

Case No. No. 24-6576

**United States Court of Appeals  
for the Ninth Circuit**

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JEFFREY POWERS, et al.,  
*Plaintiffs-Appellees,*

v.

DENIS RICHARD MCDONOUGH, et al.,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 2:22-cv-08357  
Honorable David O. Carter

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**BRIEF OF AMICUS CURIAE VETS ADVOCACY IN  
SUPPORT OF PLAINTIFFS-APPELLEES**

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## **STATEMENT OF DISCLOSURE**

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, amicus curiae Vets Advocacy certifies that it is a nonprofit entity organized under Section 501(c)(3) of the Internal Revenue Code, that it has no parent corporation, and that no publicly held company owns 10% or more of its stock.

## **RULE 29 STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amicus curiae Vets Advocacy states that: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel has contributed money intended to fund preparing or submitting this brief; and (3) no person other than amicus or its counsel has contributed money that was intended to fund the preparation or submission of this brief.

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## I. STATEMENT OF INTEREST

Vets Advocacy is a non-profit organization led by veterans and community leaders formed as a condition of the *Valentini v. Shinseki* settlement.<sup>1</sup> Its mission is to facilitate revitalization of the West Los Angeles campus (the “WLA Campus”) and to advocate for the improvement of the homeless veteran systems and community-based programs in Los Angeles. To that end, Vets Advocacy closely monitors and assists with the U.S. Department of Veterans Affairs’ (“VA”) efforts to fulfill its obligations under the *Valentini* settlement.

As the entity created for the specific purpose of working with all stakeholders to fulfill the *Valentini* settlement’s goals of ending veteran homelessness in Los Angeles in LA, Vets Advocacy has special knowledge of the extensive factual backdrop of this litigation and the urgent need for the district court’s remedies. Vets Advocacy also has a strong interest in the development of additional supportive housing as ordered by the court.

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(2), amicus curiae Vets Advocacy submits this brief without an accompanying motion for leave to file because all parties have consented.

## II. INTRODUCTION

The issues raised in this lawsuit—and the district court’s solutions to them—are not new. More than thirteen years ago, in *Valentini v. Shinseki*, a group of disabled and homeless veterans in Los Angeles sued VA, raising nearly identical claims and seeking nearly identical relief. Theirs was a simple premise: No veteran entered military service severely mentally disabled and homeless, and no veteran should end up in that position after having served. But government mismanagement had undermined that uncontroversial logic, and a city boasting a VA campus with hundreds of acres of land meant for housing disabled veterans found itself the homeless veteran capital of the country.

Years of litigation to right that wrong ended in a settlement that should have marked a turning point in VA’s management of its WLA Campus. The parties entered into an agreement (the “*Valentini* Settlement Agreement”), and a new promise emerged between them: VA and plaintiffs’ representatives would work together to end veteran homelessness in 2015 and beyond. Both parties committed to cooperate

in good faith to produce a plan to return the focus of the WLA Campus to housing veterans most in need.

Amicus Vets Advocacy is the steward of that commitment, created as part of the *Valentini* Settlement Agreement to facilitate its success. But rather than shepherding in a new era of responsible VA management of the WLA Campus, Vets Advocacy has been an eyewitness to years of broken promises. Put plainly, VA has not lived up to the principles enshrined in the agreement or its commitments made since. Far from it: More than a decade on, the ideals of the settlement remain distant, the spirit of cooperation between the parties diminished, and the trust between VA and veterans eroded. Meanwhile, VA's mismanagement of the WLA Campus persists. So does rampant veteran homelessness in Los Angeles.

VA's unlawful conduct and its track record of broken promises after *Valentini* justify the district court's order instructing VA to bring its conduct within the letter of the law and the spirit of the agreement it committed to more than a decade ago. Those remedies are legally sound and long overdue. The Court should affirm.

### III. FACTUAL BACKGROUND

#### A. The *Valentini* Litigation

In a nearly identical lawsuit filed in 2011, a group of homeless veterans with severe mental disabilities sued VA for its failure to provide adequate housing on the WLA Campus. *See Valentini v. Shinseki*, 860 F. Supp. 2d 1079 (C.D. Cal. 2011), *vacated sub. nom. by Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17, 2015). On summary judgment, the court ruled in favor of the plaintiffs, holding that VA exceeded its statutory authority by leasing portions of the WLA Campus to third parties, including the Brentwood School and UCLA, rather than ensuring that the property was used for the provision of healthcare. *Valentini v. Shinseki*, 2013 WL 12121981, at \*1, 13–14 (C.D. Cal. 2013), *vacated sub. nom. by Valentini v. McDonald*, 2015 WL 14020677 (C.D. Cal. Feb. 17, 2015).

