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"Judicial Frustration": A Local Judge's Bold Attempt to Solve the Homelessness Crisis from the Bench

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“JUDICIAL FRUSTRATION”: A LOCAL JUDGE’S BOLD ATTEMPT TO SOLVE THE HOMELESSNESS CRISIS FROM THE BENCH

Gregory A. Alonge*

In May 2021, in the case of LA Alliance v. Los Angeles, Judge David O. Carter of the Central District of California granted a sweeping order enjoining the city and county of Los Angeles to offer shelter to all unhoused persons living in Skid Row. The 109-page order identified structural racism and government indifference as the unconstitutional causes of homelessness in the region, and condemned California’s housing-first approach to addressing the issue. Although the Ninth Circuit swiftly vacated the preliminary injunction on procedural grounds, Judge Carter’s order begs the question: would universal shelter offers actually ameliorate the homelessness crisis? This Note argues that per Martin v. Boise, which declared anti-camping ordinances unconstitutional in cities without adequate shelter bed availability, providing those individuals with shelter would reopen the door to criminalizing homelessness by providing a way around Martin’s holding. Thus, the counterintuitive result of offering housing or shelter to all unhoused persons would be one step forward vis-à-vis housing and shelter, but one step backward vis-à-vis the criminalization of homelessness. This perverse and paradoxical legal paradigm situates those who seek to address homelessness, like Judge Carter, in the position of hurting the unhoused by virtue of helping them. To prevent cities from violating unhoused people’s fundamental rights while undermining renewed efforts to address housing insecurity, this Note proposes that California ban the practice of criminalizing homelessness within its borders.

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“They are visible all over Downtown, pushing a few pathetic possessions in purloined shopping carts, always fugitive and in motion, pressed between the official policy of containment and the increasing sadism of Downtown streets.”

—Mike Davis¹

INTRODUCTION

On April 20, 2021, in the case of *LA Alliance for Human Rights v. City of Los Angeles*,² United States District Court Judge for the Central District of California, David O. Carter, granted a sweeping 109-page preliminary injunction ordering the City and County of Los Angeles to offer shelter to all unhoused³ individuals living in Skid Row.⁴ Although the Ninth Circuit Court of Appeals swiftly vacated the order on procedural grounds,⁵ the matter was remanded, leading to further litigation and heated settlement proposals reminiscent of the order itself.⁶ Regardless of the case’s outcome, the preliminary injunction made judicial history by candidly recognizing the factors giving rise to the homelessness crisis⁷ and unilaterally attempting to solve that crisis from the bench.

1. MIKE DAVIS, CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES 212 (3d ed. 2018).

2. No. 20-0229, 2021 WL 1546235 (C.D. Cal. Apr. 20, 2021).

3. This Note uses the terms “unhoused” and “homeless” interchangeably, acknowledging that many activists, and even some politicians, now prefer the former, arguing it is less stigmatizing and otherizing of unhoused people. See Nicholas Slayton, *Time to Retire the Word ‘Homeless’ and Opt for ‘Houseless’ or ‘Unhoused’ Instead?*, ARCHITECTURAL DIG. (May 21, 2021), <https://www.architecturaldigest.com/story/homeless-unhoused> [<https://perma.cc/P7B2-F93W>].

4. In Chambers Order at 108, *LA All. for Hum. Rts. v. City of Los Angeles*, No. LA CV 20-02291 (C.D. Cal. Apr. 20, 2021) [hereinafter “In Chambers Order”] (order granting preliminary injunction).

5. *LA All. for Hum. Rts. v. County of Los Angeles*, 14 F.4th 947, 957 (9th Cir. 2021).

6. See Meghann Cuniff, *LA’s Settlement Deal in Homelessness Lawsuit Being Appealed*, L.A. MAG. (July 17, 2022), <https://www.lamag.com/citythinkblog/las-settlement-deal-in-homelessness-lawsuit-being-appealed/> [<https://perma.cc/G79L-7ACS>].

7. Designating homelessness as a “crisis” can be traced back at least to the late nineteenth century, when “[o]ne religious group described the problem as ‘a crisis of men let loose from all the habits of domestic life, wandering without aim or home.’” NAT’L ACAD. OF SCIS., ENG’G, & MED., PERMANENT SUPPORTIVE HOUSING: EVALUATING THE EVIDENCE FOR IMPROVING HEALTH OUTCOMES AMONG PEOPLE EXPERIENCING CHRONIC HOMELESSNESS 175 (2018) (citing TODD DEPASTINO, CITIZEN HOBO: HOW A CENTURY OF HOMELESSNESS SHAPED AMERICA 25 (2003)). This characterization of the “crisis” of homelessness as a threat to the domestic structures undergirding society persists to this day. See DEPASTINO, *supra*, at xvii–xviii (“[The] home structures and regulates human activities in ways that model and articulate the social relations governing the larger community [and thus,] [s]ocieties riddled with persons deemed ‘homeless’ are, by definition, societies in crisis.”). In fact, former L.A. Mayor Garcetti adopted the term, with his website describing homelessness as “the moral and humanitarian crisis of our time.” *Homelessness*, ERIC

But was Judge Carter's preliminary injunction an act of judicial overreach? And more importantly, would a mandatory offer of shelter to all unhoused individuals in Skid Row actually help those individuals? Some say it would not, arguing that compulsory offers of shelter would shift focus and resources from the more proven "housing-first" model to an inhumane congregate shelter model, which would trap unhoused people in shelters that are ultimately ineffective at lifting them out of homelessness.⁸ Citing the landmark decision in *Martin v. City of Boise*,⁹ opponents of the order also argue that the mass availability of interim shelter spaces would allow local governments to criminalize homeless individuals who cannot or will not take advantage of the shelter made available to them.¹⁰ On the other hand, proponents of the order believe that compulsory offers of shelter would proactively get people off the streets, likely saving lives and restoring blighted areas in the process.¹¹

Meanwhile, as *LA Alliance* is litigated at the local level, California is forced to sit back and wait on legal results that could dramatically alter its ongoing statewide approach to the housing and homelessness crises. This approach—spearheaded by Governor Gavin Newsom's administration and the California legislature—marks an unprecedented strategy to address housing shortages and homelessness, from new state zoning laws promoting higher density development, to robust housing-first initiatives and massive coffers subsidizing it all.¹² Nevertheless, California continues to face profound

GARCETTI #MAYOROFLA, <https://www.lamayor.org/Homelessness> [https://perma.cc/55T4-GF9C]. Furthermore, this Note focuses on the homelessness crisis in California, but the crisis of homelessness is indeed national and global. See Slayton, *supra* note 3; see also *About Us*, INST. OF GLOB. HOMELESSNESS, <https://ighomelessness.org/about-us/> [https://perma.cc/22ZX-2TLG].

8. See, e.g., Amicus Brief of SCANPH, CSH, and Non Profit Affordable Housing Developers in Support of Appellants at 6, *LA All. for Hum. Rts. v. City of Los Angeles*, 14 F.4th 947 (9th Cir. 2021) (No. 21-55408); Los Angeles Homeless Services Authority's Amicus Brief in Support of Appellant County of Los Angeles at 8, *LA All. for Hum. Rts.*, 14 F.4th 947 (No. 21-55408); Oral Argument at 19:49–20:23, *LA All. for Hum. Rts.*, 14 F.4th 947 (Nos. 21-55408, 21-55404, 21-55395) [hereinafter Oral Argument], <https://www.ca9.uscourts.gov/media/video/?20210707/21-55395/> [https://perma.cc/DSQ6-QZFW].

9. 920 F.3d 584 (9th Cir. 2019).

10. Judge Carter correctly emphasizes that, through centuries of societal *de jure* and *de facto* racism, homelessness disproportionately impacts the Black community. See *infra* Section I.B. Thus, opponents argue, in opening the door to greater criminalization of homelessness, Judge Carter's order would hypocritically result in the disproportionate criminalization of the Black community. See Los Angeles Homeless Services Authority's Amicus Brief at 14, *L.A. All. for Hum. Rts.*, 14 F.4th 947 (No. 21-55408).

11. Oral Argument, *supra* note 8, at 37:22–37:47.

12. See *infra* Section V.C.1.

obstacles in its fight for improved housing, including competing political interests and the exacerbating effects of the COVID-19 pandemic.¹³ Against this backdrop, a local district court judge dictating major policy decision-making in Los Angeles—California’s homelessness ground zero—potentially throws a wrench in California’s much-needed control over the situation. The result is the largest state and its largest city operating at cross-purposes, with a local Judge advancing a short-term, shelter-focused model while the state advances a long-term, housing-focused model.

For these reasons, Judge Carter’s order functions as much more than a mere footnote to an ongoing case. Rather, it functions as a profound judicial luminescence, exposing deep-seated policy contradictions and grave pitfalls along California’s path to addressing homelessness. Leveraging that light, Part I of this Note highlights the shameful state of the homelessness crisis, its disproportionate impact on the Black community, and the failed efforts of both the private and public sectors to respond appropriately. Part II introduces the two people behind the April 20, 2021, preliminary injunction—Judge David O. Carter and his court special master, Michele Martinez. Part III outlines the legal background against which the California homelessness crisis unfolds by spotlighting two essential cases bearing upon Judge Carter’s order: *Martin v. City of Boise* and *Mitchell v. City of Los Angeles*.¹⁴ Part IV details *LA Alliance v. Los Angeles*, from the groundswell that catalyzed its filing to the momentous 109-page preliminary injunction it produced, and the Ninth Circuit’s appellate reversal of that injunction.

By way of analysis, Section V.A argues that, rather than quibble over whether Judge Carter engaged in judicial overreach, we should acknowledge his understandable “judicial frustration” and laud his willingness to take action in the face of such acute human tragedy. Section V.B argues that, in granting equitable relief unprecedented in scope yet untenable in procedure, Judge Carter used his equitable powers primarily to coerce settlement and raise awareness. Section V.C ultimately concludes that, despite Judge Carter’s commendable efforts, his proposed shift to a compulsory shelter model reveals in itself two fatal contradictions—both of which threaten to undermine California’s fight against homelessness. *First*, shifting to a shelter-

13. See *infra* Sections I.A, I.C.

14. 2016 WL 11519288 (C.D. Cal. 2016).

based model would undermine California's renewed efforts to address homelessness systemically through a housing-first approach, leading to a disjointed and incoherent tension between state and local policy. *Second*, and most damning, is that per *Martin*, any substantial increases in shelter would necessarily pave the way for the criminalization of homelessness—a vicious and useless paradigm that only exacerbates the crisis. But indeed, we *need* such increases in emergency shelter capacity. Thus, any one step forward vis-à-vis increased shelter necessarily entails at least one step backward vis-à-vis the criminalization of homelessness—a policy catch-22 that will stifle California's progress in reaching meaningful change.

Accordingly, Sections VI.A–B propose that California, pursuant to its own state constitutional bar against cruel or unusual punishment and excessive fines imposed, should match Judge Carter's boldness and categorically ban the criminalization of homelessness within its borders. In doing so, California would ensure that offers of shelter could not be used as an insidious pretext for punishment while also ensuring that much needed increases in housing and shelter would not be met with equal increases in regressive penal measures. Section VI.C addresses counterarguments and concludes that decriminalizing homelessness will not lead to the chaos within or handcuffs on municipalities that criminalization itself has promoted for decades. And thus, by exposing two untenable policy contradictions, Judge Carter's benevolent judicial activism also reveals one intuitive and intelligent truth: that California should set aside its impulse to punish and embrace its duty to empower.

I. THE SOCIOHISTORICAL CONTOURS OF THE CALIFORNIA HOMELESSNESS CRISIS

While it is no secret that Los Angeles is experiencing a homelessness crisis, many may be unaware of how severely that crisis has festered, how disproportionately it affects Black Angelenos, and how woefully the public and private sectors have failed to address it. This Note discusses each topic here in turn.

A. *The Shameful Extent of the Homelessness Crisis*

Overwhelming and painfully visible homelessness is a reality all Angelenos confront each day.¹⁵ Governor Newsom asks us to “call it what it is, a disgrace, that the richest state in the richest nation . . . is failing to properly house, heal, and humanely treat so many of its own people.”¹⁶ Former Los Angeles City Councilmember, Mike Bonin, echoes this condemnation, admitting that “there’s almost nobody in the city of Los Angeles, housed or unhoused, who would give what’s happening in Los Angeles [anything] other than a failing grade.”¹⁷ In discussing the extent of the crisis, the statistics can be so extreme that they have the potential to function as abstractions that discourage critical thinking and dehumanize the nature of the calamity.¹⁸ However, we must not let these facts and figures replace our human understanding that the crisis impacts real people who are entitled to respect, dignity, and protection of their fundamental rights. We do not require these numbers to know that this human calamity is unfolding on our doorstep, is ensnaring our loved ones, and must come to an end. That said, some salient figures are as follows:

- Increasing by 24.3% from 2018, there were an estimated 161,548 homeless people in California as of March 2020.¹⁹
- In 2020, there were 66,436 homeless people in Los Angeles County—48,041 of whom were unsheltered.²⁰
- According to Forbes, the three most unsafe neighborhoods in all of America are in and around Skid Row, Los Angeles.²¹

15. See Donna Littlejohn, *SCNG Survey Finds Homelessness Tops Los Angeles Voter Concerns*, L.A. DAILY NEWS (Oct. 19, 2022, 12:56 PM), <https://www.dailynews.com/2022/10/19/scng-survey-finds-homelessness-tops-los-angeles-voter-concerns/> [<https://perma.cc/4KPW-SFQA>].

16. In Chambers Order, *supra* note 4, at 32.

17. *Id.* at 41.

18. Cf. ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 92 (Greg Ruggiero ed., 2003) (arguing analogously that “unmediated use of such statistical evidence . . . can discourage the very critical thinking that ought to be elicited by an understanding of the prison industrial complex,” because “[t]here are many different kinds of men and women in [the prison system] whose lives are erased by the Bureau of Justice Statistics figures”); FYODOR DOSTOEVSKY, *CRIME AND PUNISHMENT* 46 (Constance Garnett trans., Wordsworth Editions Ltd. ed. 2000) (1866) (“A percentage! What splendid words they have; they are so scientific, so consolatory . . . Once you’ve said ‘percentage’ there’s nothing more to worry about. If we had any other word maybe we might feel more uneasy.”).

19. In Chambers Order, *supra* note 4, at 41.

20. *Homelessness in Los Angeles County 2020*, L.A. ALMANAC, <http://www.laalmanac.com/social/so14.php> [<https://perma.cc/R6XC-EH4W>].

21. In Chambers Order, *supra* note 4, at 14. Indeed, Skid Row has been unsafe for several decades now, with Mike Davis in 1990 observing that “[b]y condensing the mass of the desperate

- In 2017, bathroom access for homeless people living in Skid Row fell below U.N. standards for Syrian refugee camps, and in 2019, there were thirty-one public toilets available for an estimated 36,000 homeless people, leaving one toilet for every 1,161 people.²²
- “Since 2016, the Los Angeles County Medical Examiner-Coroner recorded more deaths of homeless individuals due to hypothermia than in New York and San Francisco, *combined*.”²³
- In 2018, the number of fires involving the homeless community doubled from the year before to 2,500.²⁴ Even still, these fires increased by 82% from 2019 to 2020. Indeed, in 2020, there was a 90% increase in deliberately set fires affecting homeless people.²⁵
- In 2020, there were 7,491 homeless youths in Los Angeles County, a number which increased from 5,061 in 2019, and 4,731 in 2018.²⁶

and helpless together in such a small space, and denying adequate housing, official policy has transformed Skid Row into probably the most dangerous ten square blocks in the world—ruled by a grisly succession of ‘Slashers,’ ‘Night Stalkers’ and more-ordinary predators.” See DAVIS, *supra* note 1, at 209.

22. In Chambers Order, *supra* note 4, at 59. “Los Angeles, as a matter of deliberate policy, has fewer available public lavatories than any major North American city.” DAVIS, *supra* note 1, at 210.

23. In Chambers Order, *supra* note 4, at 55 (emphasis added). The homeless have been dying from hypothermia in sunny Los Angeles for decades. A particularly brutal winter in 1988 claimed the lives of at least three “transients” in just one week that December. See DAVIS, *supra* note 1, at 212 (citing Eric Malnic, *Cold Snap’s Toll at 5 as Its Iciest Night Arrives: Los Angeles Homeless Again Offered Shelter; Farmers Work to Save Frost-Sensitive Crops*, L.A. TIMES (Dec. 29, 1988, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1988-12-29-mn-1270-story.html> [<https://perma.cc/X2NJ-WQPQ>]).

24. James Queally, *Firecrackers. Molotov Cocktails. Fire Attacks Have Shaken L.A.’s Homeless Community*, L.A. TIMES (Oct. 18, 2019, 7:00 AM), <https://www.latimes.com/california/story/2019-10-18/homeless-population-attacks-fire> [<https://perma.cc/5WWB-R4X5>].

25. In Chambers Order, *supra* note 4, at 51–52. In the fall of 2019, there was “a string of unsettling attacks involving fire or incendiary devices that . . . left homeless people dead or injured and entire encampments scorched across the Los Angeles area.” Queally, *supra* note 24.

26. *Homelessness in Los Angeles County 2020*, *supra* note 20. This means that the number of homeless minors has almost doubled in three years. See *id.* Statewide, there were an estimated 271,528 California public school students experiencing homelessness during the 2018–2019 school year, according to the U.S. Department of Education. *Homelessness Statistics by State*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/homelessness-statistics/ca/> [<https://perma.cc/Q5KE-SWAD>]. Furthermore, foster youth who do not find permanent placement upon reaching adulthood are highly susceptible to becoming homeless as they begin their adult years. See Thomas Barymore Murtland, Note, *California’s Foster Youth Bill of Rights as a*

- “[A]t least 1,383 people experiencing homelessness died on the streets of Los Angeles County in 2020, a figure that likely underestimates the true death toll.”²⁷

Due mainly to the COVID-19 pandemic, these stark numbers and the horrifying reality they reflect are likely to worsen in the near future, not improve. The homelessness rate among working age adults in Los Angeles will likely increase by as much as “86% by 2023 due to pandemic-related job losses.”²⁸

These figures reflect merely a small portion of the calamity,²⁹ and behind each number are real people enduring unspeakable suffering each day.³⁰ Moreover, these numbers—racially neutral in themselves—do not adequately capture how the current homelessness crisis in Los Angeles is a racist and pernicious byproduct of slavery and the *de jure* discriminatory housing policies that endure *de facto* to this day.

