

Case No. 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' SUPPLEMENTAL BRIEF REGARDING EMERGENCY
MOTION FOR STAY PENDING APPEAL**

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**IMPACT OF MAY 27, 2021 HEARING ON EMERGENCY MOTIONS TO
STAY PRELIMINARY INJUNCTION**

**I. APPELLANTS CITY AND COUNTY ADMIT FACTUAL BASIS
FOR PRELIMINARY INJUNCTION**

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. (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 62:23-25, May 27, 2021 (“We’re not going to put on witnesses. We’re not going to argue about whether there’s structural racism.”); *id.* at 139:2-3 (“No, the City does not intend to present any evidence.”).) Neither the defendants nor the intervenors cross-examined a single witness, or challenged a single piece of evidence cited in the district court’s order. (*Id.* at 140:1-2 (“Do any of you have any questions of any other witnesses that have appeared today?” [No answer by City or County.]))

The defendants’ do-nothing decision was a remarkable one, as City and the County sought a stay of the district court’s preliminary injunction order largely because—they claimed—the district court issued its order without giving notice and an opportunity to address the evidence upon which the court relied. 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.

The concession was not just silent—it was also made explicit. During the May 27th hearing, City and County agents, as well as a representative for the intervenors 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.

(Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 21:16-22:9.)¹

¹ 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. (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 140:1-2.)

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.

(Appellees' Motion to Take Judicial Notice Ex. H, Hr'g Tr. 5:18-6:4.)

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.

(Appellees' Motion to Take Judicial Notice Ex. G, at 1.)

These concessions and admissions by the parties moot Appellants City and County's complaints to this Court that they did not have proper notice and an opportunity to be heard regarding the district court's factual findings underlying

the preliminary injunction. (County of Los Angeles Emergency Motion to Stay Pending Appeal, “County Mot. to Stay” at 14-15; City of Los Angeles Emergency Motion to Stay Pending Appeal, “City Mot. to Stay” at 6; City Reply in Support of Motion to Stay at 7-9.); *In re Grand Jury Subpoena (Mark Torf/Torf Env’t Mgmt.)*, 357 F.3d 900, 903 (9th Cir. 2004) (failure to object to findings of fact “waives a challenge to that finding.”) And these concessions are no small matter because they affirm the factual findings of the district court and in doing so, make it impossible for the City and the County to make the necessary “strong showing” that they are likely to win on the merits, will be irreparably injured absent a stay, or that the “public interest” is disserved by the order. *Nken v. Holder*, 556 U.S. 418, 433 (2009). Having admitted that discrimination by the City and County against people of color has directly caused or contributed to the homelessness crisis—the “humanitarian crisis” of our lifetime (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 22:17)—the City and County cannot defeat the deference due to a district court’s decision assessing those facts in light of the law set forth in the preliminary injunction. *Harris v. Bd. of Supervisors*, 366 F.3d 754, 760 (9th Cir. 2004) (appellate review of a preliminary injunction is “limited and deferential” to the district court.); *United States v. Schiff*, 379 F.3d 621, 625 (9th Cir. 2004) (appellate court “reviews a district court’s grant of a preliminary injunction for abuse of discretion.”); *Estate of Diaz v. City of Anaheim*, 840 F.3d 592, 601 (9th

Cir. 2016) (abuse of discretion standard permits reversal “only when [the appellate court is] convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances.”) And it is immaterial that the court identified constitutional violations not initially advanced by plaintiffs, because the court “is not limited to the particular legal theories advanced by the parties but retains the independent power to identify and apply the proper construction of governing law.” *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 91 (1991).

II. THE CRUCIAL NEED FOR FINANCIAL ACCOUNTING IS DEMONSTRATED

A substantial subject of discussion during the May 27 hearing was the district court’s detailed examination of financial reports, which underscored the need for the reports and audits demanded by the district court in its preliminary injunction order (Provisions 1(b)-(d); 2(a)(i).) (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 31-49; 121-149.) Specifically, the district court discussed a recent audit by California State Auditor Elaine Howle which found “California has spent \$13 billion in just the last three years on the massive homelessness problem. The auditor said that the approach to dealing with homelessness is so fragmented and incomplete, it actually hinders efforts at getting people into stable housing.” (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 32:1-6.) The court identified hundreds of millions of dollars of County Measure H funds that have

potentially gone unused or unaccounted for. (“[I]f [accountability with service providers has not been implemented], we’ve got about \$600 million that flowed through with no accounting. And that seems to match with what [California State Auditor] Elaine Howle is saying because . . . ‘the state does not track the funding it provides to combat homelessness.’”) (*Id.* at 43:15-21.)

Similarly, the district court examined Proposition HHH funds and programmatic success and failures (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 121-149; Appellees’ Motion to Take Judicial Notice Ex. A, at 21-25), and requested the Controller’s advice on whether to proceed with a forensic audit (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 132:7-17 (“[I]f we’ve got a problem, then I need a forensic audit . . . Do you have any thoughts or comments about that? Because I can limit these audits. I’m pretty flexible about that. I know one thing, I am concerned about Measure H . . . I’m concerned about the forensics out there with HHH.”).) The court also addressed the total public funds for LA Homelessness (\$2.6 billion in 2019-2020) (Appellees’ Motion to Take Judicial Notice Ex. H, Hr’g Tr. 34:10; Appellees’ Motion to Take Judicial Notice Ex. A, at 7) and questioned where that money has gone.

LA City Councilmember Kevin DeLeon underscored this point:

[W]hen I took office . . . I found out that dollars that have been utilized [to address the homelessness crisis] are highly inefficient, highly wasteful to the point that you quoted General Jeff with the homeless industrial complex, very powerful players at

every level that have a stake in this. And, quite frankly, I've seen the bureaucracies here in Los Angeles that makes the DMV look like a well-oiled machine.

(Appellees' Motion to Take Judicial Notice Ex. H, Hr'g Tr. 47:11-19.)

Importantly, again, none of the parties disputed the figures presented by the district court or disputed that serious questions abound about the potential waste and fraud occurring with the literal billions of dollars that should be utilized to alleviate this crisis.

III. CESSATION OF PROPERTY TRANSFERS AND ESCROW OF HOMELESSNESS FUNDS STAYED

Finally, the district court extended the stay of Provision 2(a)(ii) (cessation of sales and transfers of City properties) pending the outcome of the appeal and extended the stay on Provision 1(a) (escrow of homelessness funds) until October 18, 2021 because the City currently lacks the funds (Appellees' Motion to Take Judicial Notice Ex. I, at 2, Minute Order, dated May 27, 2021.) There is no reason for this Court to issue a stay pending appeal as to these provisions because they are already stayed until well after this interlocutory appeal is resolved.

DATED: June 3, 2021

Respectfully submitted,

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