

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

Hon. David O. Carter, Case No. 2:22-cv-08357

**BRIEF OF AMICUS CURIAE FORMER HIGH-
RANKING MILITARY OFFICERS GEN. PETER W.
CHIARELLI, ADM. WILLIAM H. MCRAVEN, ADM.
MICHAEL G. MULLEN, AND COL. DAVID W.
SUTHERLAND IN SUPPORT OF APPELLEES
JEFFREY POWERS, ET AL.**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI</i>	1
INTRODUCTION	3
ARGUMENT	4
I. Threats To Successful Recruitment And Enlistment Of Capable Men And Women Into Our Armed Services Are Threats To Our National Security	5
II. VA’s Failure To Adequately Reintegrate Homeless Veterans Has A Direct, Adverse Impact On Military Recruitment.....	9
III. To Honor Its Duty To Provide Veterans Available And Adequate Health Care Services, The VA Must Provide Sufficient Supportive Housing On The West LA Campus.....	18
CONCLUSION	27
CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32	28
CERTIFICATE OF SERVICE.....	29

TABLE OF AUTHORITIES

	Page(s)
Cases	
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Statutes and Rules	
38 U.S.C. § 7301(b)	24
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Federal Rules of Appellate Procedure Rule 32.....	28
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INTEREST OF *AMICI*

Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, amici Peter W. Chiarelli, William H. McRaven, Michael G. Mullen, and David W. Sutherland submit the following statement of identity, interest in this case, and the source of authority to file.¹ *Amici* are former military officers who assumed the highest command of the United States Armed Forces:

General Peter W. Chiarelli, U.S. Army (Ret.), served as the 32nd Vice Chief of Staff for the Army. As the Vice Chief of Staff, General Chiarelli oversaw the daily operations of the Army and its 1.1 million active and reserve soldiers. General Chiarelli also commanded the Multi-National Corps in Iraq, where he coordinated the combat operations of more than 147,000 U.S. and Coalition troops. General Chiarelli retired from the U.S. Army after nearly 40 years of service. After retirement, General Chiarelli became the first CEO of One Mind, a brain health and neurodegenerative disease advocacy and research nonprofit.

Admiral William H. McRaven, U.S. Navy (Ret.), served as the ninth Commander of the United States Special Operations Command (SOCOM) from

¹ No counsel for a party authored this brief in whole or in part, and no counsel for a party (or a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their counsel made a monetary contribution to its preparation or submission. All parties to this matter have consented to the filing of this amicus brief.

August 8, 2011 to August 28, 2014, and during that time he oversaw the 2011 Navy SEAL raid that neutralized Osama Bin Laden. As the commander of U.S. Special Operations Command, Adm. McRaven led a force of 69,000 men and women and was responsible for conducting counter-terrorism operations worldwide. Admiral McRaven retired from the U.S. Navy after more than 37 years of service.

Admiral Michael G. Mullen, U.S. Navy (Ret.), served as the 17th Chairman of the Joint Chiefs of Staff for Presidents George W. Bush and Barack Obama. Admiral Mullen also served as Chief of Naval Operations, as Commander, U.S. Naval Forces Europe, and as Commander, Allied Joint Forces Command, Naples. Admiral Mullen retired from the U.S. Navy after more than 42 years of service.

Colonel David W. Sutherland, U.S. Army (Ret.), served in seven combat tours over three decades of military service, culminating in his role as the Special Assistant to the Chairman of the Joint Chiefs of Staff focusing on Warrior and Family Support. Currently, he is Chair of Dixon Center for Military and Veterans Services. He retired from the U.S. Navy after 29 years of service. Between the two roles, he has spent 15 years working with thousands of communities and community-based organizations building capacity enabling veterans and their families to succeed where they live. He is a nationally recognized expert on the

evolving needs of veterans and their families, and the grassroots solutions that support them.

Amici respectfully submit that they can provide important additional input relevant to the issues on appeal. As former high-ranking military officers who, after retiring from active duty, have continued to work on behalf of those who have served our country and their families, Amici bring a unique perspective to the issues before the Court. They are deeply interested in this case, because its outcome directly impacts the availability of healthcare services for veterans at the Veterans Administration (“VA”) West Los Angeles (“WLA”) campus, and in turn the effectiveness of reintegration programs that are necessary to military recruitment efforts and the country’s long-term national security interests.

INTRODUCTION

The VA’s neglect of homeless veterans in Los Angeles—the epicenter of the veteran homelessness crisis—is a direct threat to national security. For over 50 years, the U.S. military has depended on an all-volunteer force (AVF). The nation’s military readiness therefore depends on strong recruitment. But the armed forces now face one of the most challenging recruiting environments since the AVF began. In particular, recruits fear service-related harms that often spiral into homelessness, such as post-traumatic stress disorder (PTSD) and traumatic brain injury.

The VA is tasked with reintegrating veterans into civilian life, including providing health care. The 1888 deed that established the WLA VA campus mandated that the campus would house and serve our most vulnerable veterans. Yet rather than honoring its promise to build supportive housing for veterans, the VA has instead leased the land to private interests, leaving veterans without access to the health care they need.

