**No. 24-6576**

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**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE NINTH CIRCUIT**

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JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DENIS RICHARD McDONOUGH, et al.,

Defendants-Appellants

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On Appeal from the United States District Court
for the Central District of California

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# PLAINTIFFS-APPELLEES OPPOSITION TO EMERGENCY MOTION FOR A STAY PENDING APPEAL AND AN IMMEDIATE ADMINISTRATIVE STAY

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# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Cases** **Page(s)**

**Statutes**



**Other Authorities**

## INTRODUCTION

The Government asks this Court to stay its obligation to construct or otherwise provide housing for homeless disabled veterans to access needed healthcare while the Government appeals whether it has such an obligation at all. Granting the requested stay requires accepting the Government's argument that VA's expenditure of *less than one-hundredth of one percent of its annual budget* to house these veterans is an irreparable harm that outweighs the lives of men and women injured in service to this country.

The consequences of a stay for homeless and disabled veterans will be severe and irreversible. Homelessness is lethal, and for those who survive, has devastating repercussions including "exacerbation of existing disabilities and health conditions and exposure to violence and other victimization." *Powers v. McDonough*, 2024 WL 4100866, at *51 (C.D. Cal. Sept. 6, 2024) (District Court's Post-Trial Opinion and Findings of Fact); SA34–158.[1]

The District Court recognized these harms: "[W]ith fall and winter approaching and with thousands of homeless veterans still living on the streets," the need for temporary housing on the West Lost Angeles Grounds ("Grounds") is an "emergency." A192. And "[w]ithout temporary supportive housing, countless veterans may die on the streets or in shelters while waiting for permanent housing to be built." *Powers*, 2024 WL 4100866, at *23. The District Court's recognition of these risks is the basis for its emergency orders. *See* A190; A192.

The Government's stay motion confronts these stakes cavalierly, if at all. Yet preventing unhoused veterans' needless suffering and death is what the trial was all about, and what the District Court's orders address. Indeed, less than a month ago, Chelsea Black, Acting Chief of the VAGLAHS Office of Strategic Facility & Master Planning, stated in court that VA was "**going to find the funding [for temporary**

[1] Citations to "SA" refer to the Supplemental Appendix attached to Plaintiffs' Response.

**supportive housing]. We want to do this**." A633 at 42:12–13 (emphasis added). The Government's motion is an outright reversal of this commitment.

The Government attempts to relitigate comprehensive factual findings entered by the District Court following a month-long trial. *See generally Powers,* 2024 WL 4100866. Yet the Government fails to acknowledge the District Court's Findings of Fact, much less explain why any is clear error.

The Government's arguments as to the merits have no likelihood of success. VA itself has adopted a Housing First model that prioritizes the provision of permanent supportive housing to unhoused veterans. *Powers,* 2024 WL 4100866, at *45. Its disagreement with the District Court is over *timing* of providing such housing—i.e., whether construction is proceeding at a pace that accounts for the life-or-death consequences for Plaintiffs and other disabled veterans—not the remedy itself. Nor can VA meaningfully dispute the District Court's finding that temporary supportive housing—in quantity subject to adjustment according to need—is necessary to save disabled veterans' lives while the construction of permanent housing plods on. That VA may have to expend an infinitesimal fraction of its annual budget to house disabled veterans is scarcely a "harm" in comparison to their lives. This Court should deny the Government's requested stay.

## STATEMENT

Approximately 3,000 veterans in Los Angeles lack a permanent home, and VA's own findings indicate that the majority of these unhoused veterans have severe disabilities like Severe Mental Illness, Traumatic Brain Injury, and PTSD. *Powers,* 2024 WL 4100866, at *7, *23. After an exhaustive four-week trial, the District Court found that VA urgently needs more supportive housing near its WLA Medical Center—which provides "the bulk of . . . specialty care" to veterans in Southern California—to allow unhoused disabled veterans to access essential healthcare. *Id.* at *44, *63. If the District

