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

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LA ALLIANCE FOR HUMAN RIGHTS, et al.

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES, et al.

Defendants-Appellants.

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

APPELLANT COUNTY OF LOS ANGELES' OPENING BRIEF

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Local government is entrusted with decisions about how to formulate and implement policy in a way that benefits the public. While appellees and the district court might have different ideas about how to tackle the homelessness crisis, private citizens and the unelected judicial branch are not empowered to dictate policymaking in the County of Los Angeles ("County"). This mandatory injunction substitutes the district court's judgment for the judgment of elected officials. In doing so, it steps over the boundary between the legislature and the judiciary and violates separation of powers.

The injunction is legally erroneous. The threshold flaw is that appellees lack standing. When appellees filed this lawsuit, they were residents and business owners from the Skid Row area who wanted the encampments there cleaned up. When appellees filed the motion for preliminary injunction, they stated for the first time that people experiencing homelessness ("PEH") were also members of LA Alliance. Regardless of who belongs to the LA Alliance now, appellees have not identified an injury that is "fairly traceable" to the County, and their generalized grievances about how the County approaches homelessness cannot be redressed by a federal court.

The injunction is also legally erroneous because it is predicated on constitutional and statutory violations that did not occur. Although appellees

brought fourteen claims, the injunction is based on four: (i) violation of due process and equal protection; (ii) violation of due process—state-created danger; (iii) violation of mandatory duty; and (iv) violation of the American with Disabilities Act ("ADA").[1] But the complaint and the motion for preliminary injunction, which are not about race, do not track with the district court's injunction, which is all about race:

Claim	Complaint/Motion	Injunction
Violation of due process and equal protection	The City enforces anti-camping ordinances in some areas and not in others, which leads to more PEH in Skid Row. That deprives Plaintiffs of their property.	Defendants fail to stop Black PEH from having their equal protection rights violated. Defendants' policies threaten the integrity of Black families.
Violation of due process—state-created danger	Defendants affirmatively create or increase the risk that Plaintiffs will be exposed to danger.	Defendants contributed to a discriminatory homelessness regime that injured Black PEH.
Violation of mandatory duty	Shelter is "medically necessary" and "housing is healthcare."	Defendants fail to provide sufficient shelter and mental health beds.

[1] Although the County is included under the ADA heading in the injunction, the complaint does not include the County on the ADA claims (and the motion does not reference the County in the ADA section).

In other words, the injunction arose not from the complaint, appellees' motion, or evidence in the record, but from the district court's analysis of this country's history of structural racism. But a federal court cannot adjudicate an issue—here, racism—that is not pleaded in the complaint. Race is not in the case, it is not in controversy, and it therefore does not comport with the case or controversy requirement of Article III of the Constitution.

The County has not acted to deprive appellees of their constitutional rights and has not violated a mandatory duty. To the contrary, the County has dedicated billions of dollars to housing, shelter, services, and other resources for PEH. As appellees themselves acknowledge, the County's efforts, particularly in recent years, have been laudable. In 2015, the County created its Homeless Initiative with 47 criteria and $100 million. In 2016, it declared a local emergency and set the stage for Measure H. In 2017, Measure H was adopted by a vote of the people, generating over $350 million per year and dramatically increasing the services provided to PEH. There is, of course, more work to be done. The County and its partners are doing that work.

As for the district court's conclusion that appellees will be irreparably harmed but the public will not be, the opposite is true. Intervenors in this case, not appellees, are the homeless advocates. Intervenors have explained that the

injunction, which elevates form above substance and favors immediate action at the expense of long-term solutions, is more likely to *create* danger than mitigate it.

The injunction upends the needs-based allocation of resources, strips the County of its ability to implement its "Care First" model, and caters to the wishes of one group of business owners and residents. It is not good policy, or good law.

II. STATEMENT OF JURISDICTION

The complaint alleged jurisdiction in the district court under 28 U.S.C. §§ 1331, 1343, 1367, 2201 and 2202. [*See* Excerpts of Record ("ER") 12-ER-2801 ¶ 19.] On April 20, 2021, the district court entered a preliminary injunction ordering the County and City of Los Angeles ("City") to take a series of actions in connection with the population of PEH in the Skid Row area of Los Angeles. [1-ER-33-143.] The County filed a timely notice of appeal on April 21, 2021. Fed. R. App. P. 4(a)(1)(B); 12-ER-2882-3001. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

III. ISSUE PRESENTED

Whether the district court abused its discretion in issuing a mandatory preliminary injunction which is grounded in legal theories not pleaded in appellees' complaint or motion, violates separation of powers, exceeds the district court's authority, and is not supported by evidence of constitutional or statutory violations.

IV. STATEMENT OF THE CASE

A. The Case Is Filed and Then Stayed

On March 10, 2020, appellees filed this action against the County and the City. Plaintiffs LA Alliance, Charles Van Scoy, Harry Achadjian, George Frem, Leandro Suarez, Joseph Burk, Gary Whitter, Karyn Pinsky, and Charles Malow are business owners and residents from the Skid Row area of Los Angeles who want the encampments of PEH there cleaned up. [12-ER-2831-2859 ¶¶ 76-122.]

The complaint asserts 14 federal constitutional and state law claims. The district court allowed homeless rights advocates[2] to intervene. [11-ER-2774-2787.] There is no mention of race, racial discrimination, or structural racism in the complaint.

On March 19, 2020, the district court held an emergency status conference in light of COVID-19. [9th Cir. Dkt. 13-2, pp. 14-133.] At the conference, the parties agreed to stay the litigation in order to work with the court to explore settlement. [*Id*. at 128:19-129:22.] The parties engaged in court-ordered or voluntary settlement negotiations and participated in a number of public status conferences at the court's behest. There were no evidentiary hearings.

[2] Los Angeles Catholic Worker, Los Angeles Community Action Network, and Orange County Catholic Worker.

On May 15, while the case was still stayed, the court issued a *sua sponte* preliminary injunction ordering the County and City to find housing or shelter for PEH living near freeways. [11-ER-2574-2580.] On May 22, 2020, the court issued a revised order directing the City and County to "humanely relocate" PEH near freeways "by no later than September 1, 2020." [11-ER-2513.] Appellants and intervenors opposed the injunction. [11-ER-2517-2573.] The court subsequently vacated the order, without prejudice, when the County and City agreed to provide 6,700 beds and prioritize PEH near freeways.[3] [10-ER-2478-2479.]

On March 5, 2021, appellees filed a notice of intent to file a motion for preliminary injunction. [9-ER-2205-2206.] On March 29, the County filed a motion to dismiss. [9-ER-2089-2121.]

B. The District Court Issues a Preliminary Injunction

On April 12, 2021, appellees filed a motion for preliminary injunction. [8-ER-1696-1741.] The district court issued a briefing schedule that informed appellees no reply would be necessary. [7-ER-1694.] The briefing schedule also ordered appellants to respond to a brief filed by amici curiae NAACP—Compton, CORE—California, and Committee for Safe Havens. [*Id.*; *see also* 9-ER-2076-

[3] On April 26, 2021, the district court scheduled a hearing for May 26 and indicated that it was considering reinstating the prior injunction. [1-ER-2-16.]

2088.] On April 19, appellants and intervenors opposed the motion. [4-ER-849-7-ER-1693.] Appellants followed the court's instruction to respond to the amicus brief.[4] [7-ER-1490-1497.]

On April 20, less than 24 hours later, the district court issued a 110-page mandatory injunction. [1-ER-33-143.] The deadlines in the injunction began on April 23, 2021 and continue for 180 days. [1-ER-141.]

C. The County Appeals and Requests a Stay

On April 21, 2021, the County appealed. On April 22, the district court issued a "clarification" that (i) certain directives in the injunction apply to "*all* districts in the City and County and are not limited in any way to Skid Row"; and (ii) the cessation of sales and transfers of County/City property "does not apply to projects in progress as of the date of the order." [1-ER-32.]

On April 23, the County filed an *ex parte* application requesting a stay pending appeal. [2-ER-401-440.] On April 25, the district court granted in part, and denied in part, the application. [1-ER-17-31.] The court *temporarily* stayed the provision of the injunction that restrains the County from "sales, transfers by lease or covenant" of its real property. [1-ER-30.] The court left in place all other directives to the County. The court also scheduled a hearing for May 27 to

[4] Four other amicus briefs/letters were also filed. [2-ER-314-315; 9-ER-2076-2088; 9-ER-2125-2149; 9-ER-2207-2215; 10-ER-2250-2254.]

"receive evidence as to what properties are available for homelessness relief" and "receive testimony from the City and County on [the Court's findings on structural racism]." [1-ER-31.]

On April 28, the County filed an emergency motion asking this Court to stay the lower court case pending appeal.

