2216–2254, 1-SER-196–260, 2-SER-263–435.) Plaintiffs filed their notice of intent to file a preliminary

injunction on March 5, 2021 (9-ER-2205) and Defendant County filed a Motion to Dismiss on March 29, 2021 (9-ER-2089.)

V. Court Granted Plaintiffs Preliminary Injunction

On April 11, 2021 NAACP-Compton, CORE-CA, and Committee for Safe Havens filed an amicus brief raising the issue of structural racism causing the disproportionate representation of people of color experiencing homelessness. (9-ER-2076–88.) On April 12, 2021, Plaintiffs filed a motion for preliminary injunction. (8-ER-1896.) On April 13, 2021, the court issued an order with briefing schedule, and ordered the City and County to respond to the NAACP-Compton and CORE-CA amicus brief. (7-ER-1694.) On April 19, 2021, Defendants City and County, along with Intervenors, filed oppositions to Plaintiffs' motion for preliminary injunction. (1-SER-137–160, 3-ER-471–664, 4-ER-666–928, 5-ER-930–1151, 6-ER-1153–1415, 7-ER-1417–1668.) On April 20, 2021, the district court granted Plaintiffs' motion for preliminary injunction, making specific detailed factual findings,[1] and numerous likely constitutional and statutory violations. (1-ER-33–142.) The district court subsequently issued a

[1] A district court may take judicial notice of any facts it finds reasonably without dispute, and evidentiary findings are reviewed only for clear error. Fed. R. Evid. 201(b); *Indep. Living Ctr. of S. Cal.,*543 F.3d 1050, 1055 (2008) (in a preliminary injunction, "findings of fact [are reviewed for] clear error."). Moreover, neither defendant challenges the district court's factual findings. (2-ER-144-310.)

clarification of its order. (I-ER-32.) The County and City filed a notice of appeal and moved for a stay of injunction pending appeal. (2-ER-401–39, 3-ER-441–70.) The Court partially granted the stay, and ordered a hearing set for May 27 to consider aspects of the stay request, including an evidentiary hearing on the Court's factual findings. (1-ER-17.) At the hearing the City and County did not present any evidence, cross-examine any witnesses, or challenge any factual findings. (2-ER-144–310.)

STANDARD OF REVIEW

Appellate review of a preliminary injunction is "limited and deferential" to the district court. *Harris v. Bd. of Supervisors*, 366 F.3d 754, 760 (9th Cir. 2004). Findings of fact are reviewed for clear error. *Indep. Living Ctr.*, 543 F.3d at 1055. "The scope of a preliminary injunction is also reviewed for abuse of discretion." *United States v. Schiff*, 379 F.3d 621, 625 (9th Cir. 2004). "An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *Rabkin v. Or. Health Scis. Univ.*, 350 F.3d 967, 977 (9th Cir. 2003) (citation omitted); *see also In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 698 n.11 (9th Cir. 2011). Under the abuse of discretion standard, a reviewing court cannot reverse absent a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of relevant

factors. *See Estate of Diaz v. City of Anaheim*, 840 F.3d 592, 601 (9th Cir. 2016) (under the abuse of discretion standard, a reviewing court can reverse only when convinced that the district court's decision lies beyond the pale of reasonable justification under the circumstances).

Under Federal Rule of Civil Procedure 65, a preliminary injunction will issue upon a showing that the party seeking the injunction (1) is likely to succeed on the merits, (2) is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. *Disney Enters., Inc. v. VidAngel*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)). Alternatively, a preliminary injunction will issue if the moving party can demonstrate (1) "serious questions going to the merits" and (2) that "the balance of hardships tips sharply in the [movant's] favor," provided that the second and fourth *Winter* factors are also satisfied. *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011); *Epic Games, Inc. v. Apple, Inc*., 2020 WL 5993222, at *6 (N.D. Cal. Oct. 9, 2020).

This Court has adopted a "sliding scale" approach to the *Winter* factors:

> Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another. For example, a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits. This circuit has adopted and applied a version of the sliding scale approach under which a preliminary injunction could issue where the likelihood of success is such that serious questions going to the merits were

> raised and the balance of hardships tips sharply in plaintiff's favor. That test was described in this circuit as one alternative on a continuum.

Wild Rockies, 632 F.3d 1127, 1131 (9th Cir. 2011). Therefore, "a preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Id.* at 134-35.

"Mandatory injunctions, while subject to a higher standard than prohibitory injunctions, are permissible when extreme or very serious damage will result that is not capable of compensation in damages, and the merits of the case are not doubtful." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (citations omitted). "Mandatory injunctions are most likely to be appropriate when the status quo is exactly what will inflict the irreparable injury upon complainant." *Id*. Here, many of the orders contained in the preliminary injunction were mandatory in nature, yet the "status quo"—the ongoing immense suffering and daily fatalities in the streets of Los Angeles—is exactly the irreparable injury Plaintiffs seek to stop.

ARGUMENT

I. The District Court Acted Within Its Authority to Order Immediate Relief Where the Constitutional or Statutory Violations are Likely.

A. The District Court Has Broad Authority to Order Equitable Relief.

The district court identified ongoing constitutional and statutory violations (*see* discussions *infra* Section III), and after over a year of both personal observation and court hearings on the subject matter, crafted a clear, incisive, and tailored injunction to address both the violations identified and the concerns presented by both parties and non-parties.

Article III of the Constitution establishes that "[t]he judicial Power" of the federal courts "shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States[.]" U.S. Const., art. III, § 2. The Supreme Court has consistently affirmed that courts are vested with extensive equitable powers to craft relief appropriate to redress unlawful conduct.

"Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann*, 402 U.S. at 15. Courts are "guided by equitable principles" which means "practical flexibility in shaping its remedies" with the ability to "adjust[] and reconcil[e] public and private needs." *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 300 (1955) *("Brown II")*. District courts have wide latitude to fashion comprehensive relief that addresses "each element contributing to the violation" at issue. *Hutto v. Finney*, 437 U.S. 678, 687 & n.9 (1978). Because of the need to remain both flexible and expansive, appellate courts are especially deferential to the district courts' decisions guiding equitable

relief. *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) ("In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow."). It is imperative that courts consider the public interest at stake if a case "present[s] a situation in which 'otherwise avoidable human suffering'" is considered. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009).

Courts' broad equitable powers are not limited to prohibitory relief but also include mandatory action to ensure the violation is immediately addressed. *See Brown II*, 349 U.S. at 301 (instructing the district courts "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases"); *see United States v. Fordice*, 505 U.S. 717, 728 (1992) (observing that *Brown v. Board of Education* and its progeny mandate an "affirmative duty to dismantle its prior dual education system" and "a State does not discharge its constitutional obligations until it eradicates policies and practices traceable to its prior *de jure* dual system that continue to foster segregation"). In crafting appropriate, comprehensive, and balanced relief, district courts are not limited by a plaintiff's requested relief. *See Brown v. Plata*, 563 U.S. 493, 538 (2011) (*"Plata"*); *Lemon*, 411 U.S. at 200-01 (plurality op.). "System-wide relief is required if the injury is the result of violations of a statute or

the constitution that are attributable to policies or practices pervading the whole system (even though injuring a relatively small number of plaintiffs)." *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001) ("We also note that the decision to grant system-wide prospective injunctive relief does not occur in a vacuum; it is intimately connected to determinations made earlier in the lawsuit."), *overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005).

The district court extensively analyzed the breadth of its equitable power and correctly concluded "equitable powers of federal courts encompass injunctions that affect the rights of parties not before the court." (1-ER-131) (citing *Steele v. Bulova Watch Co*., 344 U.S. 280, 289 (1952) ("the District Court in exercising its equity powers may" enjoin conduct "outside its territorial jurisdiction"); *see also Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996) ("an injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit-even if it is not a class action-*if such breadth is necessary to give prevailing parties the relief to which they are entitled*.") (emphasis in original) (citation omitted). This is because district courts are given the power, and indeed the obligation, to craft relief that balances all needs, in order to ensure the most equitable solution, it necessarily must take into account the interests of non-parties. *Id*. But crucially here, the stakes are higher than just about every other constitutional case considered by the

courts. The Court in *Brown v. Board of Education* ordered desegregation based on "a feeling of inferiority" from "separate but equal" schools. 347 U.S. 483, 494-95 (1954). Prisoner welfare was at stake in *Plata*. 563 U.S. at 540. Environmental damages in *Wild Rockies,* injuries to DACA recipients in *Arizona*, injuries to dignity and civil rights in *Cupolo*. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014); *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1084 (N.D. Cal. 1997). At the crux of this case is the undisputed fact that five people living on the streets of Los Angeles will die today, five more tomorrow, and five more the day after that, while a countless greater number descend into irreversible mental illness and poor physical health. While other civil rights cases have involved significant hardship, this case presents the most dire hardships imaginable, justifying decisive court action.

There is no doubt district courts have authority to grant equitable relief based on constitutional or statutory grounds (federal or state). *See Sierra Club v. Trump*, 963 F.3d 874, 888 (9th Cir. 2020) ("Certain provisions of the Constitution give rise to equitable causes of action. Such causes of action are most plainly available with respect to provisions conferring individual rights, such as the Establishment Clause or the Free Exercise Clause."); *Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004) (enjoining LA County from closing a rehabilitation center

after finding the County violated the ADA); *Harris*, 366 F.3d at 757 (mandating LA County keep same hospital open as part of its obligation under Welfare and Institutions Code section 17000). And, where those violations pose extreme or very serious damage, relief by means of a mandatory injunction is appropriate and necessary. *Anderson v. U.S.*, 612 F.2d 1112, 1115 (9th Cir. 1979).

In *Harris v. Board of Supervisors*, a group of chronically ill indigent patients sued the County to prevent its planned closure of a medical center, Rancho Los Amigos, and the County's simultaneous decision to reduce the number of hospital beds at Los Angeles County–USC Medical Center (LAC–USC). 366 F.3d at 757. The district court entered a preliminary injunction mandating the hospital stay open after finding that the County's other hospitals were not equipped to accommodate patients displaced from Rancho's closing and the reduction in beds at LAC-USC. This Court affirmed, holding that plaintiffs had established the elements of a preliminary injunction predicated on California Welfare and Institutions Code sections 10000, 17000 and 17001. *Id*. at 764. Considering the County's budget crisis, this Court specifically noted that California has interpreted the California Welfare and Institutions provisions to require a county to provide care even in the face of a budget shortfall. *Id*. "A lack of funds is no defense to a county's obligation to provide statutorily required benefits." *Id*. at 764-65 (citing *Cooke v. Super. Ct.*, 213 Cal. App. 3d 401, 413-14 (1989)). This Court noted that section

17000 mandates that the County "relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions" and found no abuse of discretion by the district court's finding that closing Rancho would deprive plaintiffs of medically necessary care, thereby violating state law requirements. *Id*. at 764. In so holding, this Court highlighted that public interest considerations weigh on "both sides of the scale" – "[t]he County suggests that the injunction forces it to cut other important programs, such as vaccinations, routine physicals, and well-baby care for those patients who do not fall under the strict statutory definition of indigent." *Id*. at 766. But the Court noted that, "whether any or all of those programs will actually be impacted by the court's injunction is much more speculative than the probable injury the chronically ill plaintiffs face absent preliminary injunctive relief." *Id.* Accordingly, this Court held that the district court did not abuse its discretion by concluding that the public interest favored issuance of a preliminary injunction.

Appellant County challenges the district court's reliance on *Roman v. Wolf* where this Court partially upheld and partially vacated a district court's mandatory injunction, with an admonition to avoid "imposing provisions that micromanage the Government's administration" of an immigration facility (Adelanto). 977 F.3d

935, 945-46 (9th Cir. 2020). But the County misses the crucial point that the order was partially vacated *not* because of judicial overreach or "micromanag[ing]" but because so much time had passed between the order and the appeal that many provisions likely were no longer applicable. *Id*. at 939 ("We affirm in part because the district court had broad equitable authority to grant provisional relief to remedy a likely constitutional violation. In light of the changed circumstances at Adelanto since the preliminary injunction was entered, however, we vacate it in part and remand so the district court may address the current circumstances at Adelanto.") This Court declined to "speculate about which provisions of the preliminary injunction should still apply" because "the conditions at [the facility] appear to be evolving rapidly" and noted "the district court has been continually apprised of developments at the facility and is better situated to assess what relief current conditions may warrant." *Id*. at 945. Likewise, the district court here has and continues to receive input from the entire community, welcoming amicus briefs and letters from non-parties in addition to briefing by the parties, and meeting with individual city councilmembers and county supervisors. Importantly, the court has observed and heard evidence concerning the conditions in Skid Row and elsewhere in Los Angeles for over a year. Like *Roman*, the district court here "is better situated to assess what relief current conditions may warrant." *Id*. And, in certain circumstances, specific orders may be appropriate "based on the history and

circumstances of [the] case." *Armstrong v. Brown*, 768 F.3d 975, 985 (9th Cir. 2014) ("We recognize that the district court gave the State several specific instructions on how to implement its accountability system. While this might in some cases be a cause for concern, it was appropriate here . . . While the injunction here might leave the State less discretion than injunctions typically approved in the PLRA context, we conclude that the level of intrusiveness is acceptable based on the history and circumstances of the case.").