B. The Homelessness Crisis’s Disproportionate Impact on the Black Community

While many minority and disenfranchised populations are disproportionately impacted by the homelessness crisis in Los Angeles,³¹ Black Angelinos suffer the most. The historical and structural backdrop of the crisis’s current impact on the Black community is one of “unhidden public policy that explicitly segregated every metropolitan area in the United States.”³² These racist and discriminatory housing

Roadmap for Expanding Rights of LGBTQ2S+ Foster Youth in America: A Fifty-State Survey, 55 LOY. L.A. L. REV. 313, 318 (2022).

27. In Chambers Order, *supra* note 4, at 34.

28. *Id.* at 35.

29. See generally LOS ANGELES HOMELESS SERVICES AUTHORITY, <https://www.lahsa.org/> [https://perma.cc/23BN-LXSC].

30. Like Freddie, “an unhoused Angelino whose tent was destroyed by a targeted explosion in Echo Park.” And Air Force veteran, Glenn Oura, who, while sleeping in the bushes during a cold rainstorm one evening, wondered, “if I die from hypothermia, how long will it take someone to find me?” Queally, *supra* note 24; In Chambers Order, *supra* note 4, at 52, 55.

31. See generally In Chambers Order, *supra* note 4, at 62–65 (discussing women and the LGBTQ+ communities disproportionately impacted by homelessness). See also *id.* at 4 (“Latinos make up at least 35% of the homeless population . . .”).

32. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* viii (2017).

policies were effectuated “[t]hrough redlining,³³ containment,³⁴ eminent domain,³⁵ exclusionary zoning, and gentrification³⁶—designed to segregate and disenfranchise communities of color.”³⁷

The demographics of modern homelessness in Los Angeles reflect the disproportionate impact of slavery and these racist housing policies on the Black community. Black people are four times more likely to become homeless than white people.³⁸ “While Black people comprise only eight percent of Los Angeles’s population, *they make up 42% of its homeless population*. As of January 2020 . . . 21,509 Black people were without permanent housing in Los Angeles.”³⁹ And while the number of white Angelenos experiencing homelessness decreased by 7 percent from 2016 to 2017, the number of Black

33. The Home Owners’ Loan Corporation (HOLC)—created in 1933 to prevent home foreclosures in the wake of the Great Depression—further entrenched housing segregation by creating color coded maps that outlined Black neighborhoods in red, designating them as unsafe and hazardous. Black residents within these redlined zones were frequently denied home loans by the HOLC and Federal Housing Administration based on this insidious designation. *See* In Chambers Order, *supra* note 4, at 6–7.

34. In 1976, seeking to keep the business district of downtown and other neighborhoods free of the homeless population, Los Angeles adopted a “physical containment zone” plan to relegate homeless people within the borders of Skid Row. It became common practice to dump homeless people, people with mental disabilities, parolees, and other “undesirables” within this containment zone. Indeed, “[t]he [LAPD] set up physical buffers to reduce movement past the Skid Row border and enforce containment. Floodlights demarcated the border, disincentivizing the homeless from straying outside the containment area.” *See id.* at 13–14; *see also* DAVIS, *supra* note 1, at 209 (“[C]ouncilmembers fearful of the displacement of the homeless into their districts. . . . promote[d] the ‘containment’ (official term) of the homeless in Skid Row along Fifth Street east of the Broadway, systematically transforming the neighborhood into an outdoor poorhouse.”).

35. *See, e.g.*, In Chambers Order, *supra* note 4, at 18–20 (citing Rosanna Xia, *Manhattan Beach Was Once Home to Black Beachgoers, But the City Ran Them out. Now It Faces a Reckoning*, L.A. TIMES (Aug. 2, 2020, 6:00 AM), <https://www.latimes.com/california/story/2020-08-02/bruces-beach-manhattan-beach> [<https://perma.cc/F4PR-SBD4>]). In the early twentieth century, when access to Southern California’s beaches was racially segregated, Manhattan Beach became a prosperous Black community with a Black family-owned beachside resort to boot. But, in response to racially motivated hostility from their white neighbors, “[b]y 1924, County officials had condemned and seized over two-dozen Manhattan Beach properties [including the resort] through eminent domain” to build what would eventually become a whites-only park. The Black families whose property was taken were given “just compensation” far below property value, and they struggled to purchase beachside property elsewhere, thereby eliminating a thriving Black community and undermining Black generational wealth. *Id.*

36. *Supra* note 33 and accompanying text; In Chambers Order, *supra* note 4, at 7–8 (“Decades of depressed property values stemming from HOLC’s ‘hazardous’ labeling paved the way for present-day gentrification: it allowed white homeowners with growing equity to purchase devalued property in formerly redlined neighborhoods.”).

37. In Chambers Order, *supra* note 4, at 2–3. *See generally* ROTHSTEIN, *supra* note 32 (discussing the deliberate effects of racist housing policies that endure to disenfranchise Black communities today).

38. In Chambers Order, *supra* note 4, at 3.

39. *Id.* (emphasis added).

Angelenos experiencing homelessness increased by 22 percent in that same period,⁴⁰ demonstrating that the insidious effects of structural and historic racism are getting worse—not better. This throughline connecting slavery, *de jure* housing segregation, and the modern disproportionate impact of homelessness on the Black community raises serious constitutional concerns over, among others, the Fourteenth Amendment’s guarantee of equal protection under the law⁴¹—concerns that Judge Carter emphasized in his preliminary injunction.⁴²

C. The Failed Efforts of Government and Private Enterprise to Ameliorate the Homelessness Crisis

There is a long and historical list of government failures in addressing homelessness. To begin, promulgated over a century-and-a-half ago in 1855, section 17000 of the California Welfare and Institutions Code mandates that “[e]very county and every city shall relieve and support all incompetent, poor, [and] indigent persons, and those incapacitated by age, disease, or accident . . . when such persons are not supported and relieved by their relatives or friends, by their own means, or by state . . . institutions.”⁴³ Los Angeles attempts to meet these statutory obligations in part through use of its General Relief (GR) program, which entitles Los Angeles County’s unhoused individuals to a meager \$221 per month of assistance.⁴⁴ Through protracted legal battles from 1985 to 1991, GR relief was reluctantly

40. *Id.* at 5.

41. While not discussed in depth in the preliminary injunction, Richard Rothstein argues that these concerns also implicate the Thirteenth Amendment’s prohibition against slavery because in 1883, the U.S. Supreme Court held in the *Civil Rights Cases* that section 2 of the Thirteenth Amendment “authorized congress ‘to pass all laws necessary and proper for abolishing *all badges and incidents* of slavery in the United States.’” As Rothstein notes, the Civil Rights Act of 1866 declared racial housing discrimination as one such “badge and incident” of slavery. *See* ROTHSTEIN, *supra* note 32, at viii–ix (emphasis added); *The Civil Rights Cases*, 109 U.S. 3, 20 (1883).

42. *See infra* Section IV.A.2.

43. CAL. WELF. & INST. CODE § 17000 (2022). Section 11000 of the Welfare and Institutions Code adds that “[t]he provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program.” *Id.* § 11000. For a more in depth discussion about section 17000 and its case law, see generally In Chambers Order, *supra* note 4, at 86–90; and Gary Blasi, *Legal Right to Shelter: The Current Right-to-Housing Debate Often Fails to Note That for Many Years Indigent Californians Had a Right to Housing*, L.A. LAW., Dec. 2019, at 30, 32.

44. *See* Blasi, *supra* note 43, at 32. The average cost of living for a single person in Los Angeles is \$1,086.09 per month without including the cost of rent. *Cost of Living in Los Angeles*, NUMBEO, <https://www.numbeo.com/cost-of-living/in/Los-Angeles> [<https://perma.cc/75TH-75EY>].

raised from \$221 per month to a still-meager \$341 per month.⁴⁵ However, seemingly determined to undermine the spirit of section 17000, the County pushed back, and successfully lobbied the state legislature to nullify the fruits of these legal battles, thereby reinstating the \$221 per month figure.⁴⁶ “Today about 85,000 people in Los Angeles County subsist on the same \$221 per month The great majority of them are homeless.”⁴⁷

Courts have also interpreted a healthcare duty from the support mandated by section 17000, requiring the County to provide medical care to the indigent “at a level which does not lead to unnecessary suffering or endanger life and health”—a shockingly low bar of which the state continues to fall short.⁴⁸ On average, about twenty-six unhoused persons died *per week* in 2020 while living on the streets,⁴⁹ infectious disease runs rampant among unhoused communities like Skid Row,⁵⁰ and “[b]y the County’s own admission, the current 22.7 mental health beds available per 100,000 individuals across the County comes nowhere close to the 50 public mental health beds per 100,000 individuals that leading mental health experts say is necessary to minimally meet the needs of the population.”⁵¹ Given these failures of Los Angeles County in providing GR and medical care to its unhoused population, “[t]he County has clearly failed to meet its minimum obligations under § 17000 to provide life-preserving, medically necessary services to the homeless.”⁵²

At the federal level, there is section 8 of the Housing Act of 1937 (“Section 8”),⁵³ which has likewise provided relief woefully short of what is necessary to curb homelessness in Los Angeles. Today, qualifying low income individuals who are accepted into the program are given Section 8 vouchers—created by the Housing and Community

45. See Blasi, *supra* note 43, at 32.

46. See *id.* at 32–33.

47. See *id.* “But, few cared enough for that to think of it a second time, and, in this manner, as in all others, the common wretches were left to get out of their difficulties as they could.” CHARLES DICKENS, A TALE OF TWO CITIES 83 (Julie Nord ed., Dover Thrift Eds. 1999) (1859).

48. In Chambers Order, *supra* note 4, at 87 (citing *Tailfeather v. Bd. of Supervisors*, 56 Cal. Rptr. 2d 255, 265 (Ct. App. 1996)).

49. See *id.* at 34.

50. See In Chambers Order, *supra* note 4, at 58–61.

51. In Chambers Order, *supra* note 4, at 87.

52. *Id.*

53. 42 U.S.C. § 1437.

Developing Act of 1978—which enable renters with those vouchers to pay only 30 percent of their income as rent.⁵⁴ But crucially:

Section 8 vouchers [are] scarce—the vouchers only serve one quarter of qualifying individuals. In fact, waitlists for Section 8 . . . span more than ten years In 2017, Los Angeles reopened the Section 8 housing list for the first time in 13 years—with an expected 600,000 individuals to apply. Securing a place on the waiting list is not just based on income, but luck. A lottery system will determine which 20,000 of the hundreds of thousands to apply will be added to the Section 8 waiting list.⁵⁵

The extreme scarcity of Section 8 support was on full display during a March 2022 debacle in which a local advocacy group in South L.A. held an event to assist unhoused individuals obtain emergency shelter.⁵⁶ For some unknown reason, a social media post was sent out to the community promising that those who showed up to the event would receive an elusive Section 8 voucher—of course, this was not true.⁵⁷ The resulting throngs of frustrated people arrived desperate for some concrete housing assistance only to be told that there was no such assistance available to them.⁵⁸ Indeed, congressperson Maxine Waters was at the scene, and while giving a rousing speech extolling her extensive efforts to assist the homeless, she was caught on video telling a crowd of increasingly upset homeless people to “go home.”⁵⁹ Thus, Section 8, while providing some assistance in the fight against homelessness, functions more as a pipedream for those in need of affordable housing rather than a concrete solution.

Another swing and miss by the local government in combating the homelessness crisis was the passage of Proposition HHH in 2016, which approved raising “\$1.2 billion in bond authority to build 10,000 units of supportive housing for chronically homeless individuals over

54. In Chambers Order, *supra* note 4, at 24.

55. *Id.* at 24–25.

56. Connor Sheets, *L.A.'s Homelessness Crisis Boils Over: Pain, Confusion, Anger, and a Congressional F-bomb*, L.A. TIMES (Mar. 30, 2022, 6:28 AM), <https://www.latimes.com/california/story/2022-03-30/1-a-s-homeless-crisis-pain-confusion-and-a-congressional-f-bomb-as-hundreds-seek-help> [<https://perma.cc/T3H9-CEMG>].

57. *Id.*

58. *Id.*

59. *Id.* at 1:08–1:20.

the next decade.”⁶⁰ However, even 1.2 billion dollars has not made a dent in the homelessness crisis. Over four years after the passage of Proposition HHH:

[J]ust seven projects containing 489 total units, had been completed The initial public campaign for Proposition HHH planned for 10,000 housing units to be completed in 10 years, . . . [but] [a]t the current rate, it will take nearly 30 years to build enough housing for over 66,000 people currently experiencing homelessness—an estimate that doesn’t even account for the fact that the homelessness rate is growing exponentially every year.⁶¹

Furthermore, Proposition HHH funds have not been utilized economically. In explaining how 1.2 billion dollars seems to have made little impact on the crisis, former Los Angeles City Controller, Ron Galperin, focused on the financial inefficiency of the funds being appropriated, explaining that “[i]nstead of churning out units at \$350,000 each as originally predicted, the average per unit cost is now \$531,000—with some eclipsing \$700,000.”⁶²

But this inefficiency cannot be blamed on bureaucratic red tape alone. By artificially inflating development project budgets through the fraudulent practice of reselling, private initiatives have also contributed to the financial waste of Proposition HHH and other public funds:

In at least two separate instances with two different developers, reports indicate that developers of taxpayer-funded affordable housing projects have purchased properties before turning around and reselling those properties to themselves at higher prices in order to artificially inflate their project budgets and, in turn, the amount of public money that they receive. In the case of a partly renovated motel in L.A.’s Westlake neighborhood, developers were able to increase the project’s budget by \$8 million through this process of reselling In another case near Koreatown, a similar reselling

60. See Blasi, *supra* note 43, at 30.

61. In Chambers Order, *supra* note 4, at 44.

62. *Id.* at 45–46.

process was used by a different developer to artificially inflate the budget by \$6 million.⁶³

And leadership is not helping; former Mayor Garcetti indefinitely suspended all benchmarks and deadlines for Proposition HHH as of April 2020.⁶⁴ Thus, Proposition HHH, along with its 2017 counterpart, Measure H (raising an additional \$500 million),⁶⁵ have utterly failed to effectively combat the homelessness crisis despite the largesse given to the government and private developers by the taxpayers.

The last failed government action addressed here is the city's poor handling of Project Roomkey, which was "a collaborative effort by the State, County, and Los Angeles Homeless Services Authority (LAHSA) to secure hotel and motel rooms for vulnerable people experiencing homelessness" to curb the spread of COVID-19.⁶⁶ This program provided for partial reimbursement of local funds used on the project from the Federal Emergency Management Agency (FEMA).⁶⁷ And although the reimbursement rate under President Biden was 100 percent as of April 2021, Los Angeles had neglected to apply for the reimbursement of an estimated \$59 million in funds spent, leaving copious amounts of federal money left on the table.⁶⁸ This unrecovered FEMA money could have been used "to shelter tens of thousands of at-risk people living on the streets of L.A."⁶⁹ And to make matters worse, in March of 2021, the city began ramping down Project Roomkey—well before the onslaught of both the Delta and Omicron variants.⁷⁰

Having witnessed and experienced the bleak details outlined above, two uniquely situated individuals became determined to do something about it.

63. *Id.* at 42; *see also infra* note 140 and accompanying text (explaining how private developers profit from public incentives when developing low-income housing, and then rent gouge their tenants when those incentives and accompanying obligations expire).

64. In Chambers Order, *supra* note 4, at 46.

65. *See* Blasi, *supra* note 43, at 30.

66. *Project Roomkey*, CNTY. OF L.A., <https://covid19.lacounty.gov/project-roomkey/> [<https://perma.cc/ETZ2-VDVG>].

67. In Chambers Order, *supra* note 4, at 47–48.

68. *Id.* at 48.

69. *Id.*

70. *Id.* at 47; *CDC Museum COVID-19 Timeline*, Ctrs. for Disease Control and Prevention (Aug. 16, 2022), <https://www.cdc.gov/museum/timeline/covid19.html#Late-2020> [<https://perma.cc/Z3U8-J2SC>] (outlining that the Delta variant surged in summer 2021 and the Omicron variant surged beginning in winter 2021).

II. THE HONORABLE DAVID O. CARTER AND SPECIAL MASTER MICHELE MARTINEZ

To fully understand the April 2021 preliminary injunction's purpose and impact, we must first examine the two people behind it: Judge David O. Carter and Michele Martinez.

A. Judge David O. Carter

David O. Carter received his juris doctor degree from UCLA in 1972.⁷¹ But before attending law school, Carter served as a marine in the Vietnam War in a battalion that had 25 percent of its soldiers killed in action.⁷² Carter himself had his arm shattered by gunfire and his lip blown up by a grenade while in combat.⁷³ Upon returning from the war, Carter noticed a conspicuously large number of his fellow veterans either in jail or living on the streets, which had a profound and lingering impact on him.⁷⁴ From 1972, Carter practiced as an Orange County assistant district attorney until he became a judge for the Orange County Municipal Court in 1981.⁷⁵ “In his courtroom he began to offer basic resources for civilian life: referrals to a food bank, clothing, or childcare; advice on buying a car for work; help finding a job.”⁷⁶ It was because of this last motivation—helping former inmates find gainful employment—that in the early 1990s, Judge Carter implemented a tattoo removal program in conjunction with the Beckman Laser Institute at the University of California, Irvine.⁷⁷ The program operated to remove face and neck tattoos on former inmates to help them make a good impression on employers.⁷⁸

In 1998, President Clinton appointed Judge Carter to serve as U.S. District Court Judge for the Central District of California.⁷⁹ The first case over which he presided relevant for our purposes was *Colin ex*

71. Carter, David O., FED. JUD. CTR., <https://www.fjc.gov/history/judges/carter-david-o> [https://perma.cc/93G2-GUGQ].

72. Joseph Klett, *Second Chances*, SCI. HIST. INST. (Mar. 28, 2018), <https://www.sciencehistory.org/distillations/magazine/second-chances> [https://perma.cc/Z83C-WMDT].

73. Christopher Goffard, *Meet the Judge at the Center of O.C. Riverbed Homeless Case Who Is Known for His Unconventional, Hands-On Approach*, L.A. TIMES (Feb. 20, 2018, 4:00 AM), <https://www.latimes.com/local/lanow/la-me-ln-judge-carter-profile-20180220-story.html> [https://perma.cc/8L3J-TTFK].