Court's orders are stayed, VA's plodding development will not meet disabled veterans' need for supportive housing and healthcare nearly fast enough, if at all. *Id.* at *23. "Without this Court ordering the VA to build significant temporary housing on the [Grounds], the VA [will] continue violating the Rehabilitation Act for years to come as veterans languish waiting for permanent housing." *Id.*

After the *Valentini* litigation, VA committed to construct 1,200 permanent supportive housing units on the Grounds, including 770 units by 2022. *Id.* at *48–49. Yet there are presently only 307 such units on the property. *Id.* at *50 (233 units at time of trial); SA243 (307 units following opening of building post-trial). These units are fully occupied and in constant demand. *Powers*, 2024 WL 4100866, at *50; SA242–43. Although VA says it intends to increase permanent housing stock on the Grounds, its proposed units will not be finished until 2030 (or later, given VA's dismal record of on-time completion). *Powers*, 2024 WL 4100866, at *50 (the current financing model "presents significant delays and uncertainty for the construction of permanent supportive housing").

Nor does existing emergency and transitional housing redress the permanent housing shortage. As the District Court found, only 229 units of short-term housing were located on or near the Grounds as of August 12, 2024—capacity sufficient for *less than ten percent* of currently unhoused veterans in Greater Los Angeles. *Powers*, 2024 WL 4100866, at *50. Most of those units are already occupied. *Id.* at *10. And even if 229 short-term placements near the Grounds were sufficient (they are not), many are emergency placements not suitable for more than a few months—"a stopgap solution until a veteran obtains more permanent housing." *Id.*; SA245. There is immediate need for temporary supportive housing on the Grounds to "fill the gap between emergency programs . . . and permanent supportive housing." *Id.* at *64. VA has no intention to construct *any* such housing absent the District Court's injunction. *Id.*

To remedy violations of the Rehabilitation Act, the District Court ordered the *incremental* construction of temporary and permanent supportive housing that is (i) overseen by a Special Monitor, and (ii) capable of adjustment according to need. *Id.* at *24. At present, the District Court has ordered:

(1) The provision of temporary supportive housing—100 units in 90 days and 750 total units in 12–18 months—on the Grounds, proximate to urgently needed mental and physical healthcare at the WLA VA Medical Center. A169–70; A174–75.

(2) The provision of a plan, within six months of the District Court's judgment, for the construction of 1,800 additional permanent supportive housing units on the Grounds. *Id.*

Following the Court's post-trial opinion, Plaintiffs and the Government collaborated to identify and procure temporary supportive housing for unhoused veterans without disrupting existing operations on the Grounds. SA251–53. The Parties identified a vendor that can timely provide appropriate units at a reasonable cost, as well as suitable sites for such housing. *Id.* One-hundred temporary supportive housing units will occupy approximately five acres—or about one percent—of VA's 388-acre property. A978 at 87:10–19 (approximately 20 modular units per acre). Their construction will cost $15 million (or, by VA's estimate, $30 million—0.007 percent of VA's annual budget of $407 billion). SA254; A10. VA's own official testified that VA is able to find the funding for such housing. *See supra* at 1–2. But instead of moving forward with this urgent and life-saving construction, the Government moved for a stay. The District Court denied that motion, "declin[ing] to allow further delays so that VA can evade its legal obligations." SA3.

## ARGUMENT

### I. The Government is Unlikely to Succeed on the Merits.

#### A. The District Court Properly Granted Relief Under the Rehabilitation Act.

##### 1. The Court Has Jurisdiction Over the Rehabilitation Act Claims.

The Government asserts that VA has exclusive jurisdiction over any claim related to the provision of veterans' benefits. Mot. 11–12. That is not the law. *Powers v. McDonough*, 713 F. Supp. 3d 695, 712–16 (C.D. Cal. 2023); SA159–99. Section 511 "does not give the VA exclusive jurisdiction to construe laws affecting the provision of veterans benefits or to consider all issues that might somehow touch upon whether someone receives veterans benefits." *Broudy v. Mather*, 460 F.3d 106, 112 (D.C. Cir. 2006); *Hanlin v. United States*, 214 F.3d 1319, 1321 (Fed. Cir. 2000); *cf. FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 278 (2016) (refusing to read "affecting" hyperliterally where doing so would result in statute's "assuming near-infinite breadth"). "Rather, [Section 511] simply gives the VA authority to consider such questions when making" an individualized benefits determination, and disallows review of such determinations once made. *Broudy*, 460 F.3d at 112.

