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

INTERVENOR'S OPENING BRIEF

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INTRODUCTION

Over the course of 110 pages, the District Court in this case issued an order outlining the history of racism that is interwoven with the history of Los Angeles. Beginning with a history of redlining, the Court used its pulpit to tell a harsh narrative of "structural racism" that continues today. While Intervenor disputes some of the history and evidence relied on by the Court, the overall narrative is accurate and damning. Today's housing crisis is the result of decades of policies that systematically stripped communities of color and specifically Black people of wealth, security, and opportunity. These policies include redlining by the Federal Housing Administration in the 1930s to eminent domain by the Federal Government and the construction of freeways that divided or even decimated Black neighborhoods in the 1960s, from the creation of a "containment policy" that preserved thousands of affordable housing units in Skid Row but also aimed to keep poor (not just homeless) people concentrated in Skid Row, to the Safer Cities Initiative in Skid Row, which flooded the neighborhood with Los Angeles Police Department officers and was an explicit effort to reverse the "containment policy" and gentrify the neighborhood. As the Court elucidated, all of these racist policies, and countless others--mass incarceration, discrimination in employment, housing, and public accommodation, forced displacement-- have helped create the modern day homelessness crisis in Los Angeles.

Yet the District Court's recognition of the City's history of racism does not mean that the order issued by the Court will do anything to actually unravel the decades of racist policies identified by the Court. Nor does it mean that the case itself has anything to do with redressing the City's racist past. . The case was brought by a group of plaintiffs who primarily own property in Skid Row, and an organization, the LA Alliance for Human Rights, a new group founded by the longtime general counsel of an property owners' association in Skid Row. Far from seeking to redress the injuries of unhoused people in Skid Row or eradicating the harms of decades of structural racism, the group seeks redress from the harms they allege they have suffered as a result of other people experiencing homelessness.

And the injunction issued by the Court has more to do with the requests of the Plaintiffs than it does with unraveling the City's racist history. The Court, without legal support or evidence in the record, issued a sweeping mandatory injunction that will do nothing to solve the City's homelessness crisis, let alone unravel the City's racist past. Because the District Court abused its discretion by issuing the injunction, Intervenor requests the Court vacate the order.

JURISDICTIONAL STATEMENT

Because this action includes federal claims made under 42 U.S.C. §§ 1983 and 12131, the District Court had subject matter jurisdiction over it pursuant to 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1367(a). The District Court entered a preliminary injunction against the City of Los Angeles and the County of Los Angeles on April 20, 2021. The Intervenor, Cangress, dba Los Angeles Community Action Network, filed a timely notice of appeal on April 23, 2021. Fed. R. App. P. 4(a)(1). This Court has jurisdiction over the Intervenor's appeal pursuant to 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE CASE

a. Procedural History

On March 10, 2020, Plaintiffs—eight individuals and a newly formed organization, LA Alliance for Human Rights (hereinafter, "LA Alliance"), sued the City and County of Los Angeles over the effects of homelessness on downtown property owners and residents. 12-ER-2788-2879. Specifically, they alleged that the City and County had allowed public and private nuisances in Skid Row and surrounding areas. 12-ER-2865-2867. They also brought claims under the Americans with Disabilities Act and constitutional claims related to the harm they allege they experienced as a result of the City and County's failure to solve the homelessness crisis. 12-ER-2872-2874. None of the individual plaintiffs or members of the LA Alliance identified in the pleadings were unsheltered. 12-ER-

2831-2859. Of the eight individual plaintiffs, the vast majority are significant property owners in Skid Row. *Id.* Many of the plaintiffs and representative members of the LA Alliance are also downtown developers, landlords, and business owners who sit on the board of the Central City East Association, which manages the Business Improvement District in Skid Row.[1]

Immediately after the complaint was filed, and although the complaint was unrelated to COVID-19, the District Court ordered a status conference to discuss the impending COVID-19 crisis. Los Angeles Catholic Worker and Los Angeles Community Action Network moved to intervene before the first hearing in the case, to ensure that unhoused voices were represented in the proceedings. 11-ER-2774-2780. There were no objections from Defendants or Plaintiffs, and the District Court granted the motion to intervene as a matter of right, noting that "Proposed Intervenors are the only party that represents the interests of unhoused persons."[2] *Id.* at 2778.

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[1] In 2015, Intervenors Los Angeles Community Action Network and Los Angeles Catholic Worker sued the Central City East Association and the City of Los Angeles, alleging that the City and the Association colluded to seize and destroy unhoused people's belongings, in violation of a federal injunction related to homeless people's belongings that was issued in *Lavan v. City of L.A.*, 797 F. Supp. 2d 1005 (C.D. Cal. 2011), *upheld Lavan v. City of L.A.*, 693 F.3d 1022 (9th Cir. 2012). *See Los Angeles Catholic Worker v. Los Angeles Downtown Industrial District*, Case No. CV 14-7344 PSG (AJWx) (filed September 19, 2014).

[2] Another group, Orange County Catholic Worker was also allowed to intervene because the Notice of Related Case filed by Plaintiffs to bring this case before

On March 19, 2020, the Court held its first hearing. At that time, the Court requested and the parties agreed to ex parte communications in furtherance of settlement. The parties also agreed to stay the litigation in order to discuss settlement of the case. Over the next two months, the District Court held a number of status conferences in the case. The status conferences were routinely attended by members of the City Council and County Board of Supervisors, as well as other public officials, service providers and community activists, who were given a chance to address the Court as they saw fit. None of these status conferences were formal evidentiary hearings; there was no testimony under oath given and no opportunity to cross-examine anyone speaking to the Court.

On May 15, 2020, less than two months after the case was filed, before any party answered, while the litigation was stayed and the City and County were grappling with the effects of the COVID-19 pandemic, the District Court *sua sponte* issued a preliminary injunction, mandating that Defendants relocate all individuals "camped within 500 feet of an overpass, underpass, or ramp," by no later than September 1, 2020. 11-ER-2574-2580. Defendants City and County and Intervenors all objected to this order, including most significantly, objecting to the

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Judge Carter expressly noted that any decisions issued in this case could directly impact the proceedings in *Orange County Catholic Worker, et. al. v. County of Orange, et al*., Case No. 8:18-cv-00155-DOC-JDE (C.D. CA). 11-ER-2781-2786.

reallocation of resources away from other parts of the City based on priorities unilaterally set by the Court. 11-ER-2517-2573. Intervenors expressed strong concern that the "offers of shelter" would result in the criminalization of people living near the freeways. Despite the significant objections from all parties except Plaintiffs, the Court entered the sua sponte order on the preliminary injunction on May 22, 2020. 11-ER-2574-2580.