The message to the next generation of potential recruits is dispiriting. As a result, young people will forgo enlistment because they see a real risk of homelessness and the inability to get care for service-related injuries in their future. To maintain recruitment and to make the VA fulfill its duty to veterans, Amici request that this Court affirm the district court's Final Judgment and Permanent Injunction.

ARGUMENT

Amici urge the Court to affirm the Final Judgment and Permanent Injunction entered by the district court. Substantial evidence supports the determination that Appellees satisfied each element of the test for entry of permanent injunctive relief. In particular, the hardships encountered by homeless veterans themselves far outweigh the economic interests advanced by defendants. Amici submit this brief to highlight additional reasons why injunctive relief is warranted: (1) the impact of

veteran homelessness on military recruitment, and (2) the corresponding impact on national security.

I. Threats To Successful Recruitment And Enlistment Of Capable Men And Women Into Our Armed Services Are Threats To Our National Security

“It is obvious and unarguable that no governmental interest is more compelling than the security of the Nation.” *Haig v. Agee*, 453 U.S. 280, 307 (1981) (internal quotations omitted). In turn, “a strong and independent military is essential to the national security.” *Steffan v. Aspin*, 8 F.3d 57, 62 (D.C. Cir. 1993). For more than 50 years, the United States military has been an all-volunteer force (“AVF”).² Thus, our military readiness and strength depend on the willingness of capable men and women to volunteer to serve their country.

The military faces one of its most challenging recruiting crises since the AVF began in 1973.³ The U.S. is fielding its smallest military force since the end of World War Two⁴ at a time when the complexity and scope of the global threat environment—in the South China Sea, in Eastern Europe, in the Middle East—is at

² Jim Garamone, *Military Marks Half-Century of the All-Volunteer Force*, Dep’t of Def. (June 13, 2023), <https://tinyurl.com/2p9vphm6>.

³ See, e.g., Lt. Col. Frank Dolberry and Charles McEnany, *Be All You Can Be: The U.S Army’s Recruiting Transformation*, (Jan. 2024) at <https://tinyurl.com/yaawfxsz>.

⁴ See, e.g., Todd South, *The Army keeps getting smaller*, Army Times (March 13, 2023) <https://tinyurl.com/mrxxvxme>.

a highwater mark.⁵ A key cause of waning recruitment is the negative message to potential candidates, not to mention the family, pastors, coaches, and teachers who care about these candidates and their futures. The public now associates military service with war trauma leading to physical and psychological harms, such as PTSD, traumatic brain injury, and elevated suicide risk.⁶ They also fear that, upon reintegration, the VA will not provide necessary care for them should they suffer such harms while serving their country.⁷

These adverse health effects of military service have intensified in recent years, especially for veterans who served after the September 11, 2001 terrorist attacks:

Compared to those who served in earlier wars, the post-9/11 troops experienced more frequent and longer deployments, higher levels of exposure to combat, higher rates of survival from injuries, higher incidence of serious disability, and more complex medical treatments.⁸

⁵ See *supra* n.4.

⁶ See *supra* n.4; see also Joint Advertising, Market Research, and Studies Program, Department of Defense, *Futures Survey* (Summer 2023) at <https://tinyurl.com/yc6b9ez4> (a DoD survey noting that young people avoid service for fear of injury, death, PTSD, and other psychological issues).

⁷ See *supra* n.4.

⁸ Linda Bilmes, *United States for Care of Veterans of the Iraq and Afghanistan Wars: The Long Term Costs of Providing Disability Benefits and Medical Care, 2001-2050*, Watson Institute: Costs of War Research Series, (Aug. 18, 2021) <https://tinyurl.com/sypxdsdz>.

As a result, the newest generation of veterans are simply “more likely to bear the scars of battle, whether physical or not.”⁹

The injuries of our most recent wars are more pervasive, more complex, and more disabling for the post-9/11 generation than for any other generation of veteran.¹⁰ Despite making up only 24 percent of all living U.S. veterans, post-9/11 veterans account for more than half of all severely disabled veterans.¹¹ This overrepresentation of post-9/11 veterans is due to a combination of several factors unique to 21st century warfare: the prevalence and “extreme violence” of blast injuries;¹² advancements in military body armor, battlefield medical care, and medical evacuation policies from combat zones;¹³ and the unprecedented survival

⁹ Pew Research Center, *The American Veteran Experience and the Post-9/11 Generation*, (Sept. 2019) <https://tinyurl.com/yb6nnxn3>.

¹⁰ *See supra* n.9.

¹¹ *See supra* n.9.

¹² Susan L. Eskridge et. al., *Combat Blast Injuries: Injury Severity and Posttraumatic Stress Disorder Interaction on Career Outcomes in Male Servicemembers*, Naval Health Research Center Report No: 11-32, (Nov. 1, 2013) <https://tinyurl.com/4v58hmnv>.