*Valentini* ultimately ended in a settlement under which VA agreed to work with the plaintiffs “to end veteran homelessness in Greater LA in 2015 and beyond.” **26-ER-6713**. To that end, VA committed to: (1) create a “New Master Plan” for the WLA Campus by October 16, 2015; (2) avoid entering into or renewing any lease that would either fail to comply with applicable law or interfere with the New Master Plan; (3)

develop a “strategy and action plan for ending veteran homelessness in Greater LA”; and (4) include the objective and goals of the New Master Plan in VA’s annual Strategic Capital Investment Plan (“SCIP”). **26-ER-6714.**

The *Valentini* plaintiffs also agreed to form a nonprofit to assist VA in meeting the objectives of the *Valentini* Settlement Agreement. **26-ER-6715.** That organization is Vets Advocacy.

**B. Post-*Valentini* Efforts to Revitalize the WLA Campus**

Pursuant to the *Valentini* Settlement Agreement, VA released its first Draft Master Plan (“DMP”) in 2016. The DMP provided a framework for determining the most effective use of the WLA Campus for veterans and a timeline for constructing additional supportive housing. **27-ER-6717.**

Vets Advocacy was instrumental in helping VA develop the DMP. For example, Vets Advocacy helped to collect and submit hundreds of responses from veterans to surveys soliciting feedback on the desired services and features of the WLA Campus. **27-ER-6789; 21-ER-5282.** Vets Advocacy also led focus groups to review preliminary versions of the DMP. **27-ER-6790–91.**

The DMP that emerged called for the construction of 60 permanent supportive housing units within the next year, another 150 units by 2018, another 560 units by 2022, and another 430 units—for a total of 1,200 permanent supportive housing units—by no later than 2026.<sup>2</sup> **27-ER-6881**. VA also pledged to revise the DMP every three years to ensure the plan continued to meet the evolving housing needs of veterans. **27-ER-6725, 6885**.

Congress subsequently passed the West Los Angeles Leasing Act (the “WLALA”), Pub. L. 114-226, 130 Stat. 926 (2016), specifically “[t]o assist VA in carrying out the tenets of the [DMP].” H. Rep. No. 114-570, at 6 (2016). The WLALA empowered VA to enter into leases of the WLA Campus that would promote the DMP, authorizing third-party leases that “principally benefit[ed] veterans and their families.”<sup>3</sup> WLALA § 2(b)(2). The WLALA further required VA to establish, no later than

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<sup>2</sup> The term “supportive housing” means “housing that engages tenants in on-site and community-based support services for veterans or their families that are at risk of homelessness or are homeless.” 38 U.S.C. § 8161; Pub. L. 114-226, 130 Stat. 926 (2016).

<sup>3</sup> Section (b)(1) permits VA to enter into “[a]ny enhanced-use lease of real property ... for purposes of providing supportive housing ... that principally benefit[s] veterans and their families.” WLALA § 2(b)(2).

180 days after the date of enactment, a Veterans and Community Oversight and Engagement Board (“VCOEB”) to advise VA’s implementation of the DMP. *Id.* § 2(i)(1).

### C. VA’s Continued Mismanagement of the WLA Campus

Over the next five years, VA made virtually no headway on the DMP’s objectives. A 2021 audit by the Office of Inspector General (“OIG”)—mandated under the WLALA—reported that “VA ha[d] made little progress,” noting that VA had not constructed a *single* new unit of permanent supportive housing since the *Valentini* settlement. **26-ER-6649 (OIG report stating that 55 housing units became available in May 2017); 16-ER-3821–23 (VA official conceding that the 55 units were not originally intended for permanent supportive housing)**. OIG further reported that VA failed to make infrastructure upgrades necessary for the planned construction or even to secure the required funding. **1-ER-132; 26-ER-6649–50, 6654**. All told, OIG concluded that it did not envision VA to complete construction *in the next 17 years*. **26-ER-6658**.

VA also delayed implementing the statutorily created mechanisms designed to oversee its progress under the DMP. VA did not establish

the VCOEB until May 31, 2017—more than two months after the WLALA deadline. *See* VCOEB Notice of Establishment, 82 Fed. Reg. 25048 (May 31, 2017). Meanwhile, VA continued to enter into unlawful leases with Safety Park (for its two parking lots that provide access to Brentwood businesses), Bridgeland Resources (for oil drilling), the Brentwood School (for the private school’s athletic facilities), and UCLA (for the university’s baseball stadium), flouting the WLALA’s requirements for third-party leases. **1-ER-95, 102–13, 168; 26-ER-6671.**

Nor did VA timely update the DMP based on the evolving needs of the veteran community as required. It was not until *six years after* the DMP’s publication that VA released a revised Master Plan on March 18, 2022 (“Master Plan 2022”). **24-ER-5974.** Master Plan 2022 reiterated VA’s goals to build 1,200 permanent housing units, but now on a revised schedule—planning for at least 1,097 units by 2027. **24-ER-5993, 6186–87 (1,122 cumulative units in the “initial phase” of development).** Master Plan 2022, like the DMP, recognized that “[t]he need for additional housing on the West LA Campus is *urgent*, with 3,681 Veterans experiencing homelessness during the 2020 [point-in-

time] count due to a shortage of available and affordable housing.” **24-ER-6026 (emphasis added)**.