Rather than adhering to the preliminary injunction, the City and County began negotiating to reach an agreement on funding of new shelter solutions, which resulted in an agreement to fund and create 6,700 new shelter "solutions. 7 ER 1602. Only then did the District Court agree to vacate its sue sponte order with prejudice, but retained the right to enter the order again if the parties did not fulfill their obligations under the agreement. Plaintiffs and Intervenors were not party to those settlement discussions, which took place only between the Defendants and the Court.

b. Plaintiffs' Preliminary Injunction Motion

In March 2021, the LA Alliance filed a Notice of Intent to File a Preliminary Injunction, indicating its intention to unilaterally end the stay of litigation that had been in place for over a year and instead, bring a motion for a preliminary injunction. 9-ER-2205-2206. In response, the County filed a motion to dismiss,

and the District Court issued an order, formally lifting the stay. 9-ER-2089-212; 7-ER-266.

On April 12, 2021, Plaintiffs filed their notice of motion and motion for a preliminary injunction, based on five of the fourteen causes of action alleged in the complaint. 8-ER-1696-1741. Plaintiffs' injunction focused entirely on Skid Row and was predicated on the factual assertion that Defendants City and County had created and maintained a "containment policy" in Skid Row that concentrated homeless people in Skid Row. Based on this factual allegation, Plaintiffs moved for a preliminary injunction alleging: 1) the County violated a mandatory duty to provide housing to people experiencing homelessness because "housing is healthcare"; 2) the City and County violated Plaintiffs' substantive due process rights by maintaining a "containment policy" in Skid Row; 3) the maintenance of this "containment policy" violated property owners' and residents' procedural due process rights; 4) the City and County maintained a public and private nuisance in Skid Row; and 5) the City violated the Americans with Disabilities Act (ADA) because homeless people's tents blocked sidewalks in parts of Skid Row.

Plaintiffs requested a sweeping mandatory injunction, asking the Court to "clear" Skid Row, by requiring the City and County to offer shelter or housing to everyone in Skid Row, require the City to "clear sidewalks, public streets and public places" throughout the neighborhood, and then order it to enforce its anti-

camping ordinance for the pendency of the case. 8-ER-1699. Plaintiffs argued that the request was warranted largely because of the impact of homelessness and homeless people on the individual plaintiffs and the housed members of the LA Alliance. In support of its preliminary injunction, the LA Alliance included declarations from their attorney, six individual plaintiffs and ten members of the LA Alliance. 9-ER-1998-2075. For the first time, in conjunction with its motion, the LA Alliance also included declarations from people experiencing homelessness, who were unhoused and living on the streets of Skid Row and who declared themselves to be members of the organization. *Id*. They also included a declarations from Donald Stier, the attorney for the Central City East Association, which runs the Business Improvement District in Skid Row and who founded the LA Alliance in 2019 and Reverend Andy Bales, a board member of the Central City East Association and executive director of the Union Rescue Mission, a large homeless shelter in Skid Row. *Id*.

Intervenors, along with Defendants City and the County of Los Angeles, filed oppositions to the motion on April 19, 2021. 4-ER-849-867; 7-ER-1556-1586; 7-ER-1587-1632. Intervenors focused primarily on the impact of the preliminary injunction on unhoused people living in Skid Row, who would be subjected to the "offers of shelter" and increased enforcement, and whose interests Intervenors were allowed to intervene to protect. 4-ER-867. In opposition to the

Motion for Preliminary Injunction, Intervenors filed numerous expert declarations regarding the harm that would likely result from an order requiring the City and County to offer shelter and housing to everyone in Skid Row in a limited amount of time. 3-ER-471-664; 4-ER-666-848; 4-ER- 868-928. The County also put forth significant evidence from the CEO of its Homelessness Initiative related to the County's strategy to address the homelessness crisis. 5-ER-930-1151; 6-ER-1415; 7-ER-1417-1481. Finally, the City put forth evidence from individuals within the City related to its response to homelessness. 7-ER-1645-1668.

Less than 12 hours after Defendants and Intervenors filed their oppositions, the District Court issued a sweeping 110-page order, granting a mandatory preliminary injunction against the City and County. 1-ER-33-142. The order barely references the motion brought by the Plaintiffs and opposed by Defendants and Intervenors. The order differs not only in terms of the relief it granted, which is both greater and less expansive than the relief requested by the Plaintiffs; the basis for the relief differs significantly, and at times, contradicts the claims brought by the Plaintiffs. Although Plaintiffs raised no claims related to racial discrimination, the majority of the 110 page order focuses on "structural racism" and the history of redlining, eminent domain, and demolition of Black neighbors to construct infrastructure, all of which has helped cause the modern homelessness crisis.

Instead of reviewing the evidence and arguments made by Plaintiffs and the expert evidence put forth in opposition to Plaintiffs' motion, the District Court raised brand new arguments and selectively addressed only the evidence it saw fit to collect during the pendency of the case. The Court focused on harms it identified, rather than the ones pled by Plaintiffs. The Court all but ignored Defendants' and Intervenors' opposition and evidence. The Court did not limit itself to granting relief that could plausibly redress the injuries and allegations of the Plaintiffs, or even the newly-identified unhoused members of the LA Alliance. The Court focused on the increased mortality rates for people experiencing homelessness, and Black people specifically, but failed to take into account evidence that only permanent housing will effectively address the significant health disparities facing people experiencing homelessness.

To support its sweeping order, the Court cited to sources ranging from newspaper editorials to twitter posts, with quotations from everyone from politicians to attorneys in this case. The order did not, however, reference or address evidence presented by Defendants and Intervenors, or even the Plaintiffs themselves. Among the provisions of the sweeping, mandatory injunction, the Court ordered:

1. The City to place one billion dollars in Escrow and identify all funding streams related to the funding, within seven days;

2. The City and County to cease the cessation of sales transfers by lease or covenant of all public property held by the City and County, pending the creation of report about existing property that could be used for housing or shelter;
3. offer shelter or housing to all people living in Skid Row within 90 days for "unaccompanied women and children; within 120 days for families; and within 180 days to the general population;
4. The County to offer and if accepted, provide shelter or housing and treatment to all individuals within Skid Row who are in need of "special placement;"
5. The City and County to conduct audits and prepare reports on issues ranging from funding streams for homelessness, housing, mental health, and substance abuse treatment programs in the City and County of Los Angeles;
6. Both defendants to report back to the court about specific actions to address the structural barriers that cause a "disproportionate number of people of color to experience housing insecurity and homelessness;"
7. The City to conduct "investigations and prepare a report" about all developers funded by Proposition HHH.

All of the mandatory provisions had deadlines running from ten days to 180 days from the issuance of the order.

Following the issuance of the preliminary injunction on April 20, 2021, the Court sue sponte issued a "clarification," which explained, among other issues, that the cessation of property sales ordered by the Court did not apply to property that was already being transferred when the order issued. 1-ER-32.

On April 22 and 23, the County, City, and Intervenor LA CAN filed notices of appeal. The City and County petitioned the District Court for a stay of the injunction pending appeal. 2-ER-401; 12-ER-2880-2881. The District Court granted time-limited stays of the billion dollar escrow requirement and the cessation of the transfers of property, ordered a hearing to permit a response from the City, County, and all interested third parties on "structural racism," and otherwise denied the stay. 1-ER-2-31. The City and County sought an ex parte stay from this Court. This Court granted an administrative stay, consolidated all of the appeals, and ordered an expedited briefing schedule.

