

No. 24-6576

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

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DENIS RICHARD McDONOUGH, et al.,

Defendants-Appellants

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

BRIEF OF PLAINTIFFS-APPELLEES

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INTRODUCTION

Rather than substantively address the District Court’s findings of fact and conclusions of law from the parties’ 16-day trial, the Government spends its appeal (i) conflating the *remedies* the District Court ordered based on those facts and conclusions with the liability they establish, and (ii) troublingly, attacking the District Court.

But the Government’s swipes at the District Court—including excoriating the court for cherry-picked statements forming no part of the District Court’s findings or orders and belittling its reversal on an unrelated case¹—have no bearing on the questions at issue here. These include:

- Can a class of disabled veterans enforce their right to be free from disability discrimination in federal court?
- Must the Department of Veterans Affairs (“VA”) provide reasonable accommodations allowing disabled veterans to access VA healthcare?
- Did an 1888 deed providing for permanent maintenance of a soldiers’ home for disabled veterans impose a fiduciary duty on the Government?

¹ After this Court remanded the lawsuit the Government references, *LA Alliance for Human Rights v. County of Los Angeles*, 14 F.4th 947 (9th Cir. 2021), the District Court approved the parties’ historic settlement that commits up to \$1.24 billion in funding for homelessness services. *See* County of Los Angeles: Homeless Initiative, Historic LA County and LA Alliance Settlement, *available at* <https://homeless.lacounty.gov/news/historic-la-county-and-la-alliance-settlement/> (last visited Feb. 15, 2025).

- Could the District Court order that land illegally leased by VA to third parties be evaluated as a potential site for supportive housing for disabled, unhoused veterans?

As the District Court recognized, for the class of disabled veterans that brought this case, the answers to these urgent questions are a matter of life or death. 1-ER-86 (“Without temporary supportive housing, countless veterans may die on the streets or in shelters while waiting for permanent housing to be built.”).

Nowhere in its brief does the Government recognize—much less address—the stakes or the urgency of the homelessness crisis among disabled veterans in Los Angeles. As the record demonstrates, homelessness is lethal and, for those who survive, has devastating repercussions, including exacerbation of existing health conditions and exposure to violence and other victimization. 1-ER-135–36. As Dr. Jonathan Sherin, former Chief of Psychiatry and Mental Health Programs for VA Greater Los Angeles Healthcare System (“VAGLAHS”), testified: “Irreparable harm is being caused to our Veterans in the streets every day . . . , and there is an inexcusably inadequate urgency, nay emergency, in taking care of their wellbeing as top priority.” 1-SER-114.

Filing its brief as devastating wildfires ravaged Los Angeles, making homelessness worse for veterans, the Government never acknowledged the tremendous human costs of its failure to timely construct adequate supportive housing for the veterans it purports to serve. Instead, the Government strives to disclaim its sacred duty to veterans who risked their lives in its service—to serve them in their time

of need—and it exhorts this Court to allow it to stay the course, ignoring that the present existence of *any* supportive housing on the West Los Angeles Grounds (the “Grounds”) is only due to prior litigation challenging the Government’s persistent inaction. That litigation—the *Valentini* case—is the reason VA issued the 2016 Draft Master Plan. It is VA’s dismal failure to deliver even the limited relief promised in its plan (and its 2022 successor) that necessitated the present action.

Left to its own devices, VA has subordinated the needs of unhoused veterans to the interests of third parties, leasing land to an oil company for drilling, to UCLA for construction of a state-of-the-art baseball complex, and to Brentwood School, an elite prep school with a \$30 million endowment, for student athletic facilities. 14-ER-3337–38. It has relied on a system of outside financing and housing eligibility rules that excludes the most disabled veterans from housing they require. VA’s Office of Inspector General (“OIG”), in addition to finding several of VA’s land use agreements unlawful, lamented the laggardness of VA’s “efforts,” expressing skepticism that VA could meet its benchmark of constructing 1,200 units of permanent supportive housing by 2030. 26-ER-6654–55.

Contrary to the Government’s representations, the relief ordered by the District Court—the construction (*incrementally and based on need*) of permanent and temporary supportive housing, an increase in the number of VA outreach workers, and an end to eligibility restrictions that deny supportive housing to the most severely disabled veterans—is narrowly tailored to redress the sweeping harms caused by VA’s decades-

long mismanagement of the Grounds and the failures plaguing its programs for unhoused veterans. The Government’s position—that the status quo is justified by “VA’s expert judgment about how to use the [Grounds] and its other resources most productively to help veterans” (Br. at 4)—lacks basis in fact and law.

STATUTORY PROVISIONS

Pertinent statutory provisions are reproduced in the addendum.

STATEMENT OF THE CASE

I. Veteran Homelessness in Greater Los Angeles

At the time of trial, there were approximately 3,000 homeless veterans in the greater Los Angeles area. 1-ER-48; 26-ER-6711. By VA’s estimates, the majority of these unhoused veterans have serious mental illness (“SMI”)² or traumatic brain injury (“TBI”). 1-ER-122–23; 27-ER-6724 (estimating that two of every three homeless veterans have PTSD, and almost one in every five has traumatic brain injury). These disabilities frequently arise from veterans’ military service, often in combat. 1-ER-122. They necessitate specialized medical care available only at VA’s West LA Medical Center (“WLAVA”), which provides “the bulk of specialty care,” including psychiatry and orthopedics, to veterans in the VAGLAHS catchment area, and covers approximately 22,000 square miles across five counties. 1-ER-123; 12-ER-2651–83; 13-ER-2974.

² SMI is “a collection of psychological disorders like schizophrenia, bipolar disorders, severe forms of depression, anxiety, and other psychoses.” 17-ER-4365.

Veterans with disabilities like SMI and TBI typically face barriers accessing healthcare at the WLAVA. As VA recognizes, for a veteran with serious mental illness not already on the Grounds, merely “the stress associated with traveling to [the WLAVA] for treatment and therapy is often an insurmountable barrier” to healthcare. 1-ER-124; 19-ER-4794; 27-ER-6724. Former WLAVA Medical Director Dr. Steven Braverman testified that untreated mental illness “has an adverse effect on [a veteran’s] day-to-day . . . capability to carry on the activities of daily living,” 12-ER-2788–89, and disabled veterans often struggle to arrange and afford transportation to and from their medical appointments, 12-ER-2884–85.

Unredressed, these barriers deny healthcare to veterans experiencing homelessness, which itself generates and exacerbates severe mental illness. *See* 15-ER-3728 (“[B]eing homeless for any extended periods of time, and suffering the trauma of not being safe, not having sanitary conditions, not having access to good food . . . generate a tremendous amount of serious mental illness.”).

Living on the streets subjects unhoused veterans to dire health outcomes. Per VAGLAHS Deputy Medical Director John Kuhn, “the mental health crisis relationship to trauma and homelessness is well established.” 12-ER-2701. Moreover, “[p]eople who are on the street have much higher mortality rates [and] much higher rates of healthcare complications.” 12-ER-2701; *see also* 17-ER-4363 (per VA’s senior executive homelessness agent for Greater LA, Dr. Keith Harris, the health of homeless veterans is impacted by “the risks and impacts of being on the street, as well as . . . [a lack of]

normal preventative care”). This is why getting homeless veterans into housing “as rapidly as possible” is a central objective of VA’s healthcare program. 17-ER-4359–62; 1-ER-125.

Plaintiffs in this lawsuit, all veterans with SMI or TBI, experienced the brutality of homelessness firsthand. Air Force veteran Laurieann Wright endured multiple sclerosis, osteoporosis, and a spinal injury, all while living in a tent. 18-ER-4610–12, 4623–24. Army veteran Joseph Fields developed a hole in his foot and infections on his legs, requiring repeated hospitalization. 18-ER-4550–51. Army veteran Lavon Johnson endured multiple encampment sweeps where he saw his home and belongings thrown into the garbage. 17-ER-4327–30. Navy veteran Jeffrey Powers lived in a vermin-infested tent. 10-ER-2237. Army veteran Joshua Petitt likened the constant anxiety and vigilance of living on the street to “being back in Iraq. You’re always on your guard.” 17-ER-4343. Tragically, these stories are not unique. For decades, thousands of veterans with disabilities have suffered on Los Angeles streets. 8-ER-1840–44. Many died in close proximity to the Grounds. 1-ER-136.

II. History of the West Los Angeles VA

In 1888, Senator John P. Jones and Arcadia B. de Baker deeded the land (the “1888 Deed”) that is now the Grounds to the National Home for Disabled Volunteer Soldiers, “in consideration” that it should “locate, establish, construct[], and permanent[ly] maintain[] [there] a branch of said National Home for Disabled Volunteer Soldiers.” 1-SER-237. For decades, the property provided housing,

education, and vocational activities for as many as 5,000 veteran residents recovering from the trauma of war. 27-ER-6721; 15-ER-3747–49.