County-Appellants likewise miss the point of *Califano, District of Columbia,* and *Easyriders Freedom F.I.G.H.T.* which collectively stand for the principal that a court is not limited to issuing relief that a party requests, or even that affects the parties before it, but may (and should) craft an order that provides "complete relief" for the "violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (nationwide classes were not "inconsistent with principles of equity jurisprudence, since the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class."); *District of Columbia v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1, 49 (D.D.C. 2020) ("Nationwide relief here is necessary to provide complete relief to the plaintiffs for the 'violation established.'") (citing *Califano*); *Easyriders Freedom F.I.G.H.T.*, 92 F.3d at 1501-02 ("an injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit-even if

it is not a class action-*if such breadth is necessary to give prevailing parties the relief to which they are entitled*.") (emphasis in original, citation omitted).

B. The *Plata* Case is Instructive in Framing the Bounds of the Court's Equitable Authority in Light of Government Failure

Compelling support for the district court's action here is found in *Brown v. Plata*, a consolidation of two class actions in California resulting in an order requiring California to drastically reduce its prison population. (1-ER-134.) A three-judge panel was convened, as provided for under the Prisoner Litigation Reform Act, and ultimately ordered the state to reduce its prison population to 137.5% of design capacity within two years. The State of California appealed.

The Supreme Court affirmed the panel's ruling, holding that the PLRA authorized the relief and finding the court-mandated population limit was necessary to remedy the violation of prisoners' constitutional rights. *Plata*, 563 U.S. at 502. Echoing Appellees' arguments, the Court held that "the law and the Constitution demand recognition of certain [] rights. . . . [I]f government fails to fulfill [its] obligation, the courts have a responsibility to remedy the resulting [] violation." *Id*. at 510-11. In response to the State's concerns that the Court's order limits the State's authority to run its prisons, the Court noted that "[w]hile the order does in some respects shape or control the State's authority in the realm of prison administration, it does so in a manner that leaves much to the State's discretion. . . . The order's limited scope is necessary to remedy a constitutional violation." *Id*. at

553. Further, echoing the *Swann* court, "Courts have substantial flexibility when making these judgments. Once invoked, the scope of a district court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies." *Id*. at 583 (citations omitted).

Defendant County cites a question posed by Chief Justice Roberts during oral argument in *Plata* and attempts to extrapolate that single question into a rule forbidding district courts from weighing in on "complex policy decisions about how to manage the public health, public safety, and financial implications of the homelessness crisis." (County's Opening Br. 31, Dkt. No. 23.) But Chief Justice Roberts said no such thing. Specifically, Chief Justice Roberts, who joined the minority in the Court's published opinion, asked:

> [W]hat happens when you have this case, another district court ordering the State to take action with respect to environmental damage, another court saying, well, you've got to spend this much more on education for disabled, another court saying you've got to spend this much more on something else? How does the State sort out its obligations?

(2-SER-366.) In *Plata*, Appellees' response during argument was that the state has "an obligation to follow the Federal law, constitutional law and other laws. And if they[] [do] not, then the Federal court has an obligation to impose a remedy." (*Id.* at 368.) Appellee further contended that where the injunction had given the State the maximum degree of flexibility to make the policy choices surrounding the incarceration of prisoners, where inaction leads to Constitutional violations, there

must be a remedy. (*Id.* at 368–69.) In this case, the Plaintiffs submit that where health and safety are at stake—particularly the risk to thousands of lives—those concerns deserve priority over hypothetical concerns about the outer limits of federalism.

In acknowledging the considerations of federalism but ordering relief nonetheless, *Plata* provides guidance regarding the broad scope of courts' authority to provide equitable relief. The government cannot avoid its obligations where there is a Constitutional violation. If a court finds an ongoing Constitutional violation, it is obligated to impose a remedy, and practical concerns regarding competing court orders or the exhaustion of capacity/budget can be adequately addressed by engaging in a dialogue with the court and giving defendants sufficient discretion to address any problems.

The Northern District of California case filed in 2001 (later consolidated into the case that led to the *Plata* decision) involved claims of inadequate medical care at the state prisons. Despite state officials agreeing to take steps to address the issues, they failed to comprehensively tackle the crisis and their solutions were "very limited and piece-meal measures, with no prospect for system-wide reform or restructuring." *Plata v. Schwarzenegger* ("*Schwarzenegger I*"), No. C01-1351 TEH, 2005 WL 2932253, at *1 (N.D. Cal. Oct. 3, 2005).

Just as the district court here recognized that "the paralysis of the political

process" in Los Angeles has "endanger[ed] the lives of homeless and the safety of the communities in which they reside," (10-ER-2456), the *Schwarzenegger I* court also recognized the role that the failure of the "political will" played in the constitutional crisis in California's prisons:

> To a significant extent, **this case presents a textbook example of how majoritarian political institutions sometimes fail to muster the will to protect a disenfranchised, stigmatized, and unpopular subgroup of the population.** This failure of political will, combined with a massive escalation in the rate of incarceration over the past few decades, has led to a serious and chronic abnegation of State responsibility for the basic medical needs of prisoners. **This is a case where "the failure of the political bodies is so egregious and the demands for protection of constitutional rights [is] so importunate that there is no practical alternative to federal court intervention."**

2005 WL 2932253, at *32 (emphasis added) (citation omitted). The result of that "failure of political will" was the *Plata* court's conclusion that it had "no choice but to step in and fill the void," *id*. at *31-32, because "where federal constitutional rights have been traduced, principles of restraint, including comity, separation of powers and pragmatic caution dissolve[.]" *Id*. at *24 (quoting *Stone v. City & County of San Francisco,* 968 F.2d 850, 861 (9th Cir. 1992)).

Three years later, the district court issued an opinion further expanding that equitable remedy, directing the State of California "to transfer $250 million to the Receiver in furtherance of the Receiver's work to remedy the undisputed and ongoing constitutional inadequacies in the delivery of medical care in California's

prisons." *Plata v. Schwarzenegger* ("*Schwarzenegger II*"), No. C01-1351 TEH, 2008 WL 4847080, at *1 (N.D. Cal. Nov. 7, 2008). In an opinion denying the State's motion to stay the transfer order, the court addressed the State's argument that transferring $250 million would be a financial hardship, observing that because "the $250 million at issue here has already been allocated" to support the corrections system— much like the City of Los Angeles has already allocated funds through its $1 billion justice fund to address the homelessness crisis— "[d]efendants' claim of economic hardship is . . . less compelling." *Id*. at *5. And in any event, "financial hardship cannot outweigh the human suffering and preventable and possibly preventable deaths that will occur" if a stay were imposed. *Id*. The court concluded that "[s]ignificant financial difficulties do not . . . outweigh the public interest in ensuring that the State protects the welfare of its citizens and complies with the United States Constitution." *Id*. at *6.

As in *Plata*, this case demonstrates "how majoritarian political institutions sometimes fail to muster the will to protect a disenfranchised, stigmatized, and unpopular subgroup of the population" and "the failure of the political bodies is so egregious and the demands for protection of constitutional rights [is] so importunate that there is no practical alternative to federal court intervention." *Schwarzenegger I*, 2005 WL 2932253, at *32. It is imperative in these circumstances—where the political process completely fails a disenfranchised

population—that courts take decisive action to address ongoing constitutional violations. *See Armstrong v. Brown*, 768 F.3d 975, 985 (9th Cir. 2014) (finding it appropriate for the "district court to g[ive] the State several specific instructions on how to implement its accountability system" given the "history and circumstances of the case").

C. Cases Cited by Appellants are Distinguishable.

The cases Appellants cite on this issue are inapposite. Rather than finding the district courts were outside of their lanes, the Supreme Court in each instance found that the lack of actual violation by the government entity foreclosed the equitable relief ordered.

In *Rizzo v. Goode*, the Supreme Court specifically noted the court has the power to issue injunctive relief that directs the activities of local governmental agencies. 423 U.S. 362, 375 (1976) ("[W]hen a pattern of frequent . . . violations of rights is shown, the law is clear that injunctive relief may be granted.") (citation omitted). In reversing the district court's injunction, the *Rizzo* court found it "critical" that "the responsible authorities *had played no affirmative part* in [the alleged actions]." *Id.* at 377 (emphasis added). Thus, the Court reasoned the claims fell outside of the "settled rule that in federal equity cases 'the nature of the violation determines the scope of the remedy[.]'" *Id.* at 378 (citations omitted). *Rizzo* <u>supports</u> the Court's broad authority where violations are found.

Lewis v. Casey is likewise unsupportive of Appellants' position. 518 U.S. 343 (1996). *Lewis* turned on whether the plaintiffs had actually been injured, not the scope of a court's power. *Id*. at 351 (plaintiffs could not show that they had suffered a "relevant actual injury" and misunderstood the prevailing law); *see also id.* at 356-57 (reasoning further that actual injury was insufficiently shown). Here, there are robust findings of injury to Plaintiffs and other PEH, and *Lewis* offers little help to the County.

Appellants cite *Horne v. Flores*, 557 U.S. 433 (2009), which, like *Rizzo* and *Lewis,* turned on the nature of the injury, and did not hold that the district court could not order equitable relief. In *Horne*, the Supreme Court concluded that the appellate court mistakenly limited its analysis to whether specific funding targets were met, instead of considering whether any actual injury persisted. *Id*. at 452; *see also*, *id.* at 454 (noting that the court of appeal erred in not considering whether there was an ongoing violation of federal law). The Court remanded the case for factual findings of whether injury was ongoing; it did not dissolve the injunction for lack of authority. *Id.* at 472.

Appellants' other citations are similarly unavailing. *See, e.g. Midgett v. Tri-Cty. Metro Transp. Dist. Of Or.*, 254 F.3d 846, 851 (2001) (concluding the fact "[t]hat [defendant] is a *local* government entity does not, as Plaintiff argues, lighten his burden [of proof].") (emphasis in original); *Hodgers-Durgin v. de la*

Vina, 199 F.3d 1037, 1042 (1999) ("[t]he Supreme Court has repeatedly cautioned that, *absent a threat of immediate and irreparable harm*, the federal courts should not enjoin a state to conduct its business in a particular way.") (emphasis added). Here the court distinctly found "clear irreparable harm to . . . Plaintiffs." (1-ER-8.)

The picture that emerges from reviewing these cases and those sections 1(A) and 1(B) *supra* is plain: where a district court finds ongoing statutory or constitutional violations, coupled with the threat of irreparable harm, the court has broad authority to order relief that is fitted to the violation and the threat, and only so far as it does not *unreasonably* invade the province of the local authority. *Swann*, 402 U.S. at 15; *Armstrong*, 768 F.3d at 85; *Plata*, 563 U.S. at 502; *Roman*, 977 F.3d 939-945. Here, the district court found at least serious questions about the historic and ongoing constitutional and statutory violations resulting in continued significant harm to unhoused members of the LA Alliance and others who have been left on the streets of Skid Row to decline and ultimately perish. (1-ER-100–125.) The court further found that while the threat to those living unsheltered in Skid Row required the most immediate relief in terms of offers of shelter or housing, the City and County's dysfunction reached far beyond the borders of Skid Row and invaded every aspect of the defendants' homelessness response which has utterly failed to alleviate the suffering on the streets and in their communities. (1-ER-67–68.) Therefore, the court also ordered less intrusive

relief in terms of audits and plans to be submitted to the court by dates certain[2] to address the city- and county-wide failures. (1-ER-139–42.) This finding did not emerge from a vacuum but out of more than a year of monthly and sometimes weekly hearings, as well as the court's independent fact-finding. Where a court identifies such significant and sweeping failures by a local government to "muster the will to protect a disenfranchised, stigmatized, and unpopular subgroup" of a population—as the district court did here—extensive equitable orders are appropriately exercised. *Schwarzenegger I*, 2005 WL 2932253, at *32; *Plata*, 563 U.S. at 511 ("If government fails to fulfill [its] obligation, the courts have a responsibility to remedy the resulting . . . violation. . . . Courts must . . . not shrink from their obligation to enforce the constitutional rights of all 'persons,' including prisoners. Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of [government] administration.") (citations omitted).

