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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE DAVID O. CARTER, U.S. DISTRICT JUDGE

LA ALLIANCE FOR HUMAN RIGHTS, et.)
al.,)

Plaintiffs,)

vs.)

CITY OF LOS ANGELES, et al.,)

Defendants.)

2:20-CV-2291-DOC

REPORTER'S TRANSCRIPT OF HEARING

Los Angeles, California

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108:58:40 THE CLERK: Calling item one, LACV-20-2291-DOC, LA
208:58:49 Alliance For Human Rights, et al., vs. City of Los Angeles,
308:58:51 et al.

408:58:52 Counsel, please state your appearances.

508:58:53 THE COURT: Thank you. Let me compliment the clerk
608:58:57 of the court at the beginning. That is a wonderful formal
708:58:59 opening. Normally I don't have that. It's relatively
808:58:59 informal. So let me just compliment you and thank you.

908:59:03 Good morning. If you would make appearances on
1008:59:04 behalf of the plaintiff, please.

1108:59:07 MR. UMHOFFER: Good morning. Matthew Umhofer and Ms.
1208:59:08 Mitchell on behalf of the plaintiffs.

1308:59:10 THE COURT: It's a pleasure.

1408:59:11 And on behalf of the defense, please.

1508:59:13 MS. HASHMALL: Good morning. Mira Hashmall for the
1608:59:13 County.

1708:59:19 THE COURT: Pleasure.

1808:59:19 MS. MYERS: Good morning, Your Honor. Shayla Myers
1908:59:20 on behalf of the Intervenors.

2008:59:20 THE COURT: Pleasure.

2108:59:20 Then we'll hear arguments at this time, and of
2208:59:21 course begin with the County. These are your moving papers.
2308:59:25 And make a full presentation, and then if I have questions,
2408:59:27 I'll come back to you. There will also be two rounds. So
2508:59:30 after your opening, there will be a second opportunity.

108:59:34 MS. HASHMALL: Thank you, Your Honor.

208:59:35 And I'm not going to repeat what is in the papers,
308:59:39 obviously this issue has been thoroughly briefed, but I do
408:59:41 want to hit what I think are the most important threshold
508:59:45 issues that dictate that the motion should be granted. And
608:59:51 that is because after three years, and specific guidance from
708:59:55 the Ninth Circuit, the plaintiffs are still unable to plead
808:59:58 facts sufficient to establish the threshold question before
909:00:03 any Federal Court, and that is whether the Court has
1009:00:06 jurisdiction to resolve the case.

1109:00:09 And here, underpinning the motion to dismiss, and
1209:00:12 fundamental to the defects in the pleading, is the Separation
1309:00:16 of Powers Doctrine, and the lack of standing.

1409:00:20 You cannot take a kitchen sink approach. You must
1509:00:24 plead specific facts to establish that each plaintiff has
1609:00:28 standing as to each claim for relief.

1709:00:32 And despite multiple rounds of prior pleadings,
1809:00:37 specific direction from the Ninth Circuit, the plaintiffs are
1909:00:40 unable to meet that burden.

2009:00:42 And indeed, now three years later in their
2109:00:45 opposition they are trying to change on the fly their causes
2209:00:49 of action, their theories of relief, seeking amendment when
2309:00:54 trial is set in November. And for all those reasons they, by
2409:00:59 their own pleadings, have demonstrated an inability to cure
2509:01:03 these defects.

109:01:04 I would like to walk the Court through it. In order
209:01:11 to plead the constitutional claims, the basis for potential
309:01:15 federal question jurisdiction, they must establish a
409:01:19 constitutional deprivation, a substantive due process
509:01:23 violation, to support the 1983 claim.

609:01:27 They simply haven't met their burden. There is no
709:01:33 constitutional right to housing. They do not allege any
809:01:39 facts, even viewed in the most favorable light, that could
909:01:42 demonstrate deliberate indifference.

1009:01:46 At the core, the plaintiffs disagree with policy
1109:01:48 decisions made by elected officials. That is not a grounds
1209:01:52 for a claim, and it is certainly not the basis for alleging a
1309:01:55 constitutional violation.

1409:01:56 And the courts have been clear about this, you've
1509:02:01 got to have a legally-protected right underpinning your 1983
1609:02:06 claim.

1709:02:10 We briefed what was pled. And in the opposition,
1809:02:14 for the very first time, they changed their theory and
1909:02:16 claimed that it was a property interest that is the basis for
2009:02:21 their constitutional claim. But the law says that that won't
2109:02:25 work. *Regents vs. University of Michigan* makes clear that
2209:02:30 you cannot claim a property interest derived from state law
2309:02:34 to satisfy your pleading burden in the context of this 1983
2409:02:38 claim.

2509:02:39 And that is particularly true here where the state

109:02:43 statutes that they are grasping at, some that are not even
209:02:46 referenced in their pleading, create substantial discretion
309:02:51 in the government actor on how to fulfill its obligations.
409:02:56 And they cannot use a court to dictate that discretion. And
509:02:59 they cannot establish a legally-protected right.

609:03:02 The other reason the constitutional theories fail,
709:03:06 Your Honor, is because there is no state-created danger that
809:03:11 is anywhere close to the recognized case law.

909:03:13 They cannot point to any affirmative act by the
1009:03:17 County exposing the plaintiffs to danger that they would not
1109:03:20 otherwise face.

1209:03:21 It's really a theory based on omission. And the
1309:03:24 case law doesn't support it as a viable claim. This is not
1409:03:28 akin to pushing civilians into a rabid crowd, or blocking
1509:03:34 exit from a dangerous protest.

1609:03:37 These are arguments about how millions and millions
1709:03:41 and millions of dollars by the County has been spent to
1809:03:44 address the needs of the unhoused population, and a
1909:03:48 disagreement about those policy priorities. That is not a
2009:03:51 state-created danger. It's not a basis for jurisdiction or a
2109:03:56 claim for relief. Particularly because they cannot tie any
2209:04:01 action by the County to a particularized danger caused to the
2309:04:05 plaintiffs. And each category of plaintiff must demonstrate
2409:04:11 for themselves standing, actual injury, and a connection, a
2509:04:17 direct connection to an action by the County, whether it's

109:04:20 their unhoused plaintiffs, their formerly unhoused
209:04:25 plaintiffs, their property owner plaintiffs, or their rental
309:04:28 plaintiffs, some of whom don't even stay in the Skid Row area
409:04:33 of the City of Los Angeles. None of them can point to any
509:04:37 action by the County that can constitute deliberate
609:04:41 indifference.

709:04:43 The next federal claim is --

809:04:49 THE COURT: Excuse me for just a moment.

909:04:50 Thank you. Please continue.

1009:04:53 MS. HASHMALL: The next claim, and I think this one
1109:04:56 speaks volumes, is an instance where the plaintiffs have just
1209:04:59 swapped the County out for the City on takings and inverse
1309:05:06 condemnation claims, ignoring the reality that none of the
1409:05:09 plaintiffs claim to be in the unincorporated areas of the
1509:05:14 County.

1609:05:15 So *Iqbal* and *Twombly* require specific facts; not
1709:05:21 broad brush allegations. You can't just change names of
1809:05:24 defendants and purport to plead a viable claim for relief.
1909:05:29 And they simply haven't done so here as it relates to the
2009:05:32 County.

2109:05:32 They've got no standing, and no basis to claim
2209:05:36 either theory of takings or inverse condemnation. And the
2309:05:39 law is squarely against them on that.

2409:05:43 As it relates to the state law claims, again, you
2509:05:47 cannot use a Federal Court to dictate the exercise of

109:05:51 discretion by state actors, particularly where they cannot
209:05:56 point to a statute that creates a mandatory duty owed to the
309:06:01 plaintiffs that could support a claim for relief under state
409:06:05 law.

509:06:07 The cases have examined the statutes that plaintiffs
609:06:11 have invoked, whether it's WIC 17000 or some of the other
709:06:16 statutes, again referenced for the very first time in the
809:06:20 opposition, but never pled in their pleading, despite
909:06:25 multiple rounds of amendments. And they simply are not a
1009:06:28 basis for a claim for relief because there is no mandatory
1109:06:31 duty created, and there is no violation of an obligation owed
1209:06:35 to these plaintiffs by the County.