74. See Klett, *supra* note 72.

75. Carter, *supra* note 71.

76. Klett, *supra* note 72.

77. *Id.*

78. *Id.*

79. Carter, *supra* note 71.

rel. *Colin v. Orange Unified School District*,⁸⁰ in which he issued a preliminary injunction mandating an Orange County high school to allow the organization of a Gay-Straight Alliance on campus.⁸¹ Recognizing the power of using his courtroom to enforce protected civil rights, Judge Carter noted that “[a]bsent the threat of litigation and court-ordered enforcement of the students’ rights, Defendants were unlikely ever to recognize the club.”⁸² The case ultimately settled with the school district capitulating and recognizing the student organization.⁸³

More recently, in 2018, Judge Carter presided over a case in which officials from various cities in Orange County attempted to clear out homeless encampments along the Santa Ana River.⁸⁴ After personally visiting the encampments and shaking hands with fellow veterans, Judge Carter’s demand for solutions resulted in the parties brokering a deal in which the river would be cleared out humanely, offering each unhoused individual the necessary shelter and services.⁸⁵ “As a result of the lawsuit, shelter or housing was created for more than a thousand people—some in cities that once resisted shelters.”⁸⁶

Thus, by serving in Vietnam, creatively helping former inmates achieve employment, and using his brand of judicial activism to achieve human rights centered results, Judge Carter had decades of experience and a patented style of jurisprudence that would set the stage for *LA Alliance*.

80. 83 F. Supp. 2d 1135 (C.D. Cal. 2000).

81. *Id.*; see Benjamin Dowling-Sendor, *Equal Access Means Equal*, AM. SCH. BD. J. (July 2000), <https://web.archive.org/web/20010308101002/http://asbj.com/2000/07/0700school-law.html>.

82. *Colin*, 83 F. Supp. 2d at 1149.

83. *El Modena Students and School Board Resolve Lawsuit Over Gay-Straight Alliance*, LAMBDA LEGAL (Sept. 7, 2000), https://www.lambdalegal.org/news/ca_20000907_el-modena-students-school-board-resolve-lawsuit [<https://perma.cc/R565-7KVL>].

84. Complaint at 1, *Orange Cnty. Cath. Worker v. Orange County*, No. 18-cv-00155 (C.D. Cal. Jan. 29, 2018).

85. See also Amy Taxin, Associated Press, *Judge Brings Officials, Lawyers to Soon-to-Be Closed Homeless Camp*, CHRISTIAN SCI. MONITOR (Feb. 15, 2018), <https://www.csmonitor.com/USA/Justice/2018/0215/Judge-brings-officials-lawyers-to-soon-to-be-closed-homeless-camp> [<https://perma.cc/N2WM-K7GE>] (“[C]ounty officials agreed to provide 400 motel rooms and other short-term housing to those evicted from their traiside digs.”).

86. Benjamin Oreskes & Doug Smith, *L.A. Near Settlement to Create Shelters and Clear Homeless People off the Streets*, L.A. TIMES (Apr. 12, 2021, 3:28 PM), <https://www.latimes.com/homeless-housing/story/2021-04-12/la-nears-deal-build-shelters-clear-homeless-encampments> [<https://perma.cc/U37M-7GR4>].

B. Special Master Michele Martinez

In 2019, after serving on the Santa Ana City Council for over twelve years, Michele Martinez—the first in her family to graduate high school—volunteered to be special master to Judge Carter’s courtroom for the *LA Alliance* case.⁸⁷ “As the Special Master, Martinez ensures the parties in the . . . case follow judicial orders, while also making recommendations to the judge based on her political expertise.”⁸⁸

Martinez became acquainted with Judge Carter when, at her urging, Santa Ana joined two dozen other cities in volunteering to be sued in the Santa Ana River lawsuit mentioned above, intending to facilitate countywide reform.⁸⁹ Contrary to the usual Sisyphean struggle of combating homelessness, Santa Ana saw swift results:

Because of Martinez, Santa Ana was the first to settle with the court in this case. As a result, they built the first Santa Ana city shelter for the homeless in just 28 days. They were then required to start following a more thoughtful and compassionate service-oriented approach towards homelessness, including outreach workers to serve as the lead contacts to homeless people. Those outreach workers would offer field screenings, clinical assessments, and appropriate services and placement.⁹⁰

Indeed, these results spurred at least nineteen other local cities, like Whittier and Bellflower, to follow suit and achieve similar results.⁹¹ But these results took on a personal significance for Martinez, who herself had gone in and out of homelessness for over a decade following her mother’s incarceration, leaving her grandmother to raise her and her five siblings alone.⁹²

Together, she and Judge Carter oversee the *LA Alliance* case at the District Court level.⁹³ The two join forces outside the courtroom as well, visiting homeless encampments across Southern California to

87. Allison Norlian, *To Help End Homelessness in Her City, She Had a Radical Idea: Sue Us*, FORBES MAG. (July 21, 2021, 10:41 PM), <https://www.forbes.com/sites/allisonnorlian/2021/07/21/to-help-end-homelessness-in-her-city-she-had-a-radical-idea-sue-us/?sh=4b071b275876> [https://perma.cc/ZVX9-BF2X].

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

witness the crisis firsthand and bring that urgency into the courtroom with them.⁹⁴

III. CONTEXTUAL CASE LAW: *MARTIN V. CITY OF BOISE* & *MITCHELL V. CITY OF LOS ANGELES*

A. *Martin v. City of Boise*

Martin's impact on homelessness in the Ninth Circuit cannot be overstated, but *Martin* was a jumping off point from another famous U.S. Supreme Court case: *Robinson v. California*.⁹⁵ In *Robinson*, the Court held that a California statute making it a criminal offense to be addicted to narcotics amounted to criminalizing status, and thus, cruel and unusual punishment in violation of the Eighth Amendment.⁹⁶ In highlighting the cruel and unusual nature of punishing someone for being something regardless of what that punishment is, Justice Stewart famously analogized that, “[e]ven one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”⁹⁷

But *Robinson* does not directly address when a law, instead of punishing an obvious status or condition, punishes the necessary consequences of that status by labeling those consequences as “acts”—after all, the statute nullified in *Robinson* punished the *condition* of addiction, not the *act* of using narcotics, which is a necessary consequence of addiction. Thus, *Robinson* left open a loophole allowing municipalities to effectively punish status by punishing the behaviors resulting from that status. The conceptual sleight of hand here takes advantage of the paralogism that all acts are indeed voluntary. However, in the context of homelessness, “whether sitting, lying, and sleeping are defined as acts or conditions, *they are universal and unavoidable consequences of being human.*”⁹⁸

Thus, in closing this loophole left open by *Robinson*, when commentators speak of “criminalizing homelessness,” they speak of criminalizing a homeless individual’s engagement in necessary life-sustaining activities done in public, despite that individual having no

94. *Id.*

95. 370 U.S. 660 (1962).

96. *Id.* at 666–67.

97. *Id.*

98. *Martin v. City of Boise*, 920 F.3d 584, 616–17 (9th Cir. 2019) (emphasis added) (citing *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006)).

reasonable manner to avoid doing so.⁹⁹ In other words, they speak of criminalizing the “acts” that all unhoused individuals must commit by virtue of being unhoused. For example, laws punishing individuals for sleeping in public spaces inevitably punish unsheltered homeless people for doing what all unsheltered homeless people must do—sleep in public spaces.¹⁰⁰

Martin addressed head-on the delicate issue of criminalizing the condition of homelessness via criminalizing its “acts.” In *Martin*, six homeless plaintiffs living in Boise, Idaho, were cited by police and convicted for violating local camping and disorderly conduct ordinances.¹⁰¹

For example, a Boise police officer testified that he cited plaintiff Pamela Hawkes under the Camping Ordinance for sleeping outside “wrapped in a blanket with her sandals off and next to her,” for sleeping in a public restroom “with blankets,” and for sleeping in a park “on a blanket, wrapped in blankets on the ground.”¹⁰²

At the time, there were only three homeless shelters in the entire city, and all of them imposed barriers for unhoused persons seeking to stay there.¹⁰³ For example, individuals were required to arrive at the only nondenominational shelter by 5:00 PM, and if they arrived between 5:30 and 8:00 PM, they would only be admitted if the shelter accepted the reason for their late arrival.¹⁰⁴ If the individual arrived after 8:00 PM, they were generally not allowed to stay the night, regardless of the reason for their late arrival.¹⁰⁵ At one of the faith-based shelters, a plaintiff had been kicked out because he declined to enter the shelter’s “Discipleship Program,” which was a prerequisite for individuals to remain in the shelter beyond seventeen days.¹⁰⁶ Thus, there was a

99. Sara K. Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 CALIF. L. REV. 559, 561 (2021). This is the definition of “criminalizing homelessness” adopted by this Note.

100. *See id.*

101. *Martin*, 920 F.3d at 606.

102. *Id.* at 618 (“The Camping Ordinance therefore can be, and allegedly is, enforced against homeless individuals who take even the most rudimentary precautions to protect themselves from the elements.”).

103. *Id.* at 605–06.

104. *Id.* at 605.

105. *Id.*

106. *Id.* at 605–06. This policy required those who declined to enter the Discipleship Program to wait an additional thirty days before they could reenter the shelter, where the process would repeat. In recognizing the nexus between amplified coercion in the religious context and

conflict between the number of technically available and practically available shelter beds in the city.¹⁰⁷

The court held that the Boise ordinances violated the Eighth Amendment's ban on cruel or unusual punishment "insofar as [they] impose[d] criminal sanctions against homeless individuals for sleeping outdoors on public property, *when no alternative shelter [was] available to them.*"¹⁰⁸ Thus, *Martin* declared it unconstitutional to penalize an unhoused individual for living in public when that individual has nowhere else to go. But the *Martin* majority went out of their way to narrow the scope of their holding: "[W]e in no way dictate to the City that it must provide sufficient shelter for the homeless."¹⁰⁹ Notably, this is *precisely* what Judge Carter attempted to dictate to Los Angeles in his April 2021 preliminary injunction—that the city provide sufficient shelter for the homeless in Skid Row.¹¹⁰

B. Mitchell v. City of Los Angeles and the Origins of LA Alliance

Whereas *Martin*'s impact looms over the entire Ninth Circuit, the case of *Mitchell v. Los Angeles* affects purely local interests. In *Mitchell*, advocates represented various homeless individuals suing Los Angeles for violations of their property rights.¹¹¹ The case ultimately settled, and the ongoing agreement "limits the City's ability to clear or destroy the property of unhoused people and requires notice of any cleanups."¹¹² LA Alliance for Human Rights—a group formed to combat the *Mitchell* settlement¹¹³ and comprised mostly of Skid Row

Establishment Clause concerns, the court noted that: "A city cannot, via the threat of prosecution, coerce an individual to attend religion-based treatment programs consistently with the Establishment Clause of the First Amendment." *Id.* at 610.

107. *See id.* at 605–06.

108. *Id.* at 604, 618 (emphasis added). This Note sometimes refers to this italicized portion as the "*Martin* proviso," and it is crucial in any analysis implicating *Martin*.

109. *Id.* at 617 (citing *Jones*, 444 F.3d at 1138).

110. L.A. All. for Hum. Rts. v. County of Los Angeles, 14 F.4th 947, 956 (9th Cir. 2021).

111. Complaint at 1, *Mitchell v. City of Los Angeles*, No. 2:16-cv-01750 (C.D. Cal. Mar. 14, 2016).

112. *LA All. For Hum. Rts.*, 14 F.4th at 953; Complaint, *Mitchell v. City of Los Angeles*, No. 16-cv-01750 (C.D. Cal. Mar. 14, 2016) (emphasis added). This recognition of unhoused persons' rights in their property stems from the Ninth Circuit case of *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1024 (9th Cir. 2012), in which the Court held that a city may not confiscate or destroy a homeless individual's property without comporting with the Due Process requirements of the Fourteenth Amendment. *Lavan*, 693 F.3d at 1024.

113. *See* Oral Argument, *supra* note 8, at 33:10–33:33 (counsel for LA Alliance admitting that, as an association, "the Alliance's efforts . . . concededly, are focused on this case").

businesspeople and property owners¹¹⁴—did not support the increased property protections pursued in *Mitchell*.¹¹⁵ Accordingly, LA Alliance attempted to intervene in *Mitchell*, but was denied intervenor status.¹¹⁶ Having been denied intervenor status in *Mitchell*, LA Alliance filed its own lawsuit against the city and county of Los Angeles, leading to the *LA Alliance* case at the center of this Note.¹¹⁷

IV. *LA ALLIANCE FOR HUMAN RIGHTS V. CITY OF LOS ANGELES*

A. *At the District Court Level*

On March 10, 2020, LA Alliance for Human Rights, joined by various individual plaintiffs and represented by Spertus, Landes & Umhofer, LLP,¹¹⁸ filed a complaint in the United States District Court for the Central District of California.¹¹⁹ The complaint alleged fourteen state and federal causes of action against the city and county, including violation of section 17000 of the California Welfare and Institutions Code, waste of public funds and resources, violation of the Americans with Disabilities Act, and violation of Due Process and Equal Protection.¹²⁰ The very first line of the complaint powerfully alleges that “[p]eople are perishing on the streets at a rate of *three per*

114. The Ninth Circuit adds that “[s]ix of the nine individuals alleged to be representative of LA Alliance’s membership own property or have business or organizational interests in and around homeless encampments.” *LA All. for Hum. Rts.*, 14 F.4th at 953. Shayla Myers with the Legal Aid Foundation of Los Angeles points out that one member of the Alliance, Continuum Partners, conveniently just signed a \$2 billion development deal with the city in April of 2021 for a ten-building project on the edge of Skid Row that “would rank among the largest L.A. commercial real estate developments in recent memory.” Roger Vincent, *A \$2-Billion Mega-Project Could Reshape the Arts District*, L.A. TIMES (Apr. 29, 2021, 5:00 AM), <https://www.latimes.com/business/story/2021-04-29/fourth-central-development-arts-district> [<https://perma.cc/HF47-DDNU>]; see Benjamin Oreskes, *Judge Rails at L.A. Officials for Causing Homelessness Through Structural Racism. They Don’t Disagree*, L.A. TIMES (May 27, 2021, 4:53 PM), <https://www.latimes.com/homeless-housing/story/2021-05-27/judge-carter-rails-at-l-a-for-letting-homeless-people-die> [<https://perma.cc/6LS2-2SCK>].

115. Similarly, “LA Alliance also takes issue with [the] holding in *Martin v. City of Boise*.” *LA All. for Hum. Rts.*, 14 F.4th at 953 n.1.

116. *Id.* at 953.

117. *Id.*

118. The Central City East Association, a property owners’ association in Skid Row, is “intimately intertwined” with LA Alliance and its litigation. Proposed Intervenor’s Ex Parte Application for Intervention and Appearance at March 19, 2020 Conference at 10, *LA All. for Hum. Rts. v. City of Los Angeles*, No. 21-55408 (C.D. Cal. 2020). In fact, Don Steir, “the longtime general counsel of the Central City East Association,” also chairs LA Alliance. *Id.* at 10 n.6.

119. Complaint, *LA All. for Hum. Rts.*, 14 F.4th 947 (No. 20-cv-2291).

120. *Id.* at 1–2.

day while the City and County of Los Angeles have tried but failed to stem the tide of human tragedy.”¹²¹

Specifically, Plaintiffs allege that the County and City’s failures to curb rising homelessness, combined with various settlements [like *Mitchell*] and court orders protecting the rights of homeless individuals [like *Martin*], have resulted in violent crime, the deterioration of public order, unsanitary conditions, needless death, the usurpation of public sidewalks, and damage to the natural environment. Plaintiffs also allege that this crisis has negatively affected property values in downtown and Skid Row, harming Plaintiffs’ ability to sell, rent, and operate their properties. Various Plaintiffs also allege that they cannot safely traverse Skid Row sidewalks

...
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Conspicuously absent from the complaint is any thorough discussion of standing or how the city’s and county’s actions amounted to racial discrimination,¹²³ with the only cursory references to discrimination coming in the context of disability discrimination.¹²⁴

Believing that LA Alliance was attempting to undermine their recent settlement, some of the plaintiffs in *Mitchell* filed for intervenor status, which was granted in March of 2020 by Judge Carter.¹²⁵ In an effort to protect the interests of the *Mitchell* intervenors, Judge Carter explicitly required that any ordinances passed by the city following its compliance with the April 2021 preliminary injunction would have to comply with the *Mitchell* settlement.¹²⁶

1. The May 2020 Preliminary Injunction Ordering Freeway Onramps, Overpasses, and Underpasses Be Cleared

The first substantive results from this lawsuit came on May 22, 2020, when Judge Carter granted what would become the first of two preliminary injunctions “ORDER[ING] that individuals experiencing

121. *Id.* at para. 1; accord In Chambers Order, *supra* note 4, at 3.

122. *LA All. for Hum. Rts.*, 14 F.4th at 953.

123. The words “racial” and “discrimination” do not appear together once in the entire complaint. See Complaint, *LA All. for Hum. Rts.*, 14 F.4th 947 (No. 20-cv-2291).

124. *Id.* at paras. 171–83.

125. *LA All. for Hum. Rts.*, 14 F.4th at 953. One of those intervenors, Cangress, doing business as Los Angeles Community Action Network, was party to the Ninth Circuit’s review of the April 20, 2021 preliminary injunction. *Id.*

126. See In Chambers Order, *supra* note 4, at 109.

homelessness camped within 500 feet of an overpass, underpass, or ramp must be offered housing . . . and . . . humanely relocated at least 500 feet away from such areas.”¹²⁷ In so doing, Judge Carter cited concerns over the health, safety, and well-being of homeless individuals camped near freeways, creating risks constituting an emergency.¹²⁸ However, the preliminary injunction was vacated less than one month later¹²⁹ when the parties “struck a deal to provide 6,700 beds for those living near freeway ramps, overpasses and underpasses, with the county footing the bill.”¹³⁰ But the vacated preliminary injunction is subject to reinstatement if the court determines that the parties are not fulfilling the terms of their deal,¹³¹ and while the city claimed to have created 6,000 new beds pursuant to the agreement, by May 2021 counsel for LA Alliance claimed that only 500 new beds had been provided to those sleeping near freeways.¹³² And Judge Carter is actively monitoring the agreement; in January 2021, he invited the parties to appear at the Downtown Women’s Center located in Skid Row to provide progress and status reports of the June 18 agreement.¹³³ Thus, at least by agreement, Judge Carter had already successfully implemented his court’s injunctive powers to compel the parties to make progress towards sheltering homeless individuals. But this was a mere precursor to what would come one year later.