However, by the 1970s, notwithstanding an influx of veterans returning from the Vietnam War, VA had stopped accepting new residents on the Grounds. 1-ER-122. As VA acknowledges, the WLAVA over time “transitioned into a condensed healthcare and research campus[,] leaving land, housing[,] and amenities unused and in disrepair.” 27-ER-6717. Simultaneously, as “residential use of the campus declined . . . [VA] began the practice of leasing land on the campus to private commercial interests,” including UCLA and the private Brentwood School. 1-SER-290. VA admits that “[t]he West LA VA Campus generated millions of dollars from this leasing policy that provided little direct benefit to Veterans.” *Id.*

III. The *Valentini* Litigation and WLALA

In 2011, ten unhoused veterans with severe disabilities sued VA for its mismanagement of the Grounds. *Valentini v. Shinseki*, 860 F. Supp. 2d 1079 (C.D. Cal. 2012), *vacated sub. nom. by Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17, 2015). The court held that the 1888 Deed created a charitable trust, but that as of 2012, the government had not assumed an enforceable fiduciary duty with respect to that trust. *Id.* at 1104–07. At summary judgment, the court voided 11 third-party land-use agreements on the Grounds, including leases with UCLA and Brentwood, holding that VA had exceeded its statutory authority to enter into such agreements because they were not “related to the provision of health-care.” *Valentini v. Shinseki*, 2013 WL

12121981, at *11 (C.D. Cal. Aug. 29, 2013), *vacated sub. nom. by Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17, 2015); *see also* 38 U.S.C. §§ 8151–53.

In January 2015, VA settled the lawsuit, agreeing to draft and implement a Master Plan providing for permanent supportive housing and supportive services on the Grounds. *See* 26-ER-6713. In the resultant 2016 Draft Master Plan (“Plan”), then-VA Secretary Robert McDonald stated: “This land was deeded for the benefit of Veterans in 1888 to serve as a home for our nation’s heroes. This plan brings us one step closer to getting the land back to its intended purpose as an inviting, welcoming, community for Veterans and their families.” 27-ER-6719. A key objective of the Plan was to “[r]evitalize the [Grounds] to its intended purpose as a home; a vibrant community that includes the development of high quality housing tailored to priority Veteran subpopulations” “who have been prioritized to live on-site.” 27-ER-6722.

In its Plan, VA committed to building 1,200 units of permanent supportive housing on the Grounds by 2030, with 770 units to be completed by 2022. 27-ER-6735. It emphasized that “[t]he focus [on permanent supportive housing] is essential.” 27-ER-6760. New housing was to include “robust supports that promote wellbeing and holistic, strength based services to augment [VA’s] existing structure of healthcare services.” 27-ER-6751–52. Recognizing that “[v]eterans with fewer health and service needs are likely to self-select housing in the greater LA community,” the Plan opined that “[permanent supportive housing] on campus would be most beneficial for Veterans who utilize a high number of health/behavioral health services,” including those with

“mental health disorders.” 27-ER-6771. Recognizing that veterans living on the Grounds would often require “ongoing and proactive case management” for their “serious and persistent mental illness,” the Plan recommended locating case managers and “certain supportive services . . . in the same buildings or neighborhoods as the residences . . . to be easily accessible.” 27-ER-6772. These recommendations align with VA’s Housing First approach, which ensures that “housing options and services can effectively accommodate Veterans with disabilities.”³ The Plan made no provision, however, for *any* temporary housing to urgently alleviate homelessness.

Later that year, Congress enacted the West Los Angeles Leasing Act of 2016 (“WLALA”). Pub. L. 114–226 (Sept. 29, 2016). WLALA authorizes VA to enter into three types of leases on the Grounds: (1) an “enhanced-use lease [‘EUL’] . . . for purposes of providing supportive housing . . . that principally benefit[s] veterans and their families;” (2) a lease “to a third party to provide services that principally benefit veterans and their families . . .”; and (3) a lease to the Regents of the University of California . . . on behalf of its [UCLA] campus,” subject to specific enumerated requirements. WLALA § 2(b)(1–2). WLALA neither mandates VA’s entry into such leases nor prohibits VA from providing supportive housing or services itself.

³ Department of Veterans Affairs, VA Homeless Programs: VA’s Implementation of Housing First Over the Years, *available at* <https://www.va.gov/HOMELESS/featuredarticles/VAs-Implementation-of-Housing-First.asp> (last visited Feb. 15, 2025).

WLALA includes multiple oversight measures for VA's management of the Grounds. It requires the Secretary to "establish a Veterans and Community Oversight and Engagement Board" to, *inter alia*, "provide advice and recommendations on the implementation of the [2016] draft master plan[.]" WLALA § 2(i)(1). It mandated "an annual report" from VA to Congress "evaluating all leases and land-sharing agreements carried out at the [Grounds]." WLALA § 2(j)(2). And it directed VA's OIG to submit to Congress after two and five years "a report on all leases carried out at the [Grounds] and the management by the Department of the use of land at the [Grounds]," including VA's implementation of the Plan. WLALA § 2(j)(3).

IV. VA's Management of the Grounds Since 2016

Notwithstanding its promise to build 1,200 units of permanent supportive housing on the Grounds by 2030, VA has declined to directly finance any construction or even seek funding to do so from Congress. 1-ER-221.⁴ Instead, it chose to rely exclusively on enhanced-use leases with third-party developers who must find their own financing, typically by "apply[ing] for a complex and limited pool of affordable housing tax credits." 1-ER-134. This process causes "significant delays and uncertainty for the construction of permanent supportive housing." 1-ER-134; 16-ER-3829–40

⁴ Although VA promised in the *Valentini* settlement to include Plan objectives in its Strategic Capital Investment Planning ("SCIP") process, it did not add any projects to facilitate the development of housing at WLAVA to the SCIP until after this lawsuit was filed in 2022. 16-ER-3848–52; 20-ER-5160–88.

In 2021, five years after the Secretary approved the Plan, VA’s OIG reported that “the VA has not constructed a *single new unit* of [permanent supportive housing] pursuant to the [*Valentini*] settlement,” “fail[ing] even to make essential infrastructure upgrades for utilities like water, sewer, and stormwater systems[.]” 1-ER-56, 132 (emphasis added). Only after filing this lawsuit were some plaintiffs eventually able to obtain permanent supportive housing in Buildings 205 and 208 on the Grounds, which opened in 2023 after financing issues delayed construction for two years. 1-ER-134. Dr. Braverman testified that construction of permanent supportive housing was “approximately four years behind.” 12-ER-2824–26.

While construction stalled, VA renegotiated multiple land-use agreements that had been voided in the *Valentini* litigation, leasing VA land to Brentwood for student athletic facilities (22 acres) and to UCLA for its baseball facilities (10 acres). 1-ER-100–02. VA also entered into new agreements, including a revocable license allowing Breitburn Energy (predecessor to intervenor Bridgeland Resources) to drill for oil through VA land, and a lease with Safety Park to run parking lots serving the Brentwood Village business district. Notwithstanding OIG’s determination that VA’s land-use agreements with Brentwood, Bridgeland, and Safety Park violated WLALA, VA maintained and—for Bridgeland and Safety Park, renewed—those agreements.

Meanwhile, thousands of veterans in the LA area remained homeless. Many sought shelter and treatment on the Grounds only to be turned away for lack of capacity. 1-ER-57–58. Between 2020 and 2021, hundreds of unhoused veterans cycled

in and out of a tent encampment, “Veterans Row,” directly outside the Grounds. 1-ER-57. At the height of the Covid-19 pandemic, VA declined to provide assistance to encampment residents for food, shelter, masks, sanitizer, bedding, bathrooms, or dumpsters. 1-ER-136–37. For months, VA ignored advocates’ requests to allow veterans to pitch their donated tents on the Grounds. 9-ER-1971. UCLA also refused to make its leased property available for veterans’ shelter, citing the need for baseball fan parking. 17-ER-4097–4108. In 2020, when VA belatedly created its Care, Treatment and Rehabilitation Services (“CTRS”) program, it used donated pup tents, requiring veterans—many with severe disabilities—to crawl on hands and knees to enter and exit. 1-ER-63. Eventually, after the well-publicized deaths of two veterans on Veterans Row, VA accepted donations of “tiny shelters,” 8-by-10-foot sheds lacking kitchens and bathrooms. 1-ER-64. Several burned down in November 2022, destroying inhabitants’ possessions. *Id.* Multiple class members still reside in these sheds. *Id.* Although VA states it intends veterans to transition from CTRS to permanent housing within 60 days, some veterans have lived in these sheds for months and even years. 10-ER-2261–62.

Today, there are only 307 units of permanent supportive housing on the Grounds. 1-ER-65 (233 units at time of trial). These fully occupied units are in constant demand. 1-SER-131. They are the only permanent housing option on the Grounds; all other options are emergency shelter, transitional housing, or residential treatment programs, i.e., “stopgap solution[s] until a veteran obtains more permanent housing.”

1-ER-64–65. And even these short-term options face ongoing capacity issues, causing VA to turn away homeless veterans seeking shelter on the Grounds. *Id.*

V. Area Median Income Eligibility Requirements

Even after new permanent supportive housing becomes available on the Grounds, the area median income (“AMI”) eligibility requirements imposed by public funders limit which veterans are eligible for these units. 1-ER-66–67. Because veterans’ service-connected disability compensation is counted as income for purposes of determining eligibility, a significant number of disabled veterans, those who are the most seriously disabled, are categorically excluded from permanent supportive housing on the Grounds. *Id.* Multiple VA officials, including Dr. Harris, who advocated for years to change this policy, agree that this system is unfair to those who incurred serious injuries in the course of their military service. 18-ER-4377–78.