1309:06:37 The nuisance claim again doesn't work. They don't
1409:06:45 claim any action relating to the County in an unincorporated
1509:06:51 area that would give rise to a nuisance claim. And it
1609:06:56 appears they think the unhoused population in the Skid Row
1709:06:59 area creates a nuisance. It's an interesting theory from an
1809:07:03 organization that purports to represent that same community.
1909:07:07 But in any event, it's not a basis for suing the County.

2009:07:10 The taxpayer waste claim is squarely against Supreme
2109:07:14 Court precedent. You cannot base a waste claim on a
2209:07:19 challenge on how the government is spending money,
2309:07:23 particularly when it's undisputed that the County has spent
2409:07:26 hundreds of millions of dollars, and housed tens of thousands
2509:07:30 of individuals in connection with its homeless programs.

109:07:35 Our conduct is not only legal, it's substantially
209:07:38 addressing this crisis. And I think we all agree, while
309:07:43 there could be more done, nitpicking and challenging the use
409:07:47 of those resources is not the basis for a waste claim as a
509:07:50 matter of law.

609:07:51 Finally, because these are discretionary decisions
709:07:56 entrusted to our elected officials, they have immunity for
809:08:00 the exercise of that discretion. The state law claims fail
909:08:03 as a matter of law because of those immunities, particularly
1009:08:07 when plaintiffs have made no secret that they would like a
1109:08:11 sweeping injunction from the Court dictating policy and
1209:08:16 budgetary priorities of a government entity. And that is
1309:08:21 squarely within the immunity jurisprudence of the appellate
1409:08:25 courts of the State of California.

1509:08:27 I don't want to bury the lead, because the threshold
1609:08:32 issue of standing has not and cannot be cured. We are not
1709:08:38 raising this issue for the first time. We have raised it in
1809:08:42 various aspects of the pleadings in connection with this
1909:08:46 case, and the Ninth Circuit specifically identified those
2009:08:49 defects.

2109:08:50 Despite all that guidance, and despite three years
2209:08:53 and multiple amendments, plaintiffs cannot plead standing.
2309:09:00 And they don't even try to differentiate between their
2409:09:05 various plaintiffs. All the plaintiffs are suing everybody
2509:09:08 on every claim. The Federal Courts require more on Rule 12.

109:09:15 For all those reasons, Your Honor, I respectfully
209:09:18 request that you grant the motion.

309:09:19 THE COURT: Counsel, thank you.

409:09:20 Counsel on behalf of the Intervenor.

509:09:33 MS. MYERS: Thank you, Your Honor. Shayla Myers on
609:09:35 behalf of the Intervenor.

709:09:36 I'm only going to take just a minute, because we
809:09:39 have obviously joined the County in the motion to dismiss,
909:09:41 just on a limited number of arguments, particularly with
1009:09:43 regard to the standing arguments, the arguments regarding
1109:09:47 takings, and the arguments related to the nuisance claims.

1209:09:50 And the Intervenor raise those particular claims
1309:09:53 and join the County's arguments, and add our own additional
1409:09:54 arguments related to those claims, because we think it's
1509:09:56 important to note that those are the claims brought
1609:09:59 explicitly by property owners against unhoused -- against the
1709:10:03 County of Los Angeles for the actions of unhoused individuals
1809:10:06 in Skid Row.

1909:10:07 The takings claims, as well as the nuisance claims,
2009:10:10 are predicated on actions that the property owners, including
2109:10:15 developers in the Skid Row area, who have investment-backed
2209:10:19 expectations -- and to be clear, that is plaintiffs' own
2309:10:23 words -- investment-backed expectations related to their
2409:10:27 property, that the County is creating a takings issue, as
2509:10:33 well as allowing nuisance to exist in Skid Row related to the

109:10:37 actions of unhoused individuals.

209:10:39 There is no basis for relief that property owners
309:10:43 can seek against a government entity for the actions of
409:10:46 third-parties, and in particular, for the actions of unhoused
509:10:50 individuals in public spaces.

609:10:52 This is a broad and sweeping expansion of an
709:10:57 expectation of property interests in public spaces in Skid
809:11:02 Row.

909:11:02 This is not, to be clear, the first time that claims
1009:11:06 like this have been brought by property owners against the
1109:11:10 County or the City of Los Angeles because of the actions of
1209:11:14 unhoused individuals. This case was previously brought in
1309:11:17 *Venice Stakeholders Association vs. City and County of Los*
1409:11:20 *Angeles* in State Court. It was summarily dismissed on a
1509:11:23 summary judgment motion.

1609:11:24 When other federal courts have considered these
1709:11:26 actions, they have summarily dismissed these claims. Causes
1809:11:30 of action against city and county entities for failure to
1909:11:34 enforce laws cannot lie, cannot lie under state nuisance law,
2009:11:38 and they cannot lie under takings claims, or in Federal Court
2109:11:42 under nuisance.

2209:11:42 The plaintiffs simply do not have standing to bring
2309:11:47 these types of claims against the City, and certainly not
2409:11:50 against the County of Los Angeles for the actions of unhoused
2509:11:54 individuals.

109:11:54 I think, as the County points out, it's significant
209:11:58 that a group that purports to be the LA Alliance, and
309:12:02 represent unhoused individuals, are representing property
409:12:04 owners explicitly for the actions of unhoused individuals,
509:12:10 many of which have been constitutionally protected by this
609:12:13 Court, the Ninth Circuit and the Supreme Court in cases
709:12:17 brought by the Intervenors and others, and in fact, in the
809:12:21 cases that gave rise to this litigation.

909:12:24 These claims particularly are an attempt to
1009:12:26 undermine court protections that exist. And the plaintiffs
1109:12:30 simply have not alleged allegations that give rise to those
1209:12:33 causes of action, and certainly cannot seek the relief that
1309:12:37 they are seeking, which, to be clear, is a mandate for the
1409:12:42 County to enforce laws that do not exist on the county books
1509:12:46 against plaintiffs in this case.

1609:12:47 So again, we would join on those particular points.

1709:12:51 Thank you, Your Honor.

1809:12:51 THE COURT: Thank you.

1909:12:52 On behalf of the LA Alliance, please?

2009:13:01 MS. MITCHELL: Thank you, Your Honor.

2109:13:02 I am not going to get up here and rehash old issues.

2209:13:09 As plaintiff for county noted, a lot of these issues
2309:13:13 that the County brings up, and some of the standing issues
2409:13:17 that the Intervenors bring up, have already been litigated,
2509:13:21 and have already been decided by this Court. So there is no

109:13:26 need for us to go back through them. They are the law of the
209:13:29 case.

309:13:31 These issues that County brings up regarding the
409:13:35 Ninth Circuit order largely had to do with standing on
509:13:40 race-based claims, which are not at issue here. And these
609:13:43 enforcement-related claims that Intervenor brings up, are
709:13:48 also at issue here. Nobody is suggesting that the County
809:13:51 enforce any laws, other than the ones of their own making,
909:13:56 which have nothing to do with police, but have to do with the
1009:14:01 statutorily-created benefits, which they are failing to
1109:14:05 provide.

1209:14:06 So regarding the case or controversy, we would refer
1309:14:13 to the Court to ECF 551. That is regarding whether or not
1409:14:18 there is a case or controversy issue because of the alleged
1509:14:23 settlement agreement that did not make its way into an order.

1609:14:30 And then regarding the standing issues, we would
1709:14:33 refer the Court to ECF number 300, where the Court
1809:14:37 specifically concluded that both for the housed and unhoused
1909:14:43 individuals, plaintiffs have alleged sufficient standing.

2009:14:49 So we are not going to go back through that,
2109:14:51 especially because nothing that the Ninth Circuit raised is
2209:14:56 in play here, nor does it affect the prior motions to
2309:14:59 dismiss. Because these have been litigated ad nauseam, we
2409:15:03 will not repeat the cases here.

