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

SUPPLEMENTAL BRIEF OF PLAINTIFFS-APPELLEES

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INTRODUCTION

Through the West Los Angeles Leasing Act ("WLALA") and its 2021 Amendment, Congress expressly sought to ensure that the Department of Veterans Affairs ("VA") would strictly use the West Los Angeles Grounds ("Grounds") to "principally benefit veterans and their families." Pub. L. 114–226 (Sept. 29, 2016). At the conclusion of trial, the District Court agreed, recognizing that the Grounds could and should be used to temporarily house at least 750 homeless veterans and, for purposes of planning, permanently house an additional 1,800 veterans. President Donald J. Trump's May 9, 2025, Executive Order entitled "Keeping Promises to Veterans and Establishing a National Center for Warrior Independence" (the "EO") now mandates that up to 6,000 homeless veterans should be housed on the Grounds. Exec. Order No. 14296 (May 9, 2025); 90 Fed. Reg. 20369 (May 14, 2025). And the VA's Secretary, Doug Collins, explained that the "executive order will enable us to ensure" the Grounds are "being used as intended: to benefit Veterans."[1]

At this point, the Department of Justice ("DOJ") attorneys—at odds with the President and the Secretary of the VA—stand alone in thwarting the health and safety of homeless veterans. The EO powerfully refutes the position advanced by the DOJ in this appeal because the very executive branch of which the VA is a part recognizes that

[1] Department of Veterans Affairs, *VA Statement Regarding President Trump's Executive Order* (May 9, 2025), *available at* https://news.va.gov/press-room/va-statement-regarding-president-trumps-executive-order/.

the District Court fashioned proper relief. Specifically, the EO recognizes that: (1) the Grounds should be used to house veterans as contemplated in the 1888 deed; (2) the District Court had jurisdiction over Plaintiffs' Rehabilitation Act claims; (3) the VA can and should build the housing necessary for veterans to access healthcare; and (4) the VA illegally entered into third-party leases that do not principally benefit veterans. Accordingly, the EO confirms that the District Court's judgment should be affirmed. In the alternative, this Court should remand to the District Court to consider the impact of the EO on its decision and how the EO will operate alongside the relief granted.

STATEMENT OF FACTS

On May 9, President Trump signed the EO, which instructed the Secretary of the Department of Veterans Affairs to (among other things):

1. Establish a "National Center for Warrior Independence" on the West Los Angeles VA Grounds for homeless veterans to "seek and receive the care, benefits, and services to which they are entitled," EO § 2(a);

2. Within 120 days of the date of the EO, present a plan to the President to "restore the capacity [of the Grounds] to house up to 6,000 homeless veterans . . . by January 1, 2028," *id.* § 2(e); and

3. Establish "any guidance, requirements, or services needed" for "homeless veterans [to] access housing, receive substance abuse or addiction treatment, and return to productive work and community engagement," *id.* § 2(d).[2]

[2] *See also* President Donald J. Trump, *Fact Sheet: President Donald J. Trump Keeps Promises to Our Veterans and Establishes New Center for Homeless Veterans* (May 9, 2025), *available at* https://www.whitehouse.gov/fact-sheets/2025/05/fact-sheet-president-donald-j-trump-keeps-promises-to-our-veterans-and-establishes-new-center-for-homeless-veterans/.

In so doing, the EO recognizes that the Grounds were donated in 1888 "on the condition that they be used to house disabled veterans." *Id.* § 1. But, "the Federal Government ha[s] since allowed" a campus that "once featured a chapel, billiard hall, 1,000-seat theater, and housed about 6,000 veterans . . . to deteriorate." *Id.* The EO explains that the VA "leased parts of the property to a private school, private companies, and the baseball team of the University of California, Los Angeles," while as of 2024, about 3,000 veterans went unhoused. *Id.* The EO specifically identifies the Grounds as "indicative of [the VA's] failure" to serve "veterans when they needed help most," *id.*, but promises that "[a]ccountability will return to" the VA by directing it to establish a "National Center for Warrior Independence with facilities and resources to help our veterans." *Id.* § 1; *see also id.* § 2(a).

On May 15, the Court directed both parties to provide supplemental briefing to address the impact of the EO on the pending litigation. Dkt. 100.1.