D. The Equitable Relief is Tailored to the Violations and Largely Leaves Municipal Discretion Intact

The district court painstakingly analyzed the long history of both action and intentional inaction by the City and County that triggered the crisis on the streets of Los Angeles, including the historical and ongoing racial discrimination, corruption,

[2] Provision 2(a)(ii) orders cessation of transfers of public property, and Provision 1(a) requires escrow of homelessness funds remain stayed.

immovable bureaucracy, inadequacy of homelessness relief systems, disease, fire, crime, ADA violations, increased mortality rates, spiking mental health crises, a severe shortage of mental health beds, and a detailed account of fraud and waste and lack of accountability within homeless housing funding sources. (1-ER-33–99.)

- Each element of the district court's injunction is tied directly to its findings: 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;
- the orders for plans to address the effects of structural racism and reports on projects focusing on racial distribution are directly tied to the court's findings on the historical and ongoing discriminatory policies;
- the orders for immediate offers of shelter are tied to the city and county policies of concentrating homeless individuals in Skid Row which have in turn caused a public health crisis, endemic ADA violations, and skyrocketing crime making it the most dangerous neighborhood in America (with numbers two and three being right next door); and

- the orders for reports on progress in increasing mental health and substance abuse services is directly tied to the court's findings of a violation under Welfare and Institutions Code 17000 and the County's own reports documenting the woefully inadequate numbers of mental health beds it provides.

Every element of the injunction is designed to address the findings and violations found by the court. And while the orders may be expansive, so too is the crisis it addressed. (1-ER-73–74.) The court's diligent review of the facts presented warrant the relief granted in the preliminary injunction. *See Armstrong v. Davis*, 275 F.3d 849, 871 (9th Cir. 2001) ("[S]ystem-wide injunctive relief was justified by the district court's extensive findings of fact setting forth in meticulous detail the injuries suffered by seventeen different prisoners and parolees at a variety of Board facilities and hearings.").

Importantly, the preliminary injunction order sets clear timelines and benchmarks the City and County must meet but leaves the mechanics of those actions entirely up to defendants. For example, the court ordered that shelter or housing must be offered to every unsheltered homeless person in Skid Row within 180 days, but was silent about the type of shelter or housing (tiny homes, congregate shelter, Project Roomkey rooms, motel conversions, permanent supportive housing, affordable housing, etc.), where each must be located, the

amount to spend, or the service providers with whom to contract (if at all). The district court ordered the City and County to "prepare a plan that ensures the uplifting and enhancement of Skid Row" but does not dictate the contents of that plan. (1-ER-142.) The court ordered a cessation of transfer of public land (not including projects in process) but did not dictate what to do with that land; instead, the court ordered a report on the land potentially available for homeless housing. (1-ER-140.) And the injunction's now-stayed order to place in escrow $1 billion from the City's budget (which has already been designated for homelessness relief) is not to "direct[] the City's homelessness spending, [but to] make certain that this promised money would in fact be set aside for homelessness" in light of the myriad reports of fraud and waste within the City's homelessness bond fund (Proposition HHH). (1-ER-28.); *see also* (1-ER-29) (directing the City to draft a spending plan within 60 days "to ensure that the full $1 billion is spent city-wide" including the "number of homeless individuals who will be housed and by when."). In setting high-level mandates and allowing the City and County to coordinate, plan, and ultimately execute their own plans, the district court left local government discretion and autonomy largely intact.[3]

[3] This is largely reflective of the preliminary agreement reached between the City and County in May, 2020, in which the City was charged with the creation of 5,300 new PEH beds within 9 months, for which the County would contribute $300 million, and the implementation of which the court would (and does) oversee.

The City's argument that a public entity must first be "in default" before the court may issue orders for equitable relief is a plain misstatement of the law. (City's Opening Br. 31-33, Dkt. No. 27.) The City cites no authority at all for this curious proposition, and a review of case authority unearths no holding that a district court must first issue a finding of constitutional violation, wait for the local entity to correct it, and only then contemplate equitable orders. (*Id*. at 32.)

Also absent is any authority for the City and County's contention that the district court acted precipitously or was obligated to wait longer (and suffer through more platitudes and inaction) before issuing its order. While the *Plata* court agonized through 12 years of litigation and multiple failed orders before ultimately placing the state's prison system in receivership to reduce overcrowding (City's Opening Br. 33), many more courts facing similar urgent situations issue temporary restraining orders or preliminary injunctions at the outset of litigation to quell the emergencies before them. *See, e.g. Garcia v. City of Los Angeles*, 481 F. Supp. 3d 1031, 1049 (C.D. Cal. 2020) (in case involving property restriction ordinances, preliminary injunction issued seven months after initial complaint filed); *Lavan*, 693 F.3d at 1026 (in case involving disposal of property belonging to

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Given the district court's recent experience that the City could shelter 5,300 people in 9 months, an order to shelter 2,000 in six months—those that are undisputedly living in the most dire conditions—is entirely reasonable (6-SER-1215–16.)

homeless individuals, temporary restraining order issued 17 days after initial complaint filed and a preliminary injunction issued two months later).

II. Plaintiffs Have Article III Standing to Support the Injunction

Article III standing requires Appellees show they have (1) suffered an "injury in fact" which is (2) "fairly traceable" to actions by Appellants, and (3) it is "likely" that the injury will be redressed by a favorable decision by the trial court which confers Article III standing.[4] *See Tyler v. Cuomo*, 236 F.3d 1124, 1131-32 (9th Cir. 2000) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Plaintiff-Appellees easily clear each of these hurdles.

A. Appellees Have Suffered An "Injury in Fact"

Contrary to Appellants' contentions, the district court found that LA the Alliance's membership includes multiple persons experiencing homelessness, one of whom—Gary Whitter—is a named plaintiff[5] and seven more unsheltered

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[4] To the extent Plaintiffs have demonstrated Art. III standing, so too have they demonstrated prudential standing. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (where a federal court finds Article III jurisdiction, declining to hear the case on prudential grounds would be "in some tension with [the Supreme Court's] recent reaffirmation of the principle that 'a federal court's "obligation" to hear and decide' cases within its jurisdiction 'is 'virtually unflagging.'") (citations omitted).

[5] The definition of "literally homeless" includes an individual who is "living in a publicly or privately operated shelter designed to provide temporary living arrangements (including congregate shelters [and] transitional housing . . ." https://files.hudexchange.info/resources/documents/HomelessDefinition_Recordke

members of the Alliance submitted declarations in support of Plaintiffs' Motion for Preliminary Injunction. (9-ER-1998–2075; *see also* 2-ER-327 ("There are numerous homeless persons amongst the Plaintiffs, all of whom are members of LA Alliance and are currently experiencing homelessness in and around Skid Row.") While convenient, Appellant-County's derogatory narrative regarding LA Alliance's interests[6] is incorrect and ignores the desperate pleas of people like Leandro Suarez, an active duty naval officer who was injured on duty and now relies on a wheelchair to traverse the sidewalks downtown (12-ER-2856–57) or Gary Whitter who has been homeless for 13 years and struggles with mental and physical illnesses stemming from his time without shelter (1-ER-2857–59). The LA Alliance is a group that rejects the harmful narrative of "businesses versus homeless" and consists of those without a traditional voice in the homelessness argument, but who are also impacted. For example:

- unsheltered homeless individuals desperate for immediate shelter rather than suffering on the streets for years (like Maria Diaz (9-ER-2019–21)

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epingRequirementsandCriteria.pdf; *cf* (12-ER-2857–58: "Gary Whitter has been homeless on and off in the Los Angeles area for the last 13 years. He struggles with alcoholism, depression, bipolar disorder, chronic back pain, and hypertension." And "[Gary] entered into a program at the Union Rescue Mission, and has now been there for almost a year.")

[6] *See* County's Opening Br. 38-41 claiming LA Alliance's only interest is in having "the encampments of PEH cleaned up" and recovering "lost money, business, or enjoyment of their properties."

and Wenzial Jarrell (*id*. at 2031-34));

- formerly homeless individuals living or working on skid row now subject to unimaginable conditions daily (like Charles Malow (12-ER-2851–53) and Donald Shaw (*id.* at 2833));
- residents (like Karyn Pinsky (*id*. at 2790-2849-51) and Hal Bastian (*id*. at 2840-41);
- small business owners (like Harry Tashdjian (*id*. at 2847-49) and Joseph Burk (*id*. at 2843-47); and
- disabled persons who cannot access sidewalks (like Leandro Suarez (*id*. at 2790, 2856-57) and Charles Van Scoy (*id*. at 2853-54).

Only one of seventeen named individuals has property (commercial warehouses) for rent and none are "significant property owners." (12-ER-2841–42; *cf* Cangress's Opening Br. 4, Dkt. No. 28.) And contrary to Appellant-County's claims, allegations concerning injuries to persons experiencing homelessness were included throughout the complaint (12-ER-2792, 2815, 2831–59, 2866.)

Appellants have provided no authority for their contentions that declarations provided in support of a motion for injunction must be from persons identified in the complaint.[7] In fact the opposite is true: "At this very preliminary

[7] Were there to be such a requirement, Plaintiffs would request Plaintiffs' Motion for Preliminary Injunction and all supporting evidence attached thereto be

stage, plaintiffs may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their preliminary-injunction motion to meet their burden." *City & County of San Francisco v. United States Citizenship & Immigration Servs.*, 944 F.3d 773, 787 (9th Cir. 2019) (citing *Washington v. Trump*, 847 F.3d 1151, 159 (9th Cir. 2017 (per curiam). Declarations submitted in support of Appellees' motion for preliminary injunction came from (i) seven individuals currently experiencing unsheltered homelessness in Skid Row, (ii) five housed individuals living in or near Skid Row, (iii) one service provider working in Skid Row, (iv) two business owners in Skid Row, and (v) two individuals living in and around Skid Row who require wheelchairs and cannot access the sidewalks.[8] (9-ER-1998–2075.) Each individual is a member of LA Alliance for

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considered a supplemental pleading under Federal Rule of Civil Procedure 15(d) or, alternatively, leave to file a supplemental pleading or amended complaint to so-allege. *E.g.*, *Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1044 (9th Cir. 2015), *as amended on denial of reh'g and reh'g en banc* (Apr. 28, 2015) ("Rule 15(d) permits a supplemental pleading to correct a defective complaint and circumvents 'the needless formality and expense of instituting a new action when events occurring after the original filing indicated a right to relief.'" (citation omitted)); *Scahill v. District of Columbia*, 909 F.3d 1177, 1184 (D.C. Cir. 2018) (holding "a plaintiff may cure a standing defect under Article III through an amended pleading alleging facts that arose after filing the original complaint. The alternative approach forces a plaintiff to go through the unnecessary hassle and expense of filing a new lawsuit when events subsequent to filing the original complaint have fixed the jurisdictional problem.").

[8] These declarations were submitted in support of Plaintiffs' motion for preliminary injunction not in response to the County's motion to dismiss the complaint. (9-ER-1998–2075; *cf* County's Opening Br. 38.)

Human Rights, and the association has standing to bring claims for injunctive relief on behalf of its members. Cal. Civ. Proc. Code §§ 369.5(a), 382; *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co.*, 114 Cal. App. 3d 783, 793-96 (1981). The district court's findings concerning the LA Alliance's membership—reflected in a separate order (2-ER-327–28)—are not clearly erroneous, and fully support the district court's conclusion that the LA Alliance has standing in this case.

B. Appellees' Injuries are Fairly Traceable to the County's Conduct

Appellees have also demonstrated their injuries are "fairly traceable" to the County's conduct as comprehensively identified by the Court. (1-ER-50–53) (finding the County complicit in structural, systematic racism by, *inter alia,* implementing segregated service programs and taking property from black families), *id*. at 50-51 (making Project Roomkey rooms disproportionately available to white homeless Angelenos), 58-59 (discriminating in housing availability), *id*. at 60-64 (failing to meet affordable housing targets), *id*. at 73 (identifying homelessness as "the humanitarian crisis of our lives" yet failing to act), *id*. at 81-84 (failing to place more unhoused Angelenos in Project Roomkey rooms despite 100% funding reimbursement), *id*. at 84-86 (increased fire hazards and transportation related deaths), *id*. at 84-86 (failing to provide adequate mental health and substance use disorder beds), *id*. at 88-91 (failing to curtail public health

hazards), 100-104 (acknowledging systemic inequality but failing to act), *id*. at 109-112 (lack of coordination between City and County leads to political paralysis resulting in disproportionate rate of death for Black homeless residents); *id*. at 119-123 (detailing failures to meet statutory obligations under section 17000 including healthcare and mental health beds).) The County's long history of statutory and constitutional failures has led to significant harm suffered by members of LA Alliance of Human rights, including exposing unhoused members (several of whom are African American) to violence, disease, unhealthy conditions, fires, and unspeakable conditions, and causing financial and emotional harm to residents and businesses. *See, e.g. Tyler*, 236 F.3d at 1132 (City's actions were traceable to the plaintiffs injuries where City failed to hold meetings which may or may not have resulted in different action);); (2-ER-327–28) ("The Court finds that the Plaintiff has satisfied the injury-in-fact requirement. As shown in the Declarations attached to the Plaintiffs' motion for preliminary injunction, there are numerous homeless persons amongst the Plaintiffs. . . .Plaintiffs' enumerated actions by the County that cause the number of persons to increase or cause the conditions of homelessness to worsen demonstrate a direct and causal link to the assert injury-in-fact.")