¹³ Rachel Sayko Adams, et al., *Post-deployment Polytrauma Diagnoses among Soldiers and Veterans using the Veterans Health Affairs Polytrauma System of Care and Receipt of Opioids, Nonpharmacologic, and Mental Health Treatments*, *J. Head Trauma Rehabil.* (May-June 2019) 34(3): 167-175 <https://tinyurl.com/5n6ksbn7>.

rate of post-9/11 veterans (88 percent) due to advances in modern medicine.¹⁴ It is no wonder then that the recent wars of the post-9/11 generation—Afghanistan (Operation Enduring Freedom) and Iraq (Operations Iraqi Freedom and New Dawn)—have been referred to as the “wars of disabilities.”¹⁵

With a high survival rate and a correspondingly high likelihood of severe disability come new and complex battle scars—both seen and unseen. The hallmark injury of post-9/11 veterans is traumatic brain injury (TBI).¹⁶ TBIs are often comorbid with PTSD and chronic pain, creating what the Veterans Health Administration (“VHA”) calls the “polytrauma clinical triad” (PCT).¹⁷ Veterans presenting with PCT are common in the VA care system, and PCT heightens the risks of suicidal ideation, substance abuse, and violent impulses.¹⁸

¹⁴ Sidra Montgomery, *A Brief History of Wounded Veterans in America (Part 1)*, Veterans Scholars Blog, (Nov. 23, 2016) <https://tinyurl.com/mrxyp5p>.

¹⁵ Jamison D. Fargo, et al., *Homelessness Following Disability-Related Discharges from Active Duty Military Service in Afghanistan and Iraq*, (Mar. 10, 2017) <https://tinyurl.com/4mfed3n6>.

¹⁶ VHA Directive, *Polytrauma-Traumatic Brain Injury (TBI) System of Care*, (“TBI is defined as traumatically induced structural injury or physiological disruption of brain function as a result of an external force.”), (Jun. 9, 2009), available at <https://tinyurl.com/3yd52xuc>.

¹⁷ Shannon M. Blakey, et al., *Chronic Pain, TBI, and PTSD in Military Veterans: A Link to Suicidal Ideation and Violent Impulses?* *J. Pain* (July 2018), 19(7) <https://tinyurl.com/5fy3uujr>.

¹⁸ *See supra* n.17.

Finally, many veterans suffer from profound “moral injuries,” a term that describes the “damage done to an individual’s core morality or moral worldview” because of prolonged exposure to the war traumas.¹⁹ Given that post-9/11 veterans disproportionately experience severe wellness challenges, it is no surprise that potential recruits are forgoing military service in greater numbers. And it is appropriate for the Court to situate the VA’s decisions inside this challenging recruiting landscape that has reduced our military readiness and national security.

II. VA’s Failure To Adequately Reintegrate Homeless Veterans Has A Direct, Adverse Impact On Military Recruitment

To obtain permanent injunctive relief, Appellees needed to establish that (1) they have suffered irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between them and Appellant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction. *Cal. ex rel. Lockyer v. USDA*, 575 F.3d 999, 1019-20 (9th Cir. 2009).

After a lengthy trial and a thorough analysis of the evidence, the district court found that “[l]ack of supportive housing on or near the WLA Grounds has

¹⁹ Grace W. Yan, *The Invisible Wound: Moral Injury and Its Impact on the Health of Operation Enduring Freedom/Operation Iraqi Freedom Veterans*, *Military Medicine*, Volume 181, Issue 5, May 2016, Pages 451–458, available at <https://tinyurl.com/ycky348y>.

devastating consequences for veterans with disabilities, including exacerbation of existing disabilities and health conditions and exposure to violence and other victimization.”²⁰ The district court ordered a permanent injunction, requiring immediate construction of supportive housing units on the WLA Campus—units promised by the VA over a decade ago, but which remain mere promises to this day.²¹ The district court properly recognized that the public interest would not be disserved by holding the VA to its promises²²—and to the promises of the nation’s leaders, its own avowed mission, or the intended purpose of the WLA campus.²³

Despite its failure to demonstrate that the district court’s findings were clearly erroneous, on appeal the VA nonetheless makes plain its view that the district court impermissibly “undermin[ed] the VA’s ability to serve [veterans in the Los Angeles area] in the way the VA thinks is best.”²⁴ Amici ask the Court to

²⁰ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) ¶ 86 at p. 88. (1 ER 135.)

²¹ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) at 2. (1 ER 49).

²² *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) at 72-73, 114. (1 ER 119-20, 161.)

²³ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) at 46-47 (1 ER 93-94); (ECF No. 359, Additional Findings of Fact and Conclusions of Law) ¶ 4 (1 ER 121).

²⁴ VA Appellants’ Brief at 48. (ECF No. 58.1.)

(1) consider the devastating consequences on veterans from the VA's neglect, (2) reject the VA's plea to defer to the VA's own judgment of how best to serve the interests of the veteran community, and (3) recognize that the VA's failure to provide supportive housing to returning veterans on the WLA VA campus harms the national security interests of the United States.

Historically, military recruiters have highlighted the armed forces' vocational, educational, and economic benefits.²⁵ Advertising presents military service as a pathway to economic security and to social mobility.²⁶ A better life after completing active service is a critical part of the pitch.²⁷ So, too, is the free health care for veterans with service-connected disabilities or an inability to pay.²⁸

²⁵ Matthew Friesen and Mathew Eddy, *Selling the Service: Veterans' Reflections on Their Past Experience of the Military Recruitment Process*, 5 CRITICAL MIL. STUD. 213, 225 (2019).