Yet again, VA’s progress stalled, failing to keep pace with even the more forgiving Master Plan 2022 timeline. As of August 9, 2024, the WLA Campus had built only 233 units of permanent housing—just 21 percent of the units that VA committed to building in the “initial phase” of Master Plan 2022. **1-ER-133**. It remains “years behind” schedule to this day. **12-ER-2826**.

VA’s chronic failure to comply with its settlement obligations and to provide veterans with adequate housing led to this action. After years of litigation and a sixteen-day bench trial, the district court found in favor of Plaintiffs on all their claims, concluding that VA failed to secure adequate housing for homeless veterans, thereby preventing them from accessing the services to which they are entitled under the Rehabilitation Act. **1-ER-163-64**. The district court also held that VA’s leases with the Brentwood School, Bridgeland, UCLA, and Safety Park violated the WLALA. **1-ER-95-114**.

As a remedy, the district court ordered VA to build an additional 1,800 permanent supportive housing units and 750 temporary

supportive units on the WLA Campus “subject to modification by the Court to closely approximate the actual need for housing.” **1-ER-88, 169–70**. The district court also enjoined VA from “executing and maintaining any land use agreements ... that do[] not principally benefit veterans and their families pursuant to WLALA and its 2021 Amendment.” **1-ER-118, 171**.

#### IV. STANDARD OF REVIEW

After a bench trial, the Court reviews a district court’s findings of fact for clear error. *OneBeacon Ins. Co. v. Haas Indus., Inc.*, 634 F.3d 1092, 1096 (9th Cir. 2011). The Court reviews a district court’s choice of remedies, including the scope of a permanent injunction, for abuse of discretion. *See Barranco v. 3D Sys. Corp.*, 952 F.3d 1122, 1127 (9th Cir. 2020); *United States v. Washington*, 853 F.3d 946, 962 (9th Cir. 2017) (as amended).

#### V. ARGUMENT

The district court’s remedies are legally sound and carefully calibrated to meet the pressing needs of the 3,000 homeless veterans in Los Angeles. Through hyperbole and argument contradicted by VA’s own officials at trial, VA now seeks to paint that relief as absolute and extreme. VA asks this Court to upend the district court’s measured

remedies, arguing that (1) requiring VA to build needed housing constitutes a “fundamental alteration” of its program and is otherwise outside the scope of the Rehabilitation Act; and (2) enjoining VA from entering into future unlawful land-use agreements with third parties exceeds the court’s authority. **OB 46–53, 63–67.** Neither is true. VA is wrong on the law, the facts, and the district court’s broad discretion to fashion a flexible remedy in cases where, like here, a decade of noncompliance justifies judicial intervention. The Court should affirm.

**A. Ordering VA to build additional housing units is a reasonable modification that does not “fundamentally alter” VA’s services.**

“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” *Townsend v. Quasim*, 328 F.3d 511, 516 (9th Cir. 2003). VA contends that the district court’s order to build additional supportive housing, subject to actual need, was not a “reasonable modification” of its programs, but an impermissible

“fundamental alteration”—a defense on which VA bears the burden of proof. *See id.* at 518, 520. **OB 47–53.**

VA does not come close to carrying that burden. The record firmly establishes that the district court’s order: (1) *furthers* VA’s existing housing services to meet veteran needs that by its own admission are urgent and unmet; (2) is consistent with Congress’s intent in passing the WLALA; and (3) is justified by VA’s persistent failure to meet its own housing objectives.

**1. The injunction is consistent with the goals of the *Valentini* Settlement, the DMP, and Master Plan 2022.**

Courts reject a fundamental alteration defense where the modification is consistent with the entity’s goals or existing programs. Indeed, “[a] modification’s reasonableness depends on how it impacts the goals of an agency’s program.” *Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 862 (9th Cir. 2022). Here the court’s injunction and VA’s existing housing programs are entirely complimentary. Put simply, constructing additional housing is consistent with and, in fact, furthers VA’s stated goals under the *Valentini* Settlement Agreement, the DMP, and Master Plan 2022: to end veteran homelessness in Los Angeles and to create an integrated

community on the WLA Campus. *See* **15-ER-3724; 24-ER-6017; 26-ER-6713–15**.

In the *Valentini* Settlement Agreement, VA promised to provide “appropriate levels of bridge housing and permanent supportive housing on campus.” **26-ER-6713**. Both the DMP and Master Plan 2022 also recognized the “urgent” need for more supportive housing on the WLA Campus, and the DMP expressly contemplates *revision* of the housing construction plan based on “the most current community and VA data available to establish current housing needs and supply targets.” **27-ER-6765; 24-ER-5984**. VA has not renounced these goals and purports to be working pursuant to Master Plan 2022 that explicitly provides for “reorganizing the West LA campus *to provide more permanent supportive housing that meets the needs of vulnerable Veterans*.” **24-ER-5978 (emphasis added)**.