ISSUES ON APPEAL

1. Whether the District Court erred in finding that plaintiffs were likely to succeed on the merits of its constitutional and state law claims;
2. Whether the District Court abused its discretion by issuing a mandatory injunction that will radically alter the City and County's provision of

homeless services, despite uncontroverted evidence in the record that doing so is against the public interest;

3. Whether the preliminary injunction issued by the district court is improper because it is impermissibly broad and constitutes an advisory opinion.

STANDARD OF REVIEW

A preliminary injunction is an "extraordinary remedy never awarded as of right." *Garcia v. Google, Inc*., 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008)). A party seeking a preliminary injunction must demonstrate (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury in the absence of an injunction; (3) that the balance of equities tips in the moving party's favor; and (4) that an injunction is in the public interest. *Id.* In evaluating these factors, the Ninth Circuit has adopted a "sliding scale approach," whereby "a stronger showing of one element may offset a weaker showing of another, as long as plaintiffs 'establish that irreparable harm is likely.'" *Doe v. Kelly*, 878 F.3d 710, 719 (9th Cir. 2017) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

A mandatory injunction, which requires the enjoined party to take actions before a final adjudication of the case on its merits, "goes well beyond simply maintaining the status quo pendente lite [and are] 'particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson*

v. U.S., 612 F.2d 1112, 1114 (9th Cir. 1979)). Therefore, where, as here, a party seeks (or a Court grants) a mandatory injunction, the burden to demonstrate that the injunction is proper is "doubly-demanding." *Garcia*, 786 F.3d at 740. The moving party must "establish that the law and facts clearly favor her position, not simply that she is likely to succeed" and if the moving party fails to make such a showing, the Court should deny the requested relief. *Id.* As the Ninth Circuit has plainly stated, "mandatory injunctions should not issue in 'doubtful cases.'" *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011); *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co*., 571 F.3d 873, 879 (9th Cir. 2009).

The review of a decision by a district court to grant a preliminary injunction is limited to whether the district court abused its discretion in granting the preliminary relief. *Garcia v. Google, Inc*., 786 F.3d 733, 739 (9th Cir. 2015) (en banc). The Court's legal reasoning is reviewed de novo; a legal error is a per se abuse of discretion. *Mastro v. Rigby*, 764 F.3d 1090, 1097 (9th Cir. 2014); *U.S. v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY FINDING THAT PLAINTIFFS WERE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

The District Court committed legal error when it found that Plaintiffs were likely to succeed on a number of causes of action ranging from constitutional claims to state law claims, including a number of claims Plaintiffs did not actually plead or argue in the motion (and excluding other claims Plaintiffs did raise).

a. Plaintiffs Are Not Likely To Succeed On The Merits Of The Constitutional Claims

The District Court found that the City and County were likely to be held liable for violations of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution. The Court ruled that Plaintiffs were likely to prevail based on a number of discrete legal theories, ranging from state-created danger to equal protection related to racial discrimination. The record in this case does not support the sweeping constitutional rulings issued by the Court. Plaintiffs are not likely to succeed on the merits of these claims, let alone "establish[ed] that the law and fact clearly favor" their position. *Garcia,* 786 F.3d at 740.

i. The District Court Erred in Finding that the City and County are Likely Liable under a State-Created Danger Theory

The District Court found there was a strong likelihood that the City and County of Los Angeles are liable for violations of the Fourteenth Amendment

under a "state-created danger" theory. To support its finding, the Court again departed from the Plaintiffs' theory of the case, which focused on the danger to individual property owners in Skid Row. *See* 1-ER-104-108; *see also* 12-ER-2792-2793 ¶ 5-7, 2813, 2818, 2831-2850; 9-ER-1998-2046. Instead, the Court shifted focus to the dangers facing people experiencing homelessness, 1-ER-105-107, but ignored all of the evidence submitted in opposition to the requested preliminary injunction that demonstrated the deficiencies, if not the near complete failure, in the Court ordered directives. Specifically, the Court found that the City and County's "history of structural racism, spanning over a century, demonstrates that L.A.'s homelessness crisis, and in particular, the impact of this crisis on the Black community, is a state-created disaster." 1-ER-105. Even if this finding is true, which Intervenor certainly does not dispute, it does not follow that an injunction against the City and County could have been issued on this basis, in this case. *See Garcia*, 786 F.3d at 740.

First, courts have held that the state-created danger theory "does not create a broad rule that makes state officials liable under the Fourteenth Amendment whenever they increase the risk of some harm to members of the public." *Huffman v. Cnty. of L.A.*, 147 F.3d 1054, 1061 (9th Cir. 1998). Instead, the Plaintiffs must identify an "affirmative act" the City has undertaken, and that "affirmative act must create an actual, particularized danger." *Hernandez v. City of San Jose*, 897

F.3d 1125, 1133 (9th Cir. 2018). The City's affirmative conduct must have placed Plaintiffs "in a worse position than that in which he would have been had the state not acted at all." *Pauluk v. Savage*, 836 F.3d 1117, 1125 (9th Cir. 2016) (finding plaintiffs failed to sufficiently state a claim based on "state-created danger," where the allegation is that the police department chose a less effective crime control strategy over a more aggressive strategy, since the proper comparison is "whether they would be better off if the state had not acted at all"). And for purposes of Plaintiffs' Section 1983 claims, the affirmative act "must be the proximate cause of the Section 1983 injury." *Huffman*, 147 F.3d at 1059.

Plaintiffs' sole allegation to support its "state-created danger" theory is the vague assertion that the City and County "created the incredible danger for those in and around the Containment area;" the only "affirmative act" Plaintiffs identified was the creation of the "containment policy" in 1976, which was a land use decision that led to the preservation of affordable housing in Skid Row. 8-ER-1706-1707. Plaintiffs do not provide any explanation, nor can they, about how a decision made 40 years ago and which has long been repudiated through implicit actions and explicit legislative decrees—could constitute a particularized, "state-created" danger that could give rise to a constitutional claim under the Fourteenth Amendment. A general land use policy is ordinarily not the kind of "affirmative act" that gives rise to a claim based on state-created danger, and Plaintiffs make no

argument nor provide any evidence to show why any exception should apply here. In addition, the result of the so-called "containment policy" was the preservation of thousands of affordable housing units. Certainly Plaintiffs cannot assert that the preservation of thousands of affordable units of housing would have left any Plaintiff "in a worse position than that in which he would have been had the state not acted at all." *Johnson v. City of Seattle,* 474 F.3d 634, 641 (9th Cir. 2007).

Similarly, the District Court identified additional actions by the City and County that it found led to "state-created danger" for unhoused residents in Skid Row: 1) "the deliberate, political choice to pursue the development of long-term supportive housing at the expense of interim housing," 2) suspending HHH deadlines, and 3) ramping down emergency funding for Project Roomkey despite the availability of federal funding to support the program. 1-ER-106. Even assuming the individual members of the LA Alliance would have benefited from these policies – a proposition that is speculative at best – the test for state-created danger is not whether a plaintiff would have been better off had the City made better decisions or pursued more effective policies. These decisions are exactly the types of decisions the Court has identified as not giving rise to liability under a "state-created danger" theory.[3] *See Johnson*, 474 F.3d at 641.