²⁶ Martin Fransen, *Selling Military Service During Wartime: U.S. Army Recruitment Advertising and Enlistment Motivation During the War Against Terror*, 2 SCANDINAVIAN J. OF MIL. STUD. 178, 182 (Oct. 23, 2019).

²⁷ *Veteran Benefits*, U.S. ARMY, <https://www.goarmy.com/benefits/veterans> (last visited Feb. 18, 2025).

²⁸ *Your Health Care Costs*, VETERANS AFFS., <https://www.va.gov/health-care/about-va-health-benefits/cost-of-care/> (last visited Feb. 18, 2025).

These promises reflect the government’s reciprocal commitment to care for recruits when they transition from soldier to veteran.²⁹ The government has repeatedly recognized a foundational obligation to protect veterans and to properly reintegrate them into civilian life. Commanders in Chief from Abraham Lincoln to Joseph Biden and Donald Trump have stressed that the federal government’s responsibility to care for and protect our veterans is a “moral obligation”³⁰—in fact, a “sacred obligation” and an “unwavering commitment.”³¹

The wellspring of this “sacred obligation” within the federal government is the Department of Veterans Affairs. The VA’s own motto — “[t]o fulfill President Lincoln’s promise to care for those who have served in our nation’s military and

²⁹ Florence Wagman Roisman, *National Ingratitude: The Egregious Deficiencies of the United States’ Housing Programs for Veterans and the ‘Public Scandal’ of Veterans’ Homelessness*, (2005) 38 IND. L. R. 103 at 111 (“The substandard housing and homelessness suffered by veterans—particularly those with service-connected disabilities—is inconsistent with the long-standing understanding that the nation owes a debt to its veterans, with the nation’s history, and with the nation’s rhetorical commitments.”).

³⁰ U.S. Department of Veterans Affairs, *The Origin of the VA Motto* <https://tinyurl.com/542xrwfk> (last visited Feb. 18, 2025); *President Bush Discusses Care for America’s Returning Wounded Warriors, War on Terror at American Legion*, U.S DEP’T OF STATE (MAR. 6, 2007) <https://tinyurl.com/38fj632n>.

³¹ *Remarks by President Biden to Department of Defense Personnel*, THE WHITE HOUSE (Feb. 10, 2021), <https://tinyurl.com/5n7sbnwx>; *President Donald J. Trump Takes Care of Veterans from the Battlefield to the Home Front*, THE WHITE HOUSE (Jan. 9, 2018) <https://tinyurl.com/466r9jty>.

for their families, caregivers, and survivors”³²— affirms its duty to reintegrate veterans into civilian life. The VA has acknowledged its responsibility to lead federal efforts to end veteran homelessness.³³ The VA and its constituent organizations like VHA have repeatedly recognized that this requires proper reintegration of veterans into civilian life in addition to the abolition of veteran homelessness.³⁴ VHA has even framed its own mission in terms of a specific obligation to prevent homelessness by providing housing that ensures access to health care.³⁵

³² U.S. Department of Veterans Affairs, *The Origin of the VA Motto* <https://tinyurl.com/542xrwfk> (last visited Feb. 18, 2025).

³³ Testimony of Thomas O’Toole, M.D., Deputy Under Secretary of the Veterans Health Administration, before the House Committee on Veterans’ Affairs Subcommittee on Economic Opportunity (June 27, 2024) <https://tinyurl.com/yk9mcc78> (“Ending veteran homelessness is not only a moral imperative but also a practical investment in the well-being of those who have sacrificed for our Nation... VA leads the federal response to end veteran homelessness...”). In 2009, then-VA Secretary Eric K. Shinseki unveiled the department’s comprehensive plan to end homelessness, stating: “Those who have served this nation as Veterans should never find themselves on the streets, living without care and without hope.” VA News, Secretary Shinseki Details Plan to End Homelessness for Veterans, November 3, 2009, <https://news.va.gov/press-room/secretary-shinseki-details-plan-to-end-homelessness-for-veterans/>.

³⁴ See, e.g., Shawn Liu, Director of Communications, VA Homeless Programs Office, *VA’s Implementation of Housing First Over the Years*, at <https://tinyurl.com/4j3bxtxm> (last updated Jan. 2, 2024).

³⁵ Veterans Health Administration, Homeless Program Office, *Strategic Plan 2021-2025* <https://tinyurl.com/2f984hhu>.

The WLA campus' land was deeded over to help the federal government fulfill these exact obligations to injured and disabled veterans. The 1888 deed explicitly transferred the land "in consideration" that the National Soldiers' Home "should locate, establish, construct, and permanently maintain [there] a branch of said National Home for Disabled Volunteer Soldiers..."³⁶ The VA has acknowledged that the land was deeded for the express purpose "to serve as a home for our nation's heroes" and that the VA intended to restore the WLA campus's status "as an inviting, welcoming, community for Veterans and their families."³⁷

Despite these explicit acknowledgments, the VA has not honored the stated purpose of the WLA campus. Nor has the VA fulfilled its commitments to the homeless veteran population of Los Angeles. In January 2015, a separate group of homeless veterans struck a settlement with the VA, under which the VA agreed to build 1,200 units on its WLA campus for veterans.³⁸ Yet eight years later, not a single one of those 1,200 apartments had been built; instead, only 54 units had

³⁶ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Additional Findings of Fact and Conclusions of Law) at ¶ 74. (1 ER 121.)