VI. Off-Campus Housing

At the time of trial, taking into account *all* dedicated veteran housing throughout the entire WLAVA catchment area, there were available units for less than one-sixth of the approximately 3,000 currently homeless veterans in greater Los Angeles. 12-ER-2776–80. Excluding shelter beds and transitional housing,⁵ the number is even smaller. *Id.* These housing options are often unsuitable for veterans with SMI or TBI requiring

⁵ Transitional housing is short-term housing with a typical time limit of six months. 10-ER-2265.

specialty care on the Grounds. For example, most of the HUD-VASH⁶ project-based housing sites—subsidized units clustered in a building or neighborhood block—are located far from WLAVA. 1-SER-292 (showing map of HUD-VASH project-based units). Apart from buildings on the Grounds, only one of these project-based sites is located in West LA; most are in locations such as Lancaster (65 miles from WLAVA) or Pomona (46 miles from WLAVA). 1-ER-75, 127. As with the new permanent supportive housing on the Grounds, the third-party developers of these sites typically rely on tax credits that impose strict income requirements for tenants. Consequently, those veterans who are most disabled are categorically excluded from access to the majority of HUD-VASH project-based units: of 46 buildings in Los Angeles providing permanent supportive housing for veterans, 38 have either some or all of their units' income limitations set at 30 percent of area median income. 1-ER-65–66.

Apart from dedicated veteran housing, the joint housing program between the VA and the Department of Housing and Urban Development (“HUD”) also issues tenant-based vouchers for use in the private housing market. VA is responsible for referring unhoused veterans to the public housing authorities (“PHAs”) that issue these vouchers. Historically, insufficient referrals from VA have caused thousands of HUD-VASH vouchers to go unused—at time of trial, one of the local PHAs reported

⁶ HUD-VASH is the joint program between VA and the U.S. Department of Housing and Urban Development (“HUD”) that links HUD’s rental assistance voucher program with VA’s case management and support services. 11-ER-2343–44.

approximately 1,500 unused HUD-VASH vouchers. 1-ER-65–68, 73–75. For veterans referred to PHAs, it takes several months on average to actually obtain housing. 1-ER-73–75. For veterans able to use tenant-based vouchers, there is high turnover rate. *Id.* In 2022 and 2023, more veterans left the HUD-VASH program than entered, due largely to technical program violations—for example failure to submit recertification paperwork—that could be avoided with adequate VA support services. *Id.*

VII. This Litigation

Plaintiffs filed this lawsuit in November 2022, asserting that VA violated Section 504 of the Rehabilitation Act because (a) VA’s lack of supportive housing denies unhoused veterans with SMI and TBI (“class members”) meaningful access to VA’s healthcare services (“meaningful-access claim”), (b) under *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), VA fails to provide class members their disabilities benefits “in the most integrated setting appropriate to their needs,” placing them at a “serious risk of institutionalization” (“*Olmstead* claim”), and (c) VA’s policy of contracting with housing developers who impose AMI limitations is facially discriminatory (“AMI claim”).⁷ 1-SER-97–98. In addition, Plaintiffs asserted that the 1888 Deed conveying the Grounds as a home for disabled soldiers created a charitable trust, and under WLALA, the government assumed—and then breached—enforceable fiduciary duties to Plaintiffs as trustee of that trust (“charitable trust claims”). 1-SER-98–104.

⁷ Plaintiffs asserted similar claims under the Rehabilitation Act against HUD.

On December 14, 2023, the District Court denied the Government’s motions to dismiss. *See* 1-ER-218–58. On July 14, 2024, the District Court granted summary judgment in favor of Plaintiffs on their AMI claim and denied the Government’s motion for summary judgment on Plaintiffs’ meaningful-access and *Olmstead* claims, permitting those claims to proceed to trial. *See* 1-ER-172–201. In addition, the District Court partially granted summary judgment on Plaintiffs’ charitable trust claims, finding that the government “has assumed an enforceable fiduciary duty on the [G]rounds” and permitting the question of the Government’s breach to proceed to trial. 1-ER-199–200.

In August 2024, during a 16-day trial, the District Court heard testimony from 30 witnesses, including five plaintiffs, four experts for Plaintiffs, and nine Government witnesses. After trial, the District Court ruled for Plaintiffs on their meaningful-access, *Olmstead*, and charitable trust claims. It found that VA “has for decades strayed from its mission to care for . . . veterans [on the Grounds]” and “[w]hat was once a home for disabled soldiers must fully reopen its gates and become a robust community for veterans once again.” 1-ER-119–20.

To remedy VA’s violations, the District Court ordered the incremental construction of temporary and permanent supportive housing on the Grounds, to be overseen by a Special Monitor and adjusted according to need. 1-ER-25. The Court also ordered increased staffing to (1) provide more HUD-VASH referrals to public housing agencies, (2) reduce attrition from the HUD-VASH program, and (3) increase street outreach to unhoused veterans. 1-ER-171. Finally, the District Court voided VA’s leases

with Bridgeland, UCLA, Brentwood, and SafetyPark. Citing “VA’s persistent mismanagement of the Grounds,” the Court enjoined VA from re-negotiating those leases. *Id.*

Following its Post-Trial Opinion, the District Court heard testimony on specific injunctive relief. Finding the existence of an emergency “with fall and winter approaching and with thousands of homeless veterans still living on the streets,” the Court issued emergency orders requiring the provision of some temporary supportive housing on the Grounds. 1-SER-229. The parties worked together to identify suitable sites on the Grounds for the first 100 units of temporary supportive housing, as well as vendors and manufacturers who could timely provide such housing at a reasonable cost. Chelsea Black—Acting Chief of the VAGLAHS Office of Strategic Facility & Master Planning—stated in court that VA “want[ed] to do this,” and was “going to find the funding” for temporary supportive housing. 3-ER-542.

Less than two weeks later, the Government moved to stay the District Court’s orders. The District Court declined “to allow further delays” to VA’s compliance with its legal obligations, reasoning that costs to build 100 temporary housing units were “not unreasonable ‘in light of the VA’s overall annual budget of approximate \$407 billion.’” 2-ER-262, 285. Subsequently, this Court granted the Government’s stay motion.

SUMMARY OF ARGUMENT

The District Court's judgment should be affirmed.

The District Court correctly granted relief on Plaintiffs' Rehabilitation Act claims. *First*, the District Court had jurisdiction over those claims because Section 511 of the VJRA restricts jurisdiction to claims that only contest VA's prior individual benefit determinations, and the District Court did not need to revisit VA's prior benefits decisions here. *Second*, the District Court correctly held that Plaintiffs satisfied the class commonality requirement for their meaningful-access and *Olmstead* claims because Plaintiffs' allegations target VA's system-wide policy and practices, specifically its failure to provide supportive housing. *Third*, the District Court properly granted relief on Plaintiffs' meaningful-access, *Olmstead*, and AMI claims. Ample evidence adduced at trial supports Plaintiffs' meaningful-access and *Olmstead* claims; the VA's AMI policy is plainly facially discriminatory; and the Government's fundamental-alteration defense lacks merit.

Separately, the District Court properly granted relief on Plaintiffs' charitable trust claims. *First*, Plaintiffs have standing to enforce the charitable trust because they are a group of intended beneficiaries with a special interest in that trust. Further, in gifting the Grounds to the government under the 1888 Deed on the condition that it permanently maintain a home for disabled veterans, the grantors manifested their intention to create a trust. And under WLALA and its 2021 amendment, the government assumed enforceable fiduciary duties to Plaintiffs as a trustee of that trust.

Second, with respect to the trust, the District Court’s injunction prohibiting VA from entering into new leases was both proper and necessary due to VA’s repeated misconduct. And not one of the Government’s arguments to the contrary has merit.

ARGUMENT

I. The District Court Had Jurisdiction Over Plaintiffs’ Rehabilitation Act Claims.

The Government argues that VA has exclusive jurisdiction over all claims that “relate to benefits decisions,” including all claims under the Rehabilitation Act.⁸ Gov’t Br. at 25. That position contravenes the plain text of 38 U.S.C. § 511, its legislative history, and governing case law, and ignores the absence of any meaningful alternative to present such claims through VA’s benefit dispute resolution process. The District Court properly rejected the breathtaking sweep of the Government’s position and adjudicated the claims brought here.

A “strong presumption in favor of judicial review of administrative action” accompanies congressional enactments. *I.N.S. v. St. Cyr*, 533 U.S. 289, 298 (2001). As this Court has stated, the “express instructions of the Supreme Court, our precedent, and common sense” all dictate the narrow construction of jurisdiction-stripping statutes except where their meaning is clear and unequivocal. *Acre v. United States*, 899 F. 3d 796, 800 (9th Cir. 2018). Where an agency seeks to channel claims into a special review

⁸ Throughout the Government’s brief, to the extent the Government may refer to VA’s interpretation of the Rehabilitation Act, this Court owes no deference to that interpretation. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).

structure, those structures must be intended “to give the agency a heightened role in the matters it customarily handles, and can apply distinctive knowledge to.” *Axon Enters., Inc. v. FTC*, 598 U.S. 175, 186 (2015). Here, the scope and nature of Plaintiffs’ Rehabilitation Act claims place them well beyond any adjudication available through the limited review structure into which VA seeks to confine them.

As the District Court held, the plain language of § 511 of the VJRA restricts Article III jurisdiction only to a specified class of claims: those contesting VA’s prior individualized benefit determinations. Section 511(a) prevents district courts only from undertaking (1) “review” of any decision of the Secretary as to (2) “questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. § 511(a). In other words, district courts lack jurisdiction to review *only* “decisions that the Secretary has actually made” within the context of an individual veteran’s VA benefits proceedings. *Blue Water Navy Vietnam Veterans Ass’n, Inc. v. McDonald*, 830 F.3d 570, 575 (D.C. Cir. 2016); *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1023 (9th Cir. 2012) (“*VCS*”).