[3] On the other hand, Plaintiffs' requested relief from the district court—an order requiring the City to offer "shelter" to unhoused people and then "clear sidewalks,

The "state-created danger" theory is an exception to the general rule that the state is not liable for the failure to protect its citizens from harm. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs*., 489 U.S. 189, 196 (1989). None of the "affirmative acts" identified by Plaintiffs or the Court fit within the "state-created danger" exception that gives rise to government liability, and the District Court erred in finding Plaintiffs were likely to succeed on the merits of this claim.

ii. There Is No Evidence To Support The "Special Relationship" Exception Identified By The Court

The District Court also found that Plaintiffs were likely to succeed based on a "special relationship exception" to the general rule that "the Fourteenth Amendment . . . generally does not confer any affirmative right to government aid." 489 U.S. 189, 202 (1989); *see also Patel v. Kent Sch. Dist*., 648 F.3d 965, 971 (9th Cir. 2011). This theory, not raised by Plaintiffs, is predicated on a finding that the state has a "special duty' to protect individuals it "takes into its custody and holds . . . against his will." 1-ER-108-09 (quoting *DeShaney*, 489

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public streets and public areas" and prohibit camping in the designated areas, would actually be analogous to the state-created dangers prevented by the district court in *Santa Cruz Homeless Union v. Bernal*, 2021 WL 222005 (N.D. Cal. Jan. 20, 2021) (granting preliminary injunction where the City placed unhoused residents at a known risk, including where, for example, local governments forcibly removed unhoused individuals, in violation of Centers for Disease Control guidelines that prevent the displacement of people living in homeless encampments to congregate shelters or into other communities).

U.S. at 199–200). According to the District Court, the City's "containment policy" sufficiently limited the personal liberties of people experiencing homelessness to give rise to a "special relationship" previously recognized only in the context of incarceration or institutionalization. *See e.g.*, *Patel*, 648 F.3d at 973.

The inquiry into whether there is a special relationship between the state and a party hinges on "whether the City or County has a constitutional duty arising from 'the limitation which the state has imposed on his freedom.'" 1-ER-110. To that end, the Court found that, "with the inception of the containment policy, enforced by the use of floodlights, physical barriers, and policing, the City effectively created such 'restraints of personal liberty as to establish a special relationship between the homeless population and the state." *Id.*

Even assuming the "special relationship" exception could apply outside of an institutional or carceral setting, the Court's theory of the creation of a "special relationship" between the City and unhoused individuals in Skid Row is not supported by any evidence in the record, and in fact, is contradicted by facts outlined in the Court's own order. By the Plaintiffs' own admission, the "containments policy" was officially repudiated by the Los Angeles City Council in 2016. 8-ER-1710-1711. This action was little more than a symbolic gesture, since the evidence in the record shows that the use of hostile architecture and

policing to keep poor people contained to Skid Row ended decades earlier.[4] Intervenors and Plaintiffs put forth evidence that, in the intervening years, the City's strategy was aimed at driving unhoused individuals from Skid Row, rather than keeping them restrained in the neighborhood. *See* 4-ER-877 ¶¶ 22; 8-ER-1715 n.18 (citing to Ellen Reese et al., *'Weak-Center' Gentrification and the Contradictions of Containment: Deconcentrating Poverty in Downtown Los Angeles*, 34.2 Intl' J. Urb. and Reg'l Rsch. 310, 316-17 (2010), available at https://eprints.soton.ac.uk/156315/1/IJURR_final.pdf).

To wit, none of the Plaintiffs allege that their movement was restrained in any way. On the contrary, the unhoused members of the LA Alliance explain why and how they came to Skid Row, ranging from enrollment in programs in Skid Row to moving to the neighborhood for community and support. *See e.g.*, 9-ER-2008 ¶ 3; 9-ER-2019 ¶ 2; 9-ER-2025 ¶ 2; 9-ER-2028 ¶¶ 2-4. Of the few individuals who indicate the city or county had any involvement whatsoever in their decision to come to Skid Row, no one alleges they are restrained in any way from leaving. There are simply no allegations, let alone evidence in the record, that supports the theory that the City and County constrained the personal liberty to such a degree as to create an exception to the well-established rule that individuals

[4] As noted above, the vast majority of unhoused individuals in Los Angeles are now outside of Skid Row.

are not generally entitled to government aid. *See DeShaney,* 489 U.S. at 202. There is certainly not enough evidence to give rise to a mandatory injunction. *See Garcia*, 786 F.3d at 740.

iii. Plaintiff LA Alliance Did Not Bring An Equal Protection Claim On Behalf Of Its Unhoused Members, Nor Can The Individual Plaintiffs Bring Such A Claim

The District Court found that the City and County's failure to act to dismantle structural racism resulted in the strong likelihood that they were violating the Equal Protection Clause. Whether or not this is true, basing the preliminary injunction on this claim is an abuse of discretion for the simple reason that Plaintiffs have not brought any claims in this case for equal protection violations on the basis of race. *See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.,* 810 F.3d 631, 636 (9th Cir. 2015) (upholding the denial of a request for preliminary injunction that was not encompassed by the allegations in the case); *see also Kaimowitz v. Orlando, Fla.,* 122 F.3d 41, 43 (11th Cir. 1997). In fact, Plaintiffs did not seek an injunction based on violations of the Equal Protection clause at all. *See U.S. v. Sineneng-Smith*, 140 S.Ct. 1575, 1579 (2020) ("[C]ourts are essentially passive instruments of government . . . They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties") (internal quotations omitted).

Plaintiffs' complaint does include an Equal Protection claim on behalf of property owners in Skid Row, alleging that the City treats Skid Row differently from other neighborhoods because it fails to enforce laws against unhoused people there to the same degree it enforces those laws elsewhere. 12-ER-2875-2876. This is a dubious claim, both in terms of law and fact, and Plaintiffs did not bring the motion for a preliminary injunction based on these allegations. Nor did any of the individual members of the LA Alliance and certainly none of the individual plaintiffs allege any concrete and particularized injuries fairly traceable to discrimination on the basis of race, let alone put forth any evidence to support such a claim. *See Ramos v. Wolf*, 975 F.3d 872, 896–97 (9th Cir. 2020) ("Determining whether invidious discriminatory purpose was a motivating factor 'as is required for an equal protection claim' demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available").

iv. Plaintiffs Do Not Have Standing To Bring Substantive Due Process Claims Based on Family Integrity