On May 11, the district court denied the County's motion to dismiss. [2-ER-325-335.] The court cited not to the complaint and the claims alleged therein, but to appellees' evidence in support of the motion for a preliminary injunction and the injunction itself. [*Id*.]

On May 13, this Court issued an order staying the district court's preliminary injunction until June 15, 2021, consolidating the three appeals, and requesting concurrent supplemental briefs addressing the impact, if any, of the further proceedings in the district court on the issues presented in the stay motions. [9th Cir. Dkt. 16.]

At the May 27 hearing, the district court reiterated its view that structural racism is a driving force behind the homelessness crisis in Los Angeles. [2-ER-200:22-24, 201:5-6.] There was no testimony or evidence presented at the May 27 hearing. Appellants tried to bring the court back to the case or controversy requirement, explaining that appellees had never alleged an equal protection violation on the basis of race. Appellants argued that because racism is not alleged

in the complaint, the injunction does not comport with the case or controversy requirement of Article III of the U.S. Constitution.

Intervenors weighed in, reminding the court of what Plaintiffs *did* allege: the impact of homelessness on landlords and property owners, and gentrification. [2-ER-294:19-25 ("This case, when we look at it as reflected in the pleadings, takes issue with Skid Row and the impact on property owners. . . . It does not talk about the impacts of structural racism on the people who are disproportionately impacted.").]

V. STANDARD OF REVIEW

This Court reviews the district court's grant of a preliminary injunction for abuse of discretion, considering whether plaintiffs established they were "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief," whether "the balance of equities tips in [their] favor," and whether "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "The district court necessarily abuses its discretion when it bases its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Katie A., ex rel. Ludin v. Los Angeles County*, 481 F.3d 1150, 1155 (9th Cir. 2007) (citation omitted) (vacating preliminary injunction).

"When the district court imposes a preliminary injunction on a state agency, a strong factual record is necessary; our review of the injunction must be more

rigorous when we review an injunction against a state as opposed to a federal agency, since the Supreme Court requires a showing of an intentional and pervasive pattern of misconduct in order to enjoin a state agency." *Thomas v. County of Los Angeles*, 978 F.2d 504, 508 (9th Cir. 1992) (citing *Rizzo v. Goode*, 423 U.S. 362, 375 (1976)). "Where an injunction is issued against state officials, a district court will 'be deemed to have committed an abuse of discretion . . . if its injunction requires any more of state officers than demanded by federal constitutional or statutory law.'" *Katie A.*, 481 F.3d at 1155 (citation omitted).

VI. THE INJUNCTION IS LEGALLY ERRONEOUS

A. The Injunction Exceeds the District Court's Authority and Violates Separation of Powers

Federal district courts are tasked with serving as neutral arbiters in adjudicating disputes between litigants. They are not tasked with policymaking. That is left to state and local government. Accordingly, "a federal court must exercise restraint when a plaintiff seeks to enjoin any non-federal government agency, be it local or state." *Midgett v. Tri-Cty. Metro. Transp. Dist. of Or.*, 254 F.3d 846, 851 (9th Cir. 2001) (affirming order granting summary judgment where plaintiff was not entitled to permanent injunctive relief); *see also Rizzo*, 423 U.S. at 378-79 (a plaintiff seeking to enjoin a government agency "must contend with 'the

well-established rule that the Government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs"'" (citations omitted)).

Federal courts have always been mindful of the need for restraint when confronting demands for injunctive relief that could infringe on issues of local governance. Almost 50 years ago, the Supreme Court held that an injunction was "an unwarranted intrusion by the federal judiciary into the discretionary authority committed to [city officials] by state and local law to perform their official functions." *Rizzo*, 423 U.S. at 366. In *Rizzo*, plaintiffs filed a class action against the City of Philadelphia and local officials alleging police mistreatment of minority citizens and other city residents. Plaintiffs sought equitable relief, including appointment of a receiver to supervise the police department and civilian review of police activity.

The district court found that police procedures discouraged the filing of civilian complaints and minimized the consequences of police misconduct. 423 U.S. at 368-69. The court ordered the city to submit "a comprehensive program for dealing adequately with civilian complaints," in accordance with comprehensive court-ordered "guidelines." *Id*. at 369. The proposed program, which was developed to comply with the court's order, was incorporated into a final judgment. *Id.* at 365. Among other things, the police commissioner was required to implement a directive governing the manner in which citizens'

complaints against police officers should be handled. *Id*. The Court of Appeals affirmed, holding that the equitable relief ordered "appeared to have the potential for prevention of future police misconduct." *Id*. at 365-66.

The Supreme Court reversed, holding that the district court had exceeded its authority and issued a reminder: "[F]ederal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.'" 423 U.S. at 378 (citation omitted).

Twenty years later, the Supreme Court reaffirmed the limited scope of federal equity power in *Lewis v. Casey*, 518 U.S. 343 (1996). There, prison inmates sued the Arizona Department of Corrections for alleged violations of their right of access to the courts. A special master proposed a permanent injunction with changes to the Arizona state prison system, which the court adopted. *Id.* at 346-47.

The Supreme Court held that the district court's actions violated separation of powers, explaining that "it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." 518 U.S. at 349. The concurring opinion aptly explained why:

> Principles of federalism and separation of powers impose stringent limitations on the equitable power of federal courts. When these

> principles are accorded their proper respect, Article III cannot be understood to authorize the Federal Judiciary to take control of core state institutions like prisons, schools, and hospitals, and assume responsibility for making the difficult policy judgments that state officials are both constitutionally entitled and uniquely qualified to make. Broad remedial decrees strip state administrators of their authority to set long-term goals for the institutions they manage and of the flexibility necessary to make reasonable judgments on short notice under difficult circumstances.

Id. at 385 (Thomas, J., concurring) (citation omitted).

The Supreme Court more recently affirmed these principles in *Horne v. Flores*, 557 U.S. 433 (2009). The district court issued an injunction requiring Arizona to increase funding for educational programs for ELL students, held the State in civil contempt for failing to do so, and rejected the State's proposed legislation as inadequate. *Id*. at 433. Arizona's Superintendent of Public Instruction and Arizona legislators intervened, moved to purge the contempt order, and sought relief from the injunction. *Id*. The district court denied the requests, and the Court of Appeals affirmed. *Id*.

The Supreme Court reversed, cautioning against federal court decrees that have the effect of dictating state or local budget priorities because "[s]tates and local governments have limited funds." 557 U.S. at 448 (citing *Missouri v. Jenkins*, 515 U.S. 70, 131 (1995) ("A structural reform decree eviscerates a State's discretionary authority over its own program and budgets and forces state officials to reallocate state resources and funds . . . .")). It held that the lower court

"improperly substituted its own educational and budgetary policy judgments for those of the state and local officials to whom such decisions are properly entrusted." *Id.* at 455.

Given their limited role when it comes to directing local governments how to act, federal courts cannot issue injunctive relief in a vacuum. The plaintiff must make a showing of a "real or immediate threat of substantial or irreparable injury" before a federal court can intervene. *Midgett*, 254 F.3d at 850; *see Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999) (affirming order granting summary judgment where plaintiffs' alleged injuries did not entitle them to injunction).

The relief must be tethered to specific constitutional or statutory violations and a solid evidentiary record. *Juliana v. United States*, 947 F.3d 1159, 1173 (9th Cir. 2020) ("As the Supreme Court recently explained, 'a constitutional directive or legal standards' must guide the courts' exercise of equitable power." (quoting *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019))). "Absent those standards, federal judicial power could be 'unlimited in scope and duration,' and would inject 'the unelected and politically unaccountable branch of the Federal Government [into] assuming such an extraordinary and unprecedented role.'" *Id.* (alteration in original) (quoting *Rucho*, 139 S. Ct. at 2507).

Here, the district court is directing specific uses of public funds and setting policy priorities for, among other things, housing and shelter for PEH in the County. Doing so improperly usurps the authority entrusted to local officials. It is local officials who have the authority, and responsibility, to develop policy and exercise discretion in implementing that policy for the public benefit. The district court may not substitute its own policy judgments for those of elected County officials and usurp the County's discretionary authority to "dispatch . . . its own internal affairs." *Rizzo*, 423 U.S. at 379.

B. The Desegregation Cases Do Not Apply

There have been times in this country's history in which state actions resulting in egregious constitutional violations were so clearly established that the federal courts directed local government to act. The district court relies on those examples here by analogizing its authority to the authority of the district courts in the school desegregation context. [1-ER-100-101; 1-ER-130-131.] It is not the right analogy.

The court references *Brown v. Board of Education of Topeka, Kan.*, 349 U.S. 294 (1955), frequently. This is not that case. In *Brown*, the Supreme Court confronted a facially discriminatory policy of segregation that had a devastating impact on the quality of education students received, solely because of their race. States had expressly excluded racial minorities from public schools across the

nation. In that unique context, the Supreme Court directly admonished the district courts to carry out "judicial appraisal" of whether schools were taking appropriate action to implement the governing constitutional principles. *Id.* at 299.