The Government's brief makes no mention of *Broudy*, whose standard this Court invoked in *Veterans for Common Sense v. Shinseki [VCS]*, 678 F.3d 1013, 1025 (9th Cir. 2012). That is because *Broudy* and *VCS* foreclose the Government's argument. In *VCS*, this Court recognized that the district court in *Broudy* properly exercised jurisdiction over claims whose resolution "did not require the district court 'to decide whether any of the veterans whose claims the Secretary rejected were entitled to benefits' or to 'revisit any decision made by the Secretary in the course of making benefits determinations.'" 678 F.3d at 1030 n.21 (quoting *Broudy*, 460 F.3d at 115). Those are the facts here. Adjudicating Plaintiffs' Rehabilitation Act claims did not require the

District Court to second-guess VA's previous benefits determinations or revisit decisions made by VA in the course of reaching those determinations. Rather—taking VA's prior benefits determinations as a given—the District Court found that VA's failure "to provide sufficient temporary and permanent supportive housing on or near the WLA Grounds" denies Plaintiffs the reasonable accommodations they need to access the benefits to which VA has already determined they are entitled. *Powers*, 2024 WL 4100866, at *47.

Nor does the Government acknowledge *VCS*'s holding that this Court had jurisdiction over "VCS's claim related to procedures affecting adjudication of claims at the Regional Office level." 678 F.3d at 1034–35 (Such review "does not require us to review 'decisions' affecting the provision of benefits to any individual claimants. Indeed, VCS does not challenge decisions at all."). The blanket rule the Government urges—in which, like *VCS*, Plaintiffs do not challenge "decisions of the VA in the cases of individual veterans"—would overturn that holding. *Id.* at 1034.

As the District Court reasoned, absent judicial review, there is a jurisdictional void for Rehabilitation Act claims (like Plaintiffs') that do not arise from individual benefits decisions. That is because the Rehabilitation Act claims of Plaintiffs and class members could not be made in the VA claims process, nor could Plaintiffs and class members secure equitable relief through that system. *Powers*, 713 F. Supp. 3d at 716 ("The Rehabilitation Act is not a law that creates benefits for veterans, so Rehabilitation Act complaints cannot be presented as claims for benefits to [VA regional offices]," and therefore "cannot access the higher levels of VJRA's review system[.]"). Thus, the Government's interpretation of VA's exclusive jurisdiction would deprive the class of any meaningful forum for their Rehabilitation Act claims. *See also* ECF No. 22 (brief of amici curiae).

2. Plaintiffs Are Entitled to Relief Under the Rehabilitation Act.

The District Court correctly held that the Government denied Plaintiffs the benefits of the VA's healthcare services in the most integrated setting appropriate to their needs and failed to provide them with reasonable accommodation to meaningfully access their healthcare services, solely on account of their disabilities. None of the Government's arguments challenging the District Court's conclusions would succeed on this Court's review.

First, the Government contends that the sole support for the District Court's ruling respecting Plaintiffs' integration claim was "testimony that unhoused Veterans may cycle into and out of jails, hospitals, and other institutions," which testimony, the Government argues, "says nothing about whether such Veterans are at a 'serious risk' of institutionalization." Mot. 12–13 (quoting *M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012)). But that ignores the depth of the record here. The District Court cited numerous veterans' testimony that "[m]any homeless veterans" with disabilities accept institutionalization—including in "emergency departments, psychiatric institutions, and jails"—as their *only* means to "receive healthcare" and "mental healthcare services." *See Powers*, 2024 WL 4100866, at *47. In other words, veterans "[w]ithout permanent supportive housing" are left with an ultimatum: either "accept institutionalization or go without [necessary] services." *Id.* That evidence amply demonstrates a "serious risk" of institutionalization. *See V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1119–20 (N.D. Cal. 2009) (finding serious risk of institutionalization where elderly plaintiffs lacked feasible "alternative" to have their healthcare needs met).