2. The April 2021 Preliminary Injunction

For nearly a year after the freeway preliminary injunction, the court stayed proceedings and “devoted an extraordinary amount of effort toward understanding and encouraging the parties to implement solutions that would improve the lives of unhoused Angelenos.”¹³⁴ But after months of impasse, an order to appear and show cause, and multiple status conferences, LA Alliance moved for preliminary

127. *LA All. for Hum. Rts. v. City of Los Angeles*, No. CV 20-02291, 2020 WL 2615741, at *6 (C.D. Cal. May 22, 2020), *vacated*, No. CV 20-02291, 2020 WL 3421782 (C.D. Cal. June 18, 2020).

128. *Id.* at *2–3.

129. *LA All. for Hum. Rts.*, No. 20-cv-2291, 2020 WL 3421782, at *1 (C.D. Cal. June 18, 2020).

130. Gina Kim, *Order to House People Living Freeways Could Be Renewed*, DAILY J., May 3, 2021, at 1; *see LA All. for Hum. Rts.*, 2020 WL 3421782, at *1.

131. *LA All. for Hum. Rts.*, 2020 WL 3421782, at *1.

132. Kim, *supra* note 130, at 2.

133. *LA All. for Hum. Rts.*, No. LA CV 20-02291, 2021 WL 329082, at *2 (C.D. Cal. Jan. 31, 2021).

134. *LA All. for Hum. Rts. v. County of Los Angeles*, 14 F.4th 947, 953 (9th Cir. 2021).

injunction, and without holding a hearing on the matter, the court granted the motion on April 20, 2021.¹³⁵

The preliminary injunction itself was a sweeping 109-page treatise, covering everything from race and gender as they relate to the homelessness crisis; government inaction; the health and safety impacts of the crisis; a legal analysis of the requirements for preliminary relief; and the order itself, which spanned only four pages.¹³⁶ The ruling began with a discussion of historical racism and a flashback to the end of the Civil War, with Abraham Lincoln standing “at the site of the bloodiest battle,” making a “short and profound speech, exemplifying an unshakable moral commitment to end the abomination of slavery.”¹³⁷ From there, Judge Carter jumped into a discussion of racial housing discrimination, extending from the early twentieth century’s birth of Skid Row, through the middle twentieth century’s implementation of discriminatory redlining and segregating highway construction in Black communities, to the modern effects of these discriminatory practices on Black Angelenos.¹³⁸

Judge Carter next examined the paradox of Los Angeles’s failure to provide available and so-called “affordable housing.”¹³⁹ With “private-enterprise . . . ‘getting rich’ at the expense of low-and moderate-income families,”¹⁴⁰ “[n]early 9,000 units in Los Angeles bound by affordable housing covenants . . . [set to] expire within the next eight years,”¹⁴¹ “75% of the city’s residential property . . . zoned for single-

135. See *id.* at 953–54; In Chambers Order, *supra* note 4, at 105–09. For Judge Carter’s discussion about there being no need for a hearing, see *id.* at 94–95.

136. See In Chambers Order, *supra* note 4.

137. *Id.* at 2.

138. See *id.* at 2–20.

139. See *id.* at 20–31 (“The term ‘affordable housing’ encompasses the government’s total effort to provide housing through public-private partnerships specifically designed to serve those who cannot afford market rents.”).

140. *Id.* at 21 (quoting Tracy Jeanne Rosenthal, *The Enduring Fiction of Affordable Housing*, NEW REPUBLIC (Apr. 2, 2021), <https://newrepublic.com/article/161806/affordable-housing-public-housing-rent-los-angeles> [<https://perma.cc/7587-BWV8>]). For example, after for-profit developers lobbied the federal government to participate in the “affordable housing” market, private developers were incentivized “with one percent effective interest rates, profit structures riddled with loopholes, and exit strategies.” *Id.* Indeed, the first apartment complex created under this private developer affordable housing model—the Concord Apartments in Pasadena—was hit hard by the owner’s avarice. *Id.* “Three years after purchasing the apartments, the owner of the building prepaid the subsidized mortgage, doubled tenants’ rents, and moved to auction the building at a substantial profit.” *Id.*

141. *Id.* at 22 (citing Anna Scott, *Thousands of Angelenos Will Have Fewer Affordable Housing Options as ‘Covenants’ Will Expire*, KCRW (Apr. 12, 2021), <https://www.kcrw.com/news/shows/greater-la/affordable-housing-manhattan-beach-restitution-oc/rent-covenants-expiring-la> [<https://>

family” housing,¹⁴² and the inadequacies of Section 8 housing outlined above,¹⁴³ available and affordable housing in L.A., Judge Carter declared, is neither available nor affordable.¹⁴⁴

Next, Judge Carter held Governor Newsom’s and Mayor Garcetti’s feet to the fire by highlighting that, while both officials have said a great deal about addressing homelessness and have even dedicated generous sums of money to the issue, these mounting words and dollars have been met with a similarly mounting death toll of unhoused individuals.¹⁴⁵ Judge Carter laid the blame primarily on local authorities, claiming that these preventable deaths are occurring “while the City and County of Los Angeles stand by, allowing bureaucracy to upstage the needs of their constituents.”¹⁴⁶

After having established that the city’s most powerful officials recognize the current crisis as a true emergency, Judge Carter next discussed the city’s and county’s availability of emergency powers.¹⁴⁷ To support the argument that local government has fallen asleep at the wheel, Judge Carter pointed out that pursuant to the Los Angeles City Charter and Administrative Code, the mayor has express authority to declare a state of emergency when circumstances are thoroughly “beyond the control” of the city.¹⁴⁸ If the mayor chooses to invoke these emergency powers, he then has the power to “promulgate, issue and enforce rules, regulations, orders and directives which the [mayor] considers necessary for the protection of life and property.”¹⁴⁹ But while Mayor Garcetti and the city council moved in 2015 to declare a state of emergency under these provisions, “the motion was never acted upon.”¹⁵⁰ The city did declare a shelter crisis under these

perma.cc/B67L-LZ8W]) (“Los Angeles City Councilmember Gil Cedillo noted that [the] number of soon-to-expire covenants ‘wipes out whatever gains we make’ in housing efforts.”).

142. *Id.* at 28–29. *But see infra* note 260 and accompanying text.

143. *See supra* text accompanying note 55.

144. *See* Christine Flores & Addy Bink, *L.A. Tops List of Least Affordable U.S. Cities of 2022*, KTLA (Mar. 30, 2022, 7:45 AM), <https://ktla.com/news/nationworld/l-a-tops-list-of-least-affordable-u-s-cities-of-2022/> [<https://perma.cc/D3MA-6XZQ>].

145. *See* In Chambers Order, *supra* note 4, at 32–37.

146. *Id.* at 34.

147. *Id.* at 32–38.

148. *Id.* at 37; L.A., CAL., CHARTER, § 231 (2022); L.A., CAL., ADMIN. CODE div. 8, ch. 3, art. 2, § 8.22 (2022).

149. In Chambers Order, *supra* note 4, at 37 (quoting L.A., CAL., ADMIN. CODE div. 8, ch. 3, art. 3, § 8.29 (2022)).

150. In Chambers Order, *supra* note 4, at 38.

provisions in 2018,¹⁵¹ “but the shelter crisis declaration has proven to be nothing more than empty words.”¹⁵² As already mentioned, 48,041 homeless individuals (72 percent of the entire homeless population in the county) remained unsheltered in 2020—only two years after the emergency declaration was promulgated,¹⁵³ leaving Los Angeles far behind other cities’ efforts to curb homelessness.¹⁵⁴ Thus, according to Judge Carter, the city has failed to properly designate the homelessness crisis as an emergency, and even when it has declared emergency status, such declarations have been a “waste of time,” filled with empty promises and “the pretense of urgency.”¹⁵⁵

The order then dovetailed into an analysis of government inaction in which Judge Carter outlined the failures of measures such as Proposition HHH, Measure H, and Project Roomkey addressed above.¹⁵⁶ Next was a section addressing the health and safety impacts of the homelessness crisis on unhoused people, including the risks of fires,¹⁵⁷ exposure to carcinogens such as car exhaust,¹⁵⁸ mental health trauma,¹⁵⁹ disease,¹⁶⁰ and death.¹⁶¹ Judge Carter then discussed the

151. L.A., CAL., ORDINANCE 185,490 (2022) (“In order to address the threat to the health and safety of the homeless there must be an increase in the number of shelters available to the homeless to find refuge.”).

152. In Chambers Order, *supra* note 4, at 39.

153. See *Homelessness in Los Angeles County 2020*, *supra* note 20.

154. In Chambers Order, *supra* note 4, at 39 (citing Gale Holland, *U.N. Monitor Says L.A. Lags Behind Other Cities in Attacking Homelessness*, L.A. TIMES (Dec. 15, 2017, 6:10PM), <https://www.latimes.com/local/lanow/la-me-ln-un-monitor-skid-row-20171215-story.html> [<https://perma.cc/SPD4-WZSK>]).

155. See In Chambers Order, *supra* note 4, at 38–39 (citing Editorial, *What Happened to L.A.’s State of Emergency on Homelessness?*, L.A. TIMES (Nov. 17, 2015, 5:00AM), <https://www.latimes.com/opinion/editorials/la-ed-1117-homeless-emergency-20151117-story.html> [<https://perma.cc/83L9-QRU5>]).

156. In Chambers Order, *supra* note 4, at 40–50; see *supra* Section I.C.

157. See *supra* notes 24–25 and accompanying text.

158. See In Chambers Order, *supra* note 4, at 53 (“Unhoused Angelenos near freeways are exposed to toxic pollution and a high probability of ‘hazardous waste concentrations of lead.’”); *supra* Section IV.A.1.

159. See In Chambers Order, *supra* note 4, at 56 (“[LAHSA] estimates that 25% of all homeless adults in Los Angeles County have a serious mental illness that likely perpetuates their homelessness.”); see also Michael Novasky & Tina Rosales, *Mental Health and Homelessness in the Wake of COVID-19: The Path to Supportive and Affordable Housing*, 68 UCLA L. REV. DISCOURSE 130, 132–33 (2020) (“Adults with severe mental illness constitute one of the largest subpopulations of homeless communities. . . . [A] more recent study conducted by the *L.A. Times* found that over 50 percent of those experiencing homelessness in Los Angeles County may be experiencing symptoms of a mental disorder.”).

160. See In Chambers Order, *supra* note 4, at 58–61. One Skid Row community organizer, Reverend Andrew Bales, “lost part of his leg in 2014 after he came into contact with a flesh-eating disease in Skid Row . . . consist[ing] of E-coli, strep and staph” infections. *Id.* at 58.

161. *Id.* at 55; *supra* note 27.

challenges unique to the rising number of unhoused women and LGBTQ+ individuals, explaining that “women experiencing homelessness in the City increased 25% between 2019 and 2020,”¹⁶² and “while LGBT people make up only about five percent of the U.S. population overall, they make up 12% of Skid Row’s homeless population.”¹⁶³ But, as Judge Carter explained, the horror that women and LGBTQ+ people face while living in or out of shelters cannot be captured by statistics. Women with children, for example, live under the constant threat of having their children taken away, even if they are fleeing an abusive household and seeking refuge in a shelter.¹⁶⁴ Moreover, a 2016 survey revealed that “nearly half of women living in Skid Row had been attacked in the previous 12 months,”¹⁶⁵ leading some women to alter their appearance deliberately to look more masculine to avoid violent attacks.¹⁶⁶

a. Judge Carter’s legal analysis for preliminary injunctive relief

Wading into the legal discussion, Judge Carter first asserted that “[t]his court cannot idly bear witness to preventable deaths” before outlining the four elements for granting preliminary injunctive relief: (1) likelihood of success on the merits; (2) likely irreparable harm absent preliminary relief; (3) a balance of equities tipping in favor of preliminary relief; and (4) public interest in granting the relief sought.¹⁶⁷

It is on this first element—likelihood of success on the merits—that Judge Carter focused the bulk of his analysis. He began discussing the unconstitutionality of racial discrimination, citing the seminal cases of *Brown v. Board of Education (I & II)*¹⁶⁸ and *Swann v. Charlotte-Mecklenburg Board of Education*¹⁶⁹—the former ruling that segregated schools and the “separate but equal” principle on which they stood were unconstitutional violations the Equal Protection Clause of the Fourteenth Amendment, and the latter holding that “the scope of a

162. In Chambers Order, *supra* note 4, at 63; see also Gale Holland, *Attacked, Abused and Often Forgotten: Women Now Make Up 1 in 3 Homeless People in L.A. County*, L.A. TIMES (Oct. 28, 2016), <https://www.latimes.com/projects/la-me-homeless-women/> [<https://perma.cc/BB7W-MTKE>] (“One in three homeless people in Los Angeles County are women.”).

163. In Chambers Order, *supra* note 4, at 64.

164. *Id.* at 64–65.

165. *Id.* at 65 (citing Holland, *supra* note 154).

166. *Id.* at 65.

167. *Id.* at 66.

168. 402 U.S. 1 (1971).

169. 347 U.S. 483 (1954) (“*Brown P*”); 349 U.S. 294 (1955) (“*Brown IP*”).

district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."¹⁷⁰ In other words, Judge Carter emphasized that *Swann* and its progeny, with the blessing of *Brown*, used the equitable powers of the district courts around the nation to order school districts to actively integrate their school systems.¹⁷¹

Applying this line of jurisprudence to the present case, Judge Carter noted that "[t]he City and County's actions have been, and remain, critical drivers of racial discrimination," leading to disproportional impact on unhoused Black Angelenos.¹⁷² Judge Carter thus concluded that:

Such disparities have long been recognized as severe constitutional violations—violations so corrosive to human life and dignity as to justify the sweeping exercise of a federal district court's equitable powers. Based on the Court's findings of these historical constitutional violations, a persisting legacy of racially disparate impacts . . . and the City and County's knowing failure to adequately address the issue despite numerous opportunities and resources to do so, this Court is pressed to grant an affirmative injunction ordering the City and County to actively remedy its homelessness crisis.¹⁷³

i. The state-created danger doctrine

Next, and still analyzing the likelihood of success on the merits, Judge Carter addressed more nuanced and creative legal arguments, starting with the state-created danger doctrine. Here, Judge Carter explained that while the Fourteenth Amendment does not typically confer an affirmative duty on the state to render aid, the government does have a duty to act when it "has created the dangerous conditions" giving rise to a constitutional injury.¹⁷⁴ He goes on to cite Ninth Circuit precedent holding that a state has a duty to act when it affirmatively imperils an individual by acting with deliberate indifference to a

170. In Chambers Order, *supra* note 4, at 67–70; *Brown I*, 347 U.S. at 495; *Swann*, 402 U.S. at 15.

171. *See* In Chambers Order, *supra* note 4, at 68.

172. *Id.* at 69–71.

173. *Id.* at 71.

174. *Id.*

known or obvious danger.¹⁷⁵ Thus, there are three elements to find a state-created danger exception to the Fourteenth Amendment: (1) an affirmative act by the state; (2) the existence of a known or obvious danger; and (3) deliberate indifference on the part of the state to that danger.¹⁷⁶

Judge Carter held that the first element was satisfied because “there are no shortage of affirmative steps that the City and County have taken that have created or worsened the discriminatory homeless regime that plagues Los Angeles today,” citing the state’s enforcement of discriminatory practices such as redlining and restrictive housing covenants, as well as the government’s unilateral decision to prioritize housing over shelter.¹⁷⁷ The second element, the existence of a known or obvious danger, was likewise met according to Judge Carter, as “there is no question that [the danger of homelessness] is known to the decision makers with the power to end this senseless loss of life.”¹⁷⁸ The final and most stringent element—that the state acted with deliberate indifference—was also satisfied according to Judge Carter, as “the government has ‘disregarded’ the consequences of the long-standing policies that have perpetuated structural racism and the ways in which present corruption and lack of coordination have led to an exponentially growing death rate.”¹⁷⁹ Thus, Carter concluded that LA Alliance was likely to succeed on the merits of its Fourteenth Amendment state-created danger claim.¹⁸⁰

ii. The special relationship doctrine

Next, Judge Carter addressed a second exception establishing an affirmative duty of the state to render aid under the Fourteenth Amendment: the special relationship exception. This exception applies when “a state ‘takes a person into its custody and holds him there against his will.’”¹⁸¹ According to Judge Carter, Los Angeles triggered this special relationship duty when it deprived homeless Angelenos of their

175. *Id.* at 71–72 (citing *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996); *Wood v. Ostrander*, 879 F.2d 583, 588 (9th Cir. 1989)).

176. *See id.* at 72–74.

177. *Id.* at 72–73.

178. *Id.* at 74.

179. *Id.* at 75.

180. *Id.*

181. *Id.* at 75–76 (citing *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989)).

liberty by implementing containment policies within Skid Row.¹⁸² In other words, the city deprived its homeless population of its liberty by actively confining that population to the *de jure* ghetto of Skid Row, thereby placing an affirmative duty on the city to render aid to that population. Because, according to the court, the city failed to render that aid, the court concluded the plaintiffs had yet further grounds for likelihood of success on the merits of their Fourteenth Amendment claims.¹⁸³

iii. The state “inaction” doctrine

Then, in a true display of judicial activism, Judge Carter advocated for a profound expansion of the state action doctrine, and thus, the duties of a state under the Equal Protection Clause of the Fourteenth Amendment. Judge Carter dove deep into the history and scholarship surrounding the Equal Protection Clause to argue that both a literal and original reading of the text, supplemented by *Brown*’s precedent, supports the imposition of an affirmative duty on a state to render aid when that state’s “severe inaction” is responsible for denying a suspect class equal protection under the law.¹⁸⁴ In other words, when a state’s inaction serves to deprive its Black population of equal protection, that state “inaction” should be treated as state action denying equal protection, thereby violating the Equal Protection Clause. Applying this “severe inaction” theory to the facts of the case, the court held that:

When state inaction has become so egregious, and the state so nonfunctional, as to create a death rate for Black people so disproportionate to their racial composition in the general population, the Court can only reach one conclusion—state

182. In Chambers Order, *supra* note 4, at 75–76; *see supra* note 34 and accompanying text.

183. In Chambers Order, *supra* note 4, at 76.

184. *Id.* at 76–78. Judge Carter cites scholar David M. Howard’s textual reading of the clause, who argues that the double negative “not deny” in the text “nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws” can be literally interpreted to mean “to provide,” rendering state inaction [allowing unequal protection] constitutionally impermissible.” *Id.* at 77 (first omission in original) (citing 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, 255 (2017)). Carter also quotes John Poole, a senator in 1870, who argued that the Equal Protection Clause’s language infers a duty on the state to not deny equal protection by acts of omission as well as affirmative acts. In Chambers Order, *supra* note 4, at 77.

inaction has become state *action* that is strongly likely in violation of the Equal Protection Clause.¹⁸⁵

Thus, according to the court, the plaintiffs were likely to succeed on the merits of their equal protection claims as well, paving further justification for preliminary equitable relief.

iv. The substantive due process right to family integrity

In another creative display of jurisprudence, the court next addressed what it considered likely violations of Fourteenth Amendment substantive due process. Judge Carter explained that substantive due process protects against government deprivation of life, liberty, or property in a way that either shocks the conscious or abridges the fundamental rights of individuals implied by the Bill of Rights and contemporary liberties.¹⁸⁶ One such fundamental right protected by due process is the right to family integrity.¹⁸⁷ Citing “[a] disproportionate number of Black unhoused families directly stem[ming] from decades of systemic racism intended to segregate and disenfranchise the Black community,” Carter thus concluded that “the City and County’s discriminatory conduct has threatened the family integrity of the Black unhoused,” thereby abridging the fundamental right to family integrity of Black Angelenos protected by substantive due process.¹⁸⁸ Thus, Judge Carter found likelihood of success on the merits of the plaintiff’s substantive due process claim.

v. LA Alliance’s state law claims

Next, Judge Carter addressed the plaintiff’s state law grounds for seeking equitable relief, focusing on their California Welfare and Institutions Code section 17000 claim for failure to relieve and support all incompetent, poor, indigent persons. Judge Carter cited case law interpreting a duty on the state via section 17000 to provide the indigent of California both “general assistance” and “subsistence medical care,” as discussed above.¹⁸⁹ While the state has discretion in

185. *Id.* at 78 (emphasis added).