C. Appellees' Injuries Are Likely to be Redressed by a Favorable Decision by the Court

Finally, Appellees have demonstrated redressability, which only requires that some relief may be available to address their claims. *See generally* Section I *supra*; *see also Uzuegbunam v. Preczewski*, 141 S.Ct. 792, 797-802 (2021) (holding that even nominal damages are sufficient to surpass the redressability requirement). The availability of broad injunctive relief is addressed thoroughly *supra* Section I. "[T]he law and the Constitution demand recognition of certain [] rights . . . If government fails to fulfill [its] obligation, the courts have a responsibility to remedy the resulting [] violation." *Plata*, 563 U.S. at 510-11; 2-ER-329 ("Plaintiffs have shown that their injuries are likely to be redressed by a favorable judicial decision and have carried their burden of establishing standing at this stage of the litigation.").

D. The Injunctive Relief Granted Has A Significant Nexus to Plaintiffs' Complaint

Appellants City and County complain the district court adopted a theory that was not contained in Plaintiffs' complaint (though it was discussed in both Plaintiffs' preliminary injunction motion (8-ER-1721–22) and Amici NAACP and CORE-CA's brief. (9-ER-2076–88.) But where a plaintiff properly alleges a claim or cause of action, the district court is free to adopt a different legal theory in finding a violation. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991) ("When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent

power to identify and apply the proper construction of governing law."); *see also id.* at 99-100 (noting with approval the Court of Appeals' adoption of a new rule "even though *neither* party addressed [it]") (emphasis in original)); *see also Does v. Wasden*, 982 F.3d 784, 793 (2020) (finding it proper to rule on separate grounds than were presented by any party because it "merely identified and applies the proper construction of governing law" under *Kamen* and noting that "the party presentation principle is supple, not ironclad."). Plaintiff-Appellees properly raised and pled the constitutional claims of Equal Protection and Due Process, including specifically the State-Created Danger doctrine. (12-ER-2875–77.) That the district court evaluated and ultimately found violations of Equal Protection and Due Process on alternate theories of structural racism and racial discrimination is not only constitutional permissible, it is the court's proper exercise of authority to do so. *Kamen*, 500 U.S. at 99.

Plaintiffs did not "seek[] injunctive relief based on claims not pled in the complaint" nor did the district court grant injunctive relief based on causes of action not pled. (County's Opening Br. 36 (citing *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015). In *Pacific Radiation*, plaintiff filed a complaint with ten separate causes of action alleging various business-related claims. *Pac. Radiation,* 810 F.3d at 633-34. Two years later, after significant litigation, Pacific Radiation ("PRO") filed a motion for temporary

restraining order or alternatively preliminary injunction challenging the public filing of a patient list on the court docket, the defendant ("QMC")'s right to review its own medical list, and the right of QMC to review a third party's records as sought in a subpoena. *Id* at 634. The basis for the motion was a violation of HIPAA and the Hawaii Constitution. *Id*. None of the issues raised in the preliminary injunction—the facts, legal bases, nor remedies sought—were tied in any way to the complaint. *Id*. The district court held the motion "simply does not fit within the TRO analysis" and interpreted it instead as a discovery issue. *Id*. at 635 (citation omitted).

In upholding the district court's decision to deny PRO injunctive relief, this Court described the test for a proper nexus between the complaint and the injunctive relief sought:

> We hold that there must be a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint. This requires a sufficient nexus between the claims raised in a motion for injunctive relief and the claims set forth in the underlying complaint itself. **The relationship between the preliminary injunction and the underlying complaint is sufficiently strong where the preliminary injunction would grant "relief of the same character as that which may be granted finally."**

Id. at 636 (emphasis added) (citation omitted); *see also De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945) (approving denial of preliminary

injunction because it "deal[t] with property which in no circumstance can be dealt with in any final injunction that may be entered").

It is clear that the injunctive relief issued by the district court is of the "same character as that which may be granted finally" Based on the allegations in the complaint filed by Plaintiffs. *Pac. Radiation*, 810 F.3d at 636. That complaint seeks an emergency response to the homelessness crisis:

> While this is not a natural disaster, it is a disaster nonetheless, and it should be treated that way. . . . The *only* way to address this crisis with the urgency it deserves is an emergency response—providing immediate shelter for all. . . . It can be done cheaply and quickly, and it must be done now.

(12-ER-2800.) Plaintiffs' complaint and the court's order both identify crime, fire, and public health impacts (*id*. at 2806-13; 1-ER-84–94), waste and fraud in City and County funding programs (and requesting injunction under California Civil Procedure Code section 526a)); (1-ER-88–91), and cite the mental health crises and the desperate lack of needed mental health beds (12-ER-2794–95, 2811–12; 1-ER-89, 120). The constitutional and statutory violations identified by the court are the same as those raised in the complaint (Mandatory Duty under Welfare and Institutions Code section 17000, Americans with Disabilities Act, and Violations of Due Process and Equal Protection). The specific issue of historical and ongoing discrimination is not raised in the complaint but is instead undisputed evidence that supports each and every cause of action. As noted by Pete White, director of

Intervenor-Cangress, "[W]hen I hear the city and the county counsel flippantly say, well, structural racism isn't in the pleadings, it's all in the pleadings. It's mired, it's inextricable." (2-ER-301; *see also id*. at 305 (Ms. Mitchell (on behalf of Plaintiff): "I want to echo what Mr. White just said, who is one of the intervenors in this case, is that while structural racism was not identified by phrase in our Complaint, it is implicit throughout the Complaint. And . . . the facts of structural racism that we have heard today are undisputed by the City and the County as a cause for the issues identified in the Complaint.").

In direct contrast to *Pacific Radiation* and *De Beers*, where the plaintiffs sought relief wholly separate from the issues raised in the complaint, the relief sought from and ultimately issued by the district court in this case is directly related to the claims in the complaint and is exactly the type of relief that would be sought at any merits-determination. Like the court in *Kamen*, the district court's identification of a different theory of the same constitutional violation alleged by plaintiffs is permissible because the fundamental constitutional violation was properly pleaded.

III. The District Court Properly Found the City and County Violated Appellees' Constitutional and Statutory Rights

A. The District Court's Factual Findings Are Undisputed

The disproportionate impact of homelessness on racial minorities, in particular Black people, was raised multiple times in the underlying proceedings,

was identified by plaintiffs in the motion for preliminary injunction, and was the subject of an order from the district court specifically inviting defendants to respond to the NAACP/CORE-CA brief identifying structural racism as a core driver of homelessness and recommending a "Marshall Plan" consisting of pre-fabricated units, shipping containers, and military barracks to be constructed immediately to provide the necessary relief. (9-ER-2076–88, 7-ER-1694.) Beyond that, to satisfy the City's and County's concerns of unfair surprise, the court subsequently afforded the City and the County an opportunity to present evidence at an evidentiary hearing to "receive testimony from the City and County on these findings." (1-ER-31.)

At the May 27, 2021, evidentiary hearing, the City and County declined to present any evidence to contest the trial court's factual findings supporting its preliminary injunction order. (2-ER-205 ("We're not going to put on witnesses. We're not going to argue about whether there's structural racism."); *id*. at 282 ("No, the City does not intend to present any evidence.").) Neither the defendants nor Intervenors cross-examined a single witness or challenged a single piece of evidence cited in the district court's order despite the opportunity to do so. (*Id*. at 283 ("Do any of you have any questions of any other witnesses that have appeared today?" [No answer by City or County.]).)

Given notice, an opportunity to be heard, and a chance to present their own evidence in opposition to the order, the City and the County did nothing. And by doing nothing, they conceded the correctness of much of the factual basis of the preliminary injunction order. Indeed, during that hearing, City and County agents, as well as a representative for the intervenors, affirmatively admitted the truth of the district court's findings and thanked the court for its role in compelling urgent action in the deadly homelessness crisis. A Los Angeles City Councilmember left no question:

> Decades of willful ignorance on behalf of the City and County of Los Angeles has brought us to this moment where tens of thousands of people spend their days as well as their nights on the streets and sidewalks.
>
> Now, I use the word "willful" because our unhoused community in the concentration of both men and women, especially young children, and entire families who now find themselves on Skid Row is no accident.
>
> We know that this neighborhood was designed to be an open-air prison, established through a collective effort of public officials, politicians, at both the county and city levels, who worked out a containment plan for marginalized people but, in particular, people of color.
>
> Homelessness services, housing services, and shelters were concentrated in Skid Row. The city turned law enforcement into de facto prison guards who patrol the border of Skid Row to make sure that this shameful reality stayed hidden.

(2-ER-164–65.)[9]

[9] Critically, the County had the opportunity to, but declined to, cross-examine Councilmember's representations about the County's role in this crisis in Skid Row. (2-ER-283.)

Hilda Solis, Chairperson of the LA County Board of Supervisors, stated:

> [T]hank you, Honorable Judge Carter, for allowing us to be here today to testify and elevating the history of structural racism and its impacts on the homelessness crisis here in this preliminary injunction. . . .
>
> [A]s Chair of the L.A. County Board of Supervisors, I want to acknowledge this very historic injustice that we know must be corrected. Past trauma has to be addressed, an oppressive system must be destructed in order to tackle the region's homelessness crisis.

(2-ER-148–49.)

A letter from Supervisor Solis was read into the record during the hearing, in which she acknowledged that:

> [H]istoric harms must be corrected, past trauma must be addressed, and oppressive systems must be deconstructed. The County is committed to partnering with the Skid Row Advisory Council and communities of color across the County to address the underlying structural and systemic factors which have contributed to disproportionate rates of Black people experiencing homelessness in Los Angeles. . . .
>
> I welcome additional feedback on how County policies and systems can be improved to correct mistakes of the pasts [sic]. By centering the voices of community advocates and people experiencing homelessness, I am confident that, together, we can effectively address the impacts of systemic racism and oppression in our County.

(1-SER-2–3.)

These concessions and admissions by the parties moot defendants' City and County's complaint that they did not have proper notice or an opportunity to be heard regarding the district court's factual findings underlying the preliminary

injunction. *Moreno Roofing Co., Inc. v. Nagle*, 99 F.3d 340, 343 (9th Cir. 1996) (party waives argument on appeal where it does not substantively contest the issue in the district court); *Conservation Nw. v. Sherman*, 715 F.3d 1181, 1188 (9th Cir. 2013) (even where party noted argument in brief, failure to substantively argue matter waived argument on appeal); *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (a court of appeals "will not consider arguments that are raised for the first time on appeal"); *In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.)*, 357 F.3d 900, 903 (9th Cir. 2004) (failure to object to findings of fact "waives a challenge to that finding").[10]

B. Constitutional Violations

1. State Created Danger

The district court correctly concluded that the City and County are likely liable under 42 U.S.C. § 1983 where, through a policy or custom, they violate a person's constitutional rights. *Monell v. Dep't of Soc. Servs*., 436 U.S. 658, 690-91 (1978). At minimum, a "serious question" exists as to the merits. *Wild Rockies v.*

[10] While the factual record is undisputed, City and County still complain about lack of due process and unfair surprise (County AOB 59-62, City AOB 39-40.) Should this Court seriously consider those claims, despite waiver in the district court, Plaintiffs are willing to stipulate to remand for the purpose of a second evidentiary hearing in which Plaintiffs will present witnesses and documentary evidence regarding the City and County's affirmative actions which have caused the disproportionate representation of people of color experiencing homelessness in Los Angeles.

Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011); *Epic Games, Inc. v. Apple, Inc.*, 2020 WL 5993222, at *6 (N.D. Cal. Oct. 9, 2020). This Court has recognized the constitutional right, under the Due Process clause, to be free from state-created danger. *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061-62 (9th Cir. 2006). When a state or local official acts to place a person in a situation of known danger, with deliberate ignorance towards their person or physical safety, the state violates due process. *Id.*; *see also Hernandez v. City of San Jose*, 897 F.3d 1125, 1137 (9th Cir. 2018) (police officers affirmatively placed political rally attendees in danger by requiring attendees to exit the rally into a crowd of known violent protestors); *Kennedy*, 439 F.3d at 1067 (officer knew an aggressor was violent and told aggressor of the victim's allegations against him after promising the victim to alert her before doing so); *Wood v. Ostrander*, 879 F.2d 583, 590 (9th Cir. 1989) (officer arrested and impounded the car of an intoxicated driver, leaving the passenger alone in the middle of the night in a high crime area where she was later assaulted while trying to get home); *Pauluk v. Savage*, 836 F.3d 1117, 1122 (9th Cir. 2016) ("[S]tate actor can be held liable when that state actor did 'play a part' in the creation of a danger.") (citation omitted).

The district court was also correct in concluding that the City and the County have likely violated the Due Process clause under the Fifth and Fourteenth Amendment by adopting and implementing policies that have created great danger

to Plaintiffs and other PEH and then acted with deliberate indifference to the risks facing them. Courts have recently recognized that a municipality's policy that places PEH in danger can violate due process and merit injunctive relief. In *Santa Cruz Homeless v. Bernal*, ---F. Supp. 3d----, Case No. 20-cv-09425-SVK, 2021 WL 222005, at *5 (N.D. Cal. Jan. 20, 2021), the court took judicial notice of the COVID-19 pandemic and granted homeless plaintiffs' preliminary injunction to halt the closure of two parks where the plaintiffs were camping. The court held that by closing the parks without an alternate shelter, the State would place residents in a more vulnerable situation and in greater danger because of the COVID-19 risk. *Id*. at 5-6. Similarly, in *Sausalito/Marin Cty. Chapter of the Cal. Homeless Union v. City of Sausalito*, --- F. Supp. 3d ----, No. 21-cv-01143-EMC, 2021 WL 7893571, at *9 (N.D. Cal. Mar. 1, 2021), *modified in part*, 2021 WL 2141323 (N.D. Cal. May 26, 2021), a court enjoined a City Counsel from enforcing resolutions to move a camping population to a different location, and from prohibiting all day camping, again due to the risks associated with the COVID-19 virus. The court held that those actions would increase rather than decrease health risks to campers and the surrounding community and place the camping population in imminent danger. *Id*. at *9-10. Here the facts are much more compelling because Defendants' policies have already created incredible danger for those living on the streets.

The district court properly found—and no appellants nor amici contest—the long history of structural, institutional, and systemic racism by the City and County that has caused, in full or in part, the homelessness crisis today. (1-ER-105.) The City and County have also placed its homeless and housed constituents in danger by (i) enacting and then continuing its policy of effective containment and abandonment, (ii) unilaterally choosing to pursue expensive permanent supportive housing and failing to curb massive waste and fraud rather than balancing permanent solutions with low cost interim solutions the taxpayers voted for, and (iii) suspending all contractor deadlines and ramping down Project Roomkey despite 100% reimbursement by the federal government. (*Id*. at 106.) Even if the City and County could credibly claim they did not cause or substantially contribute to the homelessness crisis in the first place, the district court's detailed order demonstrates that through its flailing homelessness response, ongoing policy of containment and waste and misuse of public funds intended to benefit persons experiencing homelessness, the City and County have engaged in conduct that has deepened and affirmatively exacerbated the homelessness crisis in Los Angeles.

a. Defendants' Discriminatory Policies Created or at Minimum Are a Substantial Factor in the Homelessness Crisis

> [T]here are no shortage of affirmative steps that the City and County have taken that have created or worsened the

> discriminatory homelessness regime that plagues Los Angeles today. Throughout most of the 20th century, the City and County of Los Angeles aggressively pursued an agenda of redlining and enforcing racially restrictive covenants that constrained the housing market for Black residents.

(1-ER-105.) This undisputed finding presents an inconvenient picture for Defendants' and Intervenors who acknowledge the truth of the statement yet simultaneously cry foul when it is employed against them. City and County claim a "discrete alleged act" must be shown rather than a "century-long history," but neither provides authority for this proposition—likely because no such authority exists. (City's Opening Br. 48; *see also* County's Opening Br. 44) Indeed, *Hernandez, Kennedy,* and *Wood* all involved a series of events that ultimately placed the victim in danger; extrapolating that reasoning, if a series of events that take place over a day (*Hernandez*), to nearly a month (*Kennedy)*, can form the basis for a state created danger, there is no reason why much more egregious actions taking place over a longer period of time, and joined in by multiple state actors, cannot also form the basis for such a violation. (1-ER-104–08.) And contrary to Intervenor-Appellants' argument (Cangress's Opening Br. 16), the appellate court in *Pauluk v. Savage* actually supported a finding that placing plaintiff in a moldy jail cell could support a state-created danger claim because it was "foreseeable" that the plaintiff would become sick. 836 F.3d 1117, 1125 (9th Cir. 2016) ("The harm that Pauluk suffered was foreseeable, as Pauluk had

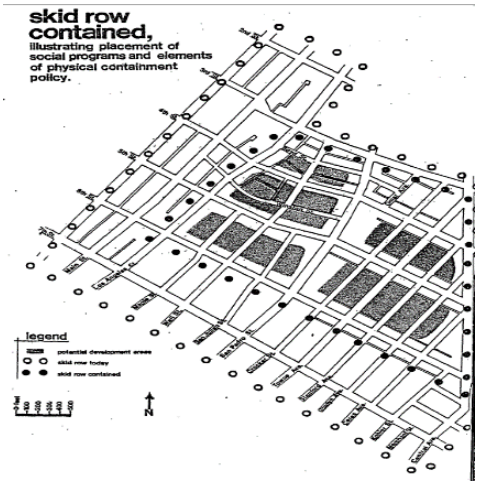
opposed the transfer specifically on the ground that he feared he would become ill due to toxic mold exposure.") Similarly, it is foreseeable that if a government entity, in conjunction and collaboration with other government entities, actively discriminates against a racial group over a series of years such that that group is systematically prevented from accumulating wealth, that group would experience poverty and homelessness at a far higher rate than other individuals not in that group. Defendants untenably admit it, apologize for it, but resist being held accountable for it.

b. Containment and Abandonment

It is undisputed that in 1976, the Los Angeles City Council adopted a plan to redevelop portions of downtown Los Angeles that initially called to eliminate Skid Row and disperse the homeless population. Downtown NIMBYs ("Not in My Backyard") objected that the dispersed homeless population would annoy other areas and negatively affect business, while service providers were concerned such a plan would leave the indigent without a place to go. (8-ER-1710.) The City instead adopted the alternative "Blue Book Plan," which sought to "contain" homeless people within the Skid Row area. (8-ER-1745–1892.)

The Containment Policy, expressing concern the "derelicts" would "disrupt other communities" and be "detrimental to future development of Central City Los Angeles," drew "new borders . . . that define a potential area of containment that

would pull Skid Row activities away from other land uses without significant relocation of housing." (*Id.* at 1881.) The plan also proposed "strong edges" that would "serve as buffers between Skid Row and the rest of the Central City." (*Id.* at 1887.) The City sought to "harden" these boundaries by "locking of garbage cans," "brightly lighting streets now used for sleeping," and ominously "police discouragement." (*Id.*) Maps were used to illustrate the strategy:



This policy officially continued for an astonishing 40 years until 2016 when a member of the City Council, formally put forward a motion for the City to rescind the "failed policy of containment." (8-ER-1711.) The City adopted the motion, recognizing the distinction between "[the] proportion of services available to homeless individuals citywide versus where those individuals live, given that recent data indicates that 85 percent of the homeless population lives outside of downtown, but that services have historically been centered in the downtown Skid Row area." (*Id.*) The City has recognized that "Containment" has animated the City's

homelessness approach for decades such that it must be reversed and replaced with new "guiding principles." (*Id.*)

The County contributed to this crisis by knowingly placing its most vulnerable residents—very poor, mentally ill, disabled, and those recently incarcerated—directly in harm's way by concentrating its services in the Skid Row area. The 1976 Blue Book acknowledges this paradigm:

> The extent to which the Department of Public Social Services (DPSS) funnels men into Skid Row must be determined before talk of decreasing the Skid Row population can proceed. Unattached single men from the entire county are sent to DPSS for food stamps and general relief. That fact alone may be sufficient to introduce some persons to the Skid Row lifestyle, but add the fat that many men are given rent vouchers for rooms in Skid Row hotels, and the possibility that DPSS is adding to the problem becomes apparent.

(8-ER-1892.) Despite officially rescinding the policy of containment, the policy continues unofficially today, resulting in the highest concentration of homeless people in the country. (9-ER-2000–01) ("[p]eace officers, hospitals, and care providers drop off people experiencing homelessness in Skid Row," "concentrating Skid Row services" such as storage facilities and housing while denying those services in other places in the city, retaliating against leaders who "stand[] up" against the continued "policy of corralling and containment"). The County also continues to concentrate services in the Skid Row area, including Mental Health, Social Services, Public Health, housing, food programs, and recently critical COVID-19 injections. (9-ER-2057.) Previously incarcerated individuals with nowhere else to go are released directly onto Skid Row from County Jail. (*Id.* at 2058; *see also*, *id.*

at 2073) ("I have been in and out of prison and county jail, but I have always been released back onto Skid Row.")

This affirmative policy brought people into the Skid Row area, compelled them to stay (despite a temporary increased police presence a decade ago, which clearly did not drive homeless individuals out of the area as Intervenors contend it was meant to do), and then subjected them to all manner of harms described *supra*.

c. Misuse of Voter-Approved Bond Funds and Sales Tax

i. Proposition HHH

In 2016, Los Angeles City taxpayers approved $1.2 billion in funding through Proposition HHH for shelter and homeless housing, yet in the past five years the City has accomplished very little. The language of the ballot explicitly provided that approved funds would be made available for three types of housing: (a) supportive housing for homeless individuals where services such as health care, mental health, and substance sharp abuse treatment may be provided, (b) temporary shelters and facilities, such as storage and showers, and (c) affordable housing (up to 20% of bond funds). (2-SER-287.) Thus, the ballot measure required that at least 80 percent of HHH funds be used on supportive housing and shelters but it did not specify how to distribute funds amongst those categories. (*Id*.) The City unilaterally decided to spend the vast majority of the funding on supportive housing and virtually nothing on temporary shelters. ((10-ER-2355–56) (Meg Barclay: "[W]e made a

recommendation to discontinue the facilities program in order to—because we were not getting a lot of applications for new beds and because we wanted to make sure that the Measure was focused on permit units which, as you know, is the permanent solution to homelessness.") and (*id*. at 2356) ("So, it wasn't that the City's focus was not on assisting facilities, we just chose to—the recommendation that was approved by Council and the Mayor was to focus Proposition HHH on permanent housing and the permanent solution for people and to use other resources to significantly expand the amount of shelter that was available in the community.")); *but see* Letter from Ron Galperin, L.A. Controller to Eric Garcetti, Mayor of Los Angeles, et al., *Meeting the Moment: An Action Plan to Advance Prop. HHH* (Sept. 9, 2020), *https://lacontroller.org/audits-and-reports/hhhactionplan/* ("Interim housing is critical to helping get vulnerable people off the streets. Available and accessible facilities are also essential to helping people living on the streets meet their basic health, hygiene, sanitation, and storage needs. Unfortunately, neither of these have been prioritized or funded at a scale that matches the needs of people experiencing homelessness in Los Angeles.") As of the last audit in September 2020, only $58 million—a mere 5% of total Proposition HHH funds—had been allocated to interim shelter and facilities projects which provided only 196 additional shelter beds. This unilateral decision by the City to almost exclusively focus on permanent supportive housing in lieu of shelter beds is contrary to the language of the proposition passed

by voters, and may be invalidated as contrary to the proposition's stated purpose. *Hunter v. Santa Barbara County*, 110 Cal. App. 698, 707 (1930) (where voters approved issuance of bonds for construction of a road, and the board of supervisors approved a contract that would spend the majority of the bond money on just a part of the road, the contract was "illegal and void" because it "called for the construction and improvement of only a portion of the road . . . and left an amount of money in the fund wholly insufficient to construct and improve the balance of the road.").

Virtually all of the money has been targeted at expensive housing at over $550,000 per unit, even though the private sector is building unsubsidized housing at $250,000 per unit, and provided no money for new shelters that would save lives immediately. (2-SER-289.) And since the proposition passed in 2016 only 613 units have been built while in that same time nearly 6,000 homeless people have died. (8-ER-1728.) Hundreds, if not thousands, of those individuals would be alive today if that money had been spent as taxpayers requested on balanced solutions, which included immediate shelters that would save lives.