2509:15:04 The one issue that the County does bring up which is

109:15:08 new, because it is a new claim that plaintiffs brought last
209:15:12 year in the Second Amended Supplemental Complaint, is the due
309:15:16 process cause of action.

409:15:18 Now, there are several red herrings that are
509:15:21 raised --

609:15:21 THE COURT: Which is which cause of action?

709:15:23 MS. MITCHELL: The due process, the state-created
809:15:25 interest cause of action.

909:15:26 THE COURT: Okay. Thank you.

1009:15:28 MS. MITCHELL: The County makes a really big deal of
1109:15:40 us noting that this is most likely a property interest and
1209:15:44 not a liberty interest.

1309:15:46 Now, it's important to note out that none of the
1409:15:49 factual allegations have changed. Nobody is suggesting that
1509:15:52 there was a scrivener's error on any of the factual
1609:15:56 allegations. The factual allegations have always been that
1709:16:01 plaintiffs are entitled to and are not receiving statutorily
1809:16:08 given interests.

1909:16:10 Now, the law on this is undeniable. It is axiomatic
2009:16:15 that that is a property interest. The case on that -- and
2109:16:19 because this was raised for the first time on reply, I'm
2209:16:21 giving the Court the cite -- this is *Board of Regents of*
2309:16:26 *State Colleges vs. Roth*, R-o-t-h, 408 U.S. 564. And it is
2409:16:35 black letter law, and has been for 50 years in this country.
2509:16:38 And in fact, one of the cases cited by the County cites to

109:16:42 this very case for the distinction between liberty and
209:16:47 property interests, Your Honor.

309:16:49 And that case specifically states, "To have a
409:16:53 property interest in a benefit, a person clearly must have
509:16:56 more than an abstract need or desire for it, he must have
609:17:00 more than a unilateral expectation of it, and he must instead
709:17:04 have a legitimate claim of entitlement to it."

809:17:08 This is not a new statement of law. And so the fact
909:17:11 that we took a look at this and said, oh, our claims are
1009:17:15 actually -- and we intended to bring them as property rights,
1109:17:19 as opposed to liberty rights -- although I do think there is
1209:17:22 an argument that it could certainly fit into both -- that is
1309:17:27 not surprising, it is not different. There was no analysis
1409:17:29 of the actual facts done by the County about this at all.

1509:17:35 And so even when we pointed it out, there was still
1609:17:39 no analysis done by the County at all. All of the cases
1709:17:43 cited by the County in the reply are still liberty interest
1809:17:47 cases.

1909:17:48 Now, the standard under that, both liberty and
2009:17:51 property, are nearly identical. There is no interest. The
2109:17:55 big question is whether the State has, in fact, created the
2209:17:58 interest, whether that interest exists, and whether the
2309:18:02 plaintiffs have an expectation, or a reasonable expectation
2409:18:06 of right to them.

2509:18:07 So we think that certainly it can fall under either

109:18:15 substantive due process, or procedural due process. And
209:18:19 there is substantial overlap between those two in the Supreme
309:18:24 Court orders. And so there is no need to really define which
409:18:30 one of those it falls into today, although I'm happy to have
509:18:33 that discussion separately if the Court is interested.

609:18:36 The -- I think the real important thing is whether
709:18:39 there is a statutorily-created interest. It's what the
809:18:45 County briefs significantly, we spent four or five pages in
909:18:50 the opposition, and I would refer the Court to that.

1009:18:52 But I do think that it is crucial to look at under
1109:18:56 *Roth*, the property evaluation, whether there is a legitimate
1209:19:00 or a reasonable expectation of receipt of the benefit.

1309:19:04 And looking at pages 8 to 11 of the opposition,
1409:19:09 plaintiffs identify statute after statute after statute which
1509:19:15 provides that expectation of benefit. 5600 MHSA, which is
1609:19:22 also known as Prop 63, 17000 all provide sufficient language
1709:19:26 themselves to find that entitlement.

1809:19:28 But CalAIM, which is ignored completely by the
1909:19:33 County in both the opposition and in the reply, despite us
2009:19:39 citing it both in our -- excuse me -- by the County in their
2109:19:42 motion and reply -- despite us citing it both in the
2209:19:47 Complaint and in the opposition, I think it's crucial to
2309:19:50 point this out, because there is no world in which this could
2409:19:53 be described as not an entitlement to this benefit.

2509:19:57 The statement which is cited in our opposition, "A

109:20:01 county mental health plan shall provide covered specialty
209:20:05 mental health services to recipients who have a significant
309:20:09 impairment, including a diagnosed or suspected mental health
409:20:14 disorder."

509:20:15 So that statement that "the County shall provide" is
609:20:20 really not subject to interpretation. The Mental Health
709:20:25 Services Act, MHSA, also identifies very specific entitlement
809:20:31 to services that are not being met.

909:20:35 So the question, I think, setting aside sort of the
1009:20:41 straw man arguments, and the obfuscation that we are seeing
1109:20:44 consistently, is really the fundamental question here: Does
1209:20:48 the County have the obligation to treat seriously mentally
1309:20:53 ill homeless individuals, and those suffering from a
1409:20:58 substance use disorder? That is the question. And that is
1509:21:01 the question that the County avoids time after time after
1609:21:04 time.

1709:21:05 So turning to the state-created danger, Your Honor.
1809:21:09 There are only two real arguments that are identified there.
1909:21:14 The one is whether there is a particularized danger to an
2009:21:18 individual, or whether there is any affirmative conduct by
2109:21:22 the County.

2209:21:23 So regarding the particularized danger, they cite a
2309:21:26 single case, *Sinclair*, which is a newer case out of the Ninth
2409:21:31 Circuit dealing with this issue, but it does not stand for
2509:21:34 which the proposition -- for the proposition for which the

109:21:38 County cites it. It does not stand for the proposition that
209:21:40 an individual must have the particularized danger, and it
309:21:46 cannot apply to a group of individuals. In fact, *Sinclair*
409:21:50 itself cites several cases where a group of individuals were
509:21:55 subject to that danger.

609:21:57 One of the cases cited by *Sinclair* is a case *Hunters*
709:22:03 *Capital*, which specifically denied a motion to dismiss
809:22:08 because those individuals lived or owned property, as opposed
909:22:11 to voluntarily entering this occupied zone during the riots
1009:22:16 up in Seattle a couple of years ago. And so when you have
1109:22:21 that particularized danger can apply to individuals if they
1209:22:27 did not voluntarily place themselves there. That has been
1309:22:30 our argument from the beginning.

1409:22:33 And then the affirmative conduct, Your Honor, we
1509:22:37 have itemized over and over on -- and we did it again
1609:22:42 individually on page 12 of the opposition, but I want to
1709:22:45 point out one of the statements from the reply, which we
1809:22:49 think is so crucial and so applicable here, the statement by
1909:22:55 the County, "These cases" -- referring to the collection of
2009:22:58 state-created danger cases -- "These cases involve egregious
2109:23:03 abuse by power -- abuse of power by a state official who
2209:23:07 exercised their authority to affirmatively force an
2309:23:11 individual into a dangerous situation where injury is
2409:23:15 foreseeable."

2509:23:16 And that is exactly what we have alleged. That is

109:23:19 what we are talking about. And that is what is repeatedly
209:23:22 alleged in the Complaint.

309:23:22 Now, turning to the takings, nuisance, mandatory
409:23:26 duty, negligence, taxpayer waste, all of this has been
509:23:30 litigated previously. The Court has ruled on it previously.
609:23:33 I will only raise a couple newer issues that were raised.

709:23:38 So one of the things the County keeps saying is that
809:23:41 they could not have been involved in a taking because this is
909:23:45 in the City and not in the County.

1009:23:48 But what the County is failing to recognize is the
1109:23:51 significant role that regulatory takings do have in the
1209:23:55 takings clause, both in the Constitution and under state law,
1309:23:58 and under state constitution.

1409:24:00 So just because you are not -- you are sort of in
1509:24:04 the land use jurisdiction of the City has nothing to do with
1609:24:07 a regulatory taking. Because someone who lives in Skid Row
1709:24:11 is subject to city regulations, county regulations, State of
1809:24:14 California regulations, and federal regulations. And any one
1909:24:19 of those could constitute a taking if it is a regulatory
2009:24:23 taking.