186. *Id.* at 79–80.

187. *Id.* at 80–81.

188. *Id.* at 82. Carter cites two cases here in which a district court granted equitable relief to reunite families that had been separated at the border by Trump-era immigration policy. *Id.* at 81 (citing *Ms. L. v. U.S. Immigr. & Customs Enf’t*, 302 F. Supp. 3d 491, 500–01 (S.D. 2018); and *Quillion v. Walcott*, 434 U.S. 246, 255 (1978)).

189. *Id.* at 86–87. See *supra* Section I.C on the duties imposed by CAL. WELF. & INST. CODE § 17000 (2022).

determining how to provide these services, recall that those services must provide medical care at a level not endangering the indigent or leading to unnecessary suffering.¹⁹⁰ Judge Carter then cited the myriad of failed attempts by the city and county to curb the tide of homelessness¹⁹¹ and its adverse impact on the health and safety of the indigent to conclude that the plaintiffs were likely to succeed on the merits of their section 17000 claim as well.¹⁹²

vi. LA Alliance's ADA claim

Lastly, and still focusing on the likelihood of success on the merits, Judge Carter shifted his analysis to the plaintiff's ADA claim. Here Judge Carter concluded that, because the ADA requires that public sidewalks have at least thirty-six inches of passable space, yet much of Skid Row's sidewalks are completely occupied by makeshift shelters, the city and county were in violation of the ADA, therefore making the plaintiff's ADA claim likely to succeed on the merits.¹⁹³

vii. The remaining elements for preliminary relief

Finally, Judge Carter shifted his analysis to the second element for granting preliminary injunctive relief: likely irreparable harm absent the relief sought. Judge Carter quickly concluded this element had been met, proclaiming that "[n]o harm could be more grave or irreparable than the loss of life," reminding the reader that "1,383 homeless people died on the streets of Los Angeles in 2020."¹⁹⁴

In analyzing the third element for preliminary injunctive relief, a balance of equities tipping in favor of such relief, Judge Carter held that where a plaintiff establishes likely constitutional violations as established here, the balance of equities favors a preliminary injunction.¹⁹⁵ Thus, the third element for preliminary injunctive relief was met, according to the court.¹⁹⁶

To close his legal analysis, Judge Carter addressed the fourth element for granting preliminary injunctive relief, a public interest in granting the relief sought. And indeed, regarding fundamental

190. *Id.* at 87.

191. *See id.*

192. In Chambers Order, *supra* note 4, at 90.

193. *Id.* at 90–92.

194. *Id.* at 92.

195. *Id.*

196. *Id.*

questions of checks and balances and judicial overreach, this small section of the long order was perhaps the most important. Here, Judge Carter framed the issue as one necessitating strong and swift judicial intervention.¹⁹⁷ Acknowledging that the defendants argued that granting this preliminary injunction would encroach upon the province of the legislature, Judge Carter countered:

The Court, however, seeks to ensure accountability, and promote action where there has been historic inaction, by issuing a practical flexibility in its remedy. The City's inaction has had a deep, disparate, and deadly impact on the citizens of Los Angeles. And no public interest is more paramount than protecting the lives of our citizens.¹⁹⁸

Thus, the court ruled that there was indeed a public interest in granting relief, thereby satisfying the fourth element for preliminary injunctive relief. Before citing a series of Supreme Court and Ninth Circuit opinions reinforcing a district court's power to grant equitable relief in the face of humanitarian crisis and constitutional violation,¹⁹⁹ the court finally concluded its order with the provisions of the preliminary injunction.

b. The provisions of the order

Judge Carter split the provisions of the preliminary injunction into two categories: first, orders for accountability, and second, orders for action.²⁰⁰ To promote and ensure accountability on the part of the city and county, the court first ordered that Mayor Garcetti place \$1 billion in escrow to fund the mandates of the injunction.²⁰¹ This bold mandate is supplemented by orders to ensure accountability, like ordering audits by independent investigators to monitor all the funds received and spent on local efforts to stem the homelessness crisis.²⁰² Moreover, the “[p]arties [were] ORDERED to meet with Special Monitor/Master

197. *See id.* at 93.

198. *Id.*

199. *Id.* at 96–104.

200. *Id.* at 106–09.

201. *Id.* at 106. The day before the preliminary injunction was granted, Mayor Garcetti announced the city would spend \$1 billion over the next year to combat homelessness. Judge Carter thus ordered Garcetti to make good on his promise and put that billion in escrow. *See Judge Orders Los Angeles to Shelter All Homeless Skid Row Residents*, THE GUARDIAN (Apr. 21, 2021, 2:26 PM), <https://www.theguardian.com/us-news/2021/apr/21/los-angeles-homeless-skid-row-shelter-judge> [https://perma.cc/KLG9-QW9M].

202. In Chambers Order, *supra* note 4, at 106.

Michele Martinez within 10 days to receive her input regarding independent auditors and investigators,” thereby granting Martinez the authority and oversight to make the impact on the case that drove her to join Judge Carter’s court.²⁰³

Moving on to orders for action, Judge Carter began by ordering the city to create reports on topics such as land availability for the construction of shelters, “structural barriers . . . that cause a disproportionate number of people of color to experience homelessness or housing insecurity,” solutions to the failure of so-called affordable housing, and answers for “why an emergency declaration has not been issued” by Mayor Garcetti.²⁰⁴ Next, regarding mental health and substance abuse treatment, the order mandated that “the County shall report to the Court on the progress towards establishing the 1,508 new sub-acute beds to accommodate the needs of the non-jail population and an additional 1,418 new sub-acute beds to accommodate those with substance abuse disorders being diverted from jails.”²⁰⁵

Moving on, Judge Carter focused on Skid Row and issued the following fateful order: “[T]he City and County must offer and if accepted provide shelter or housing immediately to all unaccompanied women and children living in Skid Row; . . . to all families living in Skid Row; and . . . to the general population living in Skid Row.”²⁰⁶ But more than causing controversy, this single mandate illuminates the policy concerns and contradictions at the center of this Note.²⁰⁷

The provisions concluded by ordering “[t]he County [to] offer and if accepted provide to all individuals within Skid Row who are in need of special placement through the Department of Mental Health or Department of Public Health appropriate emergency, interim, or permanent housing and treatment services,” thereby working to meet the mandates of section 17000.²⁰⁸ Working to undo decades of official containment in Skid Row, the order then mandated the county to provide support services to all accepting the new housing, and both the city and county to “prepare a plan that ensures the uplifting and

203. *Id.*

204. *Id.* at 107.

205. *Id.* at 108.

206. *Id.*

207. *See infra* Part V.

208. In Chambers Order, *supra* note 4, at 108.

enhancement of Skid Row without involuntarily displacing current residents to other parts of the City or County.”²⁰⁹

Judge Carter then tied his preliminary injunction to *Martin* and *Mitchell*, requiring any municipal ordinance subsequently passed by Los Angeles to conform to the holding in *Martin* and the settlement in *Mitchell*.²¹⁰ Lastly, Judge Carter appointed Michele Martinez to help the defendants implement these orders and resolve any disputes obstructing compliance.²¹¹ Thus, the preliminary injunction was granted, binding the defendants for the time being to put up one billion dollars to subsidize, offer, and provide shelter and services to every unhoused individual residing in Skid Row. But the narrative arc of the order was, at this juncture, just beginning.

B. The Immediate Aftermath of the Order

The historical precedent of the April 2021 order garnered much attention despite it being promulgated by a trial court. Numerous major news outlets including *The Guardian* and the *Los Angeles Times* reported on Judge Carter’s “sweeping,” “fiery,” and “explosive” order that left Los Angeles officials “scrambling.”²¹²

The city and county immediately fought back. Just a day after the order was issued the county filed a notice of appeal, citing judicial overreach.²¹³ Despite Garcetti openly designating a billion dollars to address the crisis just a day before Judge Carter granted LA Alliance’s motion, the head of the Los Angeles City Council’s budget committee, Paul Krekorian, criticized Judge Carter’s misunderstanding of how municipal budgets work: “The idea that the city has billions of dollars just lying around that are not being used right now, that we could just write a check and put it into an escrow account, doesn’t make

209. *Id.* at 109.

210. *Id.*

211. *Id.*

212. See, e.g., *Judge Orders Los Angeles to Shelter All Homeless Skid Row Residents*, *supra* note 201; David Zahniser et al., *Judge’s Skid Row Order Leaves L.A. Officials and Housing Developers Scrambling*, L.A. TIMES (Apr. 22, 2021, 6:08 PM), <https://www.latimes.com/california/story/2021-04-22/judges-skid-row-order-leaves-l-a-officials-housing-developers-worried-and-scrambling> [<https://perma.cc/ECF7-ALBJ>].

213. Alicia Victoria Lozano, *Los Angeles County to Appeal Judge’s Order to Shelter Homeless People on Skid Row*, NBC NEWS (Apr. 22, 2021, 4:48 PM), <https://www.nbcnews.com/news/us-news/federal-judge-orders-los-angeles-shelter-homeless-people-skid-row-n1265005> [<https://perma.cc/VQ83-JAJ5>].

sense.”²¹⁴ When asked about the order that was largely directed at him, Mayor Garcetti presciently predicted “at a ribbon-cutting ceremony for the opening of a tiny-home village for homeless residents, [that] the city would have ‘a very, very strong case’ if it decide[d] to file an appeal.”²¹⁵

The defendants did file an appeal, and they did have a strong case. Facing such exacting orders from the court, the county filed an emergency motion to stay proceedings on April 28, 2021, and the city followed suit, filing its own motion to stay on May 4, both of which were granted.²¹⁶ In its motion to stay, the county began formulating what would ultimately become their winning argument: “Plaintiffs are attempting to prop up a sweeping injunction issuing relief that exceeds what they asked for based on a nonexistent record and claims that fail as a matter of law.”²¹⁷ Then, on June 10, the Ninth Circuit extended the stay until it could review the order.²¹⁸

In addition to opening briefs filed by LA Alliance, the city, and the county, Intervenor Cangress also filed a supplemental brief writing separately “to address the significant harm to the public interest if the stay [had been] lifted and the order [had been] allowed to go into effect,” claiming the order would have “cause[d] harm to the community.”²¹⁹ Eight different amicus briefs were filed by an array of organizations with varying concerns, including the Women in Skid Row,²²⁰

214. Zahniser et al., *supra* note 212 (internal quotations omitted). Chief Executive of Skid Row’s Union Rescue Mission, the Reverend Andy Bales, pushed back against Krekorian’s claims, arguing that “[y]ou can’t say one night, ‘Hey, I’ve got a billion dollars,’ and the next night when you’re asked to put a billion in escrow, you say, ‘I don’t have a billion.’” *Id.*

215. *Id.*

216. Appellant’s Reply in Support of Emergency Motion Under Circuit Rule 27-3 for Stay Pending Appeal, *L.A. All. for Hum. Rts. v. City of Los Angeles*, 14 F. 4th 947 (9th Cir. 2021) (No. 21-55395); Emergency Motion for Stay Under Circuit Rule 27-3 Immediate Relief Requested, *LA All. for Hum. Rts.*, 14 F.4th 947 (No. 21-55404); Order Granting Emergency Motion to Stay, *L.A. All. for Hum. Rts.*, 14 F.4th 947 (Nos. 21-55408, 21-55404, 21-55395), <https://cdn.ca9.uscourts.gov/datastore/general/2021/07/08/21-55395-ORDER.pdf>.

217. Appellant’s Reply in Support of Emergency Motion, *supra* note 216, at 2.

218. Order at 3, *L.A. All. for Hum. Rts.*, 14 F.4th 947 (Nos. 21-55408, 21-55404, 21-55395), <https://cdn.ca9.uscourts.gov/datastore/general/2021/07/08/21-55395-ORDER-june-10.pdf> [<https://perma.cc/B7M7-GWGL>]; *LA All. for Hum. Rts.*, 14 F. 4th. at 956.

219. Intervenor’s Supplemental Brief re: Stay at 4, *L.A. All. for Hum. Rts.*, 14 F.4th 947 (No. 21-cv-5539).

220. Amicus Curiae Brief of Women in Skid Row in Support of Intervenor Los Angeles Community Action Network, *L.A. All. for Hum. Rts.*, 14 F.4th 947 (No. 2:20-cv-02291).

LAHSA,²²¹ and even the Texas Public Policy Foundation.²²² The Women in Skid Row, representing unhoused BIWOC (Black, Indigenous, Women of Color); transgender people; queer people; and others in Skid Row, argued in their amicus brief that Judge Carter's injunction would have "push[ed] marginalized and vulnerable people towards incarceration and mental health difficulties. . . . by imposing a half-baked solution with an arbitrary timeline that places the needs of downtown business owners over the rights and welfare of those most impacted."²²³ Conversely, the Texas Public Policy Foundation, "a non-profit, non-partisan research organization dedicated to promoting liberty, personal responsibility, and free enterprise,"²²⁴ argued in its Amicus Brief that Los Angeles's history of "housing-first" policies has failed the unhoused community,²²⁵ asking the court to "affirm[] the trial court's order to allow for immediate action to address the homelessness crisis for many living dangerously on the streets."²²⁶ Thus, the reaction to Judge Carter's order was split along ideological lines, with competing interest groups jockeying for political control over the fate of Los Angeles's unhoused population.

C. The Ninth Circuit's Appellate Review

Oral arguments were held on July 7, and the court filed its opinion on September 23, 2021.²²⁷ The opinion that brought down Judge Carter's voluminous 109-page preliminary injunction itself spanned only nine pages.²²⁸ Indeed, the Ninth Circuit did not reach the merits

221. Amicus Brief for L.A. Homeless Servs. Auth., *supra* note 8, at 2 ("The district court's substitution of its policy judgements for the City and County's data-driven allocation of resources creates confusion and excludes essential aspects of the homelessness services system. . . . [and] will exacerbate the disproportionate impact of homelessness on communities of color and fails to take into account current efforts to address systemic racism that have shown success.").

222. Brief of Citygate Network & Texas Public Policy Foundation as Amici Curiae in Support of Appellees, *LA All. for Hum. Rts.*, 14 F.4th 947 (No. 21-55395).

223. Amicus Curiae Brief of Women in Skid Row, *supra* note 220, at 1; *see supra* text accompanying note 8.

224. Brief of Citygate Network & Texas Public Policy Foundation, *supra* note 222, at 1.

225. *Id.* at 2.

226. *Id.* at 8. The Texas Public Policy Foundation was joined in their Brief by Citygate Network, "a 106-year-old national network of crisis shelters, transitional housing programs, and life-recovery centers" including at least two shelters in Los Angeles. *See id.* at 1.

227. *LA All. for Hum. Rts.*, 14 F.4th 947.

228. *Id.*

of the order, instead vacating it on procedural grounds, such as lack of standing and the reliance on extra-record evidence.²²⁹

The opinion began by exposing the inconsistency of Judge Carter's emphasis on racial discrimination claims that LA Alliance never pleaded. The court emphasized that despite all parties agreeing that structural racism and inequality have contributed significantly to the current homelessness crisis, "none of Plaintiffs' claims [were] based on racial discrimination, and the district court's order is largely based on unpled claims and theories."²³⁰ The Ninth Circuit pointed out that the district court found a likelihood of success on the merits for six specific claims against *both* the City and County for violations of: (1) "due process rights under the state-created danger doctrine"; (2) "due process rights under the special relationship doctrine"; (3) "equal protection on the basis of race"; (4) "the substantive due process right to family integrity"; (5) "California Welfare & Institutions Code section 17000"; and (6) the ADA.²³¹ *But*:

Of these six claims, Plaintiffs had not asserted or moved for injunctive relief on the first four and had asserted the fifth against only the County and the sixth against only the City. The district court's explanation for why these claims had a likelihood of success on the merits also relied on legal theories that Plaintiffs did not plead or argue.²³²

The court also held that Judge Carter impermissibly relied upon evidence not subject to judicial notice,²³³ such as scholarship, news articles, and media sources.²³⁴ Thus, the court concluded that "[t]o the extent the district court premised the injunctive relief on improperly noticed facts necessary to confer standing, the district court abused its discretion."²³⁵

229. *Id.* at 957, 961; *see also id.* at 956 ("We must assure ourselves that Plaintiffs have standing and that jurisdiction otherwise exists before we review the merits of the district court's preliminary injunction decision, whether or not the issue was raised below.").

230. *Id.* at 952.

231. *Id.* at 955.

232. *Id.*

233. *Id.* at 957.

234. *See id.* at 954.

235. *Id.* at 957.