Second, respecting Plaintiffs' meaningful-access claim, the Government contends the record shows only that supportive housing would make it easier for veterans to access healthcare facilities—not that "plaintiffs lack meaningful access to [those facilities]." Mot. 13. But the record is replete with testimony that veterans' meaningful access to healthcare *depends* on the Government's provision of supportive

housing. *See, e.g.*, *Powers,* 2024 WL 4100866, at *44 (finding, based on testimony, that many unhoused veterans with disabilities "require specialists and medical services that are only available on the [Grounds]"); *id.* at *45 ("[w]hen a veteran with a serious disability is placed in an apartment far away from [Grounds] . . . , they often fall back into homelessness," reducing access to healthcare). Plaintiff Laurieann Wright, for example, testified she cannot access healthcare on the Grounds—the only place she can receive the care she needs—because "the hours-long journey" would be "excruciating" for her disabilities, causing her to forgo care altogether. *Id.* at *4. There was no clear error in the District Court's factual findings, which squarely support relief on Plaintiffs' meaningful-access claim. *See Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1136 (9th Cir. 2012) (granting plaintiff's meaningful-access claim because, "if [the defendant] can make [the plaintiff's] experience less onerous and more akin to that enjoyed by . . . able-bodied [individuals], it *must* take reasonable steps to do so" (emphasis added)).

Further, the Government contends the "district court did not meaningfully consider the government's defense[]" that the provision of supportive housing would "fundamentally alter" its programs. Mot. 13–14. That is not true. The District Court considered the Government's factual arguments, and found its evidence non-credible and its defense unpersuasive. *See Powers,* 2024 WL 4100866, at *22, *66.

In particular, the District Court found the provision of supportive housing is "facially reasonable" because the approximately $100 million that it will cost the Government to develop temporary supportive housing amounts to only a tiny fraction—*0.02%*—of the VA's $407 billion annual budget for 2024.[2] *See Powers*, 2024

[2] The Government claims "the size of VA's budget is not, without more, a basis to conclude that VA could reasonably afford this expense without fundamentally altering its programs." Mot. 16. But nowhere has the Government identified any program that would in fact be affected from its purported financial shortfall. Nor has the Government "been proactive in seeking or requesting additional funding from Congress with which to construct housing." *Powers*, 2024 WL 4100866, at *51.

WL 4100866, at *22. And the Government's costs to build permanent supportive housing "will be spread out over [a] six-year timeline."[3] *Id.* The Government's claim that it would have to "shift" funds away from other programs is factually unsubstantiated. Mot. 14. Nor would VA's "diver[sion]" of resources to the Grounds somehow "increase[] segregation, isolation, and stigmatization of Veterans [on the Grounds] based on their disabilities." Mot. 15. As the District Court explained, one of the goals of permanent supportive housing is to create "connective tissue" for veterans—such as parks, "places to gather," and recreational activities. *Powers,* 2024 WL 4100866, at *62. And therefore "[m]any veterans *want* to live in a community with other veterans on the [Grounds]": they feel they finally would be integrated in a community. *Id.* (emphasis added).

In addition, the District Court rejected the Government's claim that provision of housing would "cause the [Grounds] to become less hospitable" or "[un]safe" for veterans. Mot. 15. It found that, due to the absence of housing, veterans near the Grounds have been "stabbed to death," killed from "being struck by a car," and "malnourished," with some describing their homelessness "like being back in Iraq." *Powers*, 2024 WL 4100866, at *7. So the provision of "shelter," "proper food, hygiene sanitation services," and an opportunity to "engage[] with the healthcare system" would lead to *more* hospitality and safety on the Grounds for veterans—not less. *Id.* at *64.