The purpose of VJRA is obvious. Each year, the Secretary makes hundreds of thousands of benefits adjudications nationwide. As this Court has explained, the aim of § 511 is to prevent the second-guessing of these determinations: “[T]he availability of review by [VA’s process] evinces Congress’s intent to protect the federal courts and the VA from time-consuming veterans’ benefits litigation, while providing a specialized forum wherein complex decisions about such benefits can be made.” *VCS*, 678 F.3d at

1032. The House Report that discusses § 511 supports the District Court’s reading of the statute. According to the report, Congress enacted § 511 to underscore the priority for “technical VA decision-making” in benefit determinations. *See* H.R. Rep. No. 100-963 at 21 (1988), *reprinted in* 1988 U.S.C.C.A.N. 5782, 5803.

Title 38 of the U.S. Code specifically defines a “benefit” as “any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by [VA] pertaining to veterans and their dependents and survivors.” It enumerates benefits including healthcare, education, disability compensation, burial and memorial benefits, and home loan benefits, among others. *See* 38 Section 20.3. Notably missing from the statute is supportive housing for veterans already determined as disabled. The statute is likewise silent on reasonable accommodations necessary to provide veterans’ healthcare in as integrated a manner possible, as mandated by *Olmstead. Arc of Washington State, Inc. v. Braddock*, 427 F.3d 615, 618 (9th Cir. 2005). The Government cites no case where VA’s agency review process has ever considered, let alone granted relief, on such claims. None exists. *See Camacho v. Nicholson*, 21 Vet. App. 360, 366 (Vet. App. 2007) (holding “neither the Board nor the Court is authorized to hear actions brought under” Rehabilitation Act or the Americans with Disabilities Act).

The Board of Veterans’ Appeals—the “body within the VA that makes the agency’s final decision in cases appealed to it,” *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011)—excludes such claims from the numerous “[e]xamples of the issues over which [it] has jurisdiction.” *See* 38 C.F.R. § 20.104(a), (b). Nor do any of the enumerated

examples remotely resemble relief available under the Rehabilitation Act, or, indeed, any federal antidiscrimination statute. What the list *does* demonstrate is the restriction of Board review to adjudications of individual veterans' entitlement to VA payments, programs, or services available under specific veterans' benefits statutes. No such adjudications are at issue here.

Crucially, the Board has no authority to issue injunctive relief to alter systemic VA policies and practices held to be in violation of the Rehabilitation Act. The Government cites to no case—and Plaintiffs found none—where injunctive relief to cure broad-scale Rehabilitation Act violations (or injunctive relief of any sort) has issued from the agency's benefits determination and review process.

Precedent from this Court and other circuits confirms the District Court's determination that it has jurisdiction over Plaintiffs' Rehabilitation Act claims. In *VCS*, this Court held that a district court lacked jurisdiction over class claims wholly distinct from those at issue here. *VCS* challenged VA's delays in adjudicating and resolving disability claims, asserting that such delays were "unreasonable" and resulted "in a functional denial of benefits" in violation of the APA and Due Process Clause. 678 F.3d at 1017. As this Court described, "*VCS* couches its complaint in terms of *average* delays [which] cannot disguise the fact that it is, fundamentally, a challenge to thousands of individual mental health benefits decisions made by the VA." *Id.* at 1027. Therefore, resolving *VCS*'s claim would require the district court to engage in the very review proscribed by the VJRA, i.e., of "the circumstances surrounding the VA's provision of

benefits to individual veterans.” *Id.* That is not the case here. All Plaintiffs have already received favorable benefits determinations; none seeks review of individual determinations.

Broudy v. Mather, 460 F.3d 106 (D.C. Cir. 2006), whose standard this Court invoked in *VCS*, is also instructive. As the *VCS* Court explained, the district court in *Broudy* properly exercised jurisdiction over claims whose resolution “did not require [it] ‘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 (cleaned up) (quoting *Broudy*, 460 F.3d at 115). That is precisely the situation 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 necessary to access benefits to which VA has already determined they are entitled.⁹ 1-ER-128–29.

⁹ Contrary to the Government’s suggestion, the District Court never held that permanent supportive housing is a veterans’ benefit subject to VA’s claims and review processes. Rather, the District Court’s post-trial opinion simply recognized that permanent supportive housing may—like a parking garage abutting a hospital—be a “medical facility” at or through which disabled veterans may access the healthcare services to which VA has found them entitled. 1-ER-91–92.

Finally, the Government ignores this Court’s holding in *VCS* that it 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 cannot be reconciled with this holding and *Broudy*’s.

II. The District Court Properly Certified the Class for Plaintiffs’ Rehabilitation Act Claims.

The Government argues that Plaintiffs cannot satisfy the class commonality requirement with respect to their meaningful-access and *Olmstead* claims.¹⁰ According to the Government, Plaintiffs’ claims “turn on Veterans’ individual circumstances,” and therefore the claims cannot be answered “in one stroke” sufficient to establish class commonality. Gov’t Br. at 34, 36 (internal quotation marks and quoted source omitted). But the Government misreads Plaintiffs’ class-wide allegations and this Court’s standard for class commonality.

At bottom, commonality is satisfied when class members’ claims “depend upon a [single] common contention . . . of such a nature that it is capable of class-wide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011). “What matters to class certification . . . is not the raising of common questions . . . but, rather, the

¹⁰ The Government does “not dispute in this appeal that” Plaintiffs satisfy the commonality requirement for their AMI claim under the Rehabilitation Act. Gov’t Br. at 33. Nor does it contend Plaintiffs fail to satisfy any other requirement for class certification. *See id.* at 32–36.

capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* at 350. Importantly, “whe[n] [a] lawsuit challenges a system-wide practice or policy that affects all of the putative class members . . . [c]ommonality is satisfied.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005); *Gonzalez v. United States Immigration & Customs Enft*, 975 F.3d 788, 808 (9th Cir. 2020).

Here, Plaintiffs’ meaningful-access and *Olmstead* claims challenge a systemwide policy and practice. *See Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 733 (9th Cir. 2021) (stating that a meaningful-access claim may challenge “systemic failures”); *Arc of Washington State Inc.*, 427 F.3d at 618 (stating with respect to integration claims under *Olmstead* that “states are required to provide care in integrated environments for as many disabled persons as is reasonably feasible”). In particular, Plaintiffs’ class—defined as homeless veterans with SMI or TBI, 1-ER-205—allege that the Government’s failure to provide permanent supportive housing on or near the Grounds results in systematic discrimination against these veterans that denies them meaningful access to necessary healthcare services and places them at serious risk of institutionalization. 7-ER-1616–17. Stated differently, Plaintiffs allege that the Government’s “past and current practices” in failing to provide permanent supportive housing to the class amounts to discrimination against those veterans on account of their disabilities. 7-ER-1610 (describing the Government’s “past and current practices”). These allegations, targeted at the Government’s “system-wide practice and policy,” are sufficient to establish

commonality. *See, e.g., Parsons v. Ryan*, 754 F.3d 657, 682, 689 (9th Cir. 2014) (holding that government’s “fail[ure] to employ enough doctors” was a systematic policy or practice subject to class-wide resolution); *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 969 (9th Cir. 2019) (holding that “failure to provide timely access to health care” was among “statewide policies and practices” affecting entire class).

The Government’s thesis—that Plaintiffs’ claims are too “individualized” to satisfy the commonality requirement—lacks merit. Gov’t Br. at 34–36. This Court has held multiple times that where a class challenges a systemwide practice or policy, as Plaintiffs do here, “individual factual differences among class members pose *no* obstacle to commonality,” including with respect to Rehabilitation Act claims. *See, e.g., Parsons*, 754 F.3d at 682 (emphasis added); *see Armstrong*, 275 F.3d at 854 (involving Rehabilitation Act claim).¹¹ That holding makes good sense: “if each class member had to individually prove the highly individualized factors relating to discrimination [under the Rehabilitation Act],” as the Government argues here, then “no civil rights action” under that Act “would ever be maintainable.” *Californians for Disability Rts., Inc. v. Cal. Dep’t of Transp.*, 249 F.R.D. 334, 345 (N.D. Cal. 2008) (rejecting defendant’s argument that plaintiff cannot establish commonality under Rehabilitation Act claim because it is

¹¹ The Government cites only one case—*Mark H. v. Hamamoto*, 620 F.3d 1090 (9th Cir. 2010)—for its proposition that Plaintiffs’ claims are too “individualized” to satisfy the commonality requirement. Gov’t Br. at 34. But that case involved this Court’s summary-judgment review on two individual plaintiffs’ meaningful-access claims. *Mark H.*, 620 F.3d at 1092, 1098. It had nothing to do with class certification, let alone a class-action claim challenging a systemwide policy or practice, like we have here.

a “highly individualized” inquiry). That cannot be the case. *See id.* (stating that the Government’s theory would “simply obviate the concept of the class action lawsuit” under the Rehabilitation Act).