Thus, in ordering VA to construct additional housing on an accelerated timeline based on the urgent and proven need of homeless veterans, the district court called only for more of what VA was already supposed to be doing. That kind of alignment cuts against the fundamental alteration defense. *See Wong v. Regents of Univ. of Cal.*,

192 F.3d 807, 820 (9th Cir. 1999) (“An institution’s past decision to make a concession to a disabled individual provides persuasive evidence ... that the accommodation was reasonable.”); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1183 (10th Cir. 2003) (“[T]he preservation of a program as it has existed for years and as approved by the federal government would [not] fundamentally alter the nature of the program.” (cleaned up)).

**2. The injunction is consistent with Congress’s intent in passing the WLALA.**

Courts also reject fundamental alteration defenses where, as here, the remedy is consistent with congressional action. In *Townsend*, for example, this Court rejected the government’s argument that requiring it to offer certain community-based care services would fundamentally alter existing policies to provide such services only in nursing homes. 328 F.3d at 519. The Court pointed to recent federal and state legislation “encourag[ing] states to experiment with providing medical care in community- and home-based settings.” *Id.* The ordered modification to allow community-based care therefore “offend[ed] no deep-seated policy choices, and in fact coincide[d] with the federal

government[’s] growing recognition of the value” of community-based care. *Id.*

Congress has sent a similar legislative signal here. Passed in the wake of the *Valentini* settlement and the publication of the DMP, the WLALA specifically charged VA with fulfilling the goals of the DMP, directing the VA Secretary to “ensure that each lease carried out under this section is consistent with the [DMP] ... or successor master plans.” WLALA § 2(g). In particular, Congress empowered VA to provide supportive housing by authorizing certain leases—and restricting others—expressly “for purposes of providing supportive housing.” *Id.* § 2(b)(1). The WLALA also mandates that OIG report to Congress about VA’s “management ... of the use of land at the Campus, including an assessment of [VA’s] efforts ... to implement the” DMP. *Id.* § 2(j)(3). In other words, Congress explicitly “encouraged” the very modifications VA now resists and has failed to implement. *Townsend*, 328 F.3d at 519.

**3. VA’s persistent failure to deliver supportive housing further justifies the injunction.**

VA contends that the district court’s order undermines its existing efforts. But that argument can only prevail when the government is “genuinely and effectively in the process of” providing appropriate

remediation. *Arc of Wash. State Inc. v. Braddock*, 427 F.3d 615, 620 (9th Cir. 2005) (quoting *Sanchez v. Johnson*, 416 F.3d 1051, 1063 (9th Cir. 2005)). By contrast, a fundamental alteration defense fails—and courts will affirm a modification—where, “[a]lthough [the government] attempted to construct ... a plan [for deinstitutionalization],” the court is “not persuaded that its efforts have been sufficient.” *Frederick L. v. Dep’t of Pub. Welfare of Pa.*, 422 F.3d 151, 157 (3d Cir. 2005). The latter is the case here.

VA wholly lacks an “acceptable plan” in place or in practice. *Sanchez*, 416 F.3d at 1063. VA has not delivered on its commitments to provide “appropriate levels of bridge housing and permanent supporting housing” under the *Valentini* Settlement Agreement, the DMP, or Master Plan 2022. **26-ER-6713**. While the DMP set out a timeline for the completion of 770 permanent supportive housing units by 2022, **27-ER-6881**, OIG’s 2021 report found that VA had not constructed a *single new unit* of permanent supportive housing since the *Valentini* settlement. **26-ER-6649; 16-ER-3821–23**. Master Plan 2022 subsequently set out a revised plan to build 1,097 units by 2027. **24-ER-**

**6187.** But, as of August 9, 2024, VA had built only 233 units of permanent housing on the WLA Campus. **1-ER-133.**

Nor did VA take even the most basic steps toward starting construction. VA failed to make essential infrastructure upgrades for utilities like water, sewer, and stormwater systems—let alone build the units it had promised. **1-ER-132; 26-ER-6649–50.** VA also dragged its feet in securing the required funding for the planned construction. According to the OIG report, “[a]s of July 2021, the principal developer had not begun submitting applications to fund projects in phases 2–4 and was still working to secure funding and close on construction financing for phase 1.” **26-ER-6654.** And as discussed below, it was not until *after Plaintiffs filed this lawsuit* that VA included any housing-related project in its budgetary planning. **20-ER-5187; 16-ER-3848-49.** Based on VA’s repeated failure to commit the necessary resources to build additional housing, OIG concluded that it did not envision construction to be completed *in the next 17 years.* **26-ER-6658.**

Trial testimony only confirmed OIG’s findings. VA officials acknowledged that VA had not met a single one of the housing targets

laid out in Master Plan 2022 and admitted to being “years behind.” **12-ER-2826**. Meanwhile, VA renegotiated multiple unlawful land-use agreements with wealthy third parties. *See supra* Section V.B.