³⁷ *Id.*

³⁸ Department of Veterans Affairs, *Department of Veterans Affairs Reaches Historic Breakthrough Agreement*, (Jan. 28, 2015) at <https://tinyurl.com/2hsacmc2>.

been finished, units that had been planned *before the lawsuit that preceded the current litigation had even been filed*.³⁹ In the interim, the VA focused its efforts not on building the new housing it had promised, but rather on leasing that land for the benefit of private interests⁴⁰ or on improving the campus grounds in a manner that has little direct benefit to veterans.⁴¹ The VA cannot uphold its duty to treat and house disabled and neglected veterans while committing 35 acres of its campus to the UCLA baseball complex, a private school for affluent students, and oil drilling.⁴²

³⁹ Libby Denkmann, *Everything You Need to Know About the Massive, Decaying West LA VA Campus—And The Plan to Fix It*, LAist (July 10, 2018) (“54 veterans moved into the newly refurbished Building 209 last June. It’s the first permanent supportive housing the VA has built on the campus, and it features stable residences with wraparound social and mental health services. Critics pointed out, however, that plans to renovate Building 209 were announced in 2007 -- well before the Draft Master Plan.”) <https://tinyurl.com/3t9k2ma4>.

⁴⁰ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Additional Findings of Fact and Conclusions of Law) at ¶ 75 (1 ER 122) (“The VA admitted in its 2022 Master Plan for the Grounds: ‘In the 70s, residential use of the campus declined, and the West LA VA Campus began the practice of leasing land on the campus to private commercial interests, including the UCLA baseball stadium, the Brentwood School athletic complex, Marriott Hotel laundry, Enterprise car rentals, and a rare bird sanctuary... The West LA VA Campus generated millions of dollars from this leasing policy that provided little direct benefit to Veterans.’”).

⁴¹ NPR, *LA’s VA Campus: A Ballpark, An Oil Well...And, Maybe Soon, A Home for Homeless Vets*, (May 23, 2017) <https://tinyurl.com/yt5jep5y>.

⁴² *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) at 53, 63, 65. (1 ER 100, 110, 112.) The

The VA's refusal to provide supportive housing necessary for adequate reintegration and access to healthcare adversely affects military recruitment. Potential recruits—and others who might encourage them to enlist—observe the highly public results: veterans fall through the cracks, harm others and themselves, and die preventable deaths.⁴³ These well-documented tragedies actively deter eligible civilians from volunteering to serve and further erode the public's fragile trust in our military institutions.⁴⁴ In fact, the very notion of homeless combat veterans waiting at the VA's locked gates for treatment is enough to discourage new recruits:

When transitioned successfully, veterans . . . are essentially ambassadors of the high-quality citizens the military develops and returns to communities. The opposite is also true. Homeless veterans, as well as those exhibiting

Brentwood School's athletic complex occupies 22 acres of the West LA Campus, UCLA baseball takes up 10 acres, and Bridgeland Oil drills on three acres.

⁴³ See, e.g., Kathleen McGrory and Neil Bedi, *How the VA Fails Veterans on Mental Health*, ProPublica (January 9, 2024) <https://tinyurl.com/5n7kcmm4> (reviewing 313 reports by the VA's Office of Inspector General detailing systemic failures in mental health service provision that directly contributed to veteran suicide and homicide).

⁴⁴ Beth J. Asch, *Addressing the Recruiting Crisis in the Armed Services: Insights from Research*, Testimony before the U.S. House of Representatives' Committee on Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation (May 11, 2023), at <https://tinyurl.com/bdnmnars>.

mental health crises, can serve as a deterrent to those considering military service...⁴⁵

The VA's failure to reintegrate disabled and homeless veterans undermines the military's best source for recruiting—the veterans themselves.⁴⁶

Arguably the most fundamental problem [with recruitment] involves veterans' views of the military. Veterans are often the military's most effective recruiters—especially of their family members... Yet only 63 percent of veterans would recommend enlisting in the military, a 12-point drop from 2019.⁴⁷

Veterans neglected by the VA will simply refuse to recommend enlistment.⁴⁸

⁴⁵ Brittany Dymond, Testimony Before the Senate Committee on Armed Services Subcommittee on Personnel, *The Status of Military Recruiting and Retention Efforts Across the Department of Defense*, (September 21, 2022) at <https://tinyurl.com/3zsne5w5>.

⁴⁶ See, e.g., Col. Matthew Amidon, *Veterans may be key to solving the US military recruitment crisis*, Military Times (August 24, 2022) at <https://tinyurl.com/ytz4b57k>.

⁴⁷ Will Selber, *The Deeper Reason for the U.S. Military's Recruitment Woes, Bulwark* (January 30, 2024) at <https://tinyurl.com/4xewbmv6>.