2109:24:24 And one of the cases that they cite, *Cedar Point*
2209:24:28 *Nursery*, which we also refer to, talks a lot about the Penn
2309:24:32 Central factors for a regulatory taking. In fact, I think it
2409:24:36 cites it something like 23 times when I did a Control F for
2509:24:39 it in the *Cedar Point* case.

109:24:41 And those specifically refer to -- and we can talk
209:24:45 about this because it was one of the things that the
309:24:50 Intervenors were particularly interested in -- that a
409:24:52 regulatory taking, you must examine the regulation's economic
509:24:58 impact, the extent of interference with investment-backed
609:25:01 expectations, and the character of the governmental action.
709:25:07 And that certainly can occur by a third-party. That was the
809:25:11 point of *Cedar Point*.

909:25:13 And these takings cases are pretty clear when there
1009:25:17 is a regulatory taking, there does not have to be a physical
1109:25:21 invasion by the County in order to take effect. And that is
1209:25:25 what we have alleged.

1309:25:27 There is no irony, Your Honor, here in what the
1409:25:32 Alliance is trying to do. The Alliance has from the
1509:25:35 beginning represented a broad swath of the community, all
1609:25:40 frustrated and shocked and dismayed at where the City and the
1709:25:45 County has been going.

1809:25:46 So the takings claim is only applicable to the
1909:25:51 property owners, there is no doubt about that. We are not
2009:25:53 suggesting otherwise. But we are also not fighting our own
2109:25:58 plaintiffs. There is no suggestion that that is occurring.

2209:26:03 The issue, Your Honor, is the unbelievable
2309:26:07 regulation, or the lack of regulation, failing to meet its
2409:26:10 own obligations that is causing the mass destruction on the
2509:26:14 street.

109:26:16 And we -- when you look at individuals who do not
209:26:18 have control of their own faculties, whose fault is that?
309:26:23 And that is what we really are talking about. And that is
409:26:25 really when you look at the causation issue, I think that is
509:26:28 the fundamental claim.

609:26:30 But when you have a clear failure by an entity who
709:26:36 has an obligation to provide help to people, which it is not
809:26:42 providing, is it people who are under the influence of drugs,
909:26:46 who have schizophrenia, who are paranoid, who are bipolar,
1009:26:50 who are manic, who are self-treating because they are in dire
1109:26:55 straits, is it their fault that chaos is ensuing? Or is it
1209:27:00 the people who have an obligation to take care of them, to
1309:27:03 provide the services and treatment and benefits that they are
1409:27:06 not providing which is failing them? That has always been
1509:27:12 the question.

1609:27:13 And so there is no hypocrisy here, as they want to
1709:27:20 suggest over and over and over. It is all a confluence of
1809:27:23 problems that the County has created.

1909:27:25 The nuisance, the mandatory duty, the negligence
2009:27:29 claims all track previous claims, the previous order that the
2109:27:34 Court has issued. And we would refer the Court to, again, to
2209:27:37 ECF number 300.

2309:27:40 The only other thing I think is relevant that is
2409:27:45 talking about -- to talk about here is the waste claim. In
2509:27:49 the reply, plaintiffs cite a case -- and I'm going to

109:27:53 pronounce it chia-tello, C-h-i-a-t-e-l-l-o, it does not stand
209:27:59 for the proposition that only an illegal ordinance survives a
309:28:05 waste claim.

409:28:06 *Chiatello* lists a litany of items which may be
509:28:12 waste, including useless expenditure of funds that is
609:28:15 incapable of achieving the ostensible goal. And then it goes
709:28:19 on to state, "Whatever else waste may or may not be, it is
809:28:23 unquestionably waste for a government to budget or spend
909:28:27 money administering an illegal ordinance."

1009:28:29 Whether the funds here are legal or illegal, I think
1109:28:34 we have alleged both, I think is yet to be determined in
1209:28:37 discovery, and perhaps an issue for summary judgment or
1309:28:39 trial.

1409:28:40 But there is no doubt that all of this can
1509:28:43 constitute waste. And here, we certainly have met that
1609:28:48 standard.

1709:28:49 And I think just looking at statutory immunity,
1809:28:52 there is nothing new, nothing interesting in their claim,
1909:28:56 frankly, that is worth talking about. And we would refer
2009:28:59 going back to ECF number 300 once again for that analysis,
2109:29:02 Your Honor.

2209:29:03 So unless there are further questions by this Court
2309:29:05 that I can answer, I'm happy to take my seat.

2409:29:09 THE COURT: All right. Thank you very much.

2509:29:11 And response, please, by the County?

109:29:17 MS. HASHMALL: Your Honor, it's telling that even
209:29:31 now in oral argument, we are hearing amendments to the
309:29:34 pleading, theories that are not in the Complaint, theories
409:29:38 that are not even in the opposition brief that are being said
509:29:43 for the first time here in oral argument.

609:29:46 The law of the case doctrine does not apply to any
709:29:50 prior ruling on a prior pleading, particularly because our
809:29:54 briefing in connection with this motion addresses the
909:29:56 allegations in the operative pleading, and identifies, again,
1009:30:01 repeated deficiencies that the plaintiffs have not and cannot
1109:30:05 cure; and indeed, they don't even attempt to.

1209:30:08 This issue with regards to the fundamental basis for
1309:30:13 being in Federal Court, whether they can establish a Section
1409:30:17 1983 claim, the threshold, the requirement for subject matter
1509:30:22 jurisdiction, cannot be satisfied.

1609:30:26 They call it a scrivener's error that they pled a
1709:30:29 liberty interest to support their claim. In the opposition,
1809:30:33 they switched to a property interest, because all of the
1909:30:37 jurisprudence under the liberty cases show they cannot plead
2009:30:40 a viable claim.

2109:30:41 But the Property Interest Doctrine provides them no
2209:30:45 refuge. And that is because they cannot plead a property
2309:30:49 interest sufficient to establish that constitutional claim.

2409:30:53 We hear, and the Court has told, that *Board of*
2509:31:01 *Regents vs. Roth*, that is the answer. Counsel has suggested

109:31:06 that when they can show a legitimate claim of entitlement
209:31:09 under state law, then that is enough. That meets the due
309:31:13 process pleading.

409:31:15 But I don't see in the briefs, and I didn't hear
509:31:18 today, any actual reference to any specific claim of
609:31:23 entitlement. And the problem gets worse when you start to
709:31:27 look at the disparate categories of the plaintiffs. Is the
809:31:32 property owner claiming to have schizophrenia untreated and
909:31:36 unavailable for the resources of the County? Is the resident
1009:31:42 who is a renter claiming they've got a substance abuse
1109:31:46 disorder, that they have been unable to obtain treatment
1209:31:49 under the indigent medical care plans of the County? I don't
1309:31:54 hear it. I don't see it. And they admit it's a requirement
1409:31:59 they simply can't meet.

1509:32:01 I'm also told now for the first time, oh, we can be
1609:32:04 substantive due process. It can be procedural. It can be
1709:32:07 anything I want it to be. Well, that is not appropriate on
1809:32:10 Rule 12. Particularly, because procedural due process has a
1909:32:15 well-developed body of case law. No allegation within this
2009:32:20 pleading satisfies that claim.

2109:32:23 We are told you don't need to decide it today.
2209:32:27 Apparently, they don't even need to define it today. But
2309:32:29 today is the day where the Court has to examine this
2409:32:34 pleading, and conclude whether they have pled specific facts
2509:32:36 to meet the heightened burden established by the Supreme

109:32:39 Court in *Iqbal*. They simply haven't.

209:32:42 And they concede on one hand that they need a
309:32:46 statutorily-created interest, an expectation of the receipt
409:32:50 of a benefit, but they don't plead it. They don't establish
509:32:55 that every plaintiff, every single plaintiff, had some right
609:33:00 under the MHSA not satisfied, or some right under WIC 17000,
709:33:07 a safety net for only the most dire and indigent. A property
809:33:12 owner in Skid Row is going to claim that they had a WIC 17000
909:33:17 entitlement not satisfied? It doesn't satisfy the face test.
1009:33:21 It does not meet the pleading standard.