Armstrong is particularly instructive. There, the class-action plaintiffs, a group of disabled prisoners, asserted a claim under the Rehabilitation Act alleging that California’s state parole authority engaged in systematic and widespread discrimination by failing to make available proper accommodations, causing plaintiffs to forfeit their rights to parole. 275 F.3d at 854. The defendant argued that the “wide variation in the nature of [their] disabilities preclude[d] a finding of commonality.” *Id.* at 868. Like the Government here, the defendant contended that each plaintiff’s claim was too “individualized” to satisfy the commonality requirement. This Court rejected that argument, stating: “individual factual differences among the individual litigants or groups of litigants will not preclude a finding of commonality . . . [and] the differences that exist here [cannot] justify requiring [the plaintiffs] . . . to prosecute separate action[s].” *Id.*

So, too, here. Plaintiffs challenge the Government’s systematic “past and current practices” in failing to provide supportive housing to homeless veterans with certain disabilities. While it is true that some of the named Plaintiffs have varying “disabilities,” “healthcare needs,” “locations in which they reside,” or other purported differences, Gov’t Br. at 34, these variances only inform the *degree* to which class members lack meaningful access to healthcare services or are at risk of serious institutionalization.

They do not speak to Plaintiffs' underlying common contention that the Government systematically discriminated against these veterans in failing to provide permanent supportive housing on or near Grounds. The District Court therefore properly determined that Plaintiffs satisfied the commonality requirement.

III. The District Court Properly Granted Relief on Plaintiffs' Rehabilitation Act Claims.

A. The District Court Properly Granted Relief on Plaintiffs' Meaningful-Access Claim.

The District Court correctly held that, “by failing to provide sufficient Permanent Supportive Housing [on the Grounds], and failing to provide temporary housing in the interim . . . , the VA consistently denies veterans with serious mental illness and traumatic brain injury meaningful access to [VA’s healthcare services],” in violation of the Rehabilitation Act. 1-ER-81; *see Bonner v. Lewis*, 857 F.2d 559, 561 (9th Cir. 1988) (“Section 504 [of the Rehabilitation Act] guarantees [individuals with disabilities] ‘meaningful access’ to [the government’s] programs or activities receiving federal financial assistance[.]”). That conclusion was based on the District Court’s many findings of fact from trial, including: (1) “supportive housing on or near the [] Grounds is necessary for veterans with disabilities . . . to access their medical benefits,” and (2) “veterans [with disabilities] . . . who are unhoused are impeded in their ability to access their healthcare.” 1-ER-123–24.

The Government’s principal argument on appeal is factual, not legal. It merely charges that the “record” does not support the District Court’s factual findings because,

according to the Government, trial testimony demonstrates only that “Veterans can more easily access healthcare facilities when they live [near the Grounds],” not that they lack meaningful access to those facilities. Gov’t Br. at 41. In essence, the Government asserts that the District Court committed “clear error” in its factual findings—invoking a standard that requires this Court to remain “highly deferential” to the District Court’s findings. *United States v. Sivilla*, 714 F.3d 1168, 1172 (9th Cir. 2013). The Government comes nowhere close to establishing this high standard.

The record is replete with testimony that veterans’ meaningful access to healthcare depends on the Government’s provision of supportive housing on the Grounds. For example, Dr. Braverman testified that veterans’ specialty healthcare services—which they routinely need—are often available only on the Grounds, 13-ER-2974 (stating that the Grounds’ medical facilities provide the “bulk of the specialty care” available for veterans); Plaintiff Wright testified that, without supportive housing, she cannot access her healthcare on the Grounds *at all*, which is the only place she can receive the care she needs, 18-ER-4636–37; Dr. Ben Henwood, Professor of Social Work and Director of the Homelessness Center at the University of Southern California, testified that veterans have “difficulty accessing [their] healthcare” without a “stable place to live,” 10-ER-2143; and Dr. Sherin testified that supportive housing on or near the Grounds would finally allow veterans “to engage[] with the healthcare system . . . more meaningfully.” 15-ER-3740.

Testimonies from Plaintiff Johnson, a Senior Program Advisor at HUD, and Plaintiff Powers—which the Government confusingly contends supports its own argument, Gov’t Br. at 42—further support the District Court’s findings. Indeed, in each of these testimonies, the witness indicated that on-Grounds housing is necessary for veterans to meaningfully access their medical benefits. *See, e.g.*, 17-ER-4332-33 (testimony from Plaintiff Johnson, who stated that, since receiving housing on Grounds, he now “get[s] visits from . . . [Grounds] healthcare workers” and his doctor, who could not otherwise “find” him when he was homeless); 15-ER-3646 (testimony from Senior Program Advisor at HUD, who recognized “the need for the veterans to be close . . . on the grounds of the medical facility . . . to access [their] services”); 10-ER-2230 (testimony from Plaintiff Powers, who stated that, since moving onto the Grounds, he was able to receive necessary knee treatment).

These testimonies parallel VA OIG’s findings regarding housing and veterans’ access to healthcare services. In its 2025 report regarding “Access to Care for HUD-VASH Veterans [on the Grounds],” VA’s OIG determined that many unhoused veterans lack “primary care” services and “treatment plans” for their healthcare needs. 1-SER-302. And, according to OIG, through the HUD-VASH Program, “permanent housing” would allow veterans to “access the[ir] health care . . . [and] mental health treatment,” which is “*necessary* to help them improve their quality of life.” *Id.* (emphasis added).

Based on many testimonies in the trial record, as well as VA OIG’s report, there was no error—let alone 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 plaintiffs’ 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)).

Finally, in addition to its challenge to the District Court’s factual findings, the Government rehashes its claim that the District Court cannot resolve Plaintiffs’ meaningful-access claim on a class-wide basis. *See, e.g.*, Gov’t Br. at 43 (stating that the District Court needed to “limit” its relief to specific Plaintiffs, “discern what proportion of plaintiffs might lack meaningful access,” or “determine whether that proportion was sufficiently great”). But, as explained, that is not true. Again, Plaintiffs’ meaningful-access claim—rooted in a disparate-impact theory of discrimination, *see Payan*, 11 F.4th at 738–39—challenges the Government’s *systemic* failure to provide supportive housing for unhoused veterans with certain disabilities to have meaningful access to their healthcare services. And “[a]llegations of systemic accessibility barriers” speak to the class as a whole—not to “individual plaintiffs in th[e] case.” *Id.* at 739 (stating that, with respect to plaintiffs’ meaningful-access claim, a campus’ “accessibility barriers . . .

impact all blind users, not just [named] plaintiffs”). In short, the Government’s class-wide challenge to this claim lacks all merit.¹²

B. The District Court Properly Granted Relief on Plaintiffs’ *Olmstead* Claim.

The District Court also properly held that, under *Olmstead*, the Government violated the Rehabilitation Act by not providing class members their disability healthcare benefits “in the most integrated setting appropriate to their needs,” “causing them to be institutionalized or placed at serious risk of institutionalization.” 1-ER-59–61; *M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012) (with respect to an *Olmstead* claim, “a plaintiff need only show that the challenged state action creates a serious risk of institutionalization”). Trial testimony demonstrates that the Government’s failure to provide supportive housing places veterans in a never-ending cycle of jail and hospitalization. 18-ER-4545 (testimony from Plaintiff Fields, who stated that veterans “fall into this cycle of . . . going to jail, getting out of jail, going to the sidewalk, going back to jail, going to [the] VA program,” which amounts to a “never-ending cycle” of institutionalization); *see also* 10-ER-2144 (testimony from Dr. Henwood, who stated that veterans with certain disabilities “use[] a lot of institutional care on and off,” which includes “hospitals,” “jails and prisons,” and “treatment programs,” leading to an “institutional circuit” in which the unhoused “end up in jails and prisons and treatment

¹² Plaintiffs do not dispute the Government’s statement that the District Court should not have entered judgment against HUD on Plaintiffs’ meaningful-access claim—nor as to Plaintiffs’ *Olmstead* claim.

programs” due to the absence of “stable housing”); 15-ER-3727 (testimony of Dr. Sherin who stated that there are “too many veterans . . . cycling in between homelessness and the jails and the hospitals”). In effect, without permanent supportive housing, veterans are forced to either “accept institutionalization or go without services.” 1-ER-129. That unrebutted evidence 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).

The Government argues that the District Court was required to establish “a[] connection between VA’s operation of its healthcare services and a serious risk of any ‘unjustified isolation’ . . . of plaintiffs,” which it failed to do. Gov’t Br. at 39 (quoting *Olmstead*, 527 U.S. at 597). In particular, the Government claims that the District Court wrongly “believe[d] that because VA provides certain services for Veterans, and because Veterans are likelier to be hospitalized or jailed if unhoused than if housed, VA is required to house them.” *Id.* at 40.

But the Government ignores that VA *does* have a responsibility to house veterans. Again, in its 2016 Draft Master Plan, VA committed to providing permanent supportive housing on the Grounds. 1-ER-131. In fact, in both its brief and at trial, the Government repeatedly has represented that VA assumes responsibility to house veterans. *See* Gov’t Br. at 1 (“[VA] believes no Veteran should experience homelessness in this nation they swore to defend” (internal quotation marks omitted)); *id.* (describing

the provision of housing as VA’s “top priority” (internal quotation marks omitted)); 3-ER-542 (Chelsea Black, stating that VA was “going to find the funding [for temporary supportive housing]. We want to do this.”). In essence, the Government’s argument is an attempt to separate VA’s responsibility to house veterans from the problem of veteran homelessness itself. But had VA followed through on its obligations, Plaintiffs would not find themselves in this present situation, including in their institutional cycle.