⁴⁸ See, e.g., Jenna Carlton, *Veterans won't help the recruiting crisis until our issues are addressed*, Task & Purpose (December 2, 2023) <https://tinyurl.com/s5e94wzj>.

III. To Honor Its Duty To Provide Veterans Available And Adequate Health Care Services, The VA Must Provide Sufficient Supportive Housing On The West LA Campus

Housing and healthcare are not separate issues, especially for veterans.

Veterans are at higher risk for homelessness than civilians.⁴⁹ Studies routinely link veteran homelessness to issues unique to veterans or unique in their outsized effect on veterans, including PTSD, substance use disorder, TBI, and mental illness.⁵⁰ Homelessness itself also has profound consequences on veterans' health; it leads to, among other things, "higher rates of chronic disease and comorbidities than [even] their nonveteran [homeless] counterparts"⁵¹ and elevated suicide risk.⁵² As just one example, Greg Valentini, an Iraq and Afghanistan combat veteran who camped on the sidewalk in front of the WLA VA almost fourteen years ago,

⁴⁹ See, e.g., Jamison D. Fargo, et al., *Prevalence and Risk of Homelessness Among US Veterans* (2012), <https://tinyurl.com/dwtt9bpf> ("Veterans are overrepresented among the homeless in the United States and are at greater risk than nonveterans of becoming homeless.").

⁵⁰ See, e.g., Jack Tsai, et al., *Risk Factors for Homelessness Among US Veterans* (2015) <https://tinyurl.com/mu3h7fhx>.

⁵¹ See Jillian Weber, et al., *Pursuing the Mission: How Homeless Veterans Manage Chronic Disease* (2018), at <https://tinyurl.com/ukc8fkma>.

⁵² See, e.g., Brandon Nichter, et al., *Prevalence, correlates, and mental health burden associated with homelessness in U.S. military veterans* (July 2023) <https://tinyurl.com/bp54fryv>; B. Palladino, et al., *Risk of Suicide Among Veterans with Traumatic Brain Injury Experiencing Homelessness* (2017) <https://tinyurl.com/mrxwzjh9>.

described his descent into homelessness as a “post-combat hell” of drug addiction and suicidal fantasies.⁵³

Like Valentini, other veterans compelled to camp on the sidewalks of San Vicente Boulevard were not spared from the “post-combat hell” of homelessness. Robert Reynolds, an Iraq War veteran who helps homeless veterans access WLA VA services, witnessed how homeless veterans’ mental and physical health deteriorated while awaiting support from the WLA VA: “they would just have breakdowns. I had veterans run out into traffic. I had veterans talk about wanting to commit suicide.”⁵⁴ On multiple occasions, Reynolds was called to San Vicente Boulevard in the aftermath of a veteran’s death, including when Marine veteran Bryan Prentiss was struck by a vehicle⁵⁵ and when Vietnam veteran Andre Butler was fatally stabbed.⁵⁶ For each homeless veteran that Reynolds worked with, “it always got worse when they were there [on the sidewalks of San Vicente].”⁵⁷

⁵³ Matthew Ivey, *The Broken Promises of an All-Volunteer Military*, 86 TEMP. L. REV. 525 (Spring 2014) at 555.

⁵⁴ Reynolds Trial Test., 49:23-25. (9 ER 1994.)

⁵⁵ Reynolds Trial Test., 67:19-68:17. (9 ER 2012-13.)

⁵⁶ Reynolds Trial Test., 67:17-18, 68:18-19. (9 ER 2012, 2013.)

⁵⁷ Reynolds Trial Test., 19:24. (9 ER 1964.)

A primary reason that the health of homeless veterans declines is because they lack access to preventive health care and are instead forced to rely on emergency rooms.⁵⁸ Reynolds, who suffers from both severe PTSD and service-related physical injuries, described his own obstacles in initially seeking care at the WLA VA as “like going through the crucible.”⁵⁹ This lack of preventive care combined with the corresponding lack of housing on the WLA VA campus means homeless veterans are also at severe risk of institutionalization.⁶⁰ The VA has acknowledged that the first step for homeless veterans to obtain healthcare is

⁵⁸ J P LePage, et al., *The Effects of Homelessness on Veterans’ Health Care Service Use: An Evaluation of Independence from Comorbidities* (Nov. 2014) (“homelessness is a barrier to obtaining routine, preventive health care and as such utilization of more costly emergen[cy] services is sought. This lack of preventive care is also associated with greater morbidity and mortality.”) <https://pubmed.ncbi.nlm.nih.gov/25443100/>; see also Melissa Chinchilla, et al., *Increasing Primary Care Engagement Among Homeless-Experienced Veterans Following an Emergency Department Visit: Qualitative Insights from Los Angeles County* (2024) (identifying barriers to care for Los Angeles homeless veterans, including lack of transportation, long follow-up times after emergency visits, and lack of walk-in appointments). <https://journals.sagepub.com/doi/10.1177/21501319241296603?icid=int.sj-abstract.citing-articles.25>.

⁵⁹ Reynolds Trial Test., 18:6-19:2-4. (9 ER 1963-64.)