1109:33:24 CalAIM, again, doesn't work. Their plaintiffs don't
1209:33:29 plead facts to suggest any eligibility, entitlement or
1309:33:34 deprivation. You cannot just gloss over due process pleading
1409:33:37 requirements in Federal Court. It doesn't work.

1509:33:40 None of their plaintiffs are claiming to have been
1609:33:43 diagnosed with severe mental illness. None of their
1709:33:48 plaintiffs are claiming that they have an untreated substance
1809:33:52 abuse disorder. Rhetoric does not satisfy their burden, Your
1909:33:58 Honor.

2009:33:59 The State-Created Danger Doctrine, again, they
2109:34:03 cannot plead, and have not even attempted to identify a
2209:34:07 particularized danger caused by the County.

2309:34:12 I think I heard counsel acknowledge that they've got
2409:34:17 to establish that they did not voluntarily place themselves
2509:34:20 in the position that they say is the basis for their claim.

109:34:23 And yet, I don't -- I don't hear any suggestion that the
209:34:28 County made anyone move to any particular area of the City of
309:34:32 LA, or decide to own property in any specific neighborhood.

409:34:39 There is no connection to their allegations, and any
509:34:44 actual action by the County, to create a danger recognized
609:34:49 under the federal cases.

709:34:51 You have to affirmatively force that individual into
809:34:55 the dangerous situation. They haven't pled it, and they
909:34:58 cannot.

1009:35:00 You are told, Your Honor, that the takings claim is
1109:35:06 fine, it's a regulatory taking now. Well, I think the name
1209:35:09 sort of makes obvious, they've got to plead a regulation that
1309:35:13 they allege is causing a significant injury that would be
1409:35:19 categorized as a taking under federal law. I haven't heard a
1509:35:22 single regulation, not in the pleading, not in the
1609:35:28 opposition, not in the oral amendments here today, none.

1709:35:32 So calling it regulatory doesn't do enough. You
1809:35:35 have to actually plead the regulation you are alleging has
1909:35:40 affected a taking. They have not. They cannot.

2009:35:43 I guess the theory of lack of regulation is a
2109:35:46 taking, but that would be a first, Your Honor. This is not
2209:35:49 the case to recognize new theories of constitutional claims.

2309:35:54 As it relates to waste, they say it doesn't require
2409:36:00 a legality, that they can just plead a waste claim, because
2509:36:05 they claim that this -- the action of the entity has no

109:36:08 public benefit. They cannot credibly allege the hundreds and
209:36:13 millions of dollars the County spends annually to provide
309:36:18 resources, housing and support, has no public benefit. They
409:36:24 have not and cannot credibly allege that theory of waste.

509:36:29 Finally, as it relates to the state law claims, I
609:36:40 did not hear any answer to the deficiency as it relates to a
709:36:44 mandatory duty by the County that was violated to the
809:36:48 plaintiffs.

909:36:50 I did not hear, and I still do not see in the
1009:36:53 pleading, any basis for a nuisance claim in a jurisdiction
1109:36:57 where they concede it's not within the County's authority to
1209:37:01 regulate.

1309:37:04 I did not see in the pleading, and I did not hear
1409:37:06 today, any suggestion that the statutes that they are
1509:37:13 invoking divest the entity of discretion on how to meet its
1609:37:19 obligations under state law. They cannot and they have not
1709:37:24 pled it.

1809:37:25 So unless the Court has questions, Your Honor, I'll
1909:37:28 submit.

2009:37:29 THE COURT: And, counsel, I thank you, counsel.
2109:37:31 Counsel on behalf of the Intervenors.

2209:37:36 MS. MYERS: Thank you, Your Honor. Shayla Myers on
2309:37:42 behalf of Intervenors.

2409:37:44 And I just want to make one minor point, and that's
2509:37:46 regarding the takings claim, as well as the nuisance claim.

109:37:48 But particularly with regard to the taking claim, we
209:37:50 want to echo the County's concern that the plaintiffs have
309:37:53 failed to identify any regulations that would give rise to
409:37:55 this crisis, have failed to identify anything that would
509:37:59 constitute a regulatory taking; and instead, fall time and
609:38:03 time again on the actions of unhoused individuals in Skid Row
709:38:06 to justify the relief that they are seeking in this case.

809:38:09 The Federal Rules of Civil Procedure require notice
909:38:13 pleadings to both guide the litigation, as well as guide
1009:38:17 discovery in this case. And I think that that is an
1109:38:19 incredibly important point to make at this point as the
1209:38:22 parties race towards a trial.

1309:38:24 The purpose of the Complaint is to give rise to an
1409:38:29 understanding about what this case is about. Plaintiffs are
1509:38:33 litigating the impacts of homelessness; and in particular,
1609:38:38 the impacts of constitutional rights protected for unhoused
1709:38:42 people on property owners in Skid Row. They are not
1809:38:47 identifying specific actions taken by the County that would
1909:38:50 constitute a regulatory taking, or would constitute nuisance
2009:38:54 claims.

2109:38:54 That is opening up -- that has the potential to give
2209:38:59 rise to something that is completely untenable, as we think
2309:39:03 about this case going forward, thinking about discovery and
2409:39:07 trial, which is no direction whatsoever in terms of what the
2509:39:12 allegations are about what the County has actually done, and

109:39:16 what the impacts are. And instead, threaten to turn this
209:39:20 case into the impacts of unhoused people on property owners.
309:39:23 We are very concerned about that. And we are concerned about
409:39:25 the ways in which the pleadings, as they are currently
509:39:29 drafted, perpetuate that.

609:39:31 The purpose of notice pleading, obviously, Your
709:39:34 Honor, is to have causes of action that are cognizable. And
809:39:37 with regard to the takings and nuisance, they simply are not
909:39:40 in this case.

1009:39:40 Thank you.

1109:39:41 THE COURT: All right, thank you, counsel.

1209:39:42 On behalf of LA Alliance, your response.

1309:39:47 MS. MITCHELL: Just briefly, Your Honor.

1409:39:56 Regarding the substantive due process and procedural
1509:39:58 due process, the cases speak to both issues. So it's not
1609:40:05 that we are being wishy washy, we are not going back and
1709:40:08 forth, it's that the cases themselves, particularly the
1809:40:10 Supreme Court authority, *Roth* and others who discuss these
1909:40:14 issues, substantive versus procedural due process, actually
2009:40:17 do speak to both issues. So we are not bouncing back and
2109:40:22 forth.

2209:40:23 As far as all of these allegations that we haven't
2309:40:25 made any regulations clear, that we haven't cited any
2409:40:28 statutory authority, I mean, I think not only have we done
2509:40:31 that ad nauseam throughout the Complaint, but we did it in

109:40:35 the opposition. And in fact, I even quoted it here today.

209:40:40 So I just don't think there is any basis.

309:40:42 I think with that, we'll submit, Your Honor.

409:40:46 THE COURT: All right. Thank you.

509:40:48 I'll go back and relook, obviously, and rethink
609:40:55 Document Number 300, where the Court had responded to many of
709:40:59 these arguments previously, and give that a fresh look.

809:41:04 But I want to ask you one question about the

909:41:09 State-Created Danger Doctrine.

1009:41:11 Unrelated to you, but by way of example, in the
1109:41:22 separate proceeding where the County is not involved, there
1209:41:24 is an issue before the Court concerning bins, and a direction
1309:41:30 to take unhoused property and house them, or take that
1409:41:43 property exclusively to Skid Row.

1509:41:51 Ms. Sobel, you and I faced that very issue in an
1609:41:54 unrelated matter that your colleagues may not be aware of in
1709:41:58 Orange County, where in the clearance of the riverbed with
1809:42:04 those thousand to 1400 people, the County of Orange had
1909:42:10 designated a warehouse in Lake Forest 17 miles away.

2009:42:18 MS. SOBEL: 26.

2109:42:19 THE COURT: 22 miles away?