At bottom, requiring the Government to provide supportive housing is a reasonable means of addressing this "urgent crisis." *Id.* at *27. In fact, the Court's orders are not meaningfully different from what VA should *already* be undertaking pursuant to its Housing First Policy. *Id.* at *45. That Policy—which recognizes that "every person

[3] The Government claims that this fact "says nothing about whether those costs would require a fundamental alteration of a program." Mot. 15. This misses the point. The fact that the Government will incur incremental costs over time to build permanent supportive housing makes it unlikely their expenditures would cause a financial shortfall for other programs.

has a fundamental right to housing" and that "housing is central to everything that the VA does"—calls for the VA to secure "the availability of housing" for veterans and "to provide a low barrier to immediate access to housing." *Id.* at *63. The Government's argument is irreconcilable with its stated commitment.

### B. The District Court Properly Granted Relief on Plaintiffs' Charitable-Trust Claims.

The District Court correctly held that the 1888 Deed conveying the Grounds to the Government created a charitable trust, and under the West Los Angeles Leasing Act of 2016 ("WLALA"), Pub. L. No. 114-226, 130 Stat. 926 (2016), the Government assumed—and then breached—enforceable fiduciary duties to Plaintiffs as a trustee of that trust. The District Court's order permanently enjoining the Government from entering into new land-use agreements that do not "principally benefit veterans and their families" was proper and necessary.

#### 1. Plaintiffs Have Standing to Enforce the Charitable Trust.

First, the Government contends Plaintiffs lack standing to pursue their charitable-trust claim. Mot. 16. Not so. Private citizens have standing to enforce a charitable trust when they have a "special interest" in that trust—meaning that private citizens' "positions with regard to the charitable trust [i.e., their entitlement to benefits under the trust] are more or less fixed." Ronald Chester et al., Bogert's The Law of Trusts and Trustees (Bogert's) § 414 (July 2024). The class of beneficiaries may be large in size so long as the class is "sharply defined" and reasonably limited. *He Depu v. Yahoo! Inc.*, 950 F.3d 897, 906 (D.C. Cir. 2020). The "essence of a 'special interest' in a charitable trust is a particularized [Article III] interest distinct from that of members of the general public." *Id.* at 907.[4]

[4] Quoting Judge Bress' concurring opinion in *Pinkert v. Schwab Charitable Fund*, 48 F.4th 1051 (9th Cir. 2022), the Government claims that "[t]he misuse of property donated to charity is in essence an injury to the community as a whole." Mot. 16. But *Pinkert* and

The Plaintiffs satisfy that standard. Under the 1888 Deed, the grantors gifted the charitable trust to the government expressly for the purpose of housing disabled veterans. A236 (ensuring the provision of housing for "Disabled Volunteer Soldiers"). So Plaintiffs—homeless veterans suffering from disabilities—are plainly a group of "intended beneficiaries" with a special interest in that trust, distinct from members of the general public. *See Powers,* 2024 WL 4100866, at *28 (finding that Plaintiffs are "intended beneficiaries" of the trust); *see Hooker v. Edes Home*, 579 A.2d 608, 612, 615 (D.C. 1990) (class of indigent women had standing to enforce a charitable trust as "identified intended beneficiar[ies]"). And while the number of Plaintiffs and their Class is relatively large in size, the charitable trust is sharply defined and reasonably limited to benefit *only* those homeless veterans with disabilities. A236; *see Hu Depu*, 950 F.3d at 906 (holding that Chinese persons imprisoned in China "for exercising their freedom of expression [online]" were a "class of potential [charitable trust] beneficiaries that is sharply defined"). Plaintiffs therefore have a particularized interest in the charitable trust and standing to enforce it.