⁶⁰ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359 at 33-34.). (1 ER 80-81.)

housing them⁶¹—“without barriers or preconditions”⁶²—and that unhoused individuals experience greater difficulties accessing care, particularly quality care.⁶³ As former VA Secretary David Shulkin put it, “Health care is housing.”⁶⁴ And according to Shulkin, that is exactly how the VA views its mandate, too: “the VA does not differentiate homelessness from health care. It is part of the mission, and nobody that I came across [at the agency] is unclear.”⁶⁵

In practice, however, the VA’s policy decisions created obstacles for veterans seeking vouchers for *any* housing in LA County, let alone housing for veterans on the WLA VA campus itself. One roadblock was an income limit that disqualified from housing voucher eligibility veterans collecting disability

⁶¹ *See, supra*, n.35 (“[The] VA’s efforts to prevent and end Veteran homelessness are built around the evidence-based Housing First approach. This approach prioritizes getting a Veteran into housing and *then* assists the Veteran with access to health care and other supports that promote stable housing and improved quality of life.”).

⁶² Department of Veterans Affairs, *Secretaries of VA, HUD Joint Statement on Ending Veteran Homelessness* (Apr. 12, 2021) <https://tinyurl.com/3mtw7urt>.

⁶³ Office of Healthcare Inspections, U.S. Dep’t of Veterans Affs., *Deficiencies in Case Management and Access to Care for HUD-VASH Veterans at the VA Greater Los Angeles Healthcare System in California 19* (Jan. 30, 2025), <https://tinyurl.com/mu6se2cm>.

⁶⁴ *City of Tents: Veterans Row* Podcast, Ep. 6 20:30-20:33, at <https://tinyurl.com/nfryreua>.

⁶⁵ *Id.* at 20:36-20:47.

benefits.⁶⁶ Perversely, this income limit actually made it more difficult for *the most disabled veterans* to secure housing than it was for veterans without disabilities.⁶⁷

The depictions of veterans who lack preventive care struggling and dying on the street by the locked gates of the WLA Campus has highlighted the VA’s failures⁶⁸—and the specter of what awaits recruits after years of combat—for all to see.⁶⁹ Los Angeles is the epicenter of the national veteran homelessness crisis.⁷⁰ It

⁶⁶ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Additional Findings of Fact and Conclusions of Law) at ¶¶ 165-186. (1 ER 150-156.)

⁶⁷ *Id.* at ¶¶ 166-167. (1 ER 150.)

⁶⁸ Reynolds Trial Testimony, 164:14-22 (Iraq War veteran Rob Reynolds, an advocate for homeless veterans, recounting how he witnessed veterans “sleeping and dying right outside the gates of the VA.”). (8 ER 1861.)

⁶⁹ See *supra* n.29 (38 Ind. L. Rev. at 109) (“Many of those homeless veterans suffer service-connected disabilities, and therefore are veterans to whom the federal government owes a special obligation. . .the federal government has abandoned them to the mercies of state and local governments and private charities, remitting many of them to the streets or to shelters that are today’s equivalent of the poorhouses and almshouses that were to be avoided for veterans in the nineteenth century.”).

⁷⁰ California accounts for 28 percent of all veterans experiencing homelessness in the United States, and no city has more homeless veterans than Los Angeles. U.S. Department of Housing and Urban Development, *2024 Annual Homelessness Assessment Report: Part 1*, at 54 (Dec. 2024) at <https://tinyurl.com/yck5anxs>; U.S. Department of Housing and Urban Development, *2023 Annual Homelessness Assessment Report to Congress*, at 74 (Dec. 2023) <https://tinyurl.com/4xufxhtb>. The VA acknowledged that the crisis of

has approximately 3,000 homeless veterans, or 10 percent of the total across the United States.⁷¹ That number has only increased since the recent wildfires displaced thousands.⁷² And the Veterans Row encampment on the sidewalk just feet from the WLA VA campus—which veterans set up to be close to the care that

unhoused veterans is particularly concentrated in Los Angeles in a recent report released by the Office of the Inspector General. Office of Healthcare Inspections, U.S. Dep't of Veterans Affs., *Deficiencies in Case Management and Access to Care for HUD-VASH Veterans at the VA Greater Los Angeles Healthcare System in California*, at 2 (Jan. 30, 2025) <https://tinyurl.com/mu6se2cm>.

⁷¹ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) at 2 (1 ER 47); Office of Healthcare Inspections, U.S. Dep't of Veterans Affs., *Deficiencies in Case Management and Access to Care for HUD-VASH Veterans at the VA Greater Los Angeles Healthcare System in California*, at 2 (Jan. 30, 2025), <https://tinyurl.com/mu6se2cm>.

