

No. 24-6576

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

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DOUGLAS A. COLLINS, et al.,

Defendants-Appellants

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

SUPPLEMENTAL BRIEF FOR APPELLANTS

YAAKOV M. ROTH

Acting Assistant Attorney General

BILAL A. ESSAYLI

United States Attorney

CHARLES W. SCARBOROUGH

DANIEL WINIK

AMANDA L. MUNDELL

Attorneys, Appellate Staff

Civil Division, Room 7245

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

(202) 305-8849

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
ARGUMENT.....	2
CONCLUSION	4
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

Regulatory Materials:	<u>Page(s)</u>
Exec. Order No. 14296, <i>Keeping Promises to Veterans and Establishing a National Center for Warrior Independence</i> , 90 Fed. Reg. 20,369 (May 14, 2025).....	1

On May 9, the President issued Executive Order 14296, entitled *Keeping Promises to Veterans and Establishing a National Center for Warrior Independence*. 90 Fed. Reg. 20,369 (May 14, 2025). The executive order recognizes that “[t]oo many veterans are homeless in America,” *id.* at 20,369, and reaffirms the government’s commitment to ensuring that as many veterans as possible can access housing. In particular, the executive order directs the Secretary of Veterans Affairs to “designate a National Center for Warrior Independence on the West Los Angeles VA Campus in which homeless veterans in the Los Angeles metropolitan area and around the Nation can seek and receive the care, benefits, and services to which they are entitled,” *id.*, and to “present an action plan” within 120 days for “hous[ing] up to 6,000 homeless veterans at the National Center for Warrior Independence by January 1, 2028,” *id.* at 20,370. The executive order also directs the Secretary of Housing and Urban Development to “use vouchers to support homeless veterans in the Los Angeles metropolitan area and around the Nation.” *Id.*

The Court has requested supplemental briefing on whether the executive order “changes the analysis presented by the parties and, if so, how.” The answer is that it does not. To the contrary, it underscores why the district court erred by attempting to take over control of the Campus.

ARGUMENT

1. As to nearly all of the government's arguments in this appeal, the executive order has no effect whatsoever. That is true of:

- the argument that the VJRA bars jurisdiction over plaintiffs' Rehabilitation Act claims against VA;
- the argument that the district court erred in certifying a class for plaintiffs' claims seeking housing from VA;
- the argument that plaintiffs failed as a matter of law to prove their Rehabilitation Act claims;
- the argument that plaintiffs lacked standing to assert their charitable-trust claims and failed to prove those claims; and
- the argument that the district court's land-use injunctions exceeded its authority.

As our briefs explain, the throughline of these arguments is that the district court exceeded its authority by attempting to take control of the VA Campus rather than allowing the Executive Branch to manage the Campus within the parameters set by Congress. The executive order underscores that the Executive Branch is capable of, and fully committed to, exercising the trust Congress has placed in it. As the government acknowledged in its

briefs and at oral argument, and as the executive order reiterates, VA has not always lived up to its obligations with respect to the Campus in the past, but the executive order ensures that the Campus will in the future be more efficiently used to serve Veterans' needs, including their urgent need for housing.

2. Nor does the executive order affect the government's argument that the district court erred in summarily rejecting VA's contention that being compelled to construct extensive additional on-Campus housing would require fundamental alterations to VA's programs. If the trial in this case were held today, the executive order could affect whether VA would pursue a fundamental-alteration defense and, if so, what evidence it would present in support of that defense. But the executive order does not alter the fact that the district court's analysis was insufficient to justify its rejection of the fundamental-alteration evidence that VA presented at trial last summer. In any event, the Court would need to address the fundamental-alteration defense only if it were to reject all of the government's other arguments regarding the Rehabilitation Act claims.

CONCLUSION

For the reasons discussed in our prior briefs and at oral argument, the district court's judgment should be reversed.

Respectfully submitted,

YAAKOV M. ROTH

Acting Assistant Attorney General

BILAL A. ESSAYLI

United States Attorney

CHARLES W. SCARBOROUGH

/s/ Daniel Winik

DANIEL WINIK

AMANDA L. MUNDELL

Attorneys, Appellate Staff

Civil Division, Room 7245

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

(202) 305-8849

daniel.l.winik@usdoj.gov

CERTIFICATE OF COMPLIANCE

9th Cir. Case Number(s) No. 24-6576

I am the attorney or self-represented party.

This brief contains 599 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

it is a joint brief submitted by separately represented parties;

a party or parties are filing a single brief in response to multiple briefs; or

a party or parties are filing a single brief in response to a longer joint brief.

complies with the length limit designated by court order dated May 15, 2025.

is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature /s/ Daniel Winik

Date May 29, 2025