Similarly, the District Court found that "the City and County's discriminatory conduct has threated the family integrity of the Black unhoused." 1-ER-115 (citing Recommendations of the Ad Hoc Committee on Black People Experiencing Homelessness at 7, December 2018, available at https://www.lahsa.org/documents?id=2823-report-and-recommendations-of-the-ad-hoc-committee-on-black-people-experiencing-homelessness). On this basis,

the Court held that "th[e] 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. Again, Plaintiffs did not bring a claim based on substantive due process, let alone a claim based on the disruption of family integrity, nor would they have standing to do so. None of the unhoused members of the LA Alliance allege that they even have children, let alone that their family integrity was disrupted by decades of conduct by the City or County.[5] Moreover, because the Court repeatedly said it did not matter what individuals were offered, there is no reason to believe placement in a congregate shelter would somehow foster family integrity. As such, they cannot show they have a "personal stake in the outcome of the controversy." *Gill v. Whitford*, 138 S.Ct. 1916, 1923 (2018).

b. Plaintiffs Are Not Likely To Succeed On Their State Law Claims Under Welfare And Institutions Code Section 17000

Plaintiffs bring a state law claim against the County of Los Angeles, alleging that the County violated a mandatory duty to provide housing to low-income people in Los Angeles under Welfare and Institutions Code Section 17000. The

[5] The only allegations in this case that even relate to the family unit are allegations by *housed* members of the LA Alliance and the Individual Plaintiffs, all of whom are also housed, who allege that the overwhelming presence of unhoused residents in Skid Row have caused them harm. 12-ER-2842-2845, 2849-2850, 2856. This is, of course, not an allegation that could support a substantive due process claim based on a disruption of family integrity, and Plaintiffs do not argue that it could.

District Court agreed, finding not only that "the County has clearly failed to meet its minimum obligations under § 17000 to provide life-preserving, medically necessary services to the homeless," but also that the City was equally obligated to provide these services and was failing to meet these obligations. 1-ER-120-121. Neither ruling can withstand scrutiny.

Under Welfare and Institutions Code Section 17000, counties are required to "relieve and support" all low-income county residents who are not otherwise supported. Cal. Welf. & Inst. Code § 17000.[6] Courts have held that this provision contains two "[t]wo distinct obligations," "the obligation to financially support the indigent through general assistance and the obligation to provide health care." *Watkins v. Cnty. of Alameda*, 177 Cal. App. 4th 320, 330 (2009); *Hunt v. Super. Ct.*, 21 Cal. 4th 984, 1002 (1999) ("[A] county's duty to provide medical care pursuant to section 17000 is independent of other obligations imposed by that section, including the obligation to pay general assistance"); *Tailfeather v. Bd. of Supervisors* (1996) 48 Cal. App. 4th 1223, 1234 ("[S]ection 17000's reference to the counties' duty to 'relieve and support' indigents includes a requirement for provision of medical care"].).

[6] Welfare and Institutions Code Section 17000 states in relevant part that "every county and every city and county" shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein."

Plaintiffs do not argue, nor does the District Court find, that the County has failed to meet its obligations to financially support low-income Los Angeles County residents, as required under Section 17000. The County of Los Angeles, like most counties in the state, fulfills its obligations to "financially support the indigent" by providing cash assistance, or General Relief, to eligible residents of the county, the amount of which is set by a legislatively mandated formula. *See* Cal. Welf. & Inst. Code § 17000.5; *see also Oberlander v. Cnty. of Contra Costa*, 11 Cal. App. 4th 535, 542 (1992) (holding that any county that provides a minimum amount of financial assistance consistent with the formula set in Section 17000.5 has met its obligations under Section 17000).

Plaintiffs instead argue that the County's failure to provide housing violates the County's obligation to provide "medically necessary care to PEH in Los Angeles." 8-ER-1731. Specifically, they argue that "the County has an obligation to provide housing to PEH in Skid Row if the alternatives are conditions that put PEH at risk for their lives or risking 'significant illness,' 'significant disability,' or 'severe pain.'" 8-ER-1732 (citing Cal. Welf. & Inst. Code § 14059(a)). The District Court appears to have agreed. *See* 1-ER-120. The Court then went further, finding that "[e]ven outside of its inaction and inertia on the housing and shelter front, the County has also failed to meet its minimal duties to provide direct medical care that is 'reasonable and necessary" to protect life or prevent disability

or pain, based on the County's failure to provide sufficient public mental health beds. 1- ER-120-121. As discussed below, the District Court abused its discretion in ruling that Plaintiffs were likely to succeed on this claim.

i. Plaintiffs Lack Standing To Raise Claims Related To Welfare And Institutions Code Section 17000

First and fatally for Plaintiffs, they have not alleged, let alone put forth competent evidence in support of an allegation, that anyone in this litigation has Article III standing to pursue claims that the County failed to provide sufficient medical care under Section 17000. The vast majority of individual plaintiffs in this litigation are not indigent—in fact, they are prominent real estate developers and land owners in Skid Row. Ostensibly, the LA Alliance bases its standing to bring this claim on the fact that it has newly-identified members of the organization that are unhoused. Being unhoused does not, in and of itself, confer Article III standing to bring this claim.

None of the individual members allege they are eligible for medical services under Section 17000. While the County has a responsibility to provide medical care for "indigent" people in Los Angeles, county healthcare programs may still place eligibility requirements on that care. *See* 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"). There is no evidence in the record that the individual members have met LA County's requirements.

Similarly, there is no evidence in the record to show that its members are not eligible for or receiving Medi-Cal benefits or other medical benefits. Under Section 17000, the County is a "provider[] of last resort . . . ." *Cty. of San Diego v. State of California*, 15 Cal. 4th 68, 98 (1997). As such, the County has a duty only "to provide medical care to indigent persons not eligible for such care under other programs." *Hunt*, 21 Cal. 4th at 991; *see Cty. of San Diego*, 15 Cal. 4th at 100-101. In particular, under Welfare and Institutions Code Section 17030, the County is not required to provide medical care to individuals who are enrolled in or eligible for Medi-Cal. Cal. Welf. & Inst. Code § 17030. Under Medi-Cal expansion and the Affordable Care Act, most individuals below the poverty level are now eligible for Medi-Cal. While the Medi-Cal expansion and recent health reforms have not alleviated the County's obligation to provide subsistence medical care as a last resort to individuals who are not covered by other programs, it has significantly reduced the number of individuals who rely on County medical care. It cannot be presumed (nor is it likely) that the individual members of the LA Alliance are entitled to have their "subsistence medical needs" covered by Los Angeles County. *Hunt*, 21 Cal. 4th at 998.

Plaintiffs also fail to allege that they have medical conditions that would entitle them to County medical care, let alone that would require the County to provide them "housing as healthcare." Nor do they allege they would be entitled to the mental health beds the District Court found that the County had failed to provide. Absent these allegations, the alleged failure by the County to provide a particular type of healthcare is simply too speculative to give rise to Article III standing. On this point, *Harris v. Bd. of Supervisors of L.A. Cnty.,* 366 F.3d 754, 767 (9th Cir. 2004), is instructive. In *Harris,* this Court held that chronically-ill, low-income patients in Los Angeles County had Article III standing to challenge the closure of the Rancho Los Amigos Rehabilitation Hospital and the elimination of beds from LA-USC hospital. The Court held that Plaintiffs had put forth evidence that not only were they eligible for services, but they relied on those medical services from the two hospitals threatening closure, to treat chronic medical conditions, and that the proposed cutbacks would interfere with their access to medical care. *Id.* at 764. As a result, they sufficiently showed an injury in fact, causation and redressability to support a preliminary injunction. *Id.* Here, on the other hand, the LA Alliance members do not even allege they are eligible for County medical care, let alone that they have been deprived of or are at risk of being deprived of specific medical care.