The City Controller, Ron Galperin, has noted that Proposition HHH is "falling short" as there is not enough housing completed or being built to "move the needle for disadvantaged communities and most others experiencing homelessness in the City." (2-SER-287.) The Controller recommended the City find other ways to use any remaining funds under Proposition HHH to "deliver faster and less expensive

projects, while also reviewing the most expensive projects in pre-development to see what can be done to reduce costs." (*Id.*) Worse, rampant fraud, waste, and abuse is reported and ignored. (1-ER-75.)[11]

Still worse, in April 2020, all benchmarks and deadlines pertaining to current HHH projects were *indefinitely suspended*. (2-SER-391–92.) Traditionally under Proposition HHH a project is given a commitment letter and two years to obtain the rest of the funding (the pre-development phase); upon a project obtaining full finding, the project may commence with certain deadlines and benchmarks. However, the Mayor of Los Angeles, using his emergency powers, unilaterally suspended all deadlines including Site Control, Schedule of Performance, and Funding Commitments. The Mayor's order came directly after the State of California specifically exempted construction workers and financial institutions from the stay-at-home order as "essential workers." So there was no reason for this across-the-board tolling of all dates and deadlines, and there is certainly no reason for the order to be continuing to this day. (2-SER-394.) The result of this unilateral, indefinite order is zero accountability for any deadlines in the pipeline, zero accountability for the production of any housing units in

[11] (1-ER-75.); *see also* 9-ER-1949–97; 1-ER-77–78 ("Ron Miller, Executive Secretary of the Los Angeles/Orange Counties Building and Construction Trades Council . . .referenced reports 'alleging everything from fake not-for-profits to contractors with zero employees and multi-million dollar development fees, and lucrative guaranteed managements fees that support zero-risk development.").)

construction, and zero accountability for the over $700 million sitting in the city's coffers collecting dust. This is a waste of a massive amount of money that could be used to save lives.[12]

Since the passage of Proposition HHH in 2016, the number of unhoused people in the City of Los Angeles grew from 28,464 to 41,290, an explosion of nearly 70 percent. (2-SER-290.) While permanent supportive housing is an important component within the broader plan to address homelessness, it cannot be the only solution: at its current cost and pace, thousands will suffer and die, and thousands more will deteriorate—often becoming increasingly drug dependent and mentally ill due to the trauma on the streets—before any housing from Proposition HHH becomes realistically available for them. Peter Lynn, former executive director of LAHSA, has observed that "[o]n our present course, it will take far too long to build far too few units of housing to effectively end this crisis." (*Id.*) Even with nearly 8,000 projects in the pipeline, if the City were to construct housing at its current rate, it would take nearly 30 years to build enough housing for over 66,000 people currently experiencing homelessness.

Defendants, Intervenors and amici complain that the district court's criticism of Proposition HHH's sole focus on permanent supportive housing is a policy

[12] This also constitutes Waste of Public Funds and Resources, which may be enjoined under Cal. Civ. Proc. Code § 526a (*See* 12-ER-2868–69.)

issue, but it's actually quite the opposite: the district court has repeatedly left the choice about the kind of housing or shelter to produce up to the City or County as long as it is done quickly. (1-ER-26, 141.) However, where—as here—the actions taken by the City cannot ever possibly achieve their ostensible goal because more PEH have already died on the street than are ever going to be served in Proposition HHH projects, while many thousands more decline both physically and mentally than will ultimately be able to utilize those projects. By unilaterally choosing to use the funds nearly exclusively on expensive housing that takes years to produce with too few units and in contravention to the apparent purpose of the proposition, the City has put thousands of human beings, including members of the Alliance, at significant risk of death or significant bodily harm.

ii. Measure H

The County's Measure H fares no better. Measure H was a 2017 voter-approved LA County quarter-cent sales tax to fund "mental health, substance abuse treatment, health care, education, job training, rental subsidies, emergency and affordable housing, transportation, outreach, prevention and supportive services for homeless children, families, foster youth, veterans, battered women, seniors, disabled individuals, and other homeless adults" for a 10-year period. (8-ER-1728–29.) This extra tax produced over $500 million in Fiscal Year 2019-2020 and is implemented across 47 separate goals. (*Id.*; 1-SER-22.) Since the passage

of Measure H and its concomitant additional hundreds of millions of dollars for housing and services, the homeless population in LA County has **risen** from 57,794 to 66,436 (a 13 percent increase). (8-ER-1728–30.) Over three fiscal years, the County left hundreds of millions of dollars unspent and has failed to provide accountability for results and use of funds. (1-SER-11–22.)

The County confirms it has focused on "long-term housing solutions in the region to ensure that people do not languish in interim shelter." (3-ER-445.) The County further confirms that "focusing on permanent housing is good policy" because short-term shelter is an "out of sight, out of mind" approach. (County's Opening Br. 45.) In other words, it is the County's chosen policy that it is better for individuals to die on the streets, seen, than live in a shelter—even if for longer than ideal—and be unseen, so the public does not forget about homelessness. But the district court's factual findings identify this as the very issue causing skyrocketing mortality rates among PEH. (1-ER-67–68.) ("As a direct result of local government inaction and inertia in the face of a rapidly escalating crisis, 165 homeless people died in January 2021 alone—a 75.5% increase compared to January 2020. Each day, while the City and County of Los Angeles stand by, allowing bureaucracy to upstage the needs of their constituents, five more people experiencing homelessness die in Los Angeles County. For years many efforts to build housing have been stymied by resistance at the local level—mayors,

supervisors, and their constituents. This must stop now.") (citations omitted). And Amicus LAHSA confirms: "Interim housing options alleviate the trauma of being unsheltered and are an essential pillar of the homeless services system." (LAHSA Amicus Br. 6, Dkt. No. 49.) Moreover, this morbid policy presupposes that permanent housing and emergency shelter is an "either/or" proposition. With the billions of dollars received from the state and federal governments, and the ongoing hundreds of millions of dollars in specialized tax funding, which was identified extensively by the court (1-ER-76–84; 1-SER-2–28.) the County is making an affirmative choice to utilize voter-mandated taxpayer dollars in a manner that is likely to cause the most death and suffering.

d. Choosing to Ramp Down Project Roomkey Despite Zero Cost to City or County

Project Roomkey is a collaborative effort with the state, county, and city governments to convert hotel and motel rooms into temporary living quarters for PEH. In January 2021 President Biden announced the federal government would reimburse 100% of Project Roomkey (a program to rent hotel and motel rooms for PEH during the COVID-19 pandemic) costs through September 2021. (1-ER-81.) Regardless, the County is inexplicably winding down its Project Roomkey program and the City failed to even request reimbursement for its costs. (1-ER-80–81, 122–23.) While these decisions may not, individually, constitute affirmative

state action that rises to the level of a state created danger, they do demonstrate the City and County's apathetic approach to solving homelessness.

e. Defendants Acted with Deliberate Indifference to a Known and Obvious Danger

The City and County have placed their homeless and housed constituents in danger and then, knowing the health and safety risks involved, acted with deliberate indifference to those risks. (1-ER-50–51, 58–59, 60–64, 73, 83–84, 88–92, 100–104, 109–112, 119–123.) Appellants cannot credibly contend that homelessness is not exceedingly and inherently dangerous, particularly as to female Skid Row residents such as Maria Diaz and Ann Jackson (9-ER-2019–21, 2028–30.) Nor can Appellants credibly contend the City and County are not aware of this danger. As the Court correctly identifies, "There is no question that homelessness presents a grave danger to human life, and there is no question that this danger is known to the decisionmakers with the power to end this senseless loss of life." (1-ER-107.) LA County acknowledges the life expectancy of a homeless person in LA County is 51 years, compared to an average life expectancy of 73 years for a housed individual. (*Id.*) "Homeless people are in fact dying at a higher rate because they're homeless." (8-ER-171.) LA City Mayor Garcetti has called for a "FEMA-level response" to the homelessness crisis, acknowledging it is disaster. (1-ER-70.)

The City claims it is not "deliberately indifferent" to the danger and is

working diligently to address it. (*Id*. at 116.) The City also claims that criticisms of its actions are mere policy disagreements, and as such, are a province into which the district court should not wade. (*Id*.) The distinction, however, comes from the present ability to protect a person or group of persons from immediate physical danger (or death) but declining to do so.

Deliberate indifference requires the defendant to "have actual knowledge of, or willfully ignore, impending harm." *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996) ("We have not added a requirement that the conscience of the federal judiciary be shocked by deliberate indifference, because the use of such subject epithets as 'gross' 'reckless' and 'shocking' sheds more heat than light on the thought processes courts must undertake in cases of this kind."). For example, in *Wood v. Ostrander*, an officer impounded a DUI suspect's car and left the passenger alone to fend for herself. 879 F.2d 583, 590 (9th Cir. 1989). "The fact that Ostrander arrested Bell, impounded his car, and apparently stranded Wood in a high-crime area at 2:30 a.m. distinguishes Wood from the general public and triggers a duty of the police to afford her some measure of peace and safety." *Id*. Similarly, in *Hernandez*, the officers were "aware of the danger to the plaintiffs" yet "[a]s part of their crowd control plan, the Officers only allowed the Attendees to leave from the east-northeast exit of the . . . Convention Center" rather than utilizing different directions that would not have subjected them to the violent

group. *Hernandez*, 897 F.3d at 1136. In both *Wood* and *Hernandez*, this Court found the state had displayed deliberate indifference because its agents willfully ignored impending harm to individuals.

Given the myriad admissions and concessions that homelessness is a crisis which necessitates an emergency response, combined with the acknowledgement of the significant health and safety risks that face the unhoused in Skid Row and elsewhere, there is no doubt the City and County are "aware of the danger" to Plaintiffs and other PEH. But they continue to fail to respond with any alacrity to the crisis. The analogy would be if the officer in *Wood*, knowing he left the passenger in a dangerous situation, drove back to the police station, filled out paperwork, responded to two more radio calls, and then drove back out to see how Wood was faring. Or if the officers in *Hernandez*, knowing the danger that was waiting for the protesters, still chose to require use of a particular exit because the city officials five years prior had made the "policy" decision to require use of that route regardless of unfolding circumstances. Labeling a particular action a policy decision—even if a good decision in other, non-crisis circumstances—does not insulate local governments from liability when they have failed to act with alacrity in an emergency or have failed to pivot direction when the decided course of action would unnecessarily subject individuals to a significant risk of harm. That is exactly what the City and County accomplished here with their joint and

individual focus on slow, expensive housing and other programming that did not provide sufficient relief, and by failing to pivot when it became clear those decisions were going to unnecessarily subject thousands to bodily harm and even death.

2. Other Constitutional Grounds

The district court also found violations of Equal Protection ("*Brown v. Board of Education*"), Due Process "Special Relationship Exception," Equal Protection - "Severe Inaction Theory," and Substantive Due Process – familial relations. Plaintiffs alleged violations of Equal Protection and Due Process in the Complaint, and the court's factual findings of structural racism as the driving force in the homelessness crisis is undisputed by the City and County.[13] While Defendants claim there is no support for the Court's Equal Protection findings because there is no proof of current discriminatory intent regardless of the discriminatory impact. (City Opening Br. 45-46; County Opening Br. 48-50.) In fact, there is Supreme Court jurisprudence on point. In *Yick v. Hopkins*, the petitioner, who was Chinese, had been denied a permit to operate a laundry in a wooden facility along with two hundred other Chinese nationals, while eighty non-Chinese laundry operators were granted a permit. 118 U.S. 356, 374 (1886). The

[13] Contrary to the City's claims, several of LA Alliance's members are African American persons experiencing homelessness, including Gregory Gibson, Ann Jackson, Mary Brannon, and Wenzial Jarrell. (9-ER-1998–2075.)

law itself was "fair on its face." *Id*. at 373. Still, the Supreme Court found the facts "admitted" and the discrimination so clear that the only conclusion that could be drawn was that the animating force behind the action was "hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified." *Id.* at 374; *see also Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960) (City of Tuskegee was liable for redistricting where it redrew the city limits from a square into an oddly formed "28-sided figure," the act of which was neutral on its face but the effect of which was "to remove from the city all save for only four or five of its 400 Negro voters while not removing a single whit voter or resident."); *Rogers v. Lodge*, 458 U.S. 613, 618 (1982) ("[D]iscriminatory intent need not be proved by direct evidence. Necessarily an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another."). The acute overrepresentation of Black people in the homeless community (40 percent), compared to the population of Los Angeles in general (9 percent), undisputed actions of discrimination which has caused that overrepresentation, and a failure to effectively address the disproportionate impact, supports "the sweeping exercise of a federal district court's equitable powers." (1-ER-104.)