District courts accepted that charge. In *Marks v. New Edinburg School District*, 259 F. Supp. 639, 645-46 (E.D. Ark. 1966), for example, the district court addressed the Supreme Court's admonishment and carried out the requisite "judicial appraisal." That same district court, however, was unwilling to direct the school district to comply with specific guidelines to "completely disrupt the operation of the school," or to "invoke an impossible burden on the board and officers of the school district." *Id*. at 646. Even in the pressing context of segregation in public schools, which lingered for far too long after the Supreme Court's ruling in *Brown*, district courts were still required to exercise restraint.

Brown does not offer the correct roadmap to address the impact of structural racism on homelessness in the Skid Row area (which, as discussed below, is also not a claim or theory in appellees' complaint). Here, the Supreme Court has not admonished district courts to perform a "judicial appraisal" of policymaking regarding homelessness. Nor has the Supreme Court articulated any constitutional principles that suggest the district courts should do so. And where the connection between state action and segregation was clear, the link between the County and the complex problem of homelessness is not. Accordingly, *Brown* and *Swann v.*

Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), another case addressing school desegregation that the district court relies on in the preliminary injunction, are inapplicable in this context. [1-ER-100 ("Dealing with the desegregation of schools, the Court in *Swann* held that schools have not only the responsibility to desegregate, but also the responsibility to integrate.").]

In fact, in *Rizzo* the Supreme Court distinguished *Swann* and reversed a district court's injunction because its order "constitute[d] an unwarranted federal judicial intrusion into the discretionary authority of petitioners to perform their official functions as prescribed by state and local law." *Rizzo*, 423 U.S. at 363, 380-81. The Supreme Court highlighted the distinction that is fatal to the position endorsed here: "federal 'judicial powers may be exercised only on the basis of a constitutional violation.'" *Id*. at 377 (citation omitted). In the segregation context, the Supreme Court explained, the state authorities *implemented* the unconstitutional deprivation. *Id*. The Supreme Court held that the district court had exceeded its authority by issuing injunctive relief without finding that the responsible authorities had played an affirmative role in depriving plaintiffs of any constitutional rights. *Id*.

The injunction itself acknowledges the threshold element that is missing here: until "a right and a violation have been shown," the court has no authority to fashion broad equitable remedies. [1-ER-130 (quoting *Swann*, 402 U.S. at 15).]

To support the judicial involvement on display in the injunction, appellees must establish specific constitutional rights and show *affirmative* conduct to deprive them of those rights. *Rizzo*, 423 U.S. at 377. They have not, and cannot.

The County has not deprived appellees of their constitutional rights. Appellees are business owners and residents who want their neighborhood cleared of encampments. The County, meanwhile, has dedicated hundreds of millions of dollars annually, along with other resources, to addressing homelessness throughout the region. There is no affirmative conduct on the part of the County to hurt appellees (or PEH) and, as set forth below, no constitutional or statutory violations to remedy with sweeping injunctive relief.

C. No Statutory Framework Authorizes the Injunction

The district court also relies on *Brown v. Plata,* 563 U.S. 493 (2011), and the underlying district court cases, for the proposition that it can use its equitable powers "even where those powers shape local government's authority and impacts their budget." [1-ER-134-136.] That case does not, as the district court suggests, guide its exercise of "broad equitable authority" here. [1-ER-131-132.]

In *Plata,* California prisoners filed class-action lawsuits alleging overcrowding and inadequate mental and medical care violated the Eighth

Amendment's prohibition of cruel and unusual punishment.[5] 563 U.S. at 500. After years of litigation, the State failed to comply with the district court's orders; and, as a result, the plaintiffs requested a three-judge district court under the Prison Litigation Reform Act of 1995 ("PLRA") to address the State's failure. *Id.*; *see* 18 U.S.C. § 3626. The Ninth Circuit convened the three-judge district court and consolidated the cases. *Plata*, 563 U.S. at 500.

The three-judge district court exercised its authority under the PLRA to issue a remedial order requiring California to reduce the inmate population to within 137.5% of the prisons' total design capacity. 563 U.S. at 501. The Governor appealed. *Id*. at 500. The Supreme Court affirmed the three-judge district court's order, ruling that "the PLRA does authorize the relief afforded in this case and . . . the court-mandated population limit is necessary to remedy the violation of prisoners' constitutional rights." *Id*. at 502.

This holding is specific to the PLRA, which provides the federal courts with detailed guidelines for issuing injunctive relief. 563 U.S. at 511-12. A three-judge

[5] The case was borne out of Eighth Amendment violations relating to the health and safety of inmates. Here, the Eighth Amendment is not implicated, and is not a basis for injunctive relief against the County. The County does not have ordinances that impose criminal sanctions against PEH. To the contrary, the County has a "Care First" model and does not support enforcement as a solution to homelessness. Notably, this injunction explicitly paves the way for enforcement. [1-ER-142 ("After adequate shelter is offered, the Court will let stand any constitutional ordinance consistent with the holdings of *Boise* and *Mitchell*.").]

district court can issue a remedial order limiting the prison population only when several conditions are met and the ordered relief is "narrowly drawn, extends no further than necessary . . ., and is the least intrusive means necessary to correct the violation." *Id*. at 512 (citation omitted). The PLRA provides a strict statutory framework to ensure that a federal district court takes the extreme action of issuing an injunction against a state only in limited circumstances and when procedural safeguards are satisfied. *Id*. at 511-12.

At oral argument in *Plata*, Chief Justice Roberts expressed his concerns about federal district courts ordering governments to spend money in specified ways. [10-ER-2245-2247.] The Chief Justice questioned what would happen if one court told a particular governing body to spend $8 billion in one way, while another court told it to spend the same $8 billion a different way. Those concerns are well founded, particularly when the decisions being made impact public health.

Federal judges do not have inherent authority (or expertise) to make complex policy decisions about how to manage the public health, public safety, and financial implications of the homelessness crisis.[6] Here, unlike in *Plata*, there

[6] The injunction cites several cases to support the conclusion that budgetary concerns must take a backseat here. [1-ER-136-137.] In *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2008 WL 4847080, at *1 (N.D. Cal. Nov. 7, 2008), the court was grappling with constitutionally inadequate medical care in state prisons in the PLRA context. *Watson v. City of Memphis*, 373 U.S. 526, 537 (1963), is another desegregation case, and comparing the County's policies surrounding homelessness to state-mandated segregation goes too far. In *Lopez v. Heckler*, 713

is no statutory framework like the PLRA that authorizes extraordinary injunctive relief.

The district court cites to other cases to justify its use of equitable authority, but none support the proposition that the district court may dictate the manner in which the County uses funds to address homelessness. [1-ER-129-137.] Indeed, several of the decisions state the opposite. *See Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 392 n.14 (1992) ("[O]nce a court has determined that a modification [of a consent decree] is warranted, . . . principles of federalism and simple common sense require the court to give significant weight to the views of the local government officials . . . ."); *Hutto v. Finney*, 437 U.S. 678, 683 (1978) (explaining that the district court had initially allowed the state to improve conditions in its prisons, and "did not immediately impose a detailed remedy of its own"); *Gilmore v. People of the State of Cal.*, 220 F.3d 987, 1005 (9th Cir. 2000) ("[T]he court's exercise of equitable discretion must heel close to the identified violation and respect 'the interests of state and local authorities in managing their own affairs,

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F.2d 1432, 1437 (9th Cir. 1983), the court confronted a class of plaintiffs who were at risk of losing their disability benefits—a result that could have caused economic hardship, suffering, or even death. Similarly, both *Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754 (9th Cir. 2004), and *Rodde v. Bonta*, 357 F.3d 988 (9th Cir. 2004), related to whether a district court could enjoin the County from closing a public hospital, where doing so would eliminate necessary medical services. Plaintiffs were indigent and uninsured county residents who relied on the county healthcare system. As detailed below, Plaintiffs here have not alleged, let alone established, anything of the sort.

consistent with the Constitution.'" (quoting *Milliken v. Bradley*, 433 U.S. 267, 281 (1977))).

The district court discusses *Roman v. Wolf* at length. [1-ER-132-133 (citing *Roman v. Wolf*, 977 F.3d 935, 939, 941-42, 945-46 (9th Cir. 2020).] In *Roman*, this Court vacated aspects of the preliminary injunction that "ordered specific measures to be implemented," and instructed the district court to "avoid imposing provisions that micromanage the Government's administration of conditions at Adelanto." *Id.* at 945-46; *see also id.* (noting that certain provisions of the preliminary injunction "wade into facility administration at a granular level beyond what is required to remedy the constitutional violation identified"). *Roman* underscores how problematic this particular injunction, which "micromanage[s] the Government's administration" of homeless services, is.