VA has been cavalier in admitting that meeting its commitments in Master Plan 2022 is simply not a priority. As the Executive Director of VA’s Office of Asset Enterprise Management testified at trial, “[t]he principles agreement did not say when” VA would budget for the promised Master Plan 2022 housing projects, “it just said [VA] would include them.” **20-ER-5188**. And while VA now contends that it “has every interest in fulfilling the Master Plan 2022 as soon as practicable,” **OB 52**, “[g]eneral assurances and good-faith intentions [do not] meet the federal laws.” *Frederick L.*, 422 F.3d at 158. VA simply cannot stand on this track record in support of a fundamental alteration defense.

**4. VA has not met its burden of showing that the costs of compliance will disadvantage other veterans.**

VA’s concerns about costs are both legally deficient and belied by its own inaction in securing funding. **OB 51**. *First*, “budgetary concerns alone do not sustain a fundamental alteration defense.” *M.R. v. Dreyfus*, 697 F.3d 706, 736 (9th Cir. 2012); *Frederick L. v. Dep’t of Pub. Welfare of Pa.*, 364 F.3d 487, 497 (3rd Cir. 2004) (“[A] singular focus upon a

state’s short-term fiscal constraints will not suffice to establish a fundamental-alteration defense.”). A defendant raising a cost-based fundamental alteration defense carries the burden of making a “particularized showing” of *how* the increased costs associated with a proposed modification will harm its services to others with mental disabilities such that it would fundamentally alter those services. *M.R.*, 697 at 737 (holding that the defendant “must show how ‘fund-shifting ... would disadvantage other segments of the ... disabled population’” (quoting *Frederick L.*, 364 F.3d at 497)); *see also Townsend*, 328 F.3d at 520 (requiring the state to show “whether ... extra costs would, in fact, compel cutbacks in services to other Medicaid recipients”).

VA had years of litigation and a full bench trial to show how the costs of providing additional supportive housing would undermine care for the rest of the disabled veteran community. Yet in that time VA has never provided a single estimate of what that permanent supportive housing would cost. Nor has VA “identif[ied] specific programs that would necessarily be cut” were it to oversee the ordered housing development. *Id.*; *see also Fisher*, 335 F.3d at 1183 (noting that “there [was] no evidence in the record to suggest that the state considered

eliminating the entire program”). And VA has not said “with certainty” whether the cuts would come from its other services to disabled veterans, or whether cuts could be made elsewhere. *M.R.* 697 F.3d at 737.

These deficiencies doom VA’s reliance on costs under this Court’s caselaw. *See id.* That is particularly so because the trial evidence contradicts VA’s claims. At trial, VA admitted that changes to its U.S. Department of Housing and Urban Development-VA Supportive Housing (“HUD-VASH”) voucher valuation would be a “game changer” in securing conventional financing for development going forward. VA’s arguments are also difficult to square with its report to Congress that it carried over a \$5.1 billion surplus from 2024 to 2025. **2-ER-285.**

*Second,* VA’s attempts to hide behind the price tag of housing veterans is but another episode in a decade-long strategy of budgetary foot-dragging dating back to the *Valentini* Settlement Agreement. Despite pledging at that time to include “the objective and goals of the ... New Master Plan” in its annual SCIP, VA failed to secure funding—or include any Master Plan 2022 housing project in its SCIP—for years. **20-ER-5170–71, 5173.**

VA's recalcitrance persisted even after the VCOEB repeatedly commented on VA's shortcomings and recommended that it identify and include real property projects specific to Master Plan 2022 in its SCIP process. **20-ER-5173**. VA did not do so, admitting that it felt no obligation to include Master Plan 2022 projects in the SCIP until they "were needed." **20-ER-5188**.

That need only arose eight years after the *Valentini* Settlement Agreement when this lawsuit was filed: the first time VA included *any* spending even tangentially related to a North Campus housing project in its SCIP *was for the 2024 fiscal year*. **20-ER-5187; 16-ER-3848-49**. Given this history, and VA's failure to meet its burden, the district court correctly saw through VA's attempts to make a scapegoat of budgetary limitations here.

**5. VA's argument that building additional housing would harm veterans is unsupported by the record.**

VA's claim that providing housing on campus would harm veterans is unfounded. According to VA, building additional on-campus housing would hurt veterans because it would create an "expectation" that certain veterans should be housed on campus, thus "limiting their ability to choose among other appropriate settings." **OB 49**. To the

extent this is an argument that the district court clearly erred in finding otherwise, that is simply not the case.