Finally, the Government contends that “Veterans . . . would arguably be more segregated from the broader community, not less,” if VA provided “on-[Grounds] supportive housing.” Gov’t Br. at 40–41. The record shows the opposite. As Dr. Sherin testified, one of the goals of permanent supportive housing is to create a “connective tissue of community” for veterans—such as “places to recreate, places to socialize, [and] places for opportunities for self-governance.” 15-ER-3739–40. As a result, “[m]any veterans *want* to live in a community with other veterans on the WLA Grounds”; they feel they finally would be integrated into a community. 1-ER-157 (emphasis added); *see, e.g.*, 17-ER-4296 (testimony of Plaintiff Petitt, acknowledging that he “want[s] to find housing near the . . . [Grounds]”); 18-ER-4637–38 (testimony of Plaintiff Wright, describing how she would prefer to live on the Grounds).

C. The District Court Properly Granted Relief on Plaintiffs’ AMI Claim.

The District Court also correctly held that “VA’s policy of contracting with [housing] developers who impose income limitations and count [veterans’] disability

benefits as income, thereby preventing the most disabled veterans from receiving housing, is facially discriminatory [under the Rehabilitation Act].” 1-ER-193–94. Indeed, as the District Court found, there are “numerous [non-discriminatory] ways” for VA to construct housing, including “directly fund[ing] or subsidiz[ing] portions of the cost of development of housing on [the Grounds]” or contracting with developers who do not impose income limitations. 1-ER-93. The Government raises three principal challenges to this holding; none has merit.¹³

First, the Government argues that because “the income eligibility restrictions . . . treat all income equally”—for example, the restrictions treat veterans’ disability benefits “no worse” than employment income—veterans do not face discrimination. Gov’t Br. at 45. But that misses the point: regardless of whether the restrictions treat all income equally, the restrictions do not treat all *disabled individuals* equally. Veterans with severe disabilities are less likely than individuals with more minor disabilities to receive housing under the restrictions because they receive higher income and surpass the ceiling on income eligibility restrictions. *See* 1-ER-67 (finding that “[a] veteran with a 100 percent disability rating receives approximately \$40,000 in disability benefits every year,” which means he will not qualify for housing because his income is too high); *id.* (citing Dr.

¹³ As mentioned, unlike the other Rehabilitation Act claims, the Government does not dispute the AMI claim on class certification grounds. In addition, as a facial discrimination claim, “the fundamental alteration test has no application” to Plaintiffs’ AMI claim. *Lovell v. Chandler*, 303 F.3d 1039, 1054 (9th Cir. 2002).

Braverman’s admission that “VA is concerned . . . that we are limiting some veterans, who by their service, would benefit most from . . . these units”); 18-ER-4377 (testimony of VA’s senior executive homelessness agent who stated that the fact that “veteran’s disability benefits disqualif[y]” veterans “from eligibility for permanent supportive housing” is “unfair”). That constitutes facial discrimination. *See Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003) (holding that defendant’s failure to provide long term care services in a particular setting to one group of disabled individuals but not another, solely on the basis of income, was discrimination in violation of the ADA).¹⁴

Second, the Government contends that recent changes from the California legislature and U.S. Treasury Department make it “unclear whether any developers will continue to count Veterans’ benefits as income when determining their eligibility for housing.”¹⁵ Gov’t Br. at 46. To the extent the Government is arguing that Plaintiffs’ AMI claim is moot against VA, that is false. How state and federal policy changes affect extant housing on the Grounds is unclear. For example, though the Treasury Department’s updated revenue procedure (which excludes veteran’s disability benefits from income) applies to projects financed after October 24, 2024, the Department does not require that the updated revenue procedure be applied to projects financed before

¹⁴ Curiously, while other federal agencies, such as the IRS, “exclude service-connected disability” benefits from their definition of income, VA does not. 15-ER-3613.

¹⁵ *See* Cal. Mil. & Vet. Code § 987.005(h), amended by A.B. 535 (Cal. 2024). Plaintiffs do not dispute that this claim against HUD is moot after HUD “announced a policy change to exclude veterans’ service-connected disability benefits when determining eligibility” for supportive housing. Gov’t Br. at 45.

that date. 5-ER-1083–84. Because all current housing on the Grounds was financed before October 24, 2024, the Government cannot meet the “stringent” requirement of showing it is “absolutely clear” that the harm plaintiffs currently experience, exclusion from housing on the Grounds, “could not reasonably be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189–90 (2000). Moreover, even *if* the Government could say with certainty that its developers in the future will not count disability benefits as income (it cannot), that does nothing to remedy the current lack of supportive housing on the Grounds for veterans with the highest disability ratings.

Finally, the Government argues that the District Court erred in ordering “VA to build housing itself if it could not find developers willing to refrain from discrimination.” Gov’t Br. at 46. But the Government significantly oversimplifies the Court’s order. The District Court ordered VA “[to] ensure a sufficient number of housing units at the West LA Grounds are free from discriminatory income restrictions,” with the precise number to be determined in consultation with VA, Plaintiffs, and a court-appointed monitor. 1-ER-89–90, 170. It then found that VA can contract with developers that rely on conventional financing, which is free from restrictions imposed by the Low Income Housing Tax Credit. *Id.* And only *if* traditional financing does not cover the entire cost of permanent supportive housing for highly disabled individuals, then the court acknowledged that VA can “directly fund or subsidize” that housing. 1-ER-90.

Furthermore, even if VA did need to build housing itself, trial testimony established that VA can successfully do so. Using its authority under 38 U.S.C. §§ 8101–8102, VA already has constructed community living centers on the Grounds, including the Domiciliary, where veterans live while receiving substance-abuse treatment. 16-ER-3826 (testimony of Brett Simms, Executive Director for the Office of Assent Enterprise Management in VA’s Office of Management: Q: “And VA has, in fact, constructed community living centers, has it not?” A: “Yes.” Q: “Not through an enhanced-use lease, correct?” A: “Correct.” Q: “Using its proceeds and its construction capabilities, correct?” A: “Correct.”).

D. The District Court Properly Rejected VA’s “Fundamental Alteration” Defense.

As a final matter regarding the Rehabilitation Act, the District Court properly held that an injunction requiring additional supportive housing was a reasonable modification, consistent with VA’s stated aims, which would not impose a “fundamental alteration of [VA’s] program.” 1-ER-84. The Government’s parade of horrors about VA’s purported consequences of complying with the District Court’s orders are without support and contrary to evidence adduced at trial.

First, the Government argues that “forcing” VA to “focus its scarce resources on providing a single type of housing in a single location for Veterans” would “harm the community of Veterans that VA serves” and would limit veterans’ “ability to choose” their housing. Gov’t Br. at 49 (citing testimony from Mr. Kuhn). But that could not be

further from the case. At present, nearly 3,000 veterans do not have *any* housing, principally due to VA's failure to adhere to its obligations. 10-ER-2183–84. So providing housing would not “limit” veterans’ housing choices; it would expand them. And VA’s provision of permanent supportive housing on the Grounds would not “harm” veterans, as the Government claims. As explained, “[m]any veterans *want* to live in a community with other veterans on the WLA Grounds” and will receive potentially life-saving healthcare and support in doing so. 1-ER-157 (emphasis added); 17-ER-4296; 18-ER-4637–38.

Second, the Government contends that the District Court’s order “would impose exorbitant costs on VA.” Gov’t Br. at 49. That is not true. The approximately \$100 million that it will cost the Government to develop temporary supportive housing amounts to an infinitesimal fraction—0.02%—of VA’s \$407 billion annual budget for 2024. 1-ER-135. And VA is yet to produce a cost estimate to build permanent supportive housing. To the extent the Government complains that it lacks “the availability of funding that Congress did not provide,” Gov’t Br. at 51, the reality is that VA failed to request *any* “additional funding from Congress with which to construct housing.” 1-ER-135. Further, the District Court retained jurisdiction to adjust the amount of housing VA was required to build if “actual need for housing” changed. 1-ER-170. So the District Court’s order was purposely flexible to avoid requiring VA to build any unnecessary housing.

The District Court also did not “barely consider[]” the Government’s budgetary concerns. Gov’t Br. at 50. The District Court repeatedly addressed, and rejected, the Government’s contention that the cost of complying with the District Court’s order would fundamentally alter the nature of VA’s programs. *See* 1-ER-85 (finding that added investments would be “sequenced throughout [a] period” of years, allowing for comparatively modest investments); 1-ER-188 (noting evidence that reduction in costs associated with homelessness may “entirely offset” the costs of housing construction); 1-ER-84 (finding that the “cost estimates” for compliance would “not [be] unreasonable” within the context of VA’s budget).

Nor did the District Court misapply “the [legal] doctrine” with respect to its evaluation of VA’s purported budgetary constraints. Gov’t Br. at 50. In assessing the Government’s “fundamental alteration defense[],” the District Court was required to “take into account [VA’s] financial and other logistical limitations.” *Townsend*, 328 F.3d at 519. The District Court repeatedly did so. *See* 1-ER-84–85 (assessing and rejecting the Government’s argument that providing supportive housing would impose an excessive financial burden); 1-ER-133 (noting that VA has recently “invested over \$100 million to upgrade and expand . . . infrastructure” on the Grounds “to support the” construction of supportive housing in accordance with VA’s stated commitments). The Government’s disagreement with the District Court’s findings does not mean that the District Court misapplied the relevant doctrine.