The District Court appears to have determined that the County is failing to provide the "statutory minimums of § 17000," because it identified a lack of mental health beds in the County. 1-ER-121. Yet, there are no allegations let alone evidence that any of the unhoused members of the LA Alliance have been injured in any way or are at risk of being injured by the alleged failure of the County to provide those beds. None of the members assert they were denied a mental health bed, that they are in need of one of these beds, or even that they are likely to need a bed in the future. Therefore, they cannot show a concrete and particularized injury or concrete risk of harm in the future based on any failure of the County to provide mental health beds. There are simply no allegations whatsoever from which to glean that the individual unhoused members of LA Alliance have standing to bring these claims.

ii. The City Is Not Obligated, Under The Plain Language Of Welfare And Institutions Code Section 17000, To Provide Support And Aid

It was an abuse of discretion for the District Court to find that the City is likely liable under Section 17000, because Plaintiffs did not bring this claim against the City. 12-ER-2862-2864. Plaintiffs' reason for bringing this claim only against the County seems self-explanatory: Section 17000 places the obligations of indigent medical care squarely on counties, not on cities. *See Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1104 n. 18 (1995); *San Francisco v. Collins*, 216 Cal. 187,

190 (1932). Although Section 17000 states "county and city and county," the "city and county" refers to a jurisdiction in California that is both a city and a county, namely, the City and County of San Francisco. *See Collins*, 216 Cal. at 190 (explaining that the duty to "relieve the indigent" is a matter of state-wide interest, which flows to counties as political subdivisions of the state, not cities; however, San Francisco, as a City and County, has the obligations of a county for this purpose); *see also City and Cnty. of San Francisco v. Sup. Ct.*, 57 Cal. App. 3d 44, 47 (1976).

The District Court disregarded the plain language of the statute and the California Supreme Court's explicit ruling to the contrary, and instead found that "in the intervening decades, the institutional and financial landscape in this area has changed drastically in ways that neither the California Legislature nor the California Supreme Court could have reasonably foreseen." 1-ER-2974. The Court goes on to give examples of ways in which funding for "homeless initiatives" focused on housing and other services for unhoused people has been provided to both cities and counties. 1-ER-2976. Because the City has been given significant funding to address homelessness, "the City and County together have become jointly responsible for fulfilling the mandate of § 17000, at least as it pertains to confronting the crisis of homelessness." *Id.* As a result, "[t]he most reasonable interpretation of § 17000—the interpretation most in step with modern

partnerships and funding arrangements between the City and County—is that it applies not only to counties alone, but to cities and counties when they undertake a joint venture directed to the goals of § 17000, such as a coordinated effort to alleviate homelessness in their jurisdictions." *Id.*

The fact that a city has taken on a "joint venture" with a county to provide services to people experiencing homelessness does not then transform that venture into an obligation under Welfare and Institutions Code Section 17000. Nothing in the language of the statute provides for such a reading. And in fact, this reading would provide significant disincentive for cooperation between cities and counties; cities would be unlikely to voluntarily work with their counties to address homelessness if doing so would result in the City taking on the County's obligation under Section 17000. *Cf. Scates v. Rydingsword*, 229 Cal. App. 3d 1085, 1102 (1991) (noting that a ruling that treated discretionary programs as mandatory under Section 17000 would "lay a trap and inhibit creative, experimental solutions").

No perceived changes in the way the state and federal governments allocate funding and no amount of frustration about the City's failure to address homelessness (a frustration shared by Intervenor), gives the federal court the authority to disregard the California Supreme Court or to stand in the shoes of the state legislature and rewrite the statute to apply to cities. Section 17000 simply does not apply to cities and it was an abuse of discretion to find otherwise.

iii. The District Court Erred in Holding that Plaintiffs are Likely to Succeed because the County Violated a Mandatory Duty

The County of Los Angeles, on the other hand, does have a mandatory duty to provide healthcare to low-income residents of Los Angeles who have no other options for that care. Section 17000 imposes upon counties a duty to provide hospital and medical services to indigent residents. *Bd. of Supervisors v. Sup. Ct.*, 207 Cal. App. 3d 552, 557 (1991) ("*Comer*") (explaining the legislative history of Section 17000). The legislature has given counties discretion to set out "standards of care and aid" to meet its obligation under Section 17000. Cal. Welf. & Inst. Code § 17001.

Plaintiffs argue that the County violated its mandatory duty to provide healthcare, because "housing is healthcare." 8-ER-1732. This argument is based on an interpretation of Section 17000 that is not suggested, let alone required, by the plain language of the statute. Plaintiffs fail to provide any explanation or argument why such a novel interpretation is consistent with the legislative intent behind the statute. Nor did they put forth an argument why the County's failure to adopt this novel interpretation would be an abuse of discretion under Section 17000. As such, they have not met their burden of demonstrating they are likely to succeed on the merits of this claim, and it was an abuse of discretion for the Court to find otherwise.

The role of the Court in analyzing whether the County has fulfilled its mandatory duty is to ensure that the County's discretion is "exercised in a manner that is consistent with — and that furthers the objectives of — state statutes." *Hunt*, 21 Cal. 4th at 991. Therefore, the task before the District Court is to interpret the statute and determine if, reading the statute as a whole, the County acted in a manner inconsistent with the statute. "In interpreting a statute [the court's] primary objective is to ascertain the intent of the Legislature and to effectuate that intent." *Smith v. Bd. of Supervisors*, 216 Cal. App. 3d 862, 869 (1989). That is not, however, what the District Court did here.

The District Court chose again to rely on its own interpretation of the statute, untethered to the legislative history, case law interpreting the statute, or the text of the Welfare and Institutions Code itself. 1-ER-25. Instead, by finding that Plaintiffs were likely to succeed on the merits of their claim, the Court likewise failed to explain how Plaintiffs' interpretation of the statute is compelled by either the plain language of the statute or by legislative intent. 1-ER-119-123.