Second, the Government claims that the 1888 Deed did not create a charitable trust. Mot. 17. But that argument has been rejected by multiple district courts, and rightfully so. *See Powers,* 2024 WL 3416249, at *28; *Valentini v. Shinseki*, 860 F. Supp. 2d 1079 (C.D. Cal. 2012). To create a charitable trust, the grantor must "manifest[] an intention" to convey the property for a charitable purpose. Restatement (Third) of Trusts § 13. The 1888 Deed granted the land to the government on condition that it "establish[ed], construct[ed], and *permanently* maintain[ed]" housing for disabled veterans. A236 (emphasis added). In other words, the 1888 Deed "expressed far more

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Judge Bress' concurring opinion relate only to whether a *donor* of a charitable trust had standing to challenge the use of property—not whether intended beneficiaries with special interest in a trust had standing. *Pinkert*, 48 F.4th at 1059 (Bress, J., concurring in part and concurring the judgment).

than a *hope*" that the Government would use the land to house disabled veterans; it granted the Government the land "[only] on the *condition*" that it do so "for all time." *Valentini*, 860 F. Supp. 2d at 1104 (original emphasis). That conditional language demonstrated the grantors' manifest intention to create a charitable trust. *See United States v. Cerio*, 831 F. Supp. 530, 536 (E.D. Va. 1993) (bequest to the U.S. Coast Guard Academy to establish a scholarship fund for graduates "unmistakably create[d] a valid charitable trust").[5]

Finally, the Government argues that any fiduciary duties with respect to the charitable trust "would be unenforceable against the government" because no "statute or regulation unambiguously assumes them and authorizes their enforcement." Mot. 17–18. But WLALA does assume fiduciary duties: the Act expressly regulates the Government's leases with third parties on the Grounds, requiring the Government to evaluate the leases to ensure that they "principally benefit veterans and their families," among other requirements. WLALA §§ 2(a), 2(c), 2(j). In short, WLALA's statutory obligations "mirror the types of fiduciary duties that trustees traditionally assume." *Powers,* 713 F. Supp. 3d at 722; *see* Restatement (Third) of Trusts § 76 ("The trustee has a duty to administer the trust, diligently and in good faith [for the benefit of the beneficiaries]."). Thus, through WLALA, the government unambiguously assumed fiduciary duties with respect to the charitable trust.[6]

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[5] The Government cites this Court's unpublished decision in *Farquhar v. United States*, 1990 WL 121076 (9th Cir. Aug. 1990), for the proposition that the 1888 Deed demonstrated only a "statement of purpose" and not a "condition" on the gift. Mot. 17. But *Farquhar* involved only whether the 1888 Deed created "[a] condition subsequent" that provided "the grantor[s] a right of reentry" to "terminat[e]" the estate; it had nothing to do with whether the 1888 Deed created a charitable trust. 1990 WL 121076, at *2. That question is before this Court for the first time.

[6] The Government contends that the WLALA "cannot be understood to create trust duties" because it post-dated and did not expressly mention the 1888 Deed. Mot. 18. But the Government offers no case or other authority supporting this argument.

2. The District Court's Scope of Relief Was Proper.

The Government takes issue with the District Court's permanent injunction barring it "from entering into new land use agreements with the Brentwood School, Safety Park, Bridgeland Resources, and UCLA" that "do[] not principally benefit veterans and their families." *Powers*, 2024 WL 4100866, at *42, *70. According to the Government, the Plaintiffs' "injuries would be remedied by [simply] holding the agreements invalid and leaving VA free to renegotiate them." Mot. 19. But the government's "free" negotiation with third parties is what precipitated the Plaintiffs' injuries in the first place. *See Powers*, 2024 WL 4100866, at *53 (finding that after VA OIG concluded that the leases "were noncompliant with federal law, the VA continued to allow leaseholders to occupy the land [unlawfully] and exercise renewal options"). And preventing the government from independently re-negotiating the land-use leases is the only way to ensure the Government does not continue to injure the Plaintiffs. *See id.* at *42 (were the government to independently renegotiate the leases, "it [would be] virtually impossible for [the] leases . . . to principally benefit veterans").