What the Government apparently misunderstands is that its fundamental alteration defense is just that: a defense—meaning that *the Government* carries the burden. *See Mannick v. Kaiser Found. Health Plan, Inc.*, 2006 WL 2168877, at *4 (N.D. Cal. July 31, 2006) (“[T]he Ninth Circuit [has] held that whether an accommodation fundamentally alters the service or facility is an affirmative defense under the ADA.”). Nowhere has the Government identified what programs will be “altered” or explained how expending a tiny fraction of its annual budget will result in the *fundamental* alteration of its programs. To be sure, at one point, the Government raised to the District Court that VA may suffer a shortfall of \$12 billion, and therefore it would purportedly lack additional funds to construct housing on the Grounds. But as the District Court observed, VA then directly contradicted that representation before Congress, where it stated that it is currently operating under a surplus. *See* 2-ER-285 (“call[ing] into question the accuracy of [VA]’s reported deficit[]” given that VA finished Fiscal Year 2024 “with unspent, carryover funds”). In short, it is the Government—not the District Court—that misapplies the relevant doctrine.

Finally, the Government argues that the District Court’s order “would cause the [Grounds] to become less hospitable for Veterans with disabilities who reside there.” Gov’t Br. at 51. But that ignores the District Court’s findings that it is in fact *the absence* of housing that creates an inhospitable and dangerous environment on or near the Grounds. *See, e.g.*, 1-ER-58 (stating that the lack of supportive housing has resulted in veterans near the Grounds being “stabbed to death,” killed from “being struck by a

car,” and “malnourished,” with some describing their homelessness “like being back in Iraq”); *see also LA All. for Hum. Rts. v. Cnty. of L.A.*, 14 F.4th 947, 955 (9th Cir. 2021) (noting that the LA’s homelessness crisis has resulted in “rising deaths of [the] unhoused, . . . unaddressed mental health disorders, . . . and the spread of uncommon diseases due to lack of sanitation”). Indeed, VA’s provision of “shelter,” “proper food, hygiene sanitation services,” and an opportunity to “engage[] with the healthcare system” would lead to only more hospitality and safety for unhoused veterans—not less. 1-ER-161.¹⁶ Life on the streets is not a safe haven.

IV. 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 WLALA, the government assumed—and then breached—enforceable fiduciary duties to Plaintiffs as trustee of that trust. The District Court’s order permanently enjoining VA from entering into new land-use agreements that do not “principally benefit veterans and their families” was both proper and necessary. 1-ER-57

¹⁶ The Government also takes issue with the District Court’s finding that VA “already administer[s] the creation of housing on and near the Campus,” so “increasing the quantity and speed at which housing is provided to veterans with disabilities is not a fundamental alteration of [its] program[s].” Gov’t Br. at 52–53. According to the Government, this observation “misses the point” because VA is allegedly committed to providing housing. *Id.* But the District Court’s observation is highly relevant: if VA is already administering housing on or near the Grounds, then economies of scale suggest that VA would not be substantially burdened by building additional housing. *See Am. Council of the Blind of N.Y., Inc. v. City of N.Y.*, 579 F. Supp. 3d 539, 563, 575 (S.D.N.Y. 2021) (finding a heightened “[s]cale and pace” of modifications is proper when the “remedy is equal to the vast scale of the violation”).

A. Plaintiffs Have Standing to Enforce the Charitable Trust.

Preliminarily, the Government contends that Plaintiffs lack standing to pursue their charitable-trust claim. 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* § 414 (July 2024); cf. *L.B. Rsch. & Educ Found. v. UCLA Found.*, 130 Cal. App. 4th 171, 180 (2005) (emphasis omitted) (explaining that a “person having a sufficient special interest may [] bring a [charitable trust] action”). 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 . . . the general public.” *Id.* at 907 (internal quotations marks omitted).

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. 7-ER-1439 (ensuring the provision of housing for “Disabled Volunteer Soldiers”). So Plaintiffs—homeless veterans suffering from certain disabilities—are plainly a group of “intended beneficiaries” with a special interest in that trust, distinct from members of the general public. 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. 7-ER-1439; *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”).¹⁷ Plaintiffs therefore have a particularized interest in the charitable trust and standing to enforce it.

B. The Charitable Trust is Valid and Enforceable Against the Government.

The Government’s additional arguments regarding the validity and enforceability of the charitable trust similarly lack merit.

First, the Government contends that the 1888 Deed did not create a charitable trust. Gov’t Br. at 55. But that argument has been properly rejected by multiple district courts. *See* 1-ER-196–98; *Valentini*, 860 F. Supp. 2d at 1103–05. To create a charitable trust, the grantor must “manifest[] an intention” to convey the property for a charitable purpose. Restatement (Third) of Trusts § 13 (2012). Here, the 1888 Deed granted massive land property to the government on the condition that it “establish[ed],

¹⁷ The Government’s argument to the contrary is that the special-interest exception “is not satisfied here” because the beneficiaries are too “vast” and “ill-defined.” Gov’t Br. at 54. But the Government fails to meaningfully address *Hu Depu*, which forecloses its position. There, Chinese citizens imprisoned for expressing dissent on the internet sued Yahoo!, which had provided that information to the Chinese government, for terminating a charitable trust Yahoo! established to assist imprisoned Chinese dissidents. The D.C. Circuit concluded that the beneficiary class—Chinese people imprisoned in China for exercising freedom of expression—was “sharply defined” sufficient to establish standing. *Hu Depu*, 950 F.3d at 906. In comparison, Plaintiffs’ class—homeless veterans with severe mental illness and traumatic brain injury—is far narrower and more sharply defined than the class in *Hu Depu*.

construct[ed], and *permanently* maintain[ed]” housing for disabled veterans. 7-ER-1439 (emphasis added). That language does not merely demonstrate a “hope[] that the[] gift would be used” to house veterans, as the Government claims. Gov’t Br. at 56–57. Instead, it grants the land to the Government “on the *condition*” that it do so “for all time.” *Valentini*, 860 F. Supp. 2d at 1104 (emphasis in original). That conditional language demonstrates the grantors’ manifest intention to create a charitable trust. *See U.S. ex rel. U.S. Coast Guard v. Cerio*, 831 F. Supp. 530, 535 (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”). Indeed, the Secretary of VA *admitted* as much in the 2016 Draft Mater Plan, stating “[t]he focus in this Draft Master Plan on [permanent supportive housing] is essential” and, [p]er the terms of the original grant of the land, housing on the [Grounds] *was and is intended to be used as a home for Veterans*, or more specifically based on the 1888 deed, housing for ‘disabled volunteer soldiers.’” 27-ER-6760 (emphasis added).

The cases the Government cites are unavailing. Citing this Court’s unpublished opinion in *Farquhar v. United States*, 1990 WL 121076, at *3 (9th Cir. Aug. 21, 1990), the Government claims that the 1888 Deed demonstrated only a “statement of purpose” and not a “condition” on the gift. Gov’t Br. at 57. While *Farquhar* discussed the 1888 Deed, that case involved only whether—with respect to *donors* of the land—the 1888 Deed created “[a] condition subsequent” that provided “the grantor[s] a right of reentry” to “terminat[e]” the estate. 1990 WL 121076, at *2. It had nothing to do with

whether the 1888 Deed created a charitable trust (let alone with respect to beneficiaries)—a question that is before this Court for the first time.¹⁸

Nor does the California state court’s unpublished decision in *Fletcher v. City of San Diego*, 2002 WL 31480258 (Cal. Ct. App. Nov. 7, 2002) support the Government’s claim that the 1888 Deed failed to create a charitable trust. In *Fletcher*, the land was deeded “for the exclusive use of the United States Navy . . . for the purpose of establishing a naval training station.” *Id.* at *3. By contrast, the 1888 Deed granted the land to the government on condition that it “*permanently* maintain[ed]” housing for disabled veterans. 7-ER-1439 (emphasis added). That is, in *Fletcher*’s words, the 1888 Deed established with “reasonable certainty” that the “grantor intended to impose an imperative obligation on, and exclude the exercise of discretion by, the grantee” for current and future uses of the deeded property. *Fletcher*, 2002 WL 31480258, at *2.

In discussing *Farquhar* and *Fletcher*, the Government essentially suggests that it is impossible for donors to grant a gift to the federal government for a specific purpose in perpetuity. Gov’t Br. at 59. Instead, according to the Government, the federal government needs to only “initial[ly]” use the gift for its intended purpose. *Id.* That is plainly incorrect. “A donor has the right to give his property to another upon *any*

¹⁸ True, as the Government quotes, the *Farquhar* Court passingly stated that the 1888 Deed may be “[c]onstru[ed] . . . as creating a covenant or statement of purpose, rather than a condition.” 1990 WL 121076, at *3. But again, the Court is not referring to whether the 1888 Deed created a “condition” or a “statement of purpose” with respect to creation of the charitable trust. *Farquhar* does not address that issue.

conditions which he sees fit to impose[.]” *Hearst v. Hearst*, 123 F. Supp. 756, 758 (N.D. Cal. 1954) (emphasis added); *Gregory v. Fresno Cnty.*, 2019 WL 2420548, at *32 (E.D. Cal. June 10, 2019) (“It has long been established that donations received for charitable purposes must be used for the purposes for which they are given[.]”). So if donors gave the Government the land on the condition that it would “permanently maintain[]” a home for disabled veterans, without qualification, then the Government must comply. Indeed, were it contrariwise, a recipient of a gift would hold unilateral power to decide when to stop using a gift for its intended purpose. That is nonsensical. *See Woody v. United States*, 368 F.2d 668, 673 (9th Cir. 1966) (“[It is] the intent of the donor, rather than the donee, [that] is the important factor[.]”).