Appellants further argue the district court is making new law in its "Severe Inaction Theory," but in fact the district court applies well-established law to a set

of circumstances that have been crying out for its application for years. *See, e.g.*, *Fordice*, 505 U.S. at 727-28 (observing that *Brown v. Board of Education* "and its progeny clearly mandate" an "affirmative duty to dismantle its prior dual university system.") Where a system is so dysfunctional, as the homelessness response in Los Angeles admittedly is, and its elected officials have universally failed to address the systemic inequalities that run rampant in the system (whether by design, infighting, or well-intentioned but overloaded bureaucracy), to the point where an entire segment of a population is dying *en masse*, the Constitution can be read to compel action in a manner which has not previously been done. While tempting to call this "new law," in reality facts like the court is witness to in Los Angeles have never been addressed before, and they beg for constitutional protection.

Finally, the City's policy of containment compels unhoused individuals into a controlled and restricted area—one it knows to be life-threatening—and fails to provide for their protection. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989) ("[I]t is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through incarceration, institutionalization, *or other similar restraint of personal liberty*—which is the 'deprivation of liberty' triggering the protections of the Due Process Clause")

(emphasis added, citation omitted).[14] And the City's and County's inaction, considering the decades of historical failures and intentional discriminatory treatment, supports broad equitable remedies to reverse the impact of those actions.

C. Statutory violations

1. Welfare and Institutions Code Section 17000

The district court properly found the County in violation of California Government Code section 815.6 and Welfare & Institutions Code section 17000 by failing to provide medically necessary care to unhoused individuals in Los Angeles. Section 17000 mandates that counties provide support to "all incompetent, poor, indigent persons and those incapacitated by age, disease, or accident" when such persons are not otherwise supported. Cal. Welf. & Inst. Code § 17000. The purpose of this section is "to provide for protection, care, and assistance to the people of the state in need thereof," to provide "appropriate aid and services to all of its needy and distressed . . . promptly and humanely . . . as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." Cal. Welf. & Inst. Code § 10000. Courts have clarified that section 17000 creates two separate obligations: (a) provision of "general assistance" in terms of financial or in-kind relief and (b) provision of subsistence medical care to

[14] This cause of action is related to, but separate from, the state-created-danger doctrine. *Patel v. Kent School Dist.,* 648 F.3d 965, 971-72 (9th Cir. 2011).

the indigent. *Hunt v. Super. Ct.,* 21 Cal. 4th 984, 1011-13 (1999).

The County argues section 17000 permits counties to act with discretion in determining the "type and form of 'care and aid' they provide, and 17000 does not impose a mandatory duty." (County's Opening Br. 55-58.) In fact, a county has some manner of discretion in *how* it provides relief, but it is still obligated *to* provide relief and only in accordance with statute. *Tailfeather v. Bd. of Supervisors*, 48 Cal. App. 4th 1223, 1245 (1996) ("Section 17000 . . . mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care.") and 1237 ("[C]ounties have a great deal of discretion in setting standards for eligibility and levels of aid. 'Nonetheless, the [county's] discretion can be exercised only within fixed boundaries and consistent with the underlying purpose of the statutes which impose the duty.'") (citation omitted); *see also Hunt*, 21 Cal. 4th at 991 ("Although this provision confers upon a county broad discretion to determine eligibility for—and the types of—indigent relief, this discretion must be exercised in a manner that is consistent with—and that furthers the objectives of—state statutes.").

Under *Tailfeather,* "counties must, at a minimum, provide 'medical care,' not just 'emergency care,' and provide it at a level which 'remedies pain and

infection which petitioners have needlessly endured.'" 48 Cal. App. 4th at 1236 (citation omitted). That care must be provided "at a level which does not lead to unnecessary suffering or endanger life and health . . . ." *Id.* at 1240. This mandate includes subsistence medical services and medically necessary services which are defined as those "reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain." Cal. Welf. & Inst. Code § 14059.5(a); *see also County of Alameda v. State Bd. of Control*, 14 Cal. App. 4th 1096, 1108 n.8 (1993).

If the County fails to meet this obligation, a court "must intervene to enforce compliance." *San Francisco*, 57 Cal. App. 3d at 50. For example, in *Cooke v. Superior Court* the court found that the County of San Diego was required to provide indigent residents with dental care sufficient to remedy substantial pain and infection. 213 Cal. App. 3d at 413-14. In *Harris v. Board of Supervisors,* this Court affirmed the district court's grant of a preliminary injunction under section 17000 requiring Los Angeles County to continue to provide beds at two hospitals where the county had intended to reduce capacity, finding that eliminating the beds would violate section 17000. 366 F.3d at 765; *see also San Francisco*, 57 Cal. App. 3d at 50.

On average, a homeless person in Los Angeles will die 22 years earlier than the general population. (8-ER-1720; 1-ER-107.) The County Center for Health

Impact Evaluation report notes:

> A principal finding is that the overall homeless mortality rate has steadily increased over the past six years. This means that increases in the number of homeless deaths recently reported in the media cannot be attributed solely to the fact that the total number of homeless people has also been increasing. **Put simply, being homeless in LA County is becoming increasingly deadly.**[15]

Dr. Barbara Ferrer, director of LA County Department of Public Health conceded: "Homeless people are in fact dying at a higher rate because they're homeless." (8-ER-1719.) Yet in New York City, where the number of people experiencing homelessness is high (91,897 persons) but the rate of *unsheltered* homelessness is low (5 percent compared to Los Angeles' 75 percent), the mortality rates of homeless persons compared to general population low-income adults is nearly identical. (*Id*.) Unsheltered homelessness both causes and exacerbates physical and mental health problems. (*Id*. at 1720.) LA County admits:

> Poor health is a major cause of homelessness, **and homelessness itself leads to poor health**. . . . **Homelessness can exacerbate chronic physical and mental health conditions** or contribute to debilitating substance abuse problems. . . Environmental exposures, communicable disease exposures, lack of access to preventive care and medical treatment, and lack of access to proper nutrition and sleep all contribute to high rates of poor health among homeless persons. **Strikingly, the average life expectancy of homeless people is estimated to be almost 30 years shorter than the general population**.

(8-ER-1720.)

Recognizing the importance of housing as a necessary component of health, the LA County Department of Health Services launched a program called Housing

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

for Health, which provides housing "to improve the health and wellbeing of vulnerable populations." (8-ER-1720, n.41.) A study conducted by the RAND Corporation on the first 890 participants enrolled found that the cost of providing health care per participant decreased by 40 percent (from an average of $38,146 to $15,358) because there was less need for the patients to access the healthcare system—meaning they were healthier individuals. (*Id.*)

As LAHSA's executive director, Ms. Marston, has announced, "housing is healthcare." (8-ER-1732.) The County has an obligation to provide housing to PEH in Skid Row and elsewhere if the alternatives are conditions that put PEH at risk for their lives or risking "significant illness," "significant disability," or "severe pain." Cal. Welf. & Inst. Code § 14059.5(a). Undisputedly the conditions in Skid Row and elsewhere on the streets of Los Angeles "lead to unnecessary suffering or endanger life and health . . . ," *Tailfeather*, 48 Cal. App. 4th at 1241, in violation of section 17000.

As the district court pointed out, the distinction between the City and County in terms of providing social services to persons experiencing homelessness has been blurred. (1-ER-121.) Unlike other cities in California, the City of Los Angeles receives funding directly from the state and federal governments for the purpose of homelessness relief. *Id*. And unlike other cities, Los Angeles spends significant resources on supporting persons experiencing homelessness: the proposed budget for

2021-2022 includes crisis response, eviction defense, multi-disciplinary teams including mental health workers, outreach workers, medical programs, and job development, all of which are traditionally the purview of the County. (*Id.*) To the extent the City is obligated under section 17000 with supporting "all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident" it has failed to do so.

Named Plaintiff Gary Whitter and Alliance members Gregory Gibson, Javier Gonzales, Ann Jackson, Wenzial Jarrell, and Luis Zaldivar have documented the severe mental and physical health issues they have experienced as a result of being unsheltered, to the point where Ms. Jackson had a stroke 18 months ago. All individuals have properly alleged that they have sought appropriate shelter, have not been able to find it, and are in desperate need of shelter in part to alleviate their significant health issues. (8-ER-1742–1947.) Nothing in Welfare and Institutions Code section 17030 requires any individual to prove he or she is not eligible for Medi-Cal to receive services under Welfare and Institutions Code section 17000. Cal. Welf. & Inst. Code § 17030 ("Nothing in Section 10000, 17000, or 17001 . . . shall require any county or city and county to provide or pay for a service reduced or eliminated from the Medi-Cal program . . . to a person otherwise eligible to receive services under the Medi-Cal program."). The required provisions under Welfare and institutions Code section 17000 are wholly separate from those provided by Med-Cal

and a county's statutory duty is not satisfied by reference to the Medi-Cal program. *Madera Cmty. Hosp. v. County of Madera*, 155 Cal. App. 3d, 136, 151 (1984) ("We conclude that it . . . appears the Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds*, notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden.") (emphasis in original).

2. Americans with Disabilities Act

a. The District Court Properly Found Widespread ADA Violations

Sidewalk after sidewalk in Skid Row and elsewhere in Los Angeles are completely blocked and impassible, requiring individuals restricted to wheelchairs (including two named plaintiffs) to dangerously traverse the middle of the road. (8-ER-1933–47; 9-ER-2063–66, 2071–72; 1-SER-32, 37, 56–66.) The ADA requires individuals with disabilities be afforded "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation . . ." 42 U.S.C. § 12182(a). The ADA's "antidiscrimination mandate requires that facilities be 'readily accessible to and usable by individuals with disabilities.'" *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 945 (9th Cir. 2011) (citation omitted). Title II therefore "requires a public entity to make 'reasonable modifications' to its 'policies, practices, or procedures' when necessary to avoid such discrimination." *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 749

(2017) (quoting 28 C.F.R. § 35.130(b)(7) (2016)).

The City has violated the ADA in Skid Row and elsewhere by failing to ensure that the public sidewalks, which are subject to access requirements, are clear and accessible. *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002). To satisfy the ADA, public sidewalks must have at least "36 inches . . . minimum" clearance, or passable sidewalk. 36 C.F.R. § 1191.1, app. D, § 403.5.1 (2014). The City is responsible for ensuring sidewalks within its jurisdiction are passable for all its residents to meet the requirements of the ADA. *See Willits v. City of Los Angeles*, 925 F. Supp. 2d 1089, 1093 (C.D. Cal. 2013), *appeal dismissed* (No. 13-56216, 9th Cir. July 11, 2017). The sidewalks in Skid Row are not accessible due to the accumulation of personal property and piles of hazardous waste as a result of the City and County's failures which leave thousands on the street to build their homes on public sidewalks.

b. The City's Arguments Justifying Its ADA Violations Fail

The City contends the district court's findings were wrong for five reasons: (i) the district court never made the requisite finding for an ADA claim, (ii) the order does not refer to the obstruction of sidewalks, (iii) the City has not discriminated against Plaintiffs "solely by reason of a disability," (iv) the City's sidewalks are passable "in their entirety," and (v) the City's ordinances against ADA violations insulate them from ADA violations. (City's Opening Br. 63-66.) None of these

stand up to scrutiny.

First, the district court specifically found Plaintiffs were likely to succeed on their ADA claims, in addition to the other *Winter* factors: "Plaintiffs are also likely to succeed on the merits of a claim under the Americans with Disabilities Act." (1-ER-123.)

Second, the order for injunctive relief, *inter alia*, requires offers of shelter or housing to all individuals living unsheltered in Skid Row within a certain time period. Because the sidewalk blockages are directly tied to the proliferation of desperate individuals on the street and their need to create structures in which to live, reducing the number of people on the street will necessarily reduce the sidewalk blockages as well. (1-ER-123–25, 141–42.)

Third, the City seems to claim that it is not discriminating against Plaintiffs because *all* persons are hampered in their ability to traverse the sidewalks. (City's Opening Br. 63-64.) But a blocked sidewalk does not have the same implications for able-bodied persons as it does for individuals with mobility challenges such as Charles Van Scoy and Leandro Suarez. For people who are walking, they may have the ability to briefly (but dangerously) step into the street and back onto the sidewalk; individuals in wheelchairs cannot simply step off a curb and back again. Instead such individuals must either traverse the entire length of the sidewalk in the street literally risking life and limb, or avoid that sidewalk altogether (and most

others in the Skid Row area). City's contention that a blocked-sidewalk-for-all reduces their liability because they are not "discriminating" is shortsighted at best. *See Cohen v. City of Culver City*, 754 F.3d 690, 700 (9th Cir. 2014) ("Obstructed sidewalks exclude disabled persons from ordinary communal life and force them to risk serious injury to undertake daily activities. This is precisely the sort of 'subtle' discrimination stemming from 'thoughtlessness and indifference' that the ADA aims to abolish.") (citation omitted).