The notion that *increasing* the WLA Campus's permanent supportive housing stock would somehow *limit* veterans' ability to choose appropriate housing defies logic and ignores the overwhelming evidence at trial. Despite the cherry-picked, self-serving testimony in VA's brief, the evidence was clear: the problem disabled veterans in LA face is the availability of permanent supportive housing *near campus* that allows them to access the care they need in a community of other veterans. **17-ER-4296; 18-ER-4637-38.**

At the time of trial, there were just 233 units of permanent supportive housing on the WLA Campus to serve the approximately 3,000 homeless veterans in Los Angeles, the majority of whom are severally mentally disabled. **1-ER-48, 65, 122-23; 27-ER-6724.** That housing was regularly full. **9-ER-2004.** Veterans were therefore left scattered and forced to travel great distances to the WLA Campus for treatment and therapy—an effort that for some veterans presented an “insurmountable barrier.” **19-ER-4794.** As Plaintiffs' expert Dr. Jonathan Sherin put it, “[t]here is not enough housing, there is not

enough support, and there is not enough community” on the WLA Campus. **15-ER-3727**.

Plaintiffs repeatedly testified that their distance from the WLA Campus severely impaired or even entirely precluded their ability to access care. **18-ER-4636–37; 10-ER-2143; 15-ER-3740-41**. Distant housing also separated disabled veterans from their friends, family, and fellow veterans—which in some cases drove them to choose homelessness closer to campus over housing miles away. **17-ER-4325**. This is why veterans were “sleeping and dying for years” on Veterans Row just blocks away from campus. **9-ER-1998**. And it is why VA’s DMP “prioritized” severely disabled and homeless veterans “to live on-site.” **27-ER-6722**. Indeed, the DMP emphasized that permanent supportive housing and associated services were “[t]he *most critical addition* to the campus.” **27-ER-6771 (emphasis added)**. VA cannot escape the obvious need for additional housing, and its own words, on this record. And it certainly cannot show that the district court clearly erred in seeing things differently. *See OneBeacon*, 634 F.3d at 1096.

**6. The district court’s remedy does not otherwise exceed the scope of the Rehabilitation Act.**

At summary judgment, the district court found that VA violated the Rehabilitation Act by contracting with third-party developers that systematically prevented the most disabled veterans from receiving housing. **1-ER-195**. It ordered a simple remedy: VA must “ensure a sufficient number of housing units at the West LA Grounds are free from discriminatory income restrictions associated with low-income tax credits” such that meaningful access to housing for the most disabled veterans would be restored. **1-ER-89-90**.

VA incorrectly asserts that this remedy exceeds the scope of the Rehabilitation Act to the extent it held that VA could, as a matter of law, directly fund or subsidize housing projects. **OB 46-47**. That assertion mischaracterizes the district court’s remedy, which appropriately cured VA’s discrimination under the Rehabilitation Act.

*First*, a remedy that restores meaningful access to the victims of discrimination is well within the scope of the Rehabilitation Act. *See* 29 U.S.C. §§ 794, 794a(a)(2); *Lonberg v. City of Riverside*, 571 F.3d 846, 852 (9th Cir. 2009) (noting that the “true remedy” for a violation of the ADA, whose remedies are coextensive with those of the Rehabilitation

Act, “would lie in an injunction requiring the actual removal of barriers that prevent meaningful access”); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 283 (2d Cir. 2003) (injunctive relief to remedy a Rehabilitation Act violation is proper if it provides the injured plaintiff with “meaningful access” to the programs or services to which the plaintiff is facially entitled). That is precisely what the district court did here in ordering VA to ensure that sufficient non-discriminatory housing options were available. Tellingly, VA does not dispute that the district court had the authority to enter that kind of relief.

*Second*, in arguing that the court “ordered VA to build housing itself,” VA mischaracterizes the flexible nature of the court’s remedy. The district court commanded only that VA restore a non-discriminatory status quo by ensuring that the most disabled veterans have adequate access to housing. But the district court left it to VA to determine just how to get there, and—critically—left the precise amount of housing subject to modification based on need and upon consultation with Plaintiffs, VA, and the court-appointed monitor. **1-ER-89, 170**. As the court explained, it wanted only “to *add* to the VA’s financing options, rather than taking any options away from them,

while still remedying the discrimination Plaintiffs face.” **1-ER-89 (emphasis added)**.

To that end, the district court identified several pathways to reaching a non-discriminatory outcome. First, it observed that VA might have access to conventional financing avenues in light of HUD’s recent implementation of small-area fair market rates in the valuation of HUD-VASH vouchers. **1-ER-90**. Second, it determined that nothing stopped VA from directly funding or subsidizing housing itself. **1-ER-90**.