Next, the Government contends that “[e]ven if the 1888 Deed created a charitable trust, that is insufficient to make any associated duties judicially enforceable against the government.” Gov’t Br. at 59–60.¹⁹ Not so. The federal government assumes enforceable fiduciary duties when there exist “specific rights-creating or duty-imposing statutory or regulatory prescriptions” and the language bears the “hallmarks of a conventional fiduciary relationship.” *United States v. Navajo Nation*, 556 U.S. 287, 301 (2009) (“*Navajo IP*”) (internal quotations marks omitted). Courts assess whether the statute provides the federal government “full responsibility to manage” the assets at

¹⁹ Notably, the Government does not contend that, assuming that VA is subject to enforceable fiduciary duties under the charitable trust, VA did not violate those duties. VA’s silence on that issue is unsurprising: VA’s leases did not “principally benefit veterans.” WLALA § 2(b).

issue “for the benefit of the [beneficiaries].” *United States v. Mitchell*, 463 U.S. 206, 224 (1983). Where the federal government takes “control or supervision” of a particular property, “the fiduciary relationship normally exists with respect to such . . . propert[y].” *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 987 (Ct. Cl. 1980).

Here, Congress twice reinforced the Government’s assumption of enforceable fiduciary duties by passing WLALA and the 2021 Amendment. 1-ER-198–99. WLALA prohibits the Government from entering into leases unless they provide “supportive housing . . . that principally benefit[s] veterans and their families,” ensure that “the provision of services to veterans is the predominant focus of the activities . . . during the term of the lease,” or “principally benefit veterans and their families.” WLALA §§ 2(b), 3. These statutory obligations mirror the types of fiduciary duties that trustees traditionally assume. *See* Restatement (Third) of Trusts § 76 (2012) (“The trustee has a duty to administer the trust, diligently and in good faith [for the benefit of the beneficiaries].”). They are therefore sufficient to impose enforceable fiduciary duties against the Government under the 1888 Deed. *See Navajo II*, 556 U.S. at 301 (stating that the statutory language need only bear the “hallmarks of a conventional fiduciary relationship”) (internal quotation marks omitted).²⁰

²⁰ The Government’s discussion of *Valentini*, which held that the Government did not have enforceable fiduciary duties under the 1888 Deed, is irrelevant. Gov’t Br. at 60. At the time the district court decided *Valentini*, Congress had not passed WLALA. Further, to the extent that the Government points to VA’s contrary interpretation of WLALA or of any associated regulations, this Court owes no deference to that interpretation. *See Loper Bright*, 603 U.S. at 394.

According to the Government, Plaintiffs cannot enforce the charitable trust because WLALA provides for only “administrative and political rather than judicial remedies.” Gov’t Br. at 61 (citing WLALA § 2(h)(1)). But that is a red herring. Plaintiffs do not assert a private cause of action under WLALA. Rather, they assert a common law claim for breach of fiduciary duty. And critically, the “remedies of trust beneficiaries are *equitable in character* and enforceable against trustees in a court exercising equity powers.” Restatement (Third) of Trusts § 95 (2012) (emphasis added). So WLALA’s lack of a statutorily-prescribed judicial remedy is irrelevant. While WLALA itself may *create* enforceable fiduciary duties against the federal government, it is the court “exercising equity powers” over the administration of trusts by which Plaintiffs may *enforce* them.

V. The District Court’s Land-Use Injunctions Did Not Exceed Its Authority.

Finally, with respect to Plaintiffs’ charitable trust claims, the District Court correctly enjoined the Government from entering into new leases with Brentwood, Safety Park, and Bridgeland. 1-ER-118.

First, the Government argues that the District Court “went well beyond remedying any injury to [P]laintiffs” because it should have simply held “the agreements invalid and le[ft] VA free to renegotiate them.” Gov’t Br. at 64. But the Government ignores (and does not contest) the District Court’s finding that “it is virtually impossible for leases for a private school’s athletic facilities, a parking lot near Brentwood businesses, an oil drilling operation, and a UCLA baseball stadium to principally benefit

veterans.” 1-ER-118. As the District Court further found, it was the Government’s “free” negotiation with third parties that precipitated Plaintiffs’ injuries in the first place. *See* 1-ER-140 (finding that after VA OIG concluded the leases “were noncompliant with federal law, the VA continued to allow leaseholders to occupy the land [unlawfully] and exercise renewal options” (emphasis added)); 1-ER-139–42 (explaining that in 2018 the OIG determined that VA’s land-use agreements with Brentwood, Bridgeland, and Safety Park violated WLALA and renewed that finding for Bridgeland and Safety Park in 2021). Preventing VA’s renegotiation of the leases was therefore both necessary and tailored. *See Nat. Res. Def. Council v. Sw. Marine, Inc.*, 236 F.3d 985, 1000 (9th Cir. 2000) (“So long as the district court’s equitable measures are reasonably calculated to ‘remedy an established wrong,’ they are not an abuse of discretion”).

Second, the Government argues that the District Court’s injunction “exceeded its statutory authority under the APA” because when reviewing a final agency action, a court “sits as an appellate tribunal” whose equitable powers are limited to “effectuating their statutory powers.” Gov’t Br. at 64–65.²¹ But the Ninth Circuit has recognized no such limitation. In fact, when addressing a violation of the APA, this Court has observed that “[a district court], as a court of equity conducting judicial review under

²¹ The Government also cites *Cnty. of Fresno v. Azar*, 384 F. Supp. 3d 1164 (E.D. Cal. 2019) and *S.A. v. Trump*, 363 F. Supp. 3d 1048 (N.D. Cal. 2018). These are opinions issued by district courts on a motion for summary judgment and a motion to dismiss, respectively. Though both cite the proposition that the district court “sits as an appellate tribunal” when reviewing final agency actions, neither case discusses injunctive relief nor a court’s equitable power.

the APA, has broad powers to order mandatory affirmative relief, [] if such relief is necessary to accomplish complete justice.” *Nw. Env’t Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 680–81 (9th Cir. 2007) (cleaned up); *see also Tinoqui–Chalola Council of Kitanemuk & Yowlumne Tejon Indians v. U.S. Dep’t of Energy*, 232 F.3d 1300, 1305 (9th Cir. 2000) (holding that a district court has authority under the APA to order rescission of a contract for sale if the federal agency “acted in excess of statutory authority or without observance of the procedures required by law”). This equitable power includes “authority to grant any ancillary relief necessary.” *Nw. Env’t Def. Ctr.*, 477 F.3d at 680 (citing *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982)). In controversies that involve the public interest, as here, “equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

Accordingly, under this Court’s precedent, the District Court had authority under its broad and flexible powers to fashion forward-looking equitable relief in response to VA’s fiduciary violations. As explained, it was “necessary to accomplish complete justice.” *Bonneville Power Admin.*, 477 F.3d at 680. VA could not have independently negotiated leases with Brentwood, Safety Park, and Bridgeland that would have “principally benefitted veterans and their families.” The District Court’s relief was therefore proper. *See, e.g., Nat. Res. Def. Council v. Locke*, 2010 WL 11545702 at *27 (N.D. Cal. Apr. 23, 2010) (imposing forward-looking equitable relief requiring federal agencies to apply specific harvest levels for endangered fish); *Cmtys. for a Better Env’t v. U.S.*

E.P.A., 2008 WL 1994898, at *3–4 (N.D. Cal. May 5, 2008) (imposing forward-looking equitable relief requiring the EPA to meet certain interim deadlines that would not otherwise be statutorily required).

Finally, the Government contends that the District Court’s preliminary approval of the settlement agreement regarding Brentwood violated the government’s “unrestricted power . . . to determine those with whom it will deal.” Gov’t. Br. at 67 (quoting *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127 (1940)). But the Government ignores the nature of the District Court’s approval of that settlement. VA claimed that there was no available space for the construction of housing on the Grounds. *See, e.g.*, 13-ER-3053–55 (testimony of Dr. Braverman stating that it is VA’s position that there is no additional land available). So based on VA’s *own argument*, the District Court had no alternative but to order new short-term leases, including with Brentwood; if there was in fact no available land on the Grounds, it would be necessary for VA to construct housing on Brentwood-leased land in short order. The District Court plainly had the power to require VA to re-enter into that lease with Brentwood—and the Government offers no applicable authority to the contrary.²² *See Nw. Env’t Def. Ctr.*, 477 F.3d at 671, 680–81 (ordering an agency to re-enter into a contractual arrangement); *see generally*

²² The Government passingly cites *Perkins* to assert that the District Court could not order it to re-enter into the lease. But that case is inapposite. *Perkins* involved the question of whether, under the Public Contracts Act of 1936, the district court could “restrain” the Secretary of Labor from requiring various purchasers to abide by minimum wage laws. *Perkins*, 310 U.S. at 117. That case has no bearing here, which merely involves the District Court ordering VA to re-enter into its lease in compliance with its fiduciary duties and in response to VA’s *own argument* that there was no available space for construction of housing on the Grounds.

Califano v. Yamasaki, 442 U.S. 682, 705 (1979) (“Absent the clearest command to the contrary from Congress, federal courts retain their equitable power.”).

CONCLUSION

The District Court’s judgment should be affirmed.

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Respectfully submitted,

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STATEMENT OF RELATED CASES

This case is related to the four other appeals that have been filed in the same case: Case Nos. 24-6578, -6888, -6603, and -6338.

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 13,487 words, according to Microsoft Word.

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