The other cases fare no better. Some involve the issue of whether an injunction can be applied nationwide. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[A] nationwide class [is not] inconsistent with principles of equity jurisprudence . . . ."); *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501 (9th Cir. 1996) ("The injunction's limitations … against *all* motorcyclists … is appropriate in this case."); *District of Columbia v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1, 49 (D.D.C. 2020) ("[A] nationwide remedy . . . follows from the nature of the claim that the rule is facially unlawful."). Others have no bearing on the

district court's ability to issue its preliminary injunction. *Steele v. Bulova Watch Co.*, 344 U.S. 280, 281 (1952) ("The issue is whether a United States District Court has jurisdiction to award relief to an American corporation against acts of trade-mark infringement and unfair competition consummated in a foreign country by a citizen and resident of the United States."); *Sierra Club v. Trump*, 963 F.3d 874, 897 (9th Cir. 2020) (affirming a district court's permanent injunction that prohibited a transfer of funds to be used for a border wall where that transfer was not authorized by certain statutes).

D. Appellees Lack Standing

A plaintiff must establish standing at every phase of the litigation. *Juliana*, 947 F.3d at 1175 (reversing and remanding with instructions to dismiss for lack of standing). Standing is a jurisdictional requirement. There is no "case or controversy" unless the plaintiff has standing. *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013) ("For there to be such a case or controversy, it is not enough that the party invoking the power of the court have a keen interest in the issue. That party must also have 'standing,' which requires, among other things, that it have suffered a concrete and particularized injury."). To have Article III standing, a plaintiff must establish that (1) he/she suffered an "injury in fact"; (2) the injury is fairly traceable to the conduct of the defendant; and (3) the injury can be redressed

by a federal court. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998) (citation omitted).

1. The Injunction Addresses an Issue Beyond the "Case or Controversy" Before It

Article III of the Constitution limits federal courts to adjudicating the "cases" and "controversies" before them. U.S. Const. art. III, § 2, cl. 1. No other principle is "more fundamental to the judiciary's proper role in our system of government." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341-42 (2006) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997), and *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976)).

Federal courts have authority to weigh in on an "active political debate . . . *only* if necessary to do so in the course of deciding an actual 'case' or 'controversy.'" *Hollingsworth*, 570 U.S. at 697-700 (emphasis added). The Supreme Court recently described this jurisdictional, threshold requirement as "an essential limit on our power." *Id*. at 700. The Supreme Court explained: "It ensures that we act *as judges*, and do not engage in policymaking properly left to elected representatives." *Id.*

The complaint in this case does not assert any claims for relief based on racial discrimination or structural racism. Accordingly, harm stemming from racial discrimination and structural racism is not a case or controversy before the

district court, and does not provide a basis for the preliminary injunction—which wades into "policymaking properly left to elected representatives." 570 U.S. at 700; *see DaimlerChrysler Corp.*, 547 U.S. at 341-42; *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) ("A court's equitable power lies only over the merits of the case or controversy before it. When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not have the authority to issue an injunction."); *see also De Beers Consol. Mines v. United States*, 325 U.S. 212, 218-20 (1945) (holding that general principles of equity preclude a preliminary injunction based on a matter external to the claims asserted in a complaint).

An injunction that does not connect to the "case or controversy" before the court cannot stand. For example, in *Pacific Radiation Oncology*, the plaintiffs alleged in their complaint that the defendant's decision to prevent the plaintiffs from treating patients at the defendant's facilities was a pretext to prevent the plaintiffs from competing with the defendant. 810 F.3d at 633. During the course of the litigation, the plaintiffs sought a preliminary injunction that would preclude the defendant from reviewing certain medical records, as doing so would purportedly violate a federal statute and the Hawaii Constitution. *Id.* The district court denied the preliminary injunction, and this Court affirmed, finding that "there must be a relationship between the injury claimed in the motion for injunctive

relief and the conduct asserted in the underlying complaint." *Id.* at 636. Because the complaint did not include a claim for improper review of medical records in violation of the federal statute and the Hawaii Constitution, the district court could not issue the requested preliminary injunction. *Id.* at 637.

The Supreme Court has applied similar reasoning to find that general principles of equitable relief preclude district courts from issuing preliminary injunctions that are unrelated to the allegations in the complaint. In *De Beers Consolidated Mines*, the Supreme Court reversed a preliminary injunction, finding that the "general principles which govern the granting of equitable relief" precluded the district court from issuing a preliminary injunction that "deals with a matter lying wholly outside the issues in the suit." 325 U.S. at 218-20.

Appellees' complaint does not allege or even discuss race in any manner. The district court lacked the authority to issue a preliminary injunction the court described as arising from racial discrimination and structural racism.

2. Appellees' "Injury in Fact" Keeps Shifting

For associational standing, appellees need to establish that LA Alliance's "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S.

167, 181 (2000). The complaint alleges that the members of LA Alliance, an unincorporated association of taxpayers, are business owners and residents in the Skid Row area of Los Angeles who want the encampments of PEH cleaned up. [1-ER-2831 ¶ 76.] Paragraphs 76-122 detail representative members of LA Alliance—no one is currently experiencing homelessness. [1-ER-2831-2859 ¶¶ 76-122.] The named plaintiffs allege facts about having lost money, business, or enjoyment of their properties due to the presence of PEH. [*Id*.]

Based on the allegations in the complaint, the County argued in its motion to dismiss that plaintiffs were not PEH and could not use third parties to support Article III standing. [9-ER-2103-2109.] *See, e.g.*, *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) (plaintiffs must "assert [their] own legal rights and interests, and cannot rest [their] claim to relief on the legal rights or interests of third parties"); *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."). In response, appellees: (i) submitted declarations of several PEH who are now members of LA Alliance in support of their motion for preliminary injunction; and (ii) updated their website to state "[o]ur membership *now* encompasses current and former homeless individuals." [8-ER-1708-1709; 9-ER-2008-2010; 9-ER-2019-2034; 9-ER-2055 ¶ 2 (emphasis added).] The district court followed along and based standing for its injunction on injuries to PEH. [1-ER-5-7.]

Notwithstanding these recent efforts, the complaint still fails to allege that PEH are among LA Alliance's members, or that injury to those PEH confers standing on LA Alliance. *See, e.g., Int'l Longshore and Warehouse Union v. Nelson*, 599 F. App'x 701, 701 (9th Cir. 2015) (mem.) ("[Plaintiff] attempts to satisfy the injury-in-fact element by arguing that it diverted considerable resources away from a labor dispute. . . . However, it failed to allege this injury in its complaint. Instead, it asserted the diversion of resources only in a declaration in support of its opposition to summary judgment. Such a declaration cannot retroactively confer standing to [plaintiff].").

Intervenors, meanwhile, who are advocates of PEH, opposed the motion for preliminary injunction and explained why the requested relief was not in the public interest, or in the interest of PEH. [4-ER-849-867.] They submitted multiple declarations explaining why. [4-ER-868-929.]

3. Appellees' Alleged Injuries Are Not Fairly Traceable to the County

Appellees must show that their alleged injury is causally linked to the County's alleged misconduct, "and not the result of misconduct of some third party not before the court." *Washington Envtl. Council v. Bellon*, 732 F.3d 1131, 1141 (9th Cir. 2013) (vacating district court's order on dispositive motions and remanding with instructions to dismiss the action for lack of subject matter

jurisdiction); *see also DaimlerChrysler Corp.*, 547 U.S. at 346 (holding that generally "state taxpayers have no standing under Article III to challenge state tax or spending decisions simply by virtue of their status as taxpayers"). It is appellees' burden to establish standing. *Id*. at 342 n.3.

To allege their harms are "fairly traceable" to the County, generalized grievances about local government do not suffice. *See Hollingsworth*, 570 U.S. at 704, 706 ("[A] generally available grievance about government . . . does not state an Article III case or controversy." (citation omitted)); *see Allen v. Wright*, 468 U.S. 737, 754 (1984) ("[An] asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court."); *United States v. Lazarenko*, 476 F.3d 642, 652 (9th Cir. 2007) ("A generalized harm shared in substantially equal measure by all or a large class of citizens does not by itself warrant exercise of jurisdiction."). Courts "refrain from adjudicating '"abstract questions of wide public significance" which amount to "generalized grievances," pervasively shared and most appropriately addressed in the representative branches.'" *Lazarenko*, 476 F.3d at 651-52 (citation omitted). In other words, courts leave citizens' complaints about local government to local government.

Searching the complaint for specific grievances is illuminating. Appellees claim injuries like lost money, business, or enjoyment of their properties due to the

increase of homeless encampments in Skid Row. [1-ER-2831-2859 ¶¶ 76-122.] Appellees do not allege they are PEH who were injured by any specific County actions. As for their complaints about PEH camping near their businesses and residences, appellees cannot establish the County caused more PEH to camp in Skid Row. *Warth*, 422 U.S. at 508-10 (taxpayers lacked standing to challenge zoning regulations because the link between their increased tax burden and the alleged failure to support low-income housing was too attenuated).