The district court even affirmatively rejected Plaintiffs’ request to enjoin VA from contracting with discriminatory developers—a remedy that VA now appears to embrace. *See OB 46*. The court rejected Plaintiffs’ proposed remedy precisely *because* it was cognizant of the scope of its authority. It noted that it lacked jurisdiction to change the terms of HUD’s low-income housing credit, and that “removing developers’ access to federal, state, and local tax credits” could prove problematic as it “would likely interfere with ongoing construction on the Grounds that has committed to using these tax credits.” **1-ER-89**.

That the court fashioned an open-ended solution designed to give VA leeway in righting the wrongs of its discriminatory practices does not render its remedy judicial overreach. Critically, VA ***does not dispute the district court’s conclusion that VA does in fact have the ability to self-finance***. It cannot: trial testimony shows that VA has directly financed construction projects on the WLA Campus in the past. **16-ER-3826**; *see also* 38 U.S.C. §§ 8101–02. VA also cites no authority for the proposition that a remedy empowering the government to identify the best path to meaningful access somehow violates the scope of the Rehabilitation Act. Indeed, such a position is at odds with fundamental remedies principles. *See Melendres v. Maricopa County*, 897 F.3d 1217, 1221 (9th Cir. 2018) (“[A] district court has broad discretion to fashion injunctive relief.”). The Court should therefore refuse to upend the district court’s flexible remedy on this basis.

**B. The district court did not abuse its discretion when entering injunctive relief with respect to future land-use leases.**

VA also contends that the district court abused its discretion by enjoining VA from entering into new leases with the Brentwood School, Safety Park, Bridgeland Resources, and UCLA. **OB 63–67**. But the

injunction was appropriate and necessary based on common sense and the ample evidence 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” as required under the WLALA. **1-ER-118**.

Notably, VA does not dispute the factual findings underlying the court’s injunction. VA instead takes issue with its scope, arguing that the restriction on future land-use leases fails to redress Plaintiffs’ injuries.<sup>4</sup>

VA is wrong for three reasons. First, the district court had broad discretion to enjoin VA from entering into future unlawful land-use agreements. Second, its remedy is reasonable in light of VA’s history of noncompliance. And third, the court narrowly tailored the injunction, as its subsequent modifications show.

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<sup>4</sup> While this brief focuses on VA’s challenges to the scope of the land-use injunction, VA also raised arguments regarding the court’s authority under the APA and VA’s freedom to contract. **OB 64–67**. Plaintiffs’ brief addresses those arguments. **AB 50–53**.

**1. The district court had broad discretion to enjoin VA from entering into future unlawful leases.**

While “[a] plaintiff’s remedy must be tailored to redress the plaintiff’s particular injury,” *Gill v. Whitford*, 585 U.S. 48, 72–73 (2018), district courts have “broad discretion in fashioning a remedy.” *Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015). The Ninth Circuit accordingly “afford[s] ‘special deference’ to the terms of a trial judge’s injunction where, as here, that judge has had “years of experience with the [case] at hand.” *Melendres*, 784 F.3d at 1265 (citing *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000)). “Moreover, ‘[w]here the public interest is involved, equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.’” *Nw. Env’t Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 680 (9th Cir. 2007) (citation omitted). This Court has accordingly permitted broad injunctions so long as they cure the injury at issue.

For example, in *Sharp*, residents sued a commitment center for failing to provide adequate mental health treatment. 233 F.3d at 1168. As a remedy, the district court ordered the facility to carry out additional staff training, provide individualized treatment, acquire

more space, and implement oversight programs. *Id.* at 1169 n.2. This Court upheld that injunction, concluding that the remedies were broadly “aimed at curing the underlying constitutional violation.” *Id.* at 1173.

Likewise, in *Gluth v. Kangas*, 951 F.2d 1504, 1510 (9th Cir. 1991), this Court upheld an injunction requiring a prison to provide inmates with specific typing and filing supplies. While “these items may be somewhat remote from what is necessary for access to the courts,” the Court reasoned that “[t]he district court in this case was particularly well situated to evaluate the [defendant’s] history and position in the litigation.” *Id.* at 1510 n.4.

So too here. The district court exercised its broad discretion to cure Plaintiffs’ injury by ensuring that VA would stop entering into leases that failed to “principally benefit” veterans. That the relevant leases failed to benefit veterans in violation of the WLALA is clearly supported by the record—including by the lessees’ own testimony—and not meaningfully challenged by VA.

For instance, the Safety Park administrator conceded at trial that the purpose of its lease with VA was “to provide parking management

services” and that it had no programs that principally benefited veterans. **20-ER-5233, 5236**. Bridgeland’s expert also admitted that the renewed Bridgeland leases did not principally benefit veterans. **23-ER-5692-93, 5705**. UCLA’s lease was for a baseball stadium and the Brentwood School’s lease was for an elite private school’s athletic facilities.

Based on this evidence and its findings, the district court was well within its discretion to issue the injunction for the purpose of ensuring that VA’s future land-use leases benefit veterans like Plaintiffs as required by law.