The Ninth Circuit then addressed the standing issues,²³⁶ beginning with the race-based claims premised on due process and equal protection theories. Here, the court exposed one glaring problem: the plaintiffs “*did not allege or present any evidence that any individual Plaintiff or LA Alliance member is Black.*”²³⁷ This bears repeating—Judge Carter and LA Alliance put forth several legal theories premised on the historical and structural discrimination of Black people without including a single Black person (let alone a Black homeless person) in the suit.²³⁸ Thus, the plaintiffs lacked standing to raise any of their race-based claims.²³⁹

Next, the court pointed out that only one individual plaintiff may have suffered an injury stemming from the state-created danger claim upon which relief was granted.²⁴⁰ However, that individual plaintiff had been sheltered throughout the litigation, and neither the plaintiff’s motion for relief nor the injunction itself discussed how the order would remedy that individual plaintiff’s injury if indeed he had one.²⁴¹ Regarding Judge Carter’s special-relationship duty analysis, the court found that the plaintiffs never alleged the existence of a special relationship between the city and its homeless population, “or that any individual Plaintiff experienced ‘restraints of personal liberty’ sufficient to create an affirmative duty for the City to act to protect their rights.”²⁴² In other words, although Judge Carter made a compelling argument that containment policies actively relegated the unhoused population to Skid Row for decades, that argument did not include facts specific to any individual plaintiffs to confer standing. Accordingly, the court found no standing on the special relationship doctrine claim.²⁴³

The court next addressed the state law claim under section 17000 of the California Welfare and Institutions Code, highlighting that the “Plaintiffs have not shown that any individual Plaintiff has standing to

236. “To have standing, Plaintiffs must have ‘(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.’” *Id.* at 956 (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)).

237. *Id.* at 958 (emphasis added).

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.* (“For example, the Order requires that the County and City offer ‘shelter or housing’ to unhoused individuals in Skid Row within 180 days, but [the individual plaintiff] is already in a shelter and nothing in the record suggests he will lose his shelter in time to receive an offer.”).

242. *Id.*

243. *See id.*

bring this claim because Plaintiffs nowhere allege that an individual Plaintiff was deprived of medically necessary care or general assistance.”²⁴⁴ Moreover, the Ninth Circuit noted that this claim was only asserted against the county, and thus, the trial court had no authority to grant relief based on that claim against the city as well.²⁴⁵

Next, the Ninth Circuit recognized the only individual plaintiffs with proper standing for any claims under the order: two individual plaintiffs who rely on wheelchairs and use Skid Row sidewalks for transportation.²⁴⁶ But, despite these two plaintiffs having standing on their ADA claim, the court held that they failed to establish the first element for preliminary injunctive relief—likelihood of success on the merits of that claim.²⁴⁷ The court reasoned that ADA claims based on obstructions to sidewalks are fact intensive claims requiring a specific showing of evidence, yet the “Plaintiffs’ allegations centered on the fact that blocked sidewalks ‘[p]ut [e]veryone at [r]isk,’ and . . . failed to suggest a specific, reasonable accommodation. Instead, they [sought] the wholesale clearing of 50-plus blocks.”²⁴⁸

Lastly, the court rejected LA Alliance’s argument it had associational standing.²⁴⁹ Because “[t]here [was] no evidence that LA Alliance’s non-Plaintiff members . . . [were] Black, risk[ed] disruption of their family integrity, ha[d] a special relationship with the City, [were] confined to Skid Row, or were deprived of the type of assistance required by section 17000,” the court concluded none of LA Alliance’s members would have had standing on their own, thereby precluding LA Alliance’s argument for associational standing.²⁵⁰

Having vacated the preliminary injunction, the Ninth Circuit concluded by responding to Judge Carter with what it considered valuable lessons about the role of the judiciary gleaned from this litigation: “The district court undoubtedly has broad equitable power to remedy legal violations that have contributed to the complex problem of

244. *Id.* at 958.

245. *Id.* at 959.

246. *Id.* at 959.

247. *Id.*

248. *Id.* (alterations in original).

249. “Associational standing exists if ‘[the organization’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.’” *Id.* at 959 (citing *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)).

250. *Id.* at 959–60.

homelessness in Los Angeles. But that power must be exercised consistent with its discretionary authority and Article III.”²⁵¹

Accordingly, the sweeping 109-page preliminary injunction that captured the local zeitgeist was wiped out, turning a terrifying court mandate into a curious legal enigma begging many questions. Why had Judge Carter—a federally appointed judge with decades of experience—granted an order so blatantly procedurally defective? Why spend so much time and effort releasing a 109-page order that would inevitably be vacated? Why turn a case brought by Skid Row property owners into a referendum on the nexus between homelessness and racial discrimination? And perhaps most importantly: *should* local government be forced to shelter all unhoused individuals within its borders?

D. Developments Post Appellate Review

On November 1, 2021, LA Alliance filed an amended complaint addressing the various procedural defects identified by the Ninth Circuit.²⁵² This amended complaint added specific facts and allegations regarding the manner in which historical and structural racism for which the city and county are allegedly responsible have injured the plaintiffs.²⁵³ LA Alliance even incorporated Judge Carter’s preliminary injunction as “Exhibit A” to the amended complaint.²⁵⁴ To bolster their constitutional standing, LA Alliance added “Wenzial Jarrell, an unsheltered Black man living in Skid Row, as a plaintiff, and added a number of named Alliance members who are also unsheltered and persons of color.”²⁵⁵ Thus, LA Alliance used the Ninth Circuit’s guidelines to procedurally bolster its suit.

In May 2022, LA Alliance reached a settlement agreement with the City that binds the City to build between 14,000 and 16,000 new shelter beds.²⁵⁶ However, intervenor Los Angeles Community Action Network is appealing the settlement citing concerns that the agreement

251. *Id.* at 961.

252. Amended and Supplemental Complaint, LA All. for Hum. Rts. v. City of Los Angeles, No. 2:20-cv-02291 (C.D. Cal. Nov. 1, 2021).

253. *Id.* at paras. 41–45 (including factual allegations of how containment, redlining, and the lack of affordable housing were caused by structural racism); Fred Shuster, *LA Alliance Applauds ‘Massive’ Shift in City’s Homelessness Policy*, HEY SOCAL (Nov. 4, 2021), <https://www.msn.com/en-us/news/us/la-alliance-applauds-massive-shift-in-city-s-homelessness-policy/a-r-AAQkgOu?ocid=msedgntp> [<https://perma.cc/5NLH-72FP>].

254. Amended and Supplemental Complaint, *supra* note 252, at para. 45.

255. *Id.* at para. 23 n.49.

256. Cuniff, *supra* note 6.

would be ineffective and lead to further criminalization of the unhoused.²⁵⁷ At its current state, *LA Alliance v. Los Angeles* is an ongoing case the results of which, whatever they may be, will have widespread impact on the region. But, regardless of what ultimately happens, Los Angeles and California have much to learn from where the case has been, and where it may go.

V. ANALYSIS

A. *Judicial Overreach or “Judicial Frustration”?*

Opponents of Judge Carter’s broad use of his court’s equitable powers claim that he engaged in judicial overreach by granting such a sweeping preliminary injunction.²⁵⁸ They argue that Judge Carter attempted to commandeer policymaking from the region on one of its most difficult and contentious issues, thereby encroaching upon the politically accountable province of state and local leaders and legislatures.²⁵⁹ However, Judge Carter contended that a strong equitable remedy in this scenario was not only legally warranted but necessary, as the Los Angeles homelessness crisis has reached unacceptable levels, and those who are responsible for addressing the crisis have failed to do so with any success.²⁶⁰

But more importantly, whether or not Judge Carter’s order is an example of judicial overreach, it is an example of the mounting anger and frustration the public has over the worsening homelessness crisis in Southern California and California at large. At oral arguments before the Ninth Circuit, counsel for the city claimed in exasperation: “This [order] is just judicial overreach beyond support!”²⁶¹ To this assertion, Judge John B. Owens, sitting on the three-panel circuit, quickly retorted:

257. *Id.*

258. *See, e.g.*, Oral Argument, *supra* note 8, at 11:58–12:04 (counsel for City arguing the order amounted to “judicial overreach beyond support”).

259. *Id.* at 12:45–13:51 (counsel for City arguing Judge Carter “has essentially taken over the function of municipal government”).

260. *See* In Chambers Order, *supra* note 4, at 93; *LA All. For Hum. Rts. v. City of Los Angeles*, No. LA CV 20-02291, WL 329082, at *3 (C.D. Cal. Jan. 31, 2021) (Judge Carter arguing that any discussion of the limits of a district court’s equitable powers in this scenario “must be balanced against the demonstrated immediate loss of life occurring in the streets as a result of homelessness and the impositions on the public and private property owners by this systemic failure of government”).

261. Oral Argument, *supra* note 8, at 11:58–12:04.

You can call it “judicial overreach”—you can also call it “judicial frustration,” where we have a judge who really wants to figure out a solution here, and in his opinion, there has been a dismal—*dismal* failure by the elected officials of Los Angeles who are supposedly charged with fixing this. So, what is he supposed to do if he sees this violation going on? Is he supposed to sit back and watch Los Angeles continue to disintegrate in this area? That’s what he’s supposed to do? Or should he take some action and make something happen?²⁶²

As Judge Owens emphasized, Judge Carter’s preliminary injunction cannot be written off as the desperate action of a rogue district court judge. Instead, his order should function as a clarion call to all who care—to all who are frustrated with witnessing the humanitarian calamity of our era worsen before our eyes each day. Rather than dismiss Judge Carter’s actions as judicially impetuous or impermissible, this Note functions as an answer to his call and an echo of his concern.

B. Judge Carter’s Jurisprudential Strategy

By purposefully exercising such broad equitable powers bearing upon one of the region’s most pressing social and political issues, Judge Carter sought to accomplish two primary goals: first, to coerce settlement, and second, to garner attention. In a legal world where the proverbial gears of justice grind slowly and often in obscurity, these jurisprudential aims should be lauded as promoting efficiency, cooperation, transparency, and social consciousness.

1. Judge Carter Used His Equitable Powers to Pressure the City and County into Settling

Judge Carter’s proactive jurisprudence involves leveraging his court’s equitable powers to coerce settlement, and thus, cooperation. Judge Carter took this exact approach when he issued a strong preliminary injunction in *Colin ex rel. Colin*, openly asserting that “[a]bsent the threat of litigation and court-ordered enforcement of the students’ rights, [Orange Unified School District was] unlikely ever to

262. *Id.* at 12:06–12:39. Counsel for the City agreed that “there is every reason to be frustrated, because [homelessness in the region] is a vast and complicated problem. It is truly a crisis.” *Id.* at 13:09–13:15.

recognize the [students' Gay-Straight Alliance] club.”²⁶³ Because of the threat of court-ordered action, that case settled, and the students got their club.²⁶⁴ This strategy garnered results in Martinez’s Santa Ana River lawsuit over which he presided,²⁶⁵ and indeed, Judge Carter adopted this same strategy in *LA Alliance*. Even before the now famous April 2021 preliminary injunction, he had already granted the May 2020 preliminary injunction ordering an offer of shelter to all Angelenos living near freeway access points, which likewise resulted in settlement and cooperation.²⁶⁶ Over a year after the April 2021 order, *LA Alliance* and the city finally reached a settlement agreement in July 2022, and although the agreement is under appeal and no such agreement has been reached with the county, we have reason to believe that Judge Carter is approaching his goal of securing settlements that would close the case.²⁶⁷

2. Does He Have Our Attention Now?

Beyond hopes for concrete agreements, in promulgating such an extensive and fiery 109-page preliminary injunction, Judge Carter sought to attract attention to the issue—and it worked.²⁶⁸ Ultimately, Judge Carter, a respected federal judge with decades of experience on the bench, created the case he wanted—not the one he received. *On purpose*, he threw standing to the wind, utilized extensive extrajudicial evidence, created a legal mandate unprecedented in scope, and focused on controversial constitutional questions of race-related due process and equal protection in order to author a legal document that had no chance of surviving appellate scrutiny, but had every chance of getting the attention of the parties and the public. The injunction was designed to fail brilliantly, and in so doing, it succeeded brilliantly. As Carter himself admitted during a June 2022 settlement hearing, he hopes that he “affronted every one of you.”²⁶⁹

263. Colin ex. Rel. Colin v. Orange Unified Sch. Dist., 83 F. Supp. 2d 1135, 1149 (C.D. Cal. 2000) (emphasis added).

264. Dowling-Sendor, *supra* note 81.

265. See Norlian, *supra* note 87.

266. L.A. All. for Hum. Rts. v. City of Los Angeles, No. CV 20-02291, 2020 WL 2615741, at *6 (C.D. Cal. May 22, 2020), *vacated*, No. CV 20-02291, 2020 WL 3421782 (C.D. Cal. June 18, 2020).

267. See Cuniff, *supra* note 6.

268. See Zahniser et al., *supra* note 212.

269. See Cuniff, *supra* note 6.

C. The Two Fundamental Problems with Judge Carter's Order in California's Fight to End Homelessness

This Note identifies two specific issues with Judge Carter's suggested policy of implementing mandatory and universal offers of shelter to the unhoused: (1) such a policy would be fundamentally out of touch with California's nascent yet robust and systemic housing-first approach to addressing the housing crisis; and (2) such a policy would unequivocally reopen the legal doors to the inhumane and counterproductive practice of criminalizing homelessness.

1. The Order's Disconnect with California's Housing Reform

Judge Carter's plan to mandate a shelter-based approach is fundamentally out of touch with California's plan to address homelessness through a more systemic housing-first approach. In 1972, responding to local homeowners' associations' successful efforts to stifle affordable housing development in the region, Eli Broad correctly concluded that housing policy in Southern California requires "larger-scale decision-making . . . less subject to local prejudice."²⁷⁰ Broad's exhortations went largely ignored until recently, as California has (finally) waged a multifront attack against housing inadequacy across the state after decades of prioritization of single family homeownership at the expense of everyone else.²⁷¹ Even still, LA Alliance, with the imprimatur and authority of Judge Carter's district court, attempts to exercise their local and self-serving interests over housing shortage's inevitable consequence—homelessness. In doing so, they pose a real threat to California's much needed control over the situation—control that is necessary for prioritizing supportive housing expansion in the face of statewide desperation and political opposition.

Homelessness plagues every corner of the state.²⁷² To address this statewide crisis, California is wisely utilizing legal measures to attack the roots of the problem. As Judge Carter points out, one root cause of

270. DAVIS, *supra* note 1, at 161.

271. Southern California has a long history of local, high value property enclaves organizing and gaining political clout to protect their interests and combat development like affordable housing. *See generally id.* at 135–98 (chronicling the "slow growth" mechanisms by which Southern California's high property value neighborhoods have historically sought to maintain "homogeneity of race, class, and especially, home values").

272. *See California*, NAT'L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/california/> [https://perma.cc/F67M-AN89].

the housing and homelessness crises is ineffective zoning.²⁷³ To address this, Governor Newsom signed a series of bills in September 2021 restricting single family zoning and promoting higher volume development.²⁷⁴ These bills were given teeth when a September 2021 Court of Appeal decision upheld the state constitutionality of the Housing Accountability Act (recently strengthened by one of the aforementioned new zoning bills), precluding local municipalities from arbitrarily denying higher density development.²⁷⁵

But beyond reforming its zoning laws, California has also taken recent robust measures to implement rent control, COVID-19 pandemic-related rent relief, and protections against rent gouging. Even before the pandemic began, the California legislature passed the Tenant Protection Act of 2019, which, “until January 1, 2030, prohibit[s] an owner of residential real property from, over the course of any 12-month period, increasing the gross rental rate for a dwelling or unit more than 5% plus the percentage change in the cost of living.”²⁷⁶ During the pandemic, the legislature passed temporary emergency measures to mitigate evictions for failure to pay rent due to pandemic related financial hardship.²⁷⁷ Furthermore, to prohibit predatory price

273. In Chambers Order, *supra* note 4, at 30 (“[I]f new affordable housing is only concentrated in low-income communities where current zoning permits more dense structures, the City and County will not meet their responsibility to affirmatively promote fair housing.”).

274. Opinion, *Watch Out, NIMBYs: Newsom Just Dumped Single-Family Zoning*, L.A. TIMES (Sept. 17, 2021, 3:40 PM), <https://www.latimes.com/opinion/story/2021-09-17/newsom-housing-sb9> [<https://perma.cc/5CL4-DF5G>]. These bills include Senate Bill 8 (extending the Housing Crisis Act of 2019 to 2030, which, *inter alia*, declared a housing state of emergency, called for the building of 180,000 new homes annually to meet housing demands, and streamlined the zoning application process for new development), Senate Bill 9 (enabling the owner of a single-family lot to build a duplex or subdivision on their lot), and Senate Bill 10 (meant to “streamline the zoning process for new multi-family housing located in a transit-rich area or an urban infill site”). See *California Enacts Sweeping Legislation to Combat Housing Crisis*, THOMSON REUTERS: PRAC. L. REAL EST. (Sept. 20, 2021), <https://1.next.westlaw.com/Document/I9a83259017ce11ecbea4f0dc9fb69570/View/FullText.html> [<https://perma.cc/G9B4-M2G3>]. In May of 2021, Governor Newsom also approved Senate Bill 7, the Jobs and Economic Improvement Through Environmental Leadership Act, designed to streamline the environmental impact report process for development projects with dedicated affordable units and adequate sustainability standards. S.B. 7, 2021–2022 Leg., Reg. Sess. (Cal. 2021).

275. See Craig Anderson, *Housing Law Ruling Expected to Have Broad Impact*, DAILY J., Sept. 14, 2021, at 1.

276. Assemb. B. 1482, 2019–2020 Leg., Reg. Sess. (Cal. 2019). In addition, codified as section 1946.2 of the Civil Code, the new law prohibits landlords from evicting tenants who have continuously occupied the property for twelve months unless the landlord demonstrates just cause (as defined by the statute) articulated in a written notice to terminate (thereby creating due process rights for tenants). CAL. CIV. CODE § 1946.2(a) (2002).

277. See Assemb. B. 3088, 2019–2020 Leg., Reg. Sess. (Cal. 2020); Assemb. B. 832, 2021–2022 Leg., Reg. Sess. (Cal. 2021).

gouging in the face of both housing and pandemic related emergencies, Governor Newsom promulgated Executive Order N-85-20 in 2020, which makes it “unlawful for any person, business, or other entity, to increase the rental price . . . to an existing or prospective tenant, by more than 10 percent,” unless necessary repairs or contractual terms dictate otherwise.²⁷⁸

And lastly, California has implemented statewide housing-first initiatives funded by decidedly deep pockets. For example, California’s \$75.7 billion surplus has allowed it to launch a “California Comeback” plan, which “invests roughly \$12 billion over two years to tackle the homelessness crisis,” creating “42,000 new homeless housing units, including housing options for people with severe mental health challenges.”²⁷⁹ These state provided funds, in addition to existing Proposition HHH and Measure H funds, signal both a desire to address the problem and the money to back that desire up. In light of California’s renewed measures to address the root causes of housing shortages and homelessness, Judge Carter’s proposed solution addressing merely the surface of the crisis through mass shelter appears rogue as a matter of policy and misguided as a matter of prudence.