The Court also found the County failed to fulfill the statutory minimum under Section 17000 because it failed to provide the number of mental health beds that "leading mental health experts" say are necessary to meet the needs of the population of Los Angeles County. 1-ER-120-121. The Court failed to grapple with the complex legislative framework that applies to the provision of mental

health services in California. *See e.g.*, Cal. Welf. & Inst. Code § 5600 *et seq*. It did not account for the fact that, while mental health care is a critical component of medical care, a more specific provision of the Welfare & Institutions Code, Section 5703, limits how much the County can be obligated to spend on mental health services, irrespective of the more general mandate under Section 17000. *See* Cal. Welf. & Inst. Code § 5703 ("In no event shall counties be required to appropriate more than the amount required under the provisions of this chapter" for mental health services). *Comer,* 207 Cal. App. 3d at 560-561 (discussing the history of the Short-Doyle Act and holding that "[b]ecause [Welfare and Institutions Code Section 5600 *et seq*] limits a county's mental health obligations, section 17000 does not add anything to a county's duty in this regard, making the General Assistance statute inapplicable in this context."); *see also Gardner v. Cnty. of L.A.*, 34 Cal. App. 4th 200, 222 (1995) ("Section 17000 does not require counties to meet the needs of the indigent for mental services beyond the financial limits set in [Welfare and Institutions Code Section 5600 *et seq*.]"). Because the District Court failed to analyze the statutory history and full legislative framework of relevant statutes, it was an abuse of discretion to find on this record that Plaintiffs established that the law and facts clearly favored an injunction. *Garcia*, 786 F.3d at 740.

A mandatory preliminary injunction is strong medicine and obligating the largest county in California to radically shift its funding priorities related to the

provision of mental health services, in order to meet the needs of individuals in a single neighborhood, would have dramatic and significant consequences for hundreds of thousands of low-income individuals throughout the county. Plaintiffs fail to "establish that the law and facts clearly favor" such a dramatic intervention, and the District Court erred by granting this relief. *Id.*

II. THE PRELIMINARY INJUNCTION ISSUED BY THE COURT IS AGAINST THE PUBLIC INTEREST

a. Plaintiffs Did Not Meet Their Burden to Show that the Preliminary Injunction was in the Public Interest

Even if a Court finds that a party is likely to succeed on the merits, it must still "balance the competing claims of injury [and] consider the effect on each party of the granting or withholding" of the injunction. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987). The Court must also weigh its impact on the public interest, which "primarily addresses impact on non-parties rather than parties." *Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 931–32 (9th Cir. 2003)(internal quotation marks and citation omitted)(citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). This requirement "embodies the Supreme Court's direction that in exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* (internal citations omitted). *See also Winter*, 55 U.S. at 24. When the government is a party to an injunction, the last two *Winter* factors merge.

Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The burden of demonstrating that the preliminary injunction is in the public interest falls on the moving party. *Winter,* 555 U.S. at 24. Yet Plaintiffs failed to put forth evidence or even any argument to meet their burden of showing that such a dramatic encroachment on the provision of city and county homeless services is warranted, let alone why such a broad injunction would be in the public interest. Plaintiffs failed to address this factor at all. This alone should have defeated Plaintiffs' motion. *See Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1162–63 (9th Cir. 2011).

As with many aspects of the preliminary injunction, the arguments regarding the public interest were supplied by the District Court. *See* 1-ER-125-127. Even so, the Court spent less than three pages of the 110-page order addressing the remaining two *Winters* factors. The Court relied on its finding that "Plaintiffs have demonstrated a likelihood of a violation of their constitutional rights," to justify the entry of the preliminary injunction. 1-ER-126 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). As discussed above, Plaintiffs are unlikely to succeed on their constitutional claims, and without a probable constitutional violation, there is no other basis for upholding the District Court's ruling that the injunction is in the public interest.

b. The Evidence in the Record Demonstrates that the Public Interest is Harmed by the Preliminary Injunction

Although Plaintiffs failed to address the public interest at stake in granting such a sweeping mandatory injunction, Defendants and Intervenors did not. The parties opposing the injunction put forth significant, uncontroverted evidence that a preliminary injunction requiring the City and County to "offer shelter and housing" to all people in Skid Row, while on its face may seem productive, would in fact be just the opposite. *See, e.g.*, 4-ER-904 ¶¶ 17-19; 5-ER-937 ¶¶ 27-28. As outlined below, the expert declarations and evidence from the City and County, which was not addressed by the Court, show numerous ways in which the requested relief would have a significant negative impact not only on people living in Skid Row, but also on people experiencing homelessness outside of Skid Row, and the community as a whole. *See e.g.,* 4-ER-904-906 ¶¶ 20-22; 5-ER-936-937 ¶¶ 25-28.

First, the preliminary injunction requires the City and County, within no more than 180 days, to "offer and if accepted provide shelter or housing immediately to" each person on Skid Row. 1-ER-141. There is no evidence in the record that "offers of shelter or housing," on this timeline, will result in a reduction of the number of people on the streets of Skid Row. Instead, Intervenor's experts explained that an offer of shelter would likely be meaningless if it does not take into account the needs and priorities of people experiencing homelessness. *See* 3-ER-475-476 ¶¶ 13-14 (describing research into the unique needs of people

experiencing homelessness), 3-ER-476 ¶¶ 15-18 (research into why a person may enter into shelter); 4-ER-925 ¶¶ 16-17 (describing obstacles experienced by unhoused individuals seeking shelter).

Second, even if an individual is able to accept an offer "of shelter or housing," the district court ignored evidence that an injunction focusing on "offers of shelter and housing" within a specific time frame would not properly account for the cyclical nature of homelessness, and in particular, people's entry into and exit out of the shelter system. 4-ER-924 ¶ 12. Intervenors put forth evidence that the lack of permanent housing options available following a shelter stay means that individuals routinely move from the street to temporary shelter and back onto the street. As explained by Sara Shortt, the former Director of the C3 outreach program in Skid Row, most people in Skid Row have been offered shelter in the past, but "the shelter and temporary programs [their] clients used did not provide exits from the street and into permanent housing." 4-ER-924 ¶ 11. Instead, they observed a "churn" effect where people were offered various short term housing programs that did not necessarily result in something permanent." *Id.* Within the 180-day window of this order, many individuals will likely cycle through the shelter system and wind up back out onto the street. Each time that happens, this can actually undermine the effectiveness of further offers of housing and make it more difficult for people to go back into shelter. *See* 3-ER-477 ¶ 18 (the most

important reason people do not enter into shelter is that programs end without other alternatives for people experiencing homelessness).

Many of Plaintiffs' own declarants who are living on the streets in Skid Row have already been offered or even had places in shelter, yet they still remain on the street. 4-ER-923-924 ¶ 10; *see e.g.*, 9-ER-2008 ¶ 4 (previously lived in a hotel but was evicted after she was unable to pay rent); 9-ER-2028 ¶ 4 (previously housed at Downtown Women's Center but left because of conditions in the shelter); 9-ER-2033 ¶ 10 (offered housing options but declining because of the conditions in the shelters).

Third, the parties put forth ample evidence that abiding by the court order would force a radical restructuring of the City and County's process of matching available housing and shelters to people who are unhoused. 5-ER-937 ¶ 27 ("The requested injunctions asks the County to prioritize Skid Row relocation efforts above all else. This would upend the County's Board-approved, voter-endorsed process and interfere with contracting, provision of services, and housing efforts").