2209:42:20 MS. SOBEL: 26.

2309:42:21 THE COURT: 26 miles away. I'm sorry.

2409:42:23 And on some occasions gave the unhoused a one-way
2509:42:27 bus ticket, and other occasions gave them no bus ticket. And

109:42:30 that was always in controversy, and I never made a definitive
209:42:34 finding about that.

309:42:36 So historically in a state-created doctrine, that
409:42:48 may involve the City and not the County. But by analogy, the
509:42:51 question I want to ask all of you is this: Is the
609:43:04 containment policy that historically existed that floods
709:43:11 literally one area, and I forget if that is Council District
809:43:16 14 or 15, which is Skid Row, a state-created danger?

909:43:23 And so let me rephrase that in a more simple way.
1009:43:28 Many studies say that that's by block one of the three most
1109:43:35 dangerous areas in America. Yet, we've had a historic
1209:43:37 containment policy in this city that encouraged, literally
1309:43:43 with floodlights and barriers, not only the movement, but the
1409:43:53 containment within that zone.

1509:43:57 Is that a state-created danger?

1609:44:00 And I'll turn to the County first.

1709:44:03 MS. HASHMALL: Thank you, Your Honor.

1809:44:04 There has been no allegation --

1909:44:07 THE COURT: Is that a state-created danger?

2009:44:10 MS. HASHMALL: The containment policy that has been
2109:44:12 referenced in these proceedings has nothing to do with the
2209:44:15 County of Los Angeles.

2309:44:15 THE COURT: I understand that. Well --

2409:44:18 MS. HASHMALL: That is the first --

2509:44:19 THE COURT: Just a moment. Maybe. Maybe. I'm

109:44:21 going to ask you the question, you can respond. If you
209:44:23 choose not to, that is fine.

309:44:24 MS. HASHMALL: So that is my first response, that
409:44:26 the containment policy has no connection to the County --

509:44:28 THE COURT: Um-hum.

609:44:30 MS. HASHMALL: -- my client; therefore, not a basis
709:44:32 for a claim against it, one.

809:44:33 Two, I think it's a reference to a city issue from
909:44:35 decades ago. And so there would be a huge problem with
1009:44:39 connecting that policy from 50-plus years ago to these
1109:44:43 plaintiffs who have to plead an actual injury now.

1209:44:45 And even then, the state-created danger requires an
1309:44:52 affirmative act particularly directed at the plaintiffs, and
1409:44:57 deliberate indifference.

1509:44:59 And so I -- I just don't see --

1609:45:03 THE COURT: All right. Thank you.

1709:45:04 MS. HASHMALL: -- under any pleading standard that
1809:45:06 satisfying it.

1909:45:07 THE COURT: For the Intervenors?

2009:45:09 MS. MYERS: First of all, Your Honor, I just want to
2109:45:11 say with regards to the three most dangerous areas that you
2209:45:14 cite to that was cited by the plaintiffs, but when you look
2309:45:17 at the underlying study, those citations actually speak
2409:45:22 volumes about the plaintiffs' claims.

2509:45:24 The basis for the determination that the three most

109:45:27 dangerous neighborhoods in the country are in Skid Row is
209:45:31 based on poverty, and poverty alone.

309:45:34 Those studies are some of the most racist studies
409:45:37 that have been done with regards to the ways in which crime
509:45:41 and poverty intersect. There is no question that Skid Row is
609:45:45 one of the most poverty stricken areas in Los Angeles. There
709:45:49 is no doubt about that. And that that is the result of the
809:45:52 containment -- the, quote, containment policy.

909:45:55 But to be clear, the containment policy was about
1009:45:58 the preservation of affordable housing. The affordable
1109:46:04 housing, Your Honor, that you cited to from *Skid Row Housing*
1209:46:07 *Trust*, *SRO Housing* and others, that have in some ways stopped
1309:46:12 some of the devastation that occurred as a result of the type
1409:46:16 of gentrification that plaintiffs have been advocating for.

1509:46:20 And, in fact, plaintiffs in their Complaint actually
1609:46:23 criticize the zoning policies that are -- that were just
1709:46:27 passed by the City Council as part of their state-created
1809:46:30 danger theory, which is the Downtown 2020 Plan, which just
1909:46:34 passed, and continue to preserve affordable housing in Skid
2009:46:39 Row. Because the plaintiffs have been fighting against those
2109:46:42 zoning policies.

2209:46:44 And, Your Honor, those are the types of zoning
2309:46:46 policies that constitute the so-called containment policy. I
2409:46:50 would be remiss if I did not note that LA Catholic Worker is
2509:46:54 an intervenor in this case. And Jeff Dietrich, the founder

109:46:58 of LA Catholic Worker, in his work at LA Catholic Worker, was
209:47:03 one of the drafters of the Blue Plan, which gave rise to the,
309:47:07 quote, containment policy that the plaintiffs cite to as
409:47:09 causing the state-created danger in Skid Row.

509:47:11 We would say that, no, absolutely not, this, quote,
609:47:15 containment policy cannot give rise to a state-created danger
709:47:19 policy for one specific reason: You cannot say that the
809:47:24 creation and preservation of affordable housing in Skid Row
909:47:30 gives rise to state-created danger for the very purpose that
1009:47:34 doing something positive, creating permanent housing, cannot
1109:47:39 be juxtaposed with plaintiffs' allegation that the failure to
1209:47:44 create shelter instead of permanent housing is a
1309:47:48 state-created danger.

1409:47:48 You cannot say that one policy is better than
1509:47:52 another for purposes of affordable housing, or for purposes
1609:47:55 of a state-created danger theory.

1709:47:58 Effectively, plaintiffs' argument in this case with
1809:48:00 regards to state-created danger is the, quote, containment
1909:48:03 policy preserving housing gave rise to a state-created danger
2009:48:08 in Skid Row. There is absolutely no basis for that
2109:48:12 allegation.

2209:48:12 And lastly, I would say, Your Honor, with regards to
2309:48:15 the idea of floodlights and barriers may have existed in the
2409:48:19 containment plan that was drafted -- the, quote, containment
2509:48:22 plan that was drafted, however, that ignores the intervening

109:48:26 Safer Cities initiative which occurred in the 1990s. It
209:48:30 ignores the reset policy that continues in Skid Row today
309:48:34 that effectively displace unhoused people from Skid Row
409:48:38 through the flooding of LAPD officers to the Skid Row area;
509:48:43 and therefore, an intervening policy that undermines the
609:48:47 initial allegation of state-created danger disrupts the
709:48:51 proximate cause which is necessary for purposes of a
809:48:54 state-created danger theory.

909:48:56 So it's Intervenor's position that, no, allegations
1009:49:00 related to floodlights cannot give rise to a state-created
1109:49:03 danger theory in this case.

1209:49:05 MS. SOBEL: And, Your Honor, if I can add a little
1309:49:07 bit to that?

1409:49:08 Ms. Myers is correct that the City was trying to
1509:49:12 preserve property. So 1986, Mayor Bradley issues an order
1609:49:18 preventing the destruction of low income properties in the
1709:49:21 Skid Row and downtown area. And by the time the *Jones* case
1809:49:26 is filed in 2003, one-half of those protected properties have
1909:49:30 been destroyed.

2009:49:31 So if they are doing state-created danger, they are
2109:49:34 not doing a really good job of containment.

2209:49:36 The *Wiggins* case, which Ms. Myers' office filed, was
2309:49:40 to protect the property that had not yet been destroyed.
2409:49:43 They have been back in court multiple times, as the City
2509:49:47 continues to give approvals to destroy more property, more

109:49:53 low income property. So again, they are not doing a really
209:49:55 good job.

309:49:56 And then, you know, Your Honor talks about the
409:49:58 floodlights. You can take a look at Venice --

509:50:01 THE COURT: And the barriers.

609:50:03 MS. SOBEL: And the barriers.

709:50:04 Take a look at Venice. They are not doing
809:50:07 floodlights. They are doing some barriers. They are doing
909:50:10 fences. So anywhere there is an encampment, people are being
1009:50:14 dislocated, and the public area is being fenced off from
1109:50:17 anybody's use. That occurred in West LA, as well.