Suggesting that the County *caused* homelessness,[7] and that residents and business owners from the Skid Row area now have standing to sue the County because of it, puts too much of a strain on Article III.

As for the mandatory injunction itself, appellees are not even mentioned. Instead, the district court focuses on "a legacy of entrenched structural racism," but

[7] Homelessness is a complex and multifaceted problem. *Matter of J.P.*, 486 Mass. 117, 124 (Mass. 2020) ("We further note that people become homeless for many reasons, including, but not limited to, being a domestic abuse survivor, being unemployed or underemployed, and falling on hard times."); *State v. Pippin*, 200 Wash. App. 826, 844-45 (Wash. Ct. App. 2017) (Washington Legislature found that "there are many causes of homelessness, including a shortage of affordable housing; a shortage of family-wage jobs which undermines housing affordability; a lack of an accessible and affordable health care system . . .; domestic violence; and a lack of education and job skills necessary to acquire adequate wage jobs" (citation omitted)); *Ass'n For Neighborhood Rehab., Inc. v. Bd. of Assessors of City of Ogdensburg*, 917 N.Y.S.2d 734, 736 (N.Y. App. Div. 2011) ("While indigency is certainly a major cause of homelessness, the evidence established that there are other causes—often overlapping—including mental health problems, substance abuse and domestic violence.").

does not explain how that connects back to appellees. [1-ER-36.] Appellees do not allege race discrimination in the complaint. The County does not dispute that this country struggles with systemic racism and inequality. Nonetheless, that is not a basis for issuing an injunction if *appellees'* injuries cannot be traced to the County.

4. Appellees Cannot Show Redressability

The federal courts cannot redress appellees' alleged injuries without exceeding the limited scope of federal equity power, adjudicating a "case" or "controversy" that is not before them, and violating separation of powers. *See supra* section VI.; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Juliana*, 947 F.3d at 1170 ("To establish Article III redressability, the plaintiffs must show that the relief they seek is . . . within the district court's power to award."); *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018) ("[E]ven where a plaintiff requests relief that would redress her claimed injury, there is no redressability if a federal court lacks the power to issue such relief.").[8]

[8] Appellees also lack prudential standing. *Lazarenko*, 476 F.3d at 649-50 ("Prudential standing encompasses 'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" (citation omitted)).

E. The County Did Not Violate Appellees' Constitutional or Statutory Rights

Federal courts do not have authority to issue injunctive relief unless there is an established constitutional or statutory violation. *Rizzo*, 423 U.S. at 377; *Swann*, 402 U.S. at 16. Past violations do not suffice—a plaintiff must show "a real and immediate threat of *continued*, *future* violations." *Midgett*, 254 F.3d at 850. Appellees did not make that showing here.

1. There Are No Predicate Constitutional Violations

The injunction relies on legal theories that appeared for the first time in the order granting appellees' motion: (i) structural racism to support application of the state-created danger doctrine; (ii) "severe inaction" to support an equal protection violation; and (iii) family integrity of Black unhoused families to support a substantive due process claim. [1-ER-104-119.]

(a) The State-Created Danger Doctrine Does Not Apply

To assert a "state-created danger" claim, the plaintiff must prove that the officials (1) created an actual, particularized danger through their own affirmative conduct, and (2) acted with deliberate indifference to a known or obvious danger. *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011). In addition, a municipal government, such as the County, cannot be vicariously liable under section 1983. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658,

691-92 (1978). To assert a "state-created danger" claim against the County, a plaintiff must further allege that the County is directly responsible for the conduct of its employees through a recognized theory of municipal liability. *Id.*[9]

(i) The County Did Not Create an Actual, Particularized Danger Through Its Own Affirmative Conduct

Neither the motion nor the injunction identifies any actual, particularized danger the County *created* for appellees. Instead, the injunction describes a general "history of structural racism, spanning over a century" as evidence of a "state-created disaster." [1-ER-105.] The district court points to "redlining and enforcing racially restrictive covenants." [*Id*.]

These generalized averments, not tethered to appellees, their complaint, or any actions taken by the County, cannot support this extraordinary relief. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75 (1982) ("[T]he Court has refrained from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." (quoting *Warth*, 422 U.S. at 499-500)).

[9] The district court also includes the "special relationship" exception, which is not pleaded in the complaint or argued in the motion, but appears to apply it only to the City. [1-ER-108-109.]

The district court also attacks the County's "focus on housing instead of shelter." [1-ER-105.] The County's discretionary decisions about how to prioritize public funds cannot be the basis for a state-created danger claim. Moreover, focusing on permanent housing is good policy. The emphasis on short-term shelter is an "out of sight, out of mind" approach the County cannot endorse.

The head of the County's Homeless Initiative explained why: "Continuing to invest in interim housing and the front stages of the homeless services system will not end homelessness." [5-ER-937 ¶ 30; 3-ER-441-449.] That is why the Homeless Initiative and its partners are prioritizing finding permanent housing for PEH. [*Id*.] These policy decisions were developed through a collaborative process with 50 community and government stakeholders. [5-ER-935 ¶ 17.] The injunction purports to describe strategic and thoughtful decision-making and a "Care First" model as a "state-created danger."

The County is not alone in its thinking that permanent housing is critical. As intervenors explained to the district court, the injunction itself is more likely to create danger for PEH. [4-ER-859:14-19 n.5.[10]] Other advocates have also weighed in and expressed concern with the emphasis on shelter.[11]

[10] Appellees will likely raise *Santa Cruz Homeless Union v. Bernal*, No. 20-cv-09425-SVK, 2021 WL 222005 (N.D. Cal. Jan. 20, 2021), and *Hernandez v. City of San Jose*, 897 F.3d 1125 (9th Cir. 2018). In *Santa Cruz*, a district court granted a motion for preliminary injunction to stop closure of one specific homeless encampment, in which plaintiffs lived. 2021 WL 222005, at *7. Here, appellees

(ii) The County Did Not Act with Deliberate Indifference

The district court acknowledges that deliberate indifference is "a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." [1-ER-107 (quoting *Bd. of Cty. Comm'rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 410 (1997)).] Nonetheless, the order goes on to find a "strong likelihood" of liability under the state-created danger doctrine based on a City Councilmember's comments at a Los Angeles Business Council event and an L.A. Times editorial from 1985 that called on the City and County to work together to address homelessness. [1-ER-108.] That is not enough.

(b) The Equal Protection Claim Cannot Support This Injunction

"The first step in equal protection analysis is to identify the [defendants'] classification of groups." *Country Classic Dairies, Inc. v. State of Montana, Dep't of Commerce Milk Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988). This is

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want the opposite: they asked the district court to move all PEH out of the Skid Row area and for the City's anti-camping ordinances to be enforced. In *Hernandez*, the Court held only that allegations that officers required plaintiffs at a rally to walk directly into violent protesters were sufficient at the pleading stage. 897 F.3d at 1133.

[11] https://www.latimes.com/opinion/story/2021-05-03/homelessness-court-order-skid-row-los-angeles

because a plaintiff must "show that the law is applied in a discriminatory manner." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995). The next step is to "determine the level of scrutiny." *Country Classic Dairies*, 847 F.2d at 596.

(i) Appellees Did Not Allege Racial Discrimination

The complaint alleges the County violated equal protection by "enforcing the law in some areas and declining to enforce the law in others." [12-ER-2875-2876 ¶¶ 185-86.] Because physical location is not a suspect classification, the rational basis test applies. *Wayte v. United States*, 470 U.S. 598, 608 (1985) ("It is appropriate to judge selective prosecution claims according to ordinary equal protection standards."); *Culinary Studios, Inc. v. Newsom*, No. 1:20-CV-1340 AWI EPG, 2021 WL 427115, at *4 (E.D. Cal. Feb. 8, 2021) (applying the rational basis test to equal protection challenge claiming that COVID-19 policies discriminate against businesses based on their physical location); *In re Tourism Assessment Fee Litig.*, No. 08cv1796-MMA(WMc), 2009 WL 10185458, at *15 (S.D. Cal. Feb. 19, 2009) (applying rational basis review to equal protection challenge to state program that granted favorable treatment to persons who rented cars at airports as opposed to other locations).

Under rational basis review, the presumption that governmental decision-making is rational "can only be overcome by a clear showing of arbitrariness and irrationality." *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981) (laws that do not

"employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the legislative means are rationally related to a legitimate governmental purpose"). A plaintiff bringing an equal protection challenge must show "both that the . . . system had a discriminatory effect and that it was motivated by a discriminatory purpose." *Wayte*, 470 U.S. at 608-09.