The Government further claims that the District Court's settlement agreement regarding Brentwood School violates the government's "'unrestricted power'" to enter into the terms of its own contracts. Mot. 19 (quoting *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127 (1940)). But the settlement agreement is merely an interim agreement to ensure a partial status quo until the parties and District Court can determine whether new long-term leases are compatible with the Government's fiduciary duties under WLALA. A178–88. It is thus fully consistent with the District Court's permanent injunction barring the Government from entering into leases that "do[] not principally benefit veterans and their families." *Powers*, 2024 WL 4100866, at *41, *70. The District Court also did not usurp the Government's contractual rights, as the agreement ensures only that the Government's leases comply with the law, which the District Court is

empowered to do. *Powers*, 2024 WL 4100866, at *35 (stating that the Court's Brentwood settlement will "ensure the land is put to a use that principally benefits veterans" pursuant to WLALA); *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power.").

## II. Other Equitable Factors Do Not Favor a Stay.

Even if the Government had strong arguments on the merits, it cannot establish irreparable harm from the absence of a partial stay. Were the Court to grant the Government's stay motion, it would be *the Plaintiffs* and the nearly 3,000 homeless veterans in Los Angeles who would be irreparably harmed. *Powers*, 2024 WL 4100866, at *46. At its core, the Government's thesis is that its purported budgetary constraints—ones that are either speculative or self-inflicted—outweigh the lives and health of veterans who sacrificed themselves for this country.

### A. Plaintiffs Have Suffered and Will Continue to Suffer Irreparable Physical Harm from Delay.

The Government failed to construct adequate housing for veterans on the Grounds for years. *See, e.g.*, *Powers*, 2024 WL 4100866, at *48–49. Due to the Government's inaction, Plaintiffs and other veterans have *already* suffered irreparable harm, including being denied access to community-based VA healthcare and mental care for which they are eligible, experiencing exacerbation of existing disabilities and health conditions, and in some cases dying just streets away from the Grounds. *Id.* at *51.

Today, there remains a lack of "temporary and permanent supportive housing" on the Grounds. *Id.* at *48. And finding other housing for Plaintiffs in Los Angeles is not an option. *See, e.g.*, *id.* at *12 (explaining that many veterans do not qualify for other veterans-focused housing developments in Los Angeles). "Without temporary

supportive housing, countless veterans may die on the streets or in shelters while waiting for permanent housing to be built"—particularly in light of winter approaching. *Powers*, 2024 WL 4100866, at *23.

The Government's arguments that the Plaintiffs would suffer *no* harm as a result of a stay are baseless. Mot. 23. First, it claims there is "no near-term need for additional temporary housing" because there are purportedly more than 150 units of vacant short-term housing in the "[GLA] catchment" areas, including 45 "vacant available" housing units on the Grounds and more units opening "soon." *Id.* But empty beds indicate not lack of demand, but the Government's failure to conduct even remotely adequate outreach. VA employs only 13 outreach personnel (only six of whom are peer specialists) for the West LA VA's *22,000 square mile* catchment area. *Powers*, 2024 WL 4100866, at *57. This pitiful outreach places the burden of securing housing on unhoused veterans with mental illness—a model that, unsurprisingly, does not work. SA234–35. Many homeless veterans do not even know that living on the Grounds near the VA Medical Center is a potential option. SA243.

Moreover, the Government fails to mention that their so-called "housing" is either 8-by-10 foot tiny metal sheds or congregate beds under a tent—all lacking bathrooms, kitchens, privacy, or accessible features for those disabled veterans in wheelchairs. *Powers*, 2024 WL 4100866, at *9, *52. And some of these units remain vacant because they in fact *worsened* veterans' disabilities. *Id.* at *52.