1209:50:19 So it doesn't seem to fit with an idea that the City
1309:50:25 is taking affirmative steps to create the state-created
1409:50:30 danger, as it is defined by the plaintiffs in this case.

1509:50:34 THE COURT: I think I can echo at least a portion of
1609:50:37 what you said. And that is in Bonner District and the Mar
1709:50:42 Vista District, that wasn't clear. That was fenced,
1809:50:45 basically.

1909:50:47 MS. SOBEL: Well, Venice Dell is being fenced
2009:50:50 tomorrow after a care plus with no offer of inside safe or
2109:50:54 other housing really, and that is Traci Park. And that will
2209:50:57 be like I think the second or third property in Venice since
2309:51:01 she took office that has been fenced off, public property
2409:51:04 fenced off.

2509:51:05 THE COURT: In terms of this state-created danger,

109:51:09 because I have written in all of the other areas previously
209:51:12 in Document 300, I'll go back and look at those again, but
309:51:27 whatever this containment policy is, Skid Row is
409:51:36 disproportionately racial, and that is even over four times
509:51:43 the number of minority black residents.

609:51:50 Did this containment policy, which was state
709:51:57 sanctioned, lead to that racial disparity?

809:52:03 MS. SOBEL: I think that gentrification throughout
909:52:04 the City has led to that racial disparity.

1009:52:07 THE COURT: So your answer is no?

1109:52:09 MS. SOBEL: My answer is no on the racial disparity.
1209:52:13 I don't think -- I think that there is a gentrification
1309:52:17 issue, and a --

1409:52:18 THE COURT: How did it turn from historically, then,
1509:52:22 a melting pot, at least from the history you have given me in
1609:52:30 your own briefing, to primarily a minority, black minority,
1709:52:41 if this is a state-created containment policy.

1809:52:46 MS. SOBEL: I think it's moving to a primarily brown
1909:52:48 minority at this point, Your Honor. The numbers are
2009:52:50 shifting.

2109:52:51 THE COURT: You want to walk down with me again? I
2209:52:53 disagree with you. Strongly disagree with you.

2309:52:57 All right. Your answer, counsel?

2409:52:58 MS. MYERS: I mean, Your Honor, are you speaking
2509:53:00 about the --

109:53:01 THE COURT: I'm speaking about the racial disparity
209:53:03 in Skid Row, and whether this was a state-created danger.

309:53:12 MS. MYERS: Your Honor, I think the reality is the
409:53:13 state-created danger problem, as we have articulated, is not
509:53:16 a cognizable state-created danger.

609:53:18 THE COURT: I understand that. So the containment
709:53:20 had nothing to do with this, is that what I'm hearing?

809:53:25 MS. MYERS: Your Honor, we dispute that the
909:53:27 containment policy exists because of the actions, including
1009:53:31 those of the plaintiffs, many of the plaintiffs identified as
1109:53:37 part of their role in the Central City East Association, the
1209:53:40 business improvement district, to displace individuals from
1309:53:43 Skid Row oftentimes through the seizure and destruction of
1409:53:46 their property, as alleged in other lawsuits against them,
1509:53:50 through the hiring of -- previously through the hiring of
1609:53:52 armed security guards, through the use of the law enforcement
1709:53:55 and the role of law enforcement, that actually in Skid Row
1809:54:01 there has been concerted effort to displace unhoused
1909:54:06 individuals from Skid Row for the last 20 years.

2009:54:08 And we would also note that many of the -- many of
2109:54:11 the practices that Ms. Sobel note, fences, those types of
2209:54:16 things, are actually being done by private businessowners in
2309:54:19 Skid Row that are -- that are forcing individuals to be more
2409:54:24 concentrated on various streets. That is evident on 4th and
2509:54:28 Town, with -- it's evident throughout Skid Row.

109:54:31 And so the types of actions that Your Honor is
209:54:34 speaking to --

309:54:35 THE COURT: I can't disagree with you. In fact, I
409:54:37 think I agree that that is occurring.

509:54:39 But originally, those appear to be property owners
609:54:43 in a sense putting up these types of barriers, probably in
709:54:52 reaction to what they perceive as the --

809:55:12 MS. SOBEL: Your Honor, I believe that --

909:55:14 THE COURT: Just a moment.

1009:55:16 But those property owners didn't, at least
1109:55:19 historically from at least the UCLA studies, that you both
1209:55:25 relied upon and referred to me, in fact, really start this
1309:55:33 process, as you argue.

1409:55:35 In fact, not the present intervenors, but at
1509:55:38 least -- well, I won't name the names -- but some of the
1609:55:41 early genesis came from actually the advocates for Skid Row
1709:55:48 concerning this containment policy. And we all know that.

1809:55:52 So instead of finger pointing, it was really a joint
1909:55:56 city, county and intervenor -- I don't want to say
2009:56:01 intervenor.

2109:56:02 MS. MYERS: Fair, Your Honor.

2209:56:02 THE COURT: It was a coalescence of this containment
2309:56:06 idea. And it substantially changed the racial population,
2409:56:09 regardless of what you think today, into a predominantly
2509:56:17 minority population.

109:56:18 And I respectfully disagree with you, Ms. Sobel, it
209:56:21 is predominantly black. I was down there two weeks ago. If
309:56:26 you want to take a census, you can walk with me again.

409:56:30 MS. SOBEL: If I may?

509:56:30 According to a number of reports from the government
609:56:32 entities in the *LA Times*, the number of Latinos who make up
709:56:37 the unhoused population in LA is now approaching 45 percent.

809:56:40 THE COURT: Oh, absolutely. In Los Angeles, in
909:56:43 fact, my greatest homeless population by number is Latino.
1009:56:47 It's not black.

1109:56:48 But the disparity of 4 to 1 is so disproportionately
1209:56:53 black. So I have no disagreement city-wide -- hear me out
1309:56:57 now -- I have no disagreement city-wide that the greatest
1409:57:00 number of homeless are now Latino. Absolutely.

1509:57:02 In fact, I'm wondering why I don't inject another
1609:57:06 intervenor group that also represents the Latino community
1709:57:10 for balance here. But disproportionately, if you are
1809:57:13 disagreeing it's 4 to 1, by proportion with the 9 to
1909:57:16 11 percent black population, it's up to 32 to 36 percent
2009:57:21 black homeless, which is hugely disproportional in terms of
2109:57:25 the number of Hispanic or Latino on the street.

2209:57:29 MS. SOBEL: It is. But I don't think it's the
2309:57:31 containment policy. I think it is the larger gentrification.

2409:57:34 THE COURT: Then what created the change in race
2509:57:36 from what I will say a melting pot, and primarily at one time

109:57:41 Caucasian, into this concentration of minority people in Skid
209:57:46 Row who are primarily black?

309:57:47 MS. SOBEL: A lot of it is gentrification. People
409:57:49 aren't gentrifying Brentwood, they are gentrifying South
509:57:54 Central LA.

609:57:55 THE COURT: But is it the encouragement, for
709:57:59 instance, to move people, or to encourage people to go into
809:58:01 this containment zone?

909:58:02 And by the way, we are going to face this in the VA.
1009:58:06 There is another case now before the Court, and that is the
1109:58:08 VA. And you have to wonder where the intake is coming from.
1209:58:13 Is Skid Row even aware if you are a veteran that the VA may
1309:58:16 be opening up facilities? So, I mean, what is the reach out
1409:58:19 to veterans on Skid Row, for instance, do you know? I'm
1509:58:22 going to find out. But, now, hold on for a moment. What is
1609:58:25 the reach out to veterans on Skid Row? Do they even know
1709:58:29 that the VA is opening, or are we going to service people
1809:58:32 from the West Side of Los Angeles in Venice?

1909:58:35 MS. SOBEL: I don't know the answer --

2009:58:36 THE COURT: Well, we'll bring that up with the
2109:58:38 Secretary of Veteran's Affairs maybe, about just getting some
2209:58:41 equality in terms of how we are going to treat our -- that
2309:58:46 has nothing to do with you, but it's a great concern to me
2409:58:49 when I see this disparity, and one racial group in this
2509:58:52 containment zone.