However, in his preliminary injunction, Judge Carter explicitly references California’s past efforts to combat housing insecurity. He acknowledges, for example, that in 2019, California provided “\$650 million in state funds . . . to address homelessness across the state.”²⁸⁰ But,

despite these state-led efforts, at least 1,383 people experiencing homelessness died on the streets of Los Angeles County in 2020 . . . [and] [a]s a direct result of local government inaction and inertia in the face of a rapidly escalating crisis, 165 homeless people died in January 2021 alone—a 75.5% increase compared to January 2020.²⁸¹

278. Cal. Exec. Order No. N-85-20 (Dec. 30, 2020); CAL. PENAL CODE § 396(e) (2022).

279. See *California Roars Back: Governor Newsom Signs \$100 Billion California Comeback Plan to Accelerate State’s Recovery and Tackle Persistent Challenges*, OFF. OF GOVERNOR GAVIN NEWSOM (July 12, 2021), <https://www.gov.ca.gov/2021/07/12/california-roars-back-governor-newsom-signs-100-billion-california-comeback-plan-to-accelerate-states-recovery-and-tackle-persistent-challenges> [<https://perma.cc/N9VG-48G8>]. This plan also purports to “move people out of unsafe, unhealthy encampments and into safer, more stable housing.” *Id.*

280. In Chambers Order, *supra* note 4, at 33.

281. *Id.* at 34.

Thus, Judge Carter argues that despite California's efforts, Los Angeles' homelessness crisis has only worsened, resulting in thousands of needless deaths.²⁸² Moreover, supporters of Judge Carter's plan, including Judge Carter himself, criticize California's thus far fruitless housing-first model, arguing that the statewide decision "to prioritize long-term housing at the expense of committing funds to interim shelters" has been a "deadly decision."²⁸³ Accordingly, Judge Carter's shelter based model is *supposed* to be out of touch with and deviate from California's housing-first initiatives, which have thus far failed.

However, while Judge Carter is correct in that California's efforts to date have failed to address housing insecurity, it does not follow that California's newest efforts targeting the roots of the problem will likewise fail, or that California should abandon its housing-first approach. The housing-first model is, by its nature, a *long-term* approach based on compelling evidence of efficaciousness. There is ample empirical data to suggest that increased access to permanent supportive housing without treatment preconditions is more humane, economical, and efficacious²⁸⁴ than less effective shelter-based initiatives that lack

282. *Id.*

283. *Id.* at 46. *But see* Chris Martin & Sharon Rapport, *California Must Not Repeat Old Mistakes as It Seeks New Ways to End Homelessness*, CAL MATTERS (Aug. 15, 2019), <https://calmatters.org/commentary/2019/08/housing/> [<https://perma.cc/N99F-HTJA>] ("True, California recently invested in affordable and supportive housing, and the number of people who are homeless did rise. But the reason is not that these investments are wrong. Rather, the scale of investment has been inadequate. . . . [and] inequitable zoning and red tape have thwarted affordable housing."). Simply put, there is not enough affordable housing available to those seeking to crawl out of homelessness. As one San Diego Shelter organizer puts it, "[T]here is no permanent housing. Folks with jobs and good credit and college educations, they can't find places to rent . . . If [housing] was there, we'd be taking them out by the friggin' busload." *See* Kelly Davis, *San Diego Unveils Unorthodox Homelessness Solution: Big Tents*, THE GUARDIAN (Mar. 29, 2018, 6:00 AM), <https://www.theguardian.com/us-news/2018/mar/29/san-diego-homelessness-big-tents> [<https://perma.cc/KNU4-DYFL>]. Moreover, while California may have (at least notionally) adopted a housing-first approach recently, it has received little help from either the federal government or the private market: "It has been almost twenty years since the federal government fundamentally abandoned any pretense of a commitment to grow the stock of affordable housing. And . . . the private market is not capable of profitably building housing affordable to low-income families." Alfred M. Clark III, *Homelessness and the Crisis of Affordable Housing: The Abandonment of Federal Affordable Housing Policy*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 85, 85 (2016). Thus, categorically declaring housing-first initiatives to be a failure is without merit when that policy is fundamentally long term and in need of greater resources and buy-in.

284. *See, e.g.*, Andrew J. Baxter et al., *Effects of Housing-First Approaches on Health and Well-Being of Adults Who Are Homeless or at Risk of Homelessness: Systematic Review and Meta-Analysis of Randomised Controlled Trials*, 73 J. EPIDEMIOLOGY & CMTY. HEALTH 379 (2019) (reviewing health and housing stability data from four randomized studies and concluding that "[housing-first] approaches successfully improve housing stability and may improve some aspects of health. . . . likely reduc[ing] homelessness . . . without an increase in problematic substance use"); Sam Tsember et al., *Housing First, Consumer Choice, and Harm Reduction for Homeless*

accompanying services and access to stable housing.²⁸⁵ Accordingly, the wholesale abandonment of housing-first policies for lack of patience and buy-in would amount to throwing out the housing baby with the proverbial bathwater.

With that said, Los Angeles is in desperate need of increased emergency shelter to quell the crisis and save lives.²⁸⁶ Thus, drawing hard lines between housing-first and shelter-first is a bona fide false dichotomy—one that Judge Carter's preliminary injunction is guilty of ratifying. In truth, Los Angeles and California need to remain steady at the housing-first wheel while simultaneously building greater shelter infrastructure. In this manner, California can immediately save the

Individuals with a Dual Diagnosis, 94 AM. J. PUB. HEALTH 651 (2004) (comparing control group of unhoused individuals suffering from substance abuse who were offered housing contingent upon treatment and sobriety with an experimental group of such individuals given access to housing-first with no such treatment requirements, and concluding that “[t]he Housing First program sustained an approximately 80% housing retention rate, a rate that presents a profound challenge to [the assumption that] the chronically homeless [are] ‘not housing ready’”); Martin & Rapport, *supra* note 283 (“By offering subsidized housing with voluntary services, we found that even people with long-time homelessness and severe disabling conditions could be housed successfully, and permanently. Housing first has resulted in decreased homelessness nationally.”). See generally LAVENA STATEN, SEATTLE U. SCH. L., PENNY WISE BUT POUND FOOLISH: HOW PERMANENT SUPPORTIVE HOUSING CAN PREVENT A WORLD OF HURT (Sara K. Rankin ed., 2019), <https://ssrn.com/abstract=3419187> [<https://perma.cc/24QB-WFVE>] (“Further, [Permanent Supportive Housing] is associated with better outcomes related to quality of life, emergency services, physical and psychiatric hospitalizations, and substance use. . . . making [it] the most cost-effective, long-term solution to chronic homelessness.”).

285. See Rankin, *supra* note 99, at 585–86. Furthermore, merely providing shelter options to homeless individuals in no way guarantees that those shelters will be safe, sanitary, or observant of those individuals' rights. Indeed, we have every reason to believe such shelters will miss the mark on all fronts. Accounts of inhumane shelter conditions from those who have experienced such conditions are as disconcerting as they are ubiquitous. See, e.g., EVE GARROW & JULIA DEVANTHÉRY, ACLU, THIS PLACE IS SLOWLY KILLING ME: ABUSE AND NEGLECT IN ORANGE COUNTY EMERGENCY SHELTERS (Marcus Benigno et al. eds., 2019), https://www.aclu-social.org/sites/default/files/aclu_social_oc_shelters_report.pdf [<https://perma.cc/ZSE7-25NW>]. Regarding sanitation alone, “Multiple [people staying in Orange County shelters] described shelter conditions that are dangerously unsafe and unsanitary, including inadequate temperature control, exposure to the elements, filthy and decrepit shower and restroom facilities, and recurrent infestations of rodents, maggots, insects, bedbugs, head lice, and scabies.” *Id.* at 14. Moreover, shelters often impose restrictions on their “residents,” such as curfews, to which many adults mindful of their liberties do not want to subject themselves. See Christopher Weber, *Los Angeles Park Closed After Protest to Save Homeless Camp*, ASSOCIATED PRESS (Mar. 25, 2021), <https://news.yahoo.com/los-angeles-park-closed-protest-140545911.html> [<https://perma.cc/96EB-TYLB>] (one homeless woman sharing that “she doesn’t want to accept assistance from the city because of shelter restrictions that include curfews”).

286. Oral Argument at 37:21, *supra* note 8; Joy H. Kim, Note, *The Case Against Criminalizing Homelessness: Functional Barriers to Shelters and Homeless Individuals' Lack of Choice*, 95 N.Y.U. L. REV. 1150, 1176 (2020) (“[I]ndoor emergency shelters should always be provided as an option, as they can provide shelter from harsh weather conditions, connect individuals to services, and shield vulnerable populations such as domestic violence victims and children. . . . [b]ut the mere availability of shelter beds does not make criminalization laws any less cruel.”).

lives of the chronic, unsheltered homeless who are subject to the nightly elements while also building permanent housing infrastructure to offer unhoused people a concrete path out of homelessness, which shelter alone cannot accomplish.

Having established that California needs to prioritize *both* housing and shelter, we are nevertheless faced with the dilemma at the center of this Note: that in light of *Martin*, substantially increasing either housing or shelter infrastructure would necessarily reopen the door to the criminalization of homelessness—a draconian and foolish practice that is just as much to blame for the state of the crisis as anything else. Thus, the counterintuitive result of offering housing or shelter to all unhoused persons, absent legal reform, would be one step forward vis-à-vis housing and shelter, yet at least one matching step backward vis-à-vis the criminalization of status. This perverse and paradoxical legal paradigm situates those who seek to address homelessness—like Governor Newsom, Judge Carter, and Michele Martinez—in the position of hurting the unhoused by virtue of helping them.

2. Judge Carter’s Proposal of Mass Shelter Availability Would Reopen the Door to Criminalization of Homelessness

First, it must be stated unequivocally that criminalizing homelessness is cruel, unusual, oppressive, racist, uneconomical, and ineffective. Regarding the racism of criminalization, Judge Carter’s own position that the disproportionate impact of homelessness on the Black community is a racist by-product of both slavery and *de jure* housing discrimination leads to the conclusion that criminalizing homelessness is likewise a racist by-product of those regimes that will also disproportionately harm Black Angelenos, thereby further entrenching centuries of oppression. Regarding the ineffectiveness and wastefulness of punishing the unhoused:

Criminalization measures ultimately exacerbate homelessness by forcing individuals into the criminal justice system. Homeless people are eleven times more likely to be arrested than the general population. . . . The revolving door between homelessness and prison makes it less likely for an individual to access temporary shelter, permanent housing,

employment, and government benefits.²⁸⁷ . . . In addition to being ineffective and inhumane, criminalization measures are exorbitantly expensive. For example, San Francisco spent \$20.6 million sanctioning homeless people under anti-homeless laws . . . in 2015.²⁸⁸

Burdening unhoused individuals with sanctions of any type makes it harder for those individuals to be reintegrated into mainstream society.²⁸⁹ Homeless individuals do not have the resources to pay criminal or civil fines, and such penalties cannot deter a homeless person from being homeless. Instead, the draconian policing of the unhoused entrenches poverty and sows mistrust of the government and police in unhoused communities.²⁹⁰ Such policies that exacerbate the impoverishment of the impoverished while simultaneously dissuading them from trusting public agents undermine efforts to help unhoused persons through supportive services.

Having established that criminalization is oppressive and counterproductive, we turn our attention back to *Martin*—a case that by all accounts was a major blow against criminalization. Recall that *Martin*, pursuant to the Eighth Amendment's ban on cruel or unusual punishment, held that municipalities may not penalize homeless individuals engaging in necessary life-sustaining activities in public spaces when those individuals have no reasonable alternative available to them.²⁹¹ But inherent in this holding is its contra holding: municipalities *may*

287. See generally Valerie Schneider, *The Prison to Homeless Pipeline: Criminal Record Checks, Race, and Disparate Impact*, 93 IND. L.J. 421 (2018).

288. Kim, *supra* note 286, at 1188–90. The United Nations' monitor on extreme poverty and human rights, Special Rapporteur Philip Alston agrees:

In many cities, homeless persons are effectively criminalized for the situation in which they find themselves. Sleeping rough, sitting in public places, panhandling, public urination (in cities that provide almost zero public toilets) and myriad other offences have been devised to attack the 'blight' of homelessness. Ever more demanding and intrusive regulations lead to infraction notices, which rapidly turn into misdemeanors, leading to the issuance of warrants, incarceration, the incurring of unpayable fines, and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing. . . . In Skid Row, . . . 6,696 arrests of homeless persons were reported to have been made between 2011 and 2016. . . . the futility of [such] existing approaches was all too evident as I walked around some of the worst affected areas.

Philip Alston, *Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights*, UNITED NATIONS (Dec. 15, 2017), <https://www.ohchr.org/en/statements/2017/12/statement-visit-usa-professor-philip-alston-united-nations-special-rapporteur> [<https://perma.cc/Y2PB-TTLH>].

289. Alston, *supra* note 288, at para. 32.

290. *Id.* at para. 33.

291. See *supra* Section III.A.

criminalize engaging in necessary life-sustaining activities in public spaces when those being penalized *do* have at least one reasonable alternative available to them. Thus, while *Martin* greatly limited cities' ability to criminalize homelessness in most circumstances, it left the door open for criminalization under circumstances in which "reasonable" alternatives are made available to homeless individuals—and both housing and shelter-based initiatives are designed to do just that.

In the 109-pages he produced, Judge Carter never explicitly addressed the role criminalization has played in the perpetual subjugation of the unhoused. Nor did he transparently articulate the criminalizing consequences his preliminary injunction would have created had it gone into effect. But, indeed, those consequences were written into the very words of the preliminary injunction. Recall the primary order from the injunction: "[T]he City and County *must offer and if accepted provide shelter or housing* immediately to . . . the general population living in Skid Row."²⁹² Crucially, this order is backed up by the following announcement from the court: "After adequate shelter is offered, *the Court will let stand any constitutional ordinance consistent with the holdings of [Martin] and Mitchell.*"²⁹³ Thus, Judge Carter's order was designed to turn the *Martin* decision on its head: where *Martin* held that criminalization of homelessness is only permitted when practical shelter alternatives are available to unhoused persons, Judge Carter's order specifically mandated the creation of those available shelter alternatives, which would have negated *Martin*'s restriction on criminalizing homelessness in Los Angeles.

Because the order was vacated, its criminalizing consequences were never realized. However, assuming the May 2022 agreement between LA Alliance and the city is executed according to plan, the creation of 14,000 to 16,000 new shelter spaces would immediately empower the city to punish the homeless population so long as one such shelter space is considered practically available to any unhoused person being punished. As the AIDS healthcare foundation warned in its opposition to the proposed settlement: "[It is] easy to foresee that the people purportedly being helped will end up back on the streets, and then subjected to sanctions for living there."²⁹⁴ Indeed, given *Martin*'s

292. In Chambers Order, *supra* note 4, at 108.

293. *Id.* at 109 (emphasis added).

294. Cuniff, *supra* note 6.

limited scope, all unhoused persons throughout California will remain under threat of being punished for being homeless.

VI. PROPOSAL

As the state with the highest number of unhoused individuals in the Union,²⁹⁵ California has an opportunity to set a profound example for the rest of the country by unilaterally declaring that the criminalization of homelessness is unacceptable. It is axiomatic that a state government may guarantee its citizens rights and protections in excess of those guaranteed by the federal government.²⁹⁶ Thus, although *Martin*'s holding sets a federal constitutional floor, California may and should raise that floor within its own jurisdiction. This Part aims to articulate the California constitutional authority to ban the criminalization of homelessness.

A. Cruel or Unusual Punishment and Excessive Fines

Mirroring the Eighth Amendment, article I, section 17 of the California Constitution declares that “[c]ruel or unusual punishment may not be inflicted or excessive fines imposed.”²⁹⁷ On the issue of excessive fines, the California Supreme Court has held that the key inquiry is proportionality, requiring that the fine imposed be appropriate in light of the offense being punished.²⁹⁸ There are four factors in determining if a fine is proportional to its proscription: (1) the defendant’s culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant’s ability to pay.²⁹⁹

The first and fourth factors are determinative here. First, homeless individuals cannot be “culpable” for engaging in necessary life-sustaining activities in public, especially when, as Judge Carter repeatedly points out, the city, county, state, and nation have failed to provide them with adequate housing and support.³⁰⁰ Moreover, as *Martin*

295. *Homelessness Statistics by State*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/homelessness-statistics/ca/> [<https://perma.cc/Q5KE-SWAD>].

296. See *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980).

297. CAL. CONST. art. I, § 17.

298. *People ex. rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408, 421 (Cal. 2005) (citing *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)).

299. *Id.*

300. See, e.g., In *Chambers Order*, *supra* note 4, at 105 (“For decades in Los Angeles, the desperation of its citizens has been met with a yawn.”). Indeed, Judge Carter’s order correctly places all culpability on the public and private sectors—not unhoused peoples themselves.

points out, “the state may not ‘criminalize conduct that is an unavoidable consequence of being homeless—namely sitting, lying, or sleeping on the streets.’”³⁰¹ The subtext of *Martin*’s logic is that such unavoidable consequences of being human are not worthy of condemnation or blame. Regarding the fourth factor in determining proportionality, as United Nations’ monitor on extreme poverty and human rights, Special Rapporteur Philip Alston pointed out after visiting Skid Row, such fines are simply “unpayable.”³⁰² Imposing monetary sanctions against those without any appreciable capital or stable income epitomizes absurdity and cruelty. Thus, just as “[e]ven one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold,”³⁰³ even one dollar would be unconstitutionally excessive for the “penalty” of being penniless.

On the issue of cruel or unusual punishment regarding penalizing activities necessarily implicated in being homeless, the California Supreme Court offers no fruitful guidance. The law’s complete inability to protect society’s most vulnerable population was put on full display in *Tobe v. City of Santa Ana*,³⁰⁴ when the court declined to recognize as cruel or unusual a Santa Ana policy “developed to show ‘vagrants’ that they were not welcome in the city.”³⁰⁵ Under the color of this Santa Ana law, local police vexatiously forced homeless people out of their makeshift shelters,³⁰⁶ confiscated and destroyed their property (such as sleeping bags), closely monitored those who offered food to the hungry, and implemented hideous tactics such as frequently turning on sprinklers in parks to make those spaces unlivable.³⁰⁷ Nevertheless, citing an absence of legal authority to hold otherwise, the court held that the law was not a violation of either the federal or state constitutional ban on cruel or unusual punishment.³⁰⁸ Analyzing the issue twenty-three years prior to *Martin*, the court cited a lack of authority

301. *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019).