⁷² Karissa Waddick, *How many homes have burned in the Los Angeles wildfires so far?*, USA TODAY (Jan. 13, 2025), <https://tinyurl.com/y8j6kest>; Ashley J. DiMella, *California wildfires: Navy veteran and mother shares heart-wrenching evacuation from her home and community*, FOX NEWS (Jan. 12, 2025), <https://tinyurl.com/ymeyjx56>; Maddie White, *'Everything is demolished': Veteran from Washington loses home to Palisades Fire*, NBC KING 5 (Jan. 14, 2025) <https://tinyurl.com/4kj3xhvh>.

they were promised⁷³—was a mainstay on national news networks⁷⁴ and even the source of an eight-part podcast.⁷⁵

Even veterans in LA County who have housing lack access to preventive care because that housing is not close to the WLA VA. The VHA is the hospital network for veterans,⁷⁶ and the VA itself recognizes that distance alone is the “most important barrier” for seeking medical care for “rural” veterans who travel an average of 44.5 miles to a VA primary care clinic.⁷⁷ Los Angeles may be a megalopolis rather than identifiably “rural,” but even the housing provided by the VA for veterans in LA County is often situated at great distance from the WLA

⁷³ KCRW, *Veterans Row: A Protest Encampment Outside the West LA VA Might Soon Move Inside*, (Nov. 11, 2020) <https://tinyurl.com/mwwanu7t> (Veterans Row was created as “an informal bridge between the streets and assistance offered on the VA campus.”).

⁷⁴ See, e.g., CBS (<https://www.youtube.com/watch?v=FIY8En5WUMc>); Fox News (<https://www.youtube.com/watch?v=UBtOLdkUko8>).

⁷⁵ *City of Tents: Veterans Row* Podcast, at <https://tinyurl.com/mvvx7frv>.

⁷⁶ 38 U.S.C. § 7301(b).

⁷⁷ U.S. Department of Veterans Affairs, *Study Shows Distance Most Important Barrier for Rural-Residing Veterans Seeking Healthcare*, (Nov. 2011) at <https://tinyurl.com/yc5d7m73>.

VA⁷⁸—the only medical center in the area capable of providing specialty medical services that many veterans require.⁷⁹

Plaintiff Laurieann Wright’s experience illustrates how the distance of housing from the WLA VA has a direct impact on the ability of veterans to access needed health care. Ms. Wright suffers from multiple conditions stemming from her sexual assault in the military, including PTSD, depression, and substance abuse,⁸⁰ and other chronic diseases like multiple sclerosis, a seizure disorder, and osteoporosis.⁸¹ After many years homeless, Ms. Wright now lives in subsidized housing provided by a VA program in Lancaster—65 miles away from the WLA VA.⁸² She does not have her own transportation, and pain from her disabilities make it exceedingly difficult to commute by bus or train to receive much-needed

⁷⁸ *Powers v. McDonough, et al.*, No. 2:22-cv-08357-DOC-KS (C.D. Cal. 2024) (ECF No. 359, Post-Trial Opinion) at 80 (“There are insufficient options for permanent supportive housing within a five-mile radius of the WLA Grounds. Many project-based HUD-VASH units are in distant locations such as Paso Robles (approximately 202 miles), Lancaster (approximately 65 miles), Pomona (approximately 46 miles), El Monte (approximately 29 miles), and Gardena (20 miles).” (1 ER 127.)

⁷⁹ *Id.* at 6:15-17. (1 ER 53.)

⁸⁰ Wright Trial Test., 184:10-16, 185:1-9. (18 ER 4610, 4611.)

⁸¹ Wright Trial Test., 185:25, 186:9-10, 196:13-14. (18 ER 4611-12, 18 ER 4622.)

⁸² Wright Trial Test., 204:7-205:4. (18 ER 4630-31.)

care.⁸³ As a result, she has had to forgo treatment for some of her critical medical needs.⁸⁴

Ms. Wright previously lived on the street outside the WLA VA.⁸⁵ While homeless, she endured repeated assaults and a litany of injuries, exacerbating her existing service-related mental health issues.⁸⁶ She was even hospitalized for brain bleeding after being thrown down the stairs while living outside of the WLA VA.⁸⁷ Though the experience of homelessness was traumatic, living outside the WLA VA campus did allow her to access preventive and lifesaving emergency care.⁸⁸ For veterans like Ms. Wright, the choice between housing and health care must not be binary. The VA can only fulfill its mission to serve these vulnerable veterans if they are housed near the care they desperately need.

When the VA does not honor its obligation to provide supportive housing on the WLA VA campus, recruits see illness and homelessness awaiting them on the

⁸³ Wright Trial Test., 207:15-208:1-5. (18 ER 4633-34.)

⁸⁴ Wright Trial Test., 209:24-211:1-3. (18 ER 4635-37.)

⁸⁵ Wright Trial Test., 186:1-3. (18 ER 4612.)

⁸⁶ Wright Trial Test., 190:17-21. (18 ER 4616.)

⁸⁷ Wright Trial Test., 185:25-186:1-3. (18 ER 4611-12.)

⁸⁸ Wright Trial Test., 185:3-12. (18 ER 4611.)

other side of combat. Failure to provide supportive housing and access to healthcare adversely impacts recruitment and thus imperils national security.

CONCLUSION

For the above reasons, Amici urge that this Court affirm the district court's Final Judgment and Permanent Injunction.

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**CERTIFICATE OF COMPLIANCE PURSUANT TO
FED. R. APP. P. 32**

I certify that pursuant to FED. R. APP. P. 32, this brief is proportionally spaced, has a typeface of 14 point or more, and contains 6,026 words.

Dated: February 25, 2025

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I hereby certify that on February 25, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the parties on the attached service list:

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