Appellees have not shown that the County discriminated against anyone on the basis of race, geography, or for any other reason. The complaint alleges that the City is limited in its ability to enforce City anti-vagrancy laws due to the Ninth Circuit's decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). [12-ER-2805-2806 ¶ 31.] Appellees contend that the City did not enforce its anti-vagrancy laws in Skid Row.

The County has no enforcement authority in the City and has a "Care First" model that does not support enforcement as a solution to homelessness. Indeed, that is one of the County's concerns with this injunction. It expressly authorizes enforcement of the City's anti-vagrancy laws. [1-ER-142.]

(ii) The Expansion of Equal Protection Jurisprudence Is Unwarranted

The district court concluded that "state inaction has become state action that is strongly likely in violation of the Equal Protection Clause." [1-ER-111; *see* 1-ER109-112.] The court's reading of the Equal Protection Clause focuses on "the

double negative implication" of "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." [1-ER-110.] The court "acknowledges that this conclusion advances equal protection jurisprudence." [*Id.*] As support, the court relies primarily on a law review article. [*Id.* at n.437.] But even that law review article only purports to advance "the *idea* that state inaction under the Equal Protection Clause constitutes state action." David M. Howard, *Rethinking State Inaction: An In-Depth Look at the State Action Doctrine in State and Lower Federal Courts*, 16 Conn. Pub. Int. L.J. 221, 223 (2017) (emphasis added). The court's order points to no other legal authority for the "state inaction" theory.[12]

At its simplest, the district court's holding is: (i) the County has an affirmative duty to make sure its residents' equal protection rights are not violated; (ii) appellees are County residents whose equal protection rights were violated; and

[12] None of the cases the court relies on in its discussion of the Equal Protection Clause discuss the "state inaction" doctrine. *United States v. Fordice*, 505 U.S. 717, 727 (1992) (explaining that "the State of Mississippi had the constitutional duty to dismantle the dual school system that its laws once mandated"); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966) ("[A] State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard."); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 716-17 (1961) (finding "discriminatory state *action* in violation of the Equal Protection Clause of the Fourteenth Amendment" where a restaurant in a state-owned parking building refused to serve the plaintiff because of his race (emphasis added)); *Marbury v. Madison*, 5 U.S. 137 (1803) (issued prior to the ratification of the Fourteenth Amendment and containing no discussion of equal protection).

(iii) because the County allowed these violations to occur, it is liable for violating appellees' equal protection rights. The court reverts to the *Brown v. Board of Education* analogy, explaining that the states had an affirmative duty there to dismantle the segregated education system the states themselves had once mandated. [1-ER-111.]

While the court's commitment to equal protection under the law is laudable and shared by the County, this theory stretches the law and facts beyond their breaking point. Appellees do not allege they are Black PEH who have had their equal protection rights violated. They do not allege the County caused, or failed to prevent, those violations. They allege only that appellants, "by enforcing the law in some areas and declining to enforce the law in others, and by abdicating their duties under the law, have arbitrarily determined where homeless encampments may or may not be located and what communities should be affected, without following their own respective procedures and in violation of both state and federal law." [1-ER-2875 ¶ 185.] The court's order does not square with the complaint's allegations (or with equal protection jurisprudence).

(c) The Substantive Due Process Claim Has No Merit

(i) Appellees Did Not Establish an Arbitrary Deprivation of Liberty

A threshold requirement of a substantive due process claim "is the plaintiff's showing of a liberty or property interest protected by the Constitution." *Wedges/Ledges of Cal., Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 62 (9th Cir. 1994). Substantive due process usually applies to matters relating to marriage, family, procreation, and the right to bodily integrity. *Albright v. Oliver*, 510 U.S. 266, 272 (1994).

A substantive due process claim that does not involve fundamental rights requires proof that the government's conduct was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926); *County of Sacramento v. Lewis*, 523 U.S. 833, 845-49 (1998) (substantive due process prohibits the arbitrary deprivation of individuals' liberty by government).

Appellees barely addressed substantive due process in their complaint or motion. [1-ER-2875-2876 ¶¶ 185-186; 8-ER-1733:28-1734:19.] The allegations and arguments focused on the City and County interfering with appellees' "liberty or property interest[s]" by allowing their property values to depreciate while still

"[f]orcing residents to pay for basic municipal services." [8-ER-1733:25-1734:19.] As these are not fundamental rights, appellees' theory is necessarily limited to a claim that the County violated their rights through arbitrary action. *County of Sacramento*, 523 U.S. at 845-49; *Village of Euclid*, 272 U.S. at 395.

Appellees "shoulder a heavy burden." *Halverson v. Skagit County*, 42 F.3d 1257, 1262 (9th Cir. 1994). They must establish that the County "*could* have had no legitimate reason for its decision." *Id.* (citing *Kawaoka v. City of Arroyo Grande*, 17 F.3d 1227, 1234 (9th Cir. 1994)). If the County's conduct was rationally related to a legitimate governmental interest, there is no due process violation. *Id.*

Appellees must also demonstrate that the County's conduct "shocks the conscience." *County of Sacramento*, 523 U.S. at 846. This requires a showing that the County acted with an intent to injure. *Id.* at 849. At best, appellees allege that the County spent taxpayer funds ineffectively, but this theory has been rejected by the Supreme Court. *Id.* at 848-49 ("[L]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process.").

Appellees have not established that the County acted arbitrarily or did anything to shock the conscience. Appellees' argument is that the City had a policy of "containment" that concentrated PEH in the Skid Row area, and that the

County centralized its services there as a result. [8-ER-1733:21-1735:19.] There is nothing arbitrary about providing services in the places where PEH live.

(ii) The Injunction Is Based on a Theory That Has No Connection to Appellees

The injunction says nothing about appellees' allegations, which related to property values, "urination and feces," and "frequent graffiti." [8-ER-1735:6-19.] Instead, the district court brings the focus back to structural racism, holding that the "practice of disrupting unhoused Black families' constitutional right to family integrity by compounding structural racism in present day policies is sufficient to find Plaintiffs have a likelihood of success on their due process claim." [1-ER-119.]

The district court relies on "family-related issues" to try to get to strict scrutiny. [1-ER-9-10.] But "family-related issues" are not raised in the complaint or the motion. Appellees allege they suffered economic harms, such as lost business, increased costs, and diminished property value. [12-ER-2875-2876 ¶¶ 185-186.] Appellees' claims and the district court's injunction are like two ships passing in the night.

The district court's "comparable" cases underscore just how far the injunction strayed from the complaint and the motion. According to the court, "[t]he facts in our case are comparable to the separations of parent and child" in

three cases: *Quilloin v. Walcott*, 434 U.S. 246 (1978), *Ms. L. v. U.S. Immigration & Customs Enf't*, 302 F. Supp. 3d 1149 (S.D. Cal. 2018), and *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enf't*, 319 F. Supp. 3d 491 (D.D.C. 2018). [1-ER-115.] In all three cases, the government actually separated families for no legitimate governmental reason—which violated the parents' substantive due process rights.

Here, there are no allegations that the County ever separated a family of Black PEH in the Skid Row area, much less that *appellees* were members of such a family. The injunction simply states that the "City and County's discriminatory conduct has threatened the family integrity of the Black unhoused." [*Id.*] Although that sentence references a footnote 499, there is no such footnote.

2. <u>There Are No Predicate Statutory Violations</u>

(a) <u>There Is No Welfare & Institutions Code Violation</u>

The district court uses appellees' claim under Welfare & Institutions Code section 17000 ("WIC § 17000") for violation of a mandatory duty as a statutory basis for its injunction against the County. [1-ER-119-123.]

To establish a claim for violation of a mandatory duty, a plaintiff must first prove that the statute at issue is "*obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken." *Haggis v. City*

of Los Angeles, 22 Cal. 4th 490, 498 (2000). Even if the entity has an obligation to perform a function, there is no claim if the function itself involves discretion. *Id*.

Under WIC § 17000, counties have two obligations: (i) to provide general assistance to the indigent; and (ii) to provide medically necessary care to "medically indigent persons." *Hunt v. Superior Court*, 21 Cal. 4th 984, 1002-03 (1999). The Board of Supervisors adopts the "standards of aid and care." Cal. Welf. & Inst. Code § 17001 ("The *board of supervisors of each county*, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county." (emphasis added)). That is what the County has done here.

Because the County has *discretion* to determine how to discharge these obligations, and has exercised that discretion to provide aid and care to the indigent, the mandatory duty claim fails. *Haggis*, 22 Cal. 4th at 498; *Tailfeather v. Bd. of Supervisors*, 48 Cal. App. 4th 1223, 1246 (1996) ("Achieving the mandated level of care requires the exercise of considerable discretion as the County chooses between a multitude of potential courses of action."). A court's authority is limited to determining "whether the County has abused or exceeded its discretion under the governing statutes—not to dictate how that discretion must be exercised." *Tailfeather*, 48 Cal. App. 4th at 1246.