Forcing the City and County to allocate resources based on geography would undermine the systems in place, which aim to match people to resources based on vulnerability and need. Currently, housing resources are allocated based on a vulnerability assessment, which takes into account a person's need for supportive services, medical and mental health needs, substance use, and other factors. 4-ER-

707 ("[T]he Coordinated Entry System targets the vulnerable households for different types of placements and service prioritization using VI-SPDAT scores"); 7-ER-1470-1481 (describing a panoply of county programs serving people experiencing homelessness which are tailored to age, gender, medical and mental health status, criminal conviction status, etc.). The purpose of this program is to ensure not only that the City and County's scarce resources housing resources go to those who need them most, but critically, the goal is to ensure that individualized assessments of need are made and that the housing interventions are based on individual needs and experiences. As the CEO of the County's Homeless Initiative explained, "the County and its partners have built a robust infrastructure to provide strategic and deliberate service to people experiencing homelessness throughout the County." 5-ER-936 ¶ 25. Tossing this system aside to meet the Court's injunction would put many individuals who are now at the top of this vulnerability list, but are not located in Skid Row, at greater risk because of the need to reprioritize pursuant to the Court's order.

Finally, nothing in the Preliminary Injunction requires the City and County to create new housing or even new shelter resources to provide placements to the individuals living on Skid Row; it simply requires the City and County to offer shelter and housing to those individuals that Plaintiffs view as causing a nuisance. Given the short timeframe to "offer and if accepted provide shelter or housing

immediately to all unaccompanied women and children living in Skid Row," 1-ER-141, Defendants put forth evidence that it is unlikely that the City or County could bring new shelters online, let alone new permanent housing interventions, beyond those that are currently being deployed throughout Los Angeles. As a result, Defendants indicated that, in order to abide by a preliminary injunction concentrating resources in Skid Row, they would need to pull vital resources away from other areas of Los Angeles, even though those resources are being deployed using proven strategies that result in people who are unhoused actually leaving the streets.[7] 5-ER-936-937 ¶¶ 25-28, Exh. K; *see also* 4-ER-873-874 ¶ 16 ("The injunction...would force the City and the County to divert resources desperately needed to keep families housed [in this time of rampant evictions] in order to force people currently in encampments into shelters").

The uncontroverted evidence in the record shows that the likely result of this injunction will be the de-prioritization of thousands of people outside of Skid Row, who would not be offered shelter as a result of the Court-mandated reorientation of resources away from a need-based model and towards a geography-based mandate by the Court. It will also likely harm people in Skid Row, who stand to be further

[7] The parties also added evidence in the record that shows that the City and County strategies to build more permanent supportive housing reduces psychiatric and medical inpatient hospitalizations as well as emergency room visits among the unhoused. 4-ER-715-716.

alienated by offers of shelter that are not calculated to address their needs, only calculated to meet an arbitrary deadline set by the District Court.

Providing housing to everyone currently living in Skid Row is a laudable goal, but there is no evidence in the record that the order issued by the Court will achieve that goal. To the contrary, all evidence shows that it will not, and instead, it will undermine any progress currently being made towards housing people on Skid Row and throughout Los Angeles. 4-ER-904-905 ¶¶ 17-19, 21 (creating a "vast temporary shelter system" would continue to increase homelessness without addressing structural economic issues and would displace people in Skid Row). The District Court committed reversable error by failing to account for the parties' evidence, let alone find, in the face of this evidence, that the injunction it granted was in the public interest.

III. THE PRELIMINARY INJUNCTION ISSUED BY THE COURT IS IMPROPER

Even if the Court had properly found that an injunction was warranted under *Winter*, the District Court still abused its discretion by issuing this preliminary injunction.

a. The Preliminary Injunction Is Overbroad

Despite the Ninth Circuit's counseling that "when the relief sought would require restructuring of state governmental institutions, federal courts will intervene only upon finding a clear constitutional violation, and even then only to

the extent necessary to remedy that violation," *L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 703 (9th Cir. 1992), the District Court granted a preliminary injunction that would radically reshape homeless services in Los Angeles, not only by reallocating City resources to Skid Row, but also by seizing the City's finances and land.

The District Court's order requires the City to place one billion dollars in City funds into escrow with the Court and prohibits the sale or transfer of all City and County property pending a "report on all land potentially available within each district for housing and sheltering the homeless of each district." 1-ER-140. The District Court and Plaintiffs have challenged the wisdom of using voter-approved funds to build permanent supportive housing instead of funding emergency shelters, but questioning the political decision of politicians and voters is not a basis for taking control of the City's homelessness budget or disposition of public lands.

The Court found that the City's "deliberate, political choice to pursue the development of long-term supportive housing at the expense of interim shelters to get people off the streets in the near-term," 1-ER-106, was a "state-created danger." This is not legally supportable, nor is it supported by any evidence in the record. Even if it were a cognizable claim, seizing the City's money and land as remedial measures far exceed what would be necessary to remedy any possible

violation. *L.A. Cnty. Bar Ass'n*, 979 F.2d at 703. Ordering these remedies was an abuse of discretion. *See Pac. Radiation Oncology,,* 810 F.3d at 636 (upholding the denial of a request for preliminary injunction that was not encompassed by the allegations in the case); *see also Kaimowitz ,* 122 F.3d at 43.

b. The Preliminary Injunction Impermissibly Includes an Advisory Opinion

The extent to which the Court is willing to go outside the case actually presented by the parties is further illustrated by another provision of the preliminary injunction, in which the Court ordered that "[a]fter adequate shelter is offered, the Court will let stand any constitutional ordinance consistent with the holdings of *Boise* and *Mitchell*." 1-ER-142. This statement, made long before any such enforcement was presented to the Court as ripe for adjudication, was not just dicta but was actually part of the preliminary injunction issued by the Court. *Id.* It was improper for the Court to opine on such a hypothetical, unripe situation related to some unknown ordinance. "[The Court's] role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." *Thomas v. Anchorage Equal Rights Comm'n,* 220 F.3d 1134, 1137 (9th Cir. 2000). This is all the more true where, as here, the Court opines on how it would respond to a controversial issue not related to any matters properly before it. *See Mills v. Rogers*, 457 U.S. 291, 305 (1982). The Court does

not have the power, as it did here, to issue judgments or opinions about behavior that is not yet before the Court. *See Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1223-24 (9th Cir. 2006) ("Until we know whether further restrictions on access by French, and possibly American, users are required, we cannot decide whether or to what degree the First Amendment might be violated by enforcement of the French court's orders.").

CONCLUSION

No facts or law presented in this case justify the sweeping mandatory injunction issued by the District Court. This Court should vacate the order granting the preliminary injunction.

Respectfully Summitted,

Dated: June 3, 2021

LEGAL AID FOUNDATION OF LOS ANGELES

By: *s/ Shayla R. Myers*
Shayla R. Myers
Attorney for Intervenor, Cangress.

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 10,695 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

LEGAL AID FOUNDATION OF LOS ANGELES

By: *s/ Shayla R. Myers*
Shayla R. Myers
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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

LEGAL AID FOUNDATION OF LOS ANGELES

By: *s/ Shayla R. Myers*
Shayla R. Myers
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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2021, I electronically filed the foregoing document INTERVENOR'S OPENING BRIEF with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I hereby certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 3, 2021

By: *s/ Shayla R. Myers*
Shayla R. Myers