Fourth, City's claims that its sidewalks are passable "when viewing the more than 9,000 miles of sidewalks in their entirety" are not supported by any evidence, much less enough evidence to demonstrate the district court's factual finding of violation was "clear error." (1-ER-124 ("Hundreds of city sidewalks, not only in Skid Row but across the City and County of Los Angeles, fail to meet the minimum requirements of the ADA due to the creation of homeless encampments.").) Even if this Court were to credit the City's unsupported contentions, *Cohen v. City of Culver City* forecloses the argument. In *Cohen,* this Court found the City's failure to regulate a private vendor's display, to ensure that sidewalk ramps were not blocked, was more likely to fall under 28 C.F.R. § 35.151 (which regulates "[n]ew construction and alterations" and does not have language requiring a service to be viewed "in its entirety") than 28 C.F.R. § 35.150 (which regulates "[e]xisting facilities" built before 1992). *Cohen*, 754 F.3d at 698-99.

> "The City chose to alter the existing arrangement of the public sidewalk by allowing private vendors to set up displays for the purpose of holding a car show. The vendors' presence was entirely unrelated to the goal of making the City's programs or services accessible to disabled persons. It would not have imposed an additional burden on the City for it to require the vendors to locate their booths a few feet in either direction to avoid blocking disabled ramps.

Id. at 699. The City of Los Angeles, like Culver City, has permitted third parties to set up tents and other make-shift shelters for the purpose of protection.

Moreover, in a place as large as Los Angeles, providing a passable sidewalk two miles away from the disabled person's place of residence does not affect the intent of Title II which should be "construe[d] . . . broadly to advance its remedial purpose." *Cohen*, 754 F.3d at 695 (citing *Hason v. Med. Bd. of Cal.*, 279 F.3d 1167, 1172 (9th Cir. 2002)). Rather than looking at 9,000 miles of sidewalk in the sprawling metropolis of Los Angeles, it is the 25 miles of sidewalk (7-ER-1665–66) in Skid Row that is the immediate focus of Plaintiffs' request for injunctive relief and the district court's order for immediate sheltering to remedy the problem, and the majority of the sidewalks in those 25 miles are completely inaccessible. (8-ER-1934–47; 9-ER-2063–66, 2073–75; 1-SER-32, 37, 56–66.)[16]

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[16] The City's argument that settlement in *Willits v. City of Los Angeles* prevents Plaintiffs' claim goes nowhere. *Willits* did not involve blocked sidewalks, but the failure to properly maintain sidewalks:

> Plaintiffs allege that the pedestrian rights of way, when viewed in their entirety, suffer from numerous deficiencies, including: (1)

Fifth the claim that Plaintiffs failed to establish "the existence of a reasonable accommodation" is belied by the both the motion for preliminary injunction and the injunction order itself. The point was made, and remains, that but-for the City's failed policies which have caused the homelessness crisis to balloon, the city's sidewalks would not be blocked for miles on end with no apparent end in sight, for which any minor attempts at relief (if they happen at all) are far too few to make any significant difference. The district court properly found that immediate offers of shelter to the Skid Row area, and additional steps taken to ensure accountability and progress throughout the City of Los Angeles, will reasonably accommodate necessary access.

D. Remaining *Winter* factors

1. Irreparable Harm and Balance of Equities Favor Injunctive Relief

"It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Hernandez v. Sessions,* 872 F.3d 976, 994 (9th Cir. 2017) (citation omitted). Violations of the Americans with

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> unsafe, non-compliant, or missing ramps; (2) broken pedestrian rights of way that are cracked, crumbled, steep, sunken, or uneven or that have improper slopes or broken and inaccessible surfaces; (3) physical obstacles on the sidewalk between intersections, such as improperly placed signs, light poles, newspapers or bus stop benches; and (4) apron parking.

Willits v. City of Los Angeles, 925 F. Supp. 2d 1089, 1091 (C.D. Cal. 2013).

Disabilities Act also constitute irreparable injuries. *See Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947, 961 (E.D. Cal. 1990) (injury to the ability to function as an independent person constitutes irreparable injury); *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1084 (N.D. Cal. 1997) ("Injuries to individual dignity and deprivations of civil rights constitute irreparable injury."). Absent immediate judicial relief, unhoused members of the Alliance and 66,000 other PEH daily risk death, disease, violent attack, and worsening physical and mental health. The court correctly found that "[n]o harm could be more grave or irreparable than the loss of life" which is at risk here absent swift relief. (1-ER-125.) *See also Lopez v. Heckler,* 713 F.2d 1432, 1437 (1983) ("We also consider it crucial that, because the members of plaintiffs' class are largely infirm and disabled, their resources and life spans are by definition extremely limited. Deprivation of benefits pending trial might cause economic hardship, suffering, or even death.").

In *Harris*, the court weighed the likely harm to plaintiffs—"pain, infection, amputation, medical complications, and death due to delayed treatment"—against the County's claims of severe budget shortfall and found the balance landed on plaintiffs' side. *Harris*, 366 F.3d at 766 ("[f]aced with [] a conflict between financial concerns and preventable human suffering, [the court has] little difficulty

concluding that the balance of hardships tips decidedly in plaintiffs' favor.") (citing *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Likewise, when balancing the sure death and decline of thousands—some of whom are Plaintiffs—with the financial implications underpinning the requirement to provide shelter for every unsheltered homeless person in Skid Row (which City and County claim to want to do anyway), and obligations to provide various reports and spending plans, the balance tips in Plaintiffs' favor.

2. Injunction Benefits Public Interest

The City and County are broken, dysfunctional, and unable to respond with focus or a comprehensive plan. Both City and County have declared various types of homeless-related "emergencies" and acknowledge that they have an obligation to come together in an emergency and solve it. They haven't. The district court gave them an entire year to solve it. They didn't. Immediate action is needed, and the City and County respond with sluggish disinterest, remaining at best disengaged from what is universally considered a "humanitarian crisis." (1-ER-73, 107, 128-29.) Appellant Intervenors complain the court ignored their declarations, claiming such an order is against the public interest. However, several of those declarations raised only speculative concerns about shelters that can be addressed through accountability, and others were mere policy opinions from other activists (such as attorney Gary Blasi) which the court is free to disregard.

The district court's order has drawn amici from all the typical sources one would expect to weigh in on this issue: organizations who have built their livelihood around producing permanent supportive housing (as opposed to shelter), or who have pushed the idea for years and cannot admit what would be a perceived failure (even utilizing just a small percentage of available dollars for interim housing). They decry the order as solely focusing on shelter when it does no such thing. The district court ordered that offers of "shelter *or* housing" must be given, but either way, the years-long wait while the crisis grows ever worse must end. (1-ER-108.) "The projects are too expensive and too slow to make a meaningful difference for people living on our streets. . . . While Los Angeles someday will see thousands of new units, it will be nowhere near enough to keep pace with the crisis in our neighborhoods." (1-ER-78.) Amicus LAHSA attacks the district court's order complaining those with mental and public health issues should not be placed in shelter (LAHSA Amicus Br. 9-10, Dkt. No. 49); the district court's order specifies that those "who are need of special placement through the Department of mental Health or Department of Public Health" be offered "appropriate emergency, interim, or permanent housing and treatment services. (1-ER-141.) What is striking is that none of the amici or Appellants who argue that the injunction is against the public interest because, due to the short timelines, it favors fast shelter solutions, have come up with any other ideas to stymie the daily tragedy on the

streets immediately. Plaintiffs advocate for individuals to sleep in some type of shelter, congregate or otherwise, where it is safe and clean while they wait for the permanent solutions to manifest. But if amici wish to establish that it is better for people to sleep outside, subject to human and natural elements, than inside a shelter, Plaintiffs would not object to remand for the limited purpose of an evidentiary hearing for Appellants and amici to present evidence on this point.

"[T]he question of the public interest is inseparable from the issues relating to the relative hardship suffered by the litigants." *Lopez*, 713 F.2d at 1437. Moreover, the court must consider societal implications when the most vulnerable populations are affected. *Id.* (It is not only the harm to the individuals involved that we must consider in assessing the public interest. Our society as a whole suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their rights or privileges.") Unhoused members of LA Alliance and other PEH are suffering on the street, waiting years for solutions that are not forthcoming. Appellant-intervenors and some amici—claiming to speak on behalf of the homeless community—argue it is in the "public interest" for LA Alliance's unhoused members to continue suffering on the street. But the homeless community is not a singular group that speaks with a singular voice; nor does a single entity represent the entire homeless community. For example, Intervenors LA Catholic Worker and Orange County Catholic worker did not join in Intervenor

Cangress' appeal. LA Alliance for Human Rights represents many unhoused homeless individuals living in Skid Row. Appellants represent a certain perspective, but ultimately do not represent the "authority" on what is good and right for persons experiencing homelessness in Skid Row and elsewhere. The district court properly considered Appellant and amici arguments, and ultimately found that immediate action—in the form of shelter *or* housing—was necessary to stop the immediate risk of death and harm on the streets of Skid Row.

CONCLUSION

The district court's undisputed findings reflect a tragic reality: being a homeless individual in Los Angeles is like living inside a ticking time bomb. The current PEH death rate is up to *five per day*; an increase of forty percent in *just one year*. It is simply becoming deadlier to be homeless in the streets of Los Angeles. Violent crime against homeless individuals, particularly women, has skyrocketed. Homeless-related fires make up over 50% of the fires in the entire City; 19% of the fires in the City are homeless-related arson fires. This represents a 245 percent increase in all homeless-related fires and 240 percent increase in all homeless-related arson fires since 2018. (8-ER-1722.). Oftentimes the occupants of the tents cannot make it out in time, and, their names forgotten, they become one more statistic counted by the Los Angeles County Coroner. (*Id.* at 1723.) Many turn to narcotics to cope with life on the streets, some—like Alliance

member Javier Gonzalez—take drugs to stay awake at night just to be able to defend themselves. (9-ER-2025–27.) The longer a person experiencing homelessness stays on the street, the harder it is for them to ever recover fully, and a person that originally entered homelessness without needing lifetime assistance might exit homelessness permanently unable to care for themselves (if they exit at all).

The unacceptable and inhumane conditions on the streets of Los Angeles—and the City and County conduct that caused and exacerbate those conditions—led the district court to issue a preliminary injunction designed to alleviate the worst of those conditions in order to prevent further loss of life. The injunction emerged only after over a year of failed settlement discussions and multiple hearings where all parties recognized and acknowledged the dire circumstances facing Los Angeles, including Skid Row in particular. The City and County initially welcomed and embraced the district court's sense of urgency and acknowledged the need for an emergency response—yet none came. After fifteen months with no comprehensive solutions offered by the City or County, and 2,000 unhoused individuals dead in that time, the City and the County left the district court with little choice but to issue this injunction.

Plaintiffs filed a motion for preliminary injunction to require immediate action to address the irreparable harm rippling through the streets of Los Angeles,

most acutely in Skid Row. The district court did not adopt all of Plaintiffs' arguments and adopted additional theories of constitutional violations that apply equally to Plaintiffs. The district court's pointed but properly aimed order should be upheld because it rightfully identified ongoing constitutional and statutory violations which constitute immediate threats to Plaintiffs and other PEH, it had the authority—indeed the obligation—to do so, and the remedy was appropriately tailored to the violation and injury.

Plaintiff-Appellees respectfully request this Court uphold the district court's preliminary injunction.

DATED: June 17, 2021

Respectfully submitted,

/s/ *Matthew Donald Umhofer*

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing opposition complies the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(G) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14-point font.

This brief does not comply with the type-volume limitation of Ninth Circuit Rule 32-2 as it contains 21,926 words; however pursuant to Ninth Circuit Rule 32-2, Appellees have moved this Court for permission to exceed the type-volume limitations, and the Court granted Appellees' motion on June 21, 2021. Other than correcting citations and updating the table of contents to reflect corrected pages, this brief is identical to the brief filed on June 17, 2021.

DATED: June 22, 2021

Respectfully submitted,

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STATEMENT OF RELATED CASES

Other than the three consolidated actions, Appellees are unaware of any related appeals.

DATED: June 17, 2021

Respectfully submitted,

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