The injunction acknowledges the County's discretion, but holds that the County has failed to provide medical care "at a level which does not lead to unnecessary suffering or endanger life and health." [1-ER-120 (quoting *Tailfeather*, 48 Cal. App. 4th at 1240).] The court cites to a report from the Department of Mental Health ("DMH"), which details the County's efforts to increase access to mental health and detoxification beds. [*Id*.] The court also repeats a soundbite from Los Angeles Homeless Services Authority's ("LAHSA"[13]) Executive Director Heidi Marston's comments that "housing is healthcare." [1-ER-119-123 ("housing is healthcare").]

The soundbite from LAHSA and the County's undisputed efforts to establish more mental health beds do not lead to a viable claim for violation of a mandatory duty under WIC § 17000. No case has held that WIC § 17000 requires counties to provide housing or shelter to all indigent residents. Moreover, appellees have not alleged or established that they are "at risk and in need of health services" and unable to access medically necessary care, or that they have tried to, and have not been able to, access a mental health or detoxification bed through DMH. That distinguishes this case from *Rodde* and *Harris*, the cases that dealt with the County's closure of a public hospital. Plaintiffs in those cases were indigent and

[13] LAHSA is an independent, joint powers authority created by the County and City.

uninsured county residents who were actually at risk of losing necessary medical services. *Rodde*, 357 F.3d at 998; *Harris*, 366 F.3d at 765.

The County agrees that increasing access to these beds is critical and is working to do just that. But, as the County has previously explained to appellees and to the district court, mental health services in this country are governed by a complex regulatory scheme managed and controlled by the state and federal governments. [10-ER-2459-2467.] The California legislature and the County's Board of Supervisors are charged with exercising discretion as to how Mental Health Services Act ("MHSA") funds are used. The State has strict guidelines regarding the eligible service population and the types of services and programs that MHSA funds can be used to support. *See* Cal. Welf. & Inst. Code § 5890; Cal. Code Regs. tit.9, § 3315.

The County works within this complex regulatory scheme to provide mental health services to a diverse population. MHSA programs in the County focus primarily on mental health treatment and support services for *all* of the populations served by the County's DMH, including PEH. DMH has invested $243 million in the development of supportive housing across Los Angeles County, including 83 MHSA-funded housing developments.

The County's MHSA program is subject to a three-year review process with required annual updates to the California MHSA Oversight and Accountability

Commission ("MHSOAC"), an oversight body established by California Welfare and Institutions Code section 5845. That body is composed of State appointees, mental health and medical professionals, and representatives from law enforcement, business, education and organized labor. The Governor also appoints MHSOAC board members who have personal experience with severe mental illness or who have family members with severe mental illness. The County's three-year program and expenditure plan is subject to approval from both MHSOAC and the California Department of Health Care Services. Accountability mechanisms are already in place.

As detailed in the report the injunction itself relies on, the County is working to establish more mental health beds. The County is not "unwilling or unable" to fulfill its goals and obligations under WIC § 17000. [1-ER-121.]

(b) The ADA Claims Do Not Apply to the County

The injunction lumps the County with the City for the ADA claims. [1-ER-123-124.] The complaint did not name the County on those claims, and the motion did not either. [12-ER-2871-2875 ¶¶ 167-183; 8-ER-1738-1739.] The injunction cannot be based on claims not pleaded. *Pac. Radiation Oncology*, 810 F.3d at 633 (court's authority limited to "case or controversy before it").

In any event, Skid Row is within the incorporated territory of the City of Los Angeles. The City has authority over, and responsibility for, municipal affairs

within its borders. Cal. Const. art. XI, §§ 5(a)-(b), 7. The County's authority is only in the *unincorporated* areas of the County. *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 274-75 (1993) ("[T]he California Constitution specifies that the police power bestowed upon a county may be exercised 'within its limits,' i.e., only in the unincorporated area of the county." (citation omitted)); *Cty. Sanitation Dist. No. 2 v. County of Kern*, 127 Cal. App. 4th 1544, 1612 (2005) (cities "are necessarily outside the jurisdiction and authority of County; County's authority extends only to the unincorporated areas").

VII. THE FACTUAL FINDINGS ARE INAPPLICABLE

A preliminary injunction is an extraordinary and drastic remedy and "should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted) (noting "the requirement for substantial proof is much higher" for a preliminary injunction than for summary judgment). Each of the elements of a preliminary injunction must be established by competent evidence. *Id.* (reversing preliminary injunction for "insufficient evidence" to establish a likelihood of prevailing on the merits); *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (reversing preliminary injunction for insufficient evidence of irreparable injury). The requirements for a plaintiff's factual showing are even

more stringent when a district court is imposing a preliminary injunction on local government. *Thomas*, 978 F.2d at 508.

This injunction does not rely on appellees' evidence. Indeed, the district court disregarded the County's evidentiary objections by disavowing any reliance on appellees' evidence. [1-ER-99 at n.411.] Instead, the court compiled newspaper articles and editorials, law review articles, and other publicly available documents that were not a part of the record. The court also relied on two reports, one issued by LAHSA and the other by UCLA's Luskin Center.

Given that the injunction is 110 pages and contains 497 footnotes, it is evident that the court had started drafting the order before even receiving appellees' motion or appellants' and intervenors' oppositions. Indeed, the injunction was issued *one day* after the oppositions were filed.

Setting aside the fact that the County did not have notice that the injunction would rely on any of the foregoing sources,[14] none of the "evidence" cited in the

[14] A preliminary injunction may be issued "only on notice to the adverse party." Fed. R. Civ. P. 65(a)(1). This notice requirement "has constitutional as well as procedural dimensions." *Qureshi v. United States*, 600 F.3d 523, 526 (5th Cir. 2010) (citation omitted). The defendant must be given a fair opportunity to oppose the application. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 432 n.7 (1974). The district court issued this injunction without giving the County an opportunity to truly oppose, because the injunction did not track appellees' motion. This is not only highly unusual, it also exceeds the court's authority and violates Rule 65(a)(1). *Qureshi*, 600 F.3d at 526 (vacating injunction for lack of notice).

injunction relates to *appellees*, as opposed to the general population (and protected classes appellees do not allege they belong to), or to the County, as opposed to society at large. There is no evidence connecting the County (or appellees) to redlining, construction of freeways, the "containment zone" in the 1970s, or what the court refers to as organized abandonment in housing. [1-ER-37-64.]

The evidence that does relate to the County is flawed. For example, the injunction questions why the County has not declared a local emergency. [1-ER-140.] But the County has done just that. In 2015, the County created its Homeless Initiative with 47 criteria and $100 million. [5-ER-932-933 ¶¶ 6-9.] In 2016, it declared a local emergency and set the stage for Measure H. [*Id.*; *see also* 2-ER-343-358.] In 2017, Measure H was adopted by a vote of the people, generating over $350 million per year and dramatically increasing the services provided to PEH. [5-ER-932-933 ¶¶ 6-9.] The County filed the emergency declaration with the court on April 26, 2021. [2-ER-343-358.]

The injunction also states that, in Manhattan Beach, "Los Angeles County employed eminent domain to take property from Black families and turn the land into a whites-only park." [1-ER-43; 1-ER-51-53.] That is not the case. *The City of Manhattan Beach* employed eminent domain in 1929 to seize that property and turn it into a park. When the County realized it now had ownership of the

property, the Board of Supervisors passed a motion to return the property to the descendants of the original owners.[15]

These are not the only examples. What they highlight, however, is the fundamental problem with issuing an injunction based not on evidence but on news articles.

VIII. THE INJUNCTION IS CONTRARY TO THE PUBLIC INTEREST

The injunction acknowledges that, "[w]hen, as here, 'the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.'" [1-ER-125-126 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017)).] It also correctly places the burden on appellees, who "must demonstrate that the public interest favors granting the injunction 'in light of [its] likely consequences [that are not] too remote, insubstantial, or speculative and [are] supported by evidence.'" [1-ER-126.] Appellees did not even mention public interest in their motion. [8-ER-1696-1741.]

The County, meanwhile, explained why the injunction would *not* benefit PEH or the public more generally, as did intervenors. [3-ER-471-477; 4-ER-849-867; 7-ER-1556-1586.] In the County's filing and supporting declaration, it

[15] http://file.lacounty.gov/SDSInter/bos/supdocs/157487.pdf#search=%22bruces%20beach%22; http://file.lacounty.gov/SDSInter/bos/supdocs/157555.pdf#search=%22bruces%20beach%22

explained that its policies are the product of community meetings, information gathering from relevant stakeholders, and expert analysis. [5-ER-934-935 ¶¶ 16-20.] In contrast, the court's injunction emerged in a vacuum with limited guidance from appellees—who are not elected officials, policy experts, or advocates for PEH.