302. Alston, *supra* note 288.

303. *Robinson v. California*, 370 U.S. 660, 667 (1962).

304. 892 P.2d 1145 (Cal. 1995).

305. *Id.* at 1151, 1166.

306. *Cf.* CHARLES DICKENS, BLEAK HOUSE 230, 540 (Wordsworth Editions Ltd. Ed., 2001) (1852) (highlighting the dehumanizing absurdity of pushing homeless people from place to place under the guise of “law and order.”). Dickens parodies such efforts in depicting a poor homeless boy, Jo, who police claim will not “move on” in response to their orders; Dickens satirizes: “It surely is a strange fact . . . that in the heart of a civilised world this creature in human form should be more difficult to dispose of than an unowned dog. *Id.*”

307. *Tobe*, 892 P.2d at 1151.

308. *Id.* at 1169.

“for the proposition that an ordinance which prohibits camping on public property punishes the involuntary status of being homeless or . . . is punishment for poverty.”³⁰⁹ However, *Martin* has since made it clear that punishing someone for the unavoidable consequence of being human, such as sleeping in public spaces, is indeed cruel or unusual punishment when those individuals have no alternative.³¹⁰ Thus, *Martin* renders the holding in *Tobe* suspect, at best.

Considering the above conclusions, California has both the authority and responsibility to prohibit the practice of criminalizing homelessness.

B. Possible Avenues for Decriminalization

Ultimately, California can decriminalize homelessness through any of its political branches, be it through an executive order, legislative lawmaking, or judicial interpretation of existing law. However, executive orders are ephemeral and subject to the political capriciousness of the gubernatorial carousel, making this option not ideal.

One commentator argues for decriminalization through the courts, asking that they utilize *Martin*'s “practically available reasonable alternatives” proviso to “consider [the] ways in which shelters may not be ‘practically available’ for some individuals, and to call on cities to stop criminalizing homelessness altogether.”³¹¹ But although courts should indeed consider the myriad obstacles to the homeless in seeking such “reasonable alternatives,” this safeguard depends on the willingness of individual judges to interpret this vague legal standard in favor of decriminalization. Moreover, relying on the *Martin* proviso does not eliminate the perverse incentive exposed by Judge Carter's preliminary injunction at the heart of this Note—namely, that creating reasonable alternatives, as must be done, will necessarily result in increased criminalization of those homeless who, for whatever reason, do not expeditiously seek them. And lastly, the state supreme court precedent of *Tobe*, having been decided twenty-three years prior to *Martin*, explicitly rejects the notion that there is anything cruel or unusual about criminalizing behaviors stemming from homelessness.³¹² Thus, we have no reason to sit back and hope that California courts will utilize the *Martin* proviso to decriminalize homelessness.

309. *Id.* at 1166.

310. *Martin v. City of Boise*, 920 F.3d 584, 616–17 (9th Cir. 2019).

311. Kim, *supra* note 286, at 1157.

312. *Tobe*, 892 P.2d at 1169.

Accordingly, all efforts to end the practice of criminalizing homelessness must come from the legislature.

Proposing that California pass legislation banning the practice of criminalizing homelessness is not as radical or quixotic as it may sound. In fact, several states have already adopted such measures (such as Connecticut, Illinois, and Rhode Island), and in 2016, Senator Carol Liu, formerly representing California's 25th district, placed such a bill on the legislative docket.³¹³ Often labeled as "Homeless Bills of Rights," these measures are designed to "[p]rotect[] against segregation, laws targeting homeless people for their lack of housing and not their behavior, and restrictions on the use of public space."³¹⁴ For example, Senator Liu's proposed legislation calls for, among other protections, "[p]ermitt[ing] use of the public space includ[ing], but . . . not limited to . . . [s]leeping or resting, and protecting oneself from the elements while sleeping or resting in a nonobstructive manner."³¹⁵ California should adopt Senator Liu's proposed legislation.

But beyond passing commonsense legislation ending the practice of criminalizing our society's most vulnerable, the California legislature is well equipped to engage in much needed fact finding and community outreach. Judge Carter claims that the housing-first approach has failed, but it is the legislature that should be scrutinizing the progress of this approach through committees, task forces, and solicitation of expertise. These legislative tools should be used to ascertain the biggest roadblocks unhoused persons face on their path to secure housing and what these individuals feel is required for them to overcome the yoke of homelessness. Ultimately, state and local leaders must mirror Judge Carter, Michele Martinez, and Special Rapporteur Alston and demonstrate a *serious* willingness to curb the tide of human suffering. From his judicial platform, Judge Carter demonstrates the proactivity and urgency he wishes to see in all officials in whom we place our trust to address societal calamities such as the homelessness crisis. As Abraham Lincoln stated and Judge Carter emphasized: "It is . . . for us to be dedicated to the great task remaining before us . . .

313. *Homeless Bill of Rights*, NAT'L COAL. FOR THE HOMELESS, <https://nationalhomeless.org/campaigns/bill-of-right/> [<https://perma.cc/6Z72-KNBR>]; S.B. 876, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

314. *Homeless Bill of Rights*, *supra* note 313. For more information on the history and law of Unhoused Bills of Rights, see generally Daniel P. Suitor, Note, *You Don't Have a Home to Go to But You Can Stay Here: A Bill of Rights for Unhoused Minnesotans*, 106 MINN. L. REV. 525 (2021).

315. S.B. 876, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

that government, of the people, by the people, for the people, shall not perish from the earth.”³¹⁶

C. Addressing Counterarguments and Articulating Alternatives to Punishment

Some may not agree that behaviors necessarily implicated in experiencing homelessness should be categorically decriminalized. Indeed, the *Martin* decision was met with vehement backlash and opposition.³¹⁷ LA Alliance implicitly premised their claims on the notion that *Martin* greatly limited municipalities’ ability to “clean the streets” of unhoused persons, thereby leading to a proliferation of homelessness.³¹⁸ This sentiment can be summed up by the words of Justice Smith in his dissent in *Martin*, in which he argued that decriminalizing homelessness “prevent[s] local governments from enforcing a host of . . . public health and safety laws, such as those prohibiting public defecation and urination. . . . [and] shackles the hands of public officials trying to redress the serious societal concern of homelessness.”³¹⁹ For reasons explained here, these concerns are without basis.

1. Criminalizing Homelessness Does Not Work

First, punishing homelessness has never and will never work.³²⁰ Criminalizing homelessness in the region has been the municipal norm for over a century leading up to the *Martin* decision, and during that long period, homelessness in California has persisted and grown.³²¹ Indeed, Judge Carter acknowledged that local governments in California have failed to address homelessness, thereby implying that one of

316. In Chambers Order, *supra* note 4, at 2.

317. Rankin, *supra* note 99, at 562–63.

318. LA All. for Hum. Rts. v. County of Los Angeles, 14 F.4th 947, 953 n.1 (9th Cir. 2021).

319. *Martin v. City of Boise*, 920 F.3d 584, 590 (9th Cir. 2019) (Smith, J., dissenting).

320. See Alston, *supra* note 288 and accompanying text.

321. As far back as 1901 when Skid Row was known as “hobo corner,” “Men were often carted away to the city jail and then released back into the neighborhood. Besides throwing people in jail and occasionally forcing people out of town, the city did nothing.” Hadley Meares, *The Early Days of Skid Row*, CURBED L.A. (Dec. 14, 2017, 11:31 AM), <https://la.curbed.com/2017/12/14/16756190/skid-row-homeless-history> [https://perma.cc/23YT-CJTT]. Homelessness in Skid Row was so bad in the 1970s, that Los Angeles began enforcing its now infamous containment policy. *Supra* note 34 and accompanying text. *Tobe* ratified Santa Ana’s draconian anti-camping ordinance in 1995, a full twenty-three years before homelessness led to the Santa Ana River lawsuit. *Tobe v. City of Santa Ana*, 892 P.2d 1145, 1169 (Cal. 1995); *supra* note 87, 304. In 2005, fourteen years before *Martin* was decided, there were an estimated 65,287 unhoused people living in Los Angeles County. *Homelessness in Los Angeles County 2020*, *supra* note 20.

governments' main tools in addressing homelessness—criminalization—has likewise failed.³²²

Furthermore, while LA Alliance and others maintain that decriminalization via *Martin* has worsened homelessness, this view, other than lacking evidentiary basis, is falsely premised on the notion that homelessness has actually been decriminalized in the Ninth Circuit.³²³ However, as Professor Sara Rankin highlights, criminalization has not ceased even post-*Martin*.³²⁴ Instead, such criminalization has found a legal loophole in the “transcarceration” of homelessness, in which more insidious forms of criminalization—such as encampment sweeps, involuntary commitment, compulsory confinement, and imposition of civil penalties³²⁵—have filled the punitive gap.³²⁶ And even more overtly, municipalities such as Los Angeles continue to criminalize homeless people in blatant violation of *Martin*. For example, in January 2022, the city voted to enforce a sweeping anti-camping ordinance, despite a massive shortage of available shelter—much to the approbation of LA Alliance.³²⁷ Thus, despite *Martin*, we remain a society that punishes homeless people for being homeless, and we continue to live with and see the results of this disastrous policy every day.

Accordingly, a move to genuine decriminalization would not “shackle[] the hands of public officials trying to redress . . .

322. In Chambers Order, *supra* note 4.

323. Judge Carter and LA Alliance explicitly argue that prioritizing housing-first over temporary shelter has led to disastrous results. In Chambers Order, *supra* note 4 at 46. We can also safely conclude that LA Alliance, given their opposition to the *Martin* holding, may argue that the proliferation of homelessness since *Martin* evidences *Martin*'s folly. See L.A. All. for Hum. Rts. v. County of Los Angeles, 14 F.4th 947, 953 n.1 (9th Cir. 2021). However, both the housing-first paradigm and the *Martin* decision have had significantly less time to be tested for efficacy when compared to the policy of criminalization that has failed for over a century.

324. Rankin, *supra* note 99.

325. For an analysis specific to the use of civil penalties to punish unhoused persons post-*Martin*, see generally Sara K. Rankin, *Civilly Criminalizing Homelessness*, 56 HARV. C.R.-C.L.L. REV. 367 (2021).

326. Rankin, *supra* note 99, at 580.

327. City News Service, *LA City Council Votes to Enforce Anti-Camping Law at 58 New Locations, Including MacArthur Park*, ABC NEWS, (Jan. 13, 2022), <https://abc7.com/homeless-camping-encampment-law/11465162/> [<https://perma.cc/P426-T54Y>]; Bruce Haring, *Los Angeles Anti-Camping Ordinance Goes into Effect, Bars Homeless from Parks, School Areas*, DEADLINE (Sept. 3, 2021, 8:58 PM), <https://deadline.com/2021/09/los-angeles-anti-camping-ordinance-goes-into-effect> [<https://perma.cc/KBN3-3F94>]; Fred Shuster, *LA Alliance Applauds 'Massive' Shift in City's Homelessness Policy*, HEY SOCAL (Nov. 4, 2021), <https://www.msn.com/en-us/news/us/la-alliance-applauds-massive-shift-in-city-s-homelessness-policy/ar-AAQkg0u?ocid=msdgnpt> [<https://perma.cc/5NLH-72FP>].

homelessness” as Justice Smith suggests.³²⁸ Rather, it would *liberate* the hands of officials from the self-imposed shackles of “insanity,” in which we repeat the same mistake expecting different results. For us to ameliorate the homelessness crisis in any meaningful sense, we must find newer, more creative, and more effective approaches to solving the problem.

2. Addressing Homelessness Requires Engagement and Outreach, Not Policing

California must replace policing homelessness with community engagement and outreach. The police should not have to carry the burden of being the custodian of the growing homeless population in California.³²⁹ By thrusting these responsibilities upon the police, who are not trained for the task, we tax already strained departments, waste valuable resources, and ultimately fail to address homelessness through more targeted and effective measures.

Fortunately, there already exists models for promoting homelessness outreach divorced from policing regimes. One such model implemented in both Los Angeles and Santa Monica is the County + City + Community (C³) program.³³⁰ Organized by the county, city, LAHSA, and United Way, C³ is “[a] partnership designed to systematically engage people living on the streets . . . and help them regain health and housing stability.”³³¹ The program consists of various “engagement teams,” which themselves consist of one Mental Health Clinician, one Registered Nurse, one Substance Abuse Counselor, one LAHSA Emergency Response Team, and two AmeriCorps Members.³³² These

328. *Martin v. City of Boise*, 920 F.3d 584, 590 (9th Cir. 2019) (Smith, J., dissenting).

329. As Urban Alchemy’s website puts it:

[C]alling the police shouldn’t be the default answer to poverty and desperation. Our society can’t address trauma, addiction, and mental illness with the same approach we use to tackle crime. Police are trained to respond to active threats, not to individuals in the throes of a psychotic break or someone who has been overwhelmed by their emotions and is acting out of desperation.

URBAN ALCHEMY, <https://urban-alchemy.us/about-us/> [<https://perma.cc/ED4Q-3ER6>].

330. *C³ County + City + Community: An Innovative, Multidisciplinary Street-Based Engagement Model for LA’s Skid Row*, LA CNTY. (June 15, 2016), http://file.lacounty.gov/SDSInter/dmh/246486_C3PresentationforHousingInstitute.pdf [<https://perma.cc/B97F-FUXY>]; Brian Hardgrave, *Reaching Out to Help the Homeless*, CITY OF SANTA MONICA (Oct. 29, 2018, 10:30 AM), <https://www.santamonica.gov/blog/reaching-out-to-help-the-homeless> [<https://perma.cc/VA32-PCJN>].

331. *C³ County + City + Community*, *supra* note 330.

332. *Id.* at 6, 9. Engagement teams typically include former unhoused individuals and victims of substance abuse to promote specialized expertise and community credibility. *See* Kelly Reinke,

engagement teams are dispatched Monday through Friday to engage unhoused persons and offer supportive services to help unhoused persons overcome obstacles in achieving housing stability.³³³

Another similar program implemented by Santa Monica is the Homeless Multidisciplinary Street Team (HMST), which “takes traditional medical and behavioral health services out of the office and to the streets, serving a group of individuals identified by City officials as the highest utilizers of local emergency services.”³³⁴ Another engagement model involves organizations partnering with local governments to confront homelessness on a larger scale. One such organization is Urban Alchemy, which employs formerly incarcerated and homeless individuals to engage unhoused persons and offer supportive services, including safe shelters and tiny home villages used to transition individuals from the street to permanent housing.³³⁵ Urban Alchemy trains their team of “practitioners” to avoid calling the police unless necessary, instead encouraging them to “[u]se [their] communication skills to deter people from engaging in behavior that disrupts the environment.”³³⁶ The People Concern, another such agency, utilizes its eighteen homeless outreach teams across the county to “provide people with linkages to resources and services that can help bring them inside for good.”³³⁷ All these models should be scaled to meet the scope of the crisis and replace the tired and useless criminalization model.

3. Governments Will Still Be Able to Enforce Commonsense Regulations That Do Not Impermissibly Target the Status of Homelessness

Decriminalizing homelessness will not lead to lawlessness or decreased public safety, as Justice Smith claims it will. Justice Smith addresses the specific concern that decriminalizing homelessness would preclude crucial health and safety regulations, such as those

C3 Task Force, YOUTUBE (Feb. 28, 2016), <https://www.youtube.com/watch?v=swhGuSPnGrM> [<https://perma.cc/AH5U-RZW6>].

333. See Kelly Reinke, *supra* note 332.

334. Hardgrave, *supra* note 330.

335. URBAN ALCHEMY, *supra* note 329.

336. *LA Practitioner Job Details*, URBAN ALCHEMY, <https://www.paycomonline.net/v4/atweb.php/jobs/ViewJobDetails?job=4307&clientkey=C4DAA0442551166DE1CA620AC95144E8> [<https://perma.cc/M635-PVWD>].

337. *Outreach Teams*, PEOPLE CONCERN, <https://www.thepeopleconcern.org/outreach-teams/> [<https://perma.cc/B3KP-LKR6>]; *Homeless Services*, PEOPLE CONCERN, <https://www.thepeopleconcern.org/homeless-services/> [<https://perma.cc/5LU9-36X3>].

prohibiting public defecation and urination.³³⁸ However, a commonsense and humane response to such a concern is simply to *provide more toilets for unhoused persons*. As Judge Carter highlights, in 2017, conditions regarding toilets in Skid Row fell below U.N. standards for Syrian refugee camps, and in 2019, there were thirty-one public toilets available for an estimated 36,000 homeless people.³³⁹ Rather than punish unhoused people for going to the bathroom in public when they have nowhere else to go—as Justice Smith suggests we do—unhoused persons should be given access to shelter, and ideally, permanent housing so they can defecate with dignity like everyone else.

Ultimately, in crafting legislation that decriminalizes homelessness like the Unhoused Bill of Rights, legislatures can and should use their lawmaking expertise to carve out commonsense pathways for local governments to maintain the accessibility and safety of public spaces without penalizing unhoused persons in the process. Through, for example, utilizing outreach teams instead of law enforcement to address homelessness, localities can make progress in both restoring public spaces and combatting endemic homelessness.

VII. CONCLUSION

Judge Carter and his April 2021 preliminary injunction mandating universal offers of shelter to all unhoused persons in Skid Row—having garnered a great deal of attention and fear before being vacated for basic procedural defects—was nothing short of a judicial enigma. But after close examination and scrutiny, the order that was designed to fail brilliantly did just that—teaching California crucial lessons about how we as a state must move forward in our fight against rampant homelessness. The first lesson learned is that as a state, California's approach to addressing homelessness must be unified, and in such unification, we must do away with false and ideological dichotomies that pit long-term housing against short-term shelter, when both are needed urgently. But our second lesson tells us that the current state of the law punishes all efforts to build such infrastructure because *Martin* dictates that the more we build, the more we sanction the criminalization of homelessness and entrench the unhoused community in

338. See *Martin v. City of Boise*, 920 F.3d 584, 590 (9th Cir. 2019) (Smith, J., dissenting). This concern is more rhetorical than anything else, as Justice Smith is deliberately highlighting behavior that inspires disgust in people, thereby tacitly reinforcing harmful stereotypes regarding the unhoused community, which only exacerbates public fear and frustration.

339. See In Chamber Order, *supra* note 4, at 59.

the nexus between criminality and poverty. Accordingly, our final lesson is that we as a state must go above and beyond our federal protections and categorically forbid the practice of criminalizing homelessness so we can build infrastructure and reform our laws simultaneously. Ultimately, while Judge Carter's preliminary injunction is not legally worth more than the paper on which it was written, it nevertheless remains a powerful policy heuristic, offering guidance and hope for genuine progress.