109:58:54 MS. SOBEL: Your Honor, if I may?

209:58:56 I think, you know, I did some litigation in the past
309:58:59 on this issue when I represented day laborers. There is an
409:59:04 overlying issue for the Latino population in Los Angeles,
509:59:09 which is why they are not public on Skid Row or in other
609:59:11 places, many of them are not documented, and so they don't go
709:59:15 to those places. And I've worked with the day labor
809:59:20 organizations and other groups. And, you know, we are
909:59:22 talking about people who are not -- who are fearful of any
1009:59:25 contact with law enforcement, because they believe they are
1109:59:28 going to get -- they are going to get deported.

1209:59:31 And I think that -- or at least taken into
1309:59:34 custody -- and I think that that raises the issue that Your
1409:59:36 Honor has talked about often when we have been in Orange
1509:59:40 County, is that we have to consider what the different
1609:59:44 criteria are, what the different characteristics are of the
1709:59:48 homeless population -- people who are experiencing
1809:59:51 homelessness. Is it women who are domestic violence victims?
1909:59:54 Is it people who come from communities where we just put in a
2009:59:57 Metro site, and then we are building transit-related housing,
2110:00:01 and all we are doing is pushing this out? Is it people who
2210:00:05 lived in the areas in the Sage Report?

2310:00:08 THE COURT: Or is it setting up a containment zone,
2410:00:11 which is state sponsored and encouraged, which leads to this
2510:00:15 racial disparity?

110:00:18 Now, you have given me a whole bunch of analogies
210:00:20 that I may agree with, but I also can't close my eyes to the
310:00:23 huge disparity on Skid Row, and the change in population
410:00:27 since the 1970s, in particular.

510:00:29 MS. SOBEL: Yeah.

610:00:30 THE COURT: Okay.

710:00:31 All right. I want to hear from the LA Alliance. Is
810:00:36 this state-created danger or not?

910:00:38 MS. MITCHELL: Your Honor, it's clearly a
1010:00:40 state-created danger. We've alleged that from the very
1110:00:43 beginning. We have pled that multiple times.

1210:00:45 And it certainly has a disproportionate impact when
1310:00:49 you look at Skid Row, in particular, where people are drawn
1410:00:51 to it. And I think the Court's example of storing people's
1510:00:55 property, but putting it, you know -- taking it I think from
1610:00:58 the West Side into Skid Row, which is bringing people from
1710:01:01 the West Side into Skid Row.

1810:01:03 You also have individuals, and we've said this from
1910:01:06 the beginning, and several of our plaintiffs who will tell
2010:01:08 you, Your Honor, that they stay in the area because that is
2110:01:12 where their social services are. They can't leave and then
2210:01:17 come back, and then leave and then come back.

2310:01:19 And so you have people in the area looking for
2410:01:22 housing, looking for shelter, looking for social services,
2510:01:25 looking for mental health, and none of it's available to

110:01:28 them.

210:01:29 So even though originally, maybe 50 years ago this
310:01:32 was a defined containment policy, and it was in face only
410:01:38 subtracted thereafter, that doesn't change what it is and how
510:01:42 people are intentionally drawn to and kept in this
610:01:48 centralization of poverty. And that is exactly what it is.

710:01:51 It is -- when you centralize poverty, and you
810:01:54 centralize the desperation of people that are looking for
910:01:58 help, then you inevitably have a spike in violence, and in
1010:02:04 crime and in crisis. And that is what we are looking at
1110:02:07 repeatedly.

1210:02:08 And it was historically the Intervenors, right? LA
1310:02:15 CAN, I think, among others, in addition to the City and the
1410:02:18 County that kind of made the devil's deal. That said, look,
1510:02:21 give us a place to be. If you are not going to give us
1610:02:23 anywhere else, give us a place to be, and we'll stay there.
1710:02:27 And that was the deal that was struck, that is unlawful, and
1810:02:30 that was done 50 years ago. And that is, in substance, still
1910:02:35 in existence today.

2010:02:36 So I don't think that there is any doubt. And I
2110:02:38 think certainly the disproportionate impact has been
2210:02:42 well-documented.

2310:02:43 MS. SOBEL: Your Honor, I want to respond to the
2410:02:45 smear of my clients, if I may?

2510:02:47 They didn't even exist until about 20 years ago. So

110:02:51 the devil's deal is with these developers and these property
210:02:55 owners, and not with LA CAN. And that is really just
310:02:59 outrageous.

410:03:01 MS. MITCHELL: I apologize. I thought that that is
510:03:03 what was said. And I was just repeating that. If that is
610:03:08 not what was said, my understanding from what the discussion
710:03:10 just was, was that 50 years ago LA CAN was involved in that.

810:03:14 MS. SOBEL: LA CAN didn't exist.

910:03:17 THE COURT: It doesn't matter if LA CAN was or not.

1010:03:20 First of all, this is a good exorcism, or whatever.
1110:03:25 So don't mind the passion between the parties.

1210:03:28 MS. SOBEL: It was Mayor --

1310:03:29 THE COURT: Just a moment now. Just a moment.

1410:03:31 Thank you.

1510:03:31 This was directed towards the City and the County,
1610:03:34 it wasn't directed towards LA CAN. So let's take LA CAN out
1710:03:37 of it. This is the City and the County.

1810:03:39 I haven't heard a satisfactory answer from either
1910:03:43 party. So what I'm going to do is the following: How long
2010:03:46 would it take to have a transcript of these proceedings
2110:03:54 transcribed? The Clerk of the Court corrected me, and that
2210:03:58 is I need to make a record on each occasion making that
2310:04:01 specific request, apparently.

2410:04:04 So I'm requesting that this be prepared, you know,
2510:04:07 at your convenience, but if it could be before the weekend, I

110:04:09 would really appreciate it, but not demanding, okay?

210:04:15 The second thing is I've asked the Clerk of the
310:04:18 Court to waive all of these Pacer fees. I'm really concerned
410:04:22 that these people on Skid Row who are interested didn't have
510:04:28 access to this, because they had to pay. And I'm waiving
610:04:31 these fees.

710:04:32 I'm also publishing, and going to start putting all
810:04:35 of these transcripts on the public websites. \$5 or \$7 is an
910:04:40 awful lot of money to the folks down there. And they deserve
1010:04:43 the right, if they want to, the folks down there have the
1110:04:50 right to read this without going and paying the Federal Court
1210:04:53 a \$7 fee. And I hope you will all join me in that, just so
1310:04:57 we can have access to the public.

1410:04:59 So far we have been starting to publish this on a
1510:05:02 website, but it's hard to get to, and you have to understand
1610:05:06 the procedure to get on that website to get a free copy. But
1710:05:10 I've been concerned about this for a long time.

1810:05:12 And we talked to the folks down there, an awful lot
1910:05:15 of folks are interested in seeing what is happening in court,
2010:05:18 and they can't get here, quite frankly. That is Don and
2110:05:22 Rick, and a whole bunch of people that are out there who
2210:05:25 really care to read this, and just can't get here.

2310:05:28 So we are going to be in recess. If I need you, I'm
2410:05:31 going to call you back into session as early as next week.
2510:05:34 I'm going to look at ECF 300. I'll look at that with a fresh

110:05:38 look. I've already decided many of these issues, including
210:05:42 standing. I'll go back and look at it again for you, and
310:05:45 make certain I feel the same way, or differently, and reverse
410:05:48 myself if I'm wrong.

510:05:49 I also want to look specifically at the
610:05:52 state-created danger issue. It's new, it's novel. Quite
710:05:56 frankly, I'm in a quandary about it right now.

810:05:59 All right. We are in recess. I want to thank you
910:06:00 for your courtesy, but be available next week if I need you.

1010:06:04 (Thereupon, the Court was in recess.)

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13 I certify that the foregoing is a correct transcript from the
14 record of proceedings in the above-titled matter.

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20 Amy C. Diaz, RPR, CRR

June 6, 2023

21 S/ Amy Diaz

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