The United Way of Greater Los Angeles ("UWGLA") also weighed in to express concern. [7-ER-1482-1489; 9-ER-2122-2124.] UWGLA explained why it did not support the approach in the injunction: (i) "[t]he focus on specific locations—like Skid Row—is not aligned with the priorities and guidance of public health and housing experts"; (ii) "Measure H and Proposition HHH are fueling meaningful progress and should not be derailed by diverting resources to a singular effort"; and (iii) "[s]hifting resources from permanent housing solutions to pay for short-term shelter would be deeply counterproductive." [*Id.*]

Intervenors submitted declarations from third-party experts who corroborated some of UWGLA's concerns: a law professor and homeless advocate, the president of a nonprofit urban research organization, a clinical-community psychologist and founder of the Pathways Housing First Institute, and the Director of Public Policy and Community Organizing at Community Housing Partnership. [3-ER 471-477; 4-ER-849-867.] These declarations were all ignored in the injunction.

Intervenors, who are advocates, put it best: "Plaintiffs ask this Court to grant an incredibly broad, mandatory injunction that would require the City and County to radically reshift their priorities and practices away from a needs-based system of care and towards a location-based model of housing, and then deploy its police force to enforce an anti-camping ordinance against some of the most vulnerable members of the community." [4-ER-862:14-19.]

Intervenors expressly informed the court that the requested relief "would have a significant negative impact not only on people living in Skid Row, but also to those people experiencing homelessness outside of Skid Row, and the community as a whole. . . . [I]t will elevate form over substance, offers of shelter over real housing solutions." [4-ER-862:25-863:3.] It would "undermine any progress currently being made towards actually finding housing solutions for people on Skid Row and throughout Los Angeles." [4-ER-863:3-5.]

Intervenors echoed the County's concerns. In its opposition to the motion, the County detailed how the injunction would actually create harmful inequities for PEH. [5-ER-935-937 ¶¶ 21-28.] The County also explained why ignoring the need for permanent housing would hurt, rather than help, PEH. [5-ER-937-938 ¶¶ 29-33.]

The County submitted additional declarations when it asked the district court for a stay. [3-ER-441-470.] The head of the Homeless Initiative stated that the

injunction "would require the County to close almost all interim housing sites currently funded with Measure H to redirect the funding to Skid Row" and that "[a]ny diversion of Measure H resources would be fundamentally and catastrophically detrimental to the County system of homeless service-delivery and would likely create inequities throughout the County." [3-ER-443-444 ¶¶ 9-10.]

According to the Homeless Initiative, the alternative to closing the interim housing sites would be exiting at least 2,054 households (the number of unsheltered Skid Row households in the 2020 Greater Los Angeles Homeless Count) from interim housing sites and refilling the sites with unsheltered households from Skid Row. [3-ER-444 ¶ 11.] Due to the lack of permanent housing destinations, the majority of the exited clients would have to return to the streets. [*Id*.] This is a perverse outcome that the injunction glosses over; it "perpetuate[s] a revolving door from the streets to interim shelters and back again, which will only make a difficult situation worse." [3-ER-445 ¶ 14.]

While the County appreciates the district court's commitment to finding solutions to homelessness, the injunction is simply not the right approach. The submissions of various *amici curiae* demonstrate why politically accountable elected officials who take into account the interests of all stakeholders must make policy. Each *amicus* brief advanced a different approach. While NAACP-Compton, CORE-California, and Committee for Safe Havens proposed a

"Marshall Plan" similar to "the one used to house and feed Europe after WWII," the Downtown Women's Center emphasized that temporary solutions could not come "at the expense of permanent housing." [9-ER-2076-2088; 10-ER-2250-2254.] The Center in Hollywood, meanwhile, advocated for "treat[ing] people in the environment in which they live." [9-ER-2208.]

The County has weighed all interests and implemented a regional approach to addressing homelessness, with an emphasis on individualized outreach and a balance of interim and permanent housing solutions. These are proven strategies, developed with community stakeholders and homeless service providers. The injunction disregards the County's discretionary decision-making and substitutes the court's judgments for those of the elected officials, and in the process, lands on a solution that is no solution at all.

If the County were to comply with the injunction, sheltered and unsheltered PEH living throughout Los Angeles County would be negatively impacted. Even the target population, PEH in the Skid Row area, could be harmed. Under the terms of the injunction, if PEH do not accept offers of shelter, they will be subjected to criminal enforcement. Even if they do accept, they might be displaced from their chosen locations and communities, which will interfere with social connections and relationships with the outreach workers who work tirelessly to help break the cycle of poverty and homelessness. [*See* 2-ER-295-296 ("We also

have to understand that when this Court orders and when the plaintiffs ask for the clearing of Skid Row, we are not talking about eliminating structural racism. We are talking about continuing the policies that got us here in the first place. . . . This case is about gentrification. It has always been about gentrification.").]

Appellees did not address the public interest in their motion, and the district court gave it short shrift in the order. [8-ER-1696-1741; 1-ER-125-127.] While the court acknowledged intervenors' concerns, it disregarded them promptly. [1-ER-126.] The County asks that the Court not do so here.

IX. APPELLEES DID NOT ESTABLISH IRREPARABLE HARM

"The 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." *Hodgers-Durgin*, 199 F.3d at 1042 (citing *Rizzo* and *Lewis*); *Am. Passage Media Corp.*, 750 F.2d at 1473 ("Regardless of how the test for a preliminary injunction is phrased, the moving party must demonstrate irreparable harm.").

The injunction states: "No harm could be more grave or irreparable than the loss of life." [1-ER-125.] The order denying the County's stay application doubles down on this theory. [1-ER-8.]

The County appreciates that the homelessness crisis requires swift and decisive action. But appellees have not established, or even alleged, that they are

at risk of "loss of life." Indeed, appellees dedicated only 10 lines of their motion to irreparable harm. [8-ER-1740:17-27.] All those lines do is cite to the district court's statements, and to one comment a City Councilmember purportedly made. [*Id*.] The law requires more than that before a federal court can direct local government to act in a specific way, particularly when its charted course is condemned by local government, advocates, and the very people it purports to protect.

X. APPELLEES DID NOT DEMONSTRATE THAT THE BALANCE OF EQUITIES TIPS IN THEIR FAVOR

A plaintiff seeking an injunction must show that the balance of equities tips in their favor. *Winter*, 555 U.S. at 20. The injunction holds that appellees satisfied this factor by demonstrating the "likelihood of a deprivation of their constitutional rights." [1-ER-125.] Because appellees have *not* demonstrated that the County has deprived them of any of their constitutional rights, that is not the case.

The balance of equities tips in favor of the County here. The County has an interest in policies that are grounded in reason and research, and that serve *all* its residents. That is why the County has a needs-based, countywide approach to homelessness. The impact on the County is significant:

- Implementation would interfere with the provision of services, which are provided throughout the County (not just in Skid Row);

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

Under these circumstances, the balance of equities tips in the County's favor. [3-ER-441-449; 3-ER-456-470; 5-ER-930-940.]

XI. CONCLUSION

The district court's injunction is grounded in legal theories not pleaded in the complaint or advanced in appellees' motion, violates separation of powers, exceeds the district court's authority, and is predicated on constitutional and

statutory violations appellees did not establish. The County respectfully requests that the Court reverse and vacate the preliminary injunction and remand for further proceedings.

DATED: June 3, 2021

MILLER BARONDESS, LLP

By: /s/ Mira Hashmall
MIRA HASHMALL
Attorneys for Appellant
COUNTY OF LOS ANGELES

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Fed. R. App. P. 32(g)(1), the attached brief complies with the type-volume limitation of Ninth Circuit Rule 32-1(a) because it contains 13,289 words, as indicated by the word count function in Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced Times New Roman typeface in 14-point font.

DATED: June 3, 2021

MILLER BARONDESS, LLP

By: /s/ Mira Hashmall
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STATEMENT OF RELATED CASES

The following cases in this Court are deemed related to this case pursuant to Ninth Circuit Rule 28-2.6: Nos. 21-55404 and 21-55408. These three appeals were consolidated by this Court on May 13, 2021.

DATED: June 3, 2021

MILLER BARONDESS, LLP

By: /s/ Mira Hashmall
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On June 3, 2021, I served true copies of the following document(s) described as:

APPELLANT COUNTY OF LOS ANGELES' OPENING BRIEF

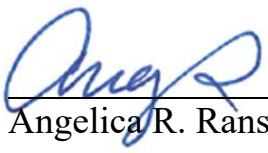
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 3, 2021, at Los Angeles, California.



Angelica R. Ransom

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Service List for Case: 21-55395 LA Alliance for Human Rights et al v. County of Los Angeles et al

Current Associated Cases: 21-55408 LA Alliance for Human Rights et al v. Cangress et al, 21-55404 LA Alliance for Human Rights et al v. City of Los Angeles et al

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