In addition, the Government argues that the VA's "free transportation" services to the Grounds obviate the need for temporary and permanent supportive housing. Mot. 23. However, the VA does not directly provide transportation services; instead, it "outsource[s] . . . transportation to and from the [Grounds] to private charities." *Powers*, 2024 WL 4100866, at *37. And those third parties often do not provide transportation to and from the Grounds at times when the veterans need it. *See, e.g., id.* at *54. In addition, the VA recently terminated its ride-share program that allowed veterans to

travel to the Grounds for medical appointments. *Id.* at *4. Regardless, even *if* the VA's transportation services were sufficient, traveling to the Grounds for healthcare is often an "insurmountable barrier" for veterans suffering from disability. *Id.* at *44. Provision of temporary and permanent supportive housing is necessary for Plaintiffs to have access to their healthcare. Homelessness matters.

### B. The Government Will Not Be Irreparably Harmed in the Absence of a Stay.

The Government's claims of irreparable harm to it are unavailing. According to the Government, it would need to spend $30 million to construct 100 temporary units in the near term and $200 million to construct 650 temporary units by April 2026.[7] Mot. 20. But the declaration VA offers in support of this claim provides no explanation for how it arrived at these financial estimates, offering mere speculation. *See* A10. That is not sufficient. *Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) ("Speculative injury does not constitute irreparable injury."). And in any event, "[m]ere injuries, however substantial, in terms of money, time, and energy necessarily expended . . . are not enough." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020).

The Government's financial estimates also assume their expenditures would go to waste. *See* Mot. 20. But that is not true. After the VA failed to build a single unit of housing on the Grounds in the five years after issuing its 2016 Master Plan, the VA in its 2022 Master Plan promised to build more than 1,000 units of Grounds housing within "the next 17 years." *Powers*, 2024 WL 4100866, at *5. Thus, regardless of what

[7] The Government also claims, without explanation, that they "would need to expend funds to plan" for the construction of 1,800 permanent supportive housing units. Mot. 20. But any costs incurred to merely *plan* for the construction of permanent supportive housing units (which is all the District Court's order requires with respect to those units) are minor.

happens on appeal, the Government will need to devote resources to Grounds housing. "[T]he issue is not *if* VA resources will be expended on housing but *when*." SA27.

Finally, the Government's assertion that its lacks financial resources to comply rings hollow. Mot. 21. The VA's overall annual budget dwarfs the amount the Government purports it will incur to comply with the District Court's orders. *Powers*, 2024 WL 4100866, at *22. To be sure, the Government claims that VA will have a $12 billion shortfall for FY2025, relying on yet another declaration that provides no explanation for this estimate. Mot. 21. But the District Court—correctly—"call[ed] into question the accuracy" of this figure because just weeks ago VA reported to Congress that its Benefits and Health Administrations were carrying over unspent funds into FY2025, as much as $5.1 billion. SA26. The Government also cannot reasonably claim that it lacks financial resources because "Congress has not appropriated funds for these [housing] expenses." Mot. 21. The District Court found that the Government took little to no action to "seek[] or request[] additional funding from Congress with which to construct housing." *Powers*, 2024 WL 4100866, at *51. Any financial shortfall the Government may incur from complying with the District Court's orders is self-inflicted, and "[s]elf-inflicted wounds are not irreparable injury." *Wolf*, 952 F.3d at 1008.[8]

[8] The Government's additional assertions that complying with the District Court's orders would "divert" funds from other veterans initiatives (Mot. 21-22) or "would undermine VA's interest in maintaining health and safety on the [Grounds]" (Mot. 22) are also unconvincing, as discussed *supra*. Nor would compliance with the District Court's orders "prevent VA form obtaining funds" from agreements that it would otherwise negotiate. Mot. 22. The court-ordered interim agreements with third parties, like Brentwood School and UCLA, provide *more* revenue to the VA than what they previously negotiated. SA28.

## CONCLUSION

The Government's motion to stay should be denied.[9]

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Respectfully submitted,

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[9] The Government did not appeal the entire judgment. Thus, to the extent the District Court were to grant the Government's motion to stay, the stay should not extend to the portions that were not appealed.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify this brief complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 5,513 words, according to Microsoft Word.

*/s/ Carter G. Phillips*
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