**2. The district court’s remedy is reasonable in light of VA’s own history of noncompliance.**

VA further argues that Plaintiffs’ injuries “would be fully remedied by holding the agreements invalid and leaving VA free to renegotiate them.” **OB 64**. But this argument assumes that VA is willing and able to enter agreements that comply with its legal obligations when its own conduct suggests otherwise. VA’s long history of unlawful leases “justif[ies] greater court involvement than is ordinarily permitted.” *Melendres*, 784 F.3d at 1265 (cleaned up); *see also Sharp*, 233 F.3d at 1173 (affirming a broad injunction in light of the

defendant's previous noncompliance and a finding that "in some instances progress had actually been set back").

VA's pattern of entering into unlawful leases is lengthy and well-documented. Yet VA has continued its unlawful practices despite the *Valentini* court holding that the Brentwood School and UCLA leases were invalid, 2013 WL 12121981, at \*1, 13–14, and despite VA's own promises in the *Valentini* Settlement Agreement to "[d]evelop an exit strategy for those non-VA entities now located at VA's West LA campus whose use of property at VA's West LA campus does not both: (a) comply with applicable law, and (b) fit within the New Master Plan[.]" **26-ER-6714**.

VA has long known that these leases are unlawful. OIG's 2018 report determined that 11 out of 40 land-use agreements, including with the Brentwood School and Breitburn (Bridgeland's predecessor), "did not comply with either the West LA Leasing Act, the [DMP], or other federal laws." **26-ER-6663, 6671**. Subsequently, OIG's 2021 report, which reviewed all 41 land-use agreements on the WLA Campus, concluded that seven were not compliant—five of which VA entered into *after* the 2018 report. **26-ER-6659**. Significantly, two of

the noncompliant leases included agreements with Safety Park and, again, the Brentwood School.

Even after *Valentini* and the multiple OIG reports, neither VA nor the third-party lessees attempted to remedy the unlawful land-use agreements. **See 13-ER-3109 (admitting that VA did not have any discussions with Brentwood School about their lease after OIG’s 2018 report); 14-ER-3459–50.** In fact, in 2023, the Brentwood School “took steps to *amend* the West Los Angeles Leasing Act and tried to take authority away from the Inspector General so [it] could essentially legalize [its] lease or keep [its] lease on the West LA VA.” **9-ER-2069–70 (emphasis added).**

VA has been candid about why it has continued to violate the WLALA: bringing these leases within the letter of the law “would likely trigger a litigative challenge” from wealthy leaseholders. **26-ER-6671–72 (arguing that the Breitburn-VA revocable license “is necessary to prevent the United States from breaching the Breitburn-BLM lease”), 6673; 14-ER-3251–52.** In other words, VA would rather breach its duties to the veterans it serves than to the well-

heeled private parties with which it has entered into unlawful agreements.

**3. The court's subsequent modification of the injunction is further evidence of narrow tailoring.**

Finally, VA contends that the “protracted series of post-judgment hearings” reflects the district court’s tendency to expansively construe its powers. **OB 3, 67**. Quite the opposite: the district court’s modifications of its injunction reflect the narrow tailoring indicative of a proper injunction. *See Gill*, 585 U.S. at 72–73.

The district court held multiple post-trial hearings regarding injunctive relief and even conducted site visits of the WLA Campus. *See, e.g., 7-ER-1685, 1686–89, 1680; 1-SER-114*. At least one of these hearings stemmed from UCLA’s request to modify the injunction. *See 5-ER-1006–07*.

During these hearings, the district court heard from the parties and modified its injunction based on their representations. For example, the court changed its order to allow UCLA access to its baseball stadium until the end of the baseball season after learning that the area would not be used for temporary housing before July 4, 2025. **1-ER-3**. The district court also modified the injunction requiring Bridgeland to

cap one of its oil wells after Bridgeland represented that the well was no longer producing any oil. **5-ER-1086-87; 4-ER-791, 831-32**. This willingness to modify its injunction exemplifies the district court's reasonableness and desire to narrowly tailor the remedies and avoid irreparable harm.

## VI. CONCLUSION

For the foregoing reasons, Vets Advocacy respectfully requests that the Court affirm.

Respectfully submitted,

Dated: February 25, 2025

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF OF AMICUS CURIAE VETS ADVOCACY IN SUPPORT OF PLAINTIFFS-APPELLEES with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. All participants in the case are registered ACMS users and that service will be accomplished by the appellate ACMS system.

Dated: February 25, 2025

*/s/ John W. Kecker*

John W. Kecker

## CERTIFICATE OF COMPLIANCE

9th Cir. Case No. 24-6576

I am the attorney or self-represented party.

This brief contains 6,487 words, excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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**Signature**  /s/ John W. Kecker       **Date**  February 25, 2025