ARGUMENT

The Court may take judicial notice of the EO, VA Secretary Collins' statement, and the White House Fact Sheet. *See, e.g., Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 851 n.10 (9th Cir. 2016) ("[C]ourts routinely take judicial notice of [documents] published by the government"); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir 2010) (taking judicial notice of information on government websites). This is true even though briefing has closed. *See, e.g, Hussain v. Whitaker*, 742 F. App'x 339, 339–40 (9th Cir. 2018) (taking judicial notice post-briefing). As such, this Court may now

reevaluate the Government's prior arguments based on the EO. *Am. Civil Liberties Union v. C.I.A.*, 710 F.3d 422, 430–32 & n.10 (D.C. Cir. 2013) (taking judicial notice after the government filed its appellate brief when "official statements of the President" made it "neither logical nor plausible for the [government] to maintain" its position).[3]

I. The EO Confirms that the District Court's Judgment Should Be Affirmed and DOJ Lacks Authority to Pursue a Position in Conflict with the President's Policy Priorities.

The Constitution vests the President with the "executive Power" and oversight of "all the departments and agencies of the Federal Government," including the VA. *Trump v. Vance*, 591 U.S. 786, 828 (2020) (Alito, J. dissenting); U.S. CONST. art. II, § 1, cl. 1. "The entire 'executive Power' belongs to the President alone." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 213 (2020). Thus, when administrative agencies implement the policy of the federal government, they act "as agents of the President." *United States v. Hackett*, 123 F.4th 1005, 1014 (9th Cir. 2024). Because the VA's authority stems entirely from the "executive Power" of the President, the VA has no independent authority to pursue positions on behalf of the United States government that stand in conflict with the President's policies as stated in the EO.

The DOJ's prior arguments in this appeal are squarely at odds with the EO and VA Secretary Collins' public statement because the EO: (1) affirms that the Grounds

[3] To the extent Appellants may argue such, the EO does not moot Appellees' case. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000) (A claim that "voluntary compliance moots a case bears a formidable burden.").

exist in a charitable trust for the benefit of homeless veterans; (2) logically shows that the District Court had jurisdiction over Plaintiffs' Rehabilitation Act claims; (3) affirms the basis for Plaintiffs' Rehabilitation Act Claims; and (4) confirms the illegality of VA's third-party leases. The EO thus supports affirmance of the District Court's judgment.

A. The EO and Secretary Collins' Statement Affirm that the Grounds Exist in a Charitable Trust.

At briefing, Defendants argued that the 1888 deed did not establish a charitable trust, but could only be understood to "create[] a covenant or statement of purpose for the land rather than a condition on its use." Dkt. 58 at 57 (internal quotations omitted). The EO disclaims this position, stating that the land was donated "on the *condition* that it be used to house disabled veterans." EO No. 14296 § 1 (emphasis added); 90 Fed. Reg. 20369, 20369 (emphasis added). The EO's language also tracks the condition in the 1888 Deed that the property be "establish[ed], construct[ed], and *permanently* maintain[ed]" to house disabled veterans. 7-ER-1439; *see also* 27-ER-6760 (VA conceding in 2016 Draft Master Plan that the property "*was and is intended to be used as a home for Veterans*.") (emphasis added).

The EO states that the VA neglected its fiduciary obligation by "allow[ing] [a] crown jewel of veteran care" that "once . . . housed about 6,000 veterans" to "deteriorate." EO No. 14296 § 1, 90 Fed. Reg. 20369, 20369. By requiring the VA to "restore the capacity to house up to 6,000 homeless veterans," EO No. 14296 § 2(e); 90 Fed. Reg. 20369, 20369, the EO affirmatively uses "duty-imposing" language that

bears "the hallmarks of a conventional fiduciary relationship," *United States v. Navajo Nation*, 556 U.S. 287, 301 (2009) (internal quotations marks omitted). Consistent with the 1888 Deed, 2016 Draft Master Plan, WLALA, its 2021 Amendment, and the District Court's ruling, the EO unequivocally recognizes VA's "full responsibility to manage" the property "for the benefit of" homeless, disabled veterans. *United States v. Mitchell*, 463 U.S. 206, 224 (1983). VA Secretary Collins' public statement confirms that the Grounds have been mismanaged and should be "used as intended: to benefit Veterans."[4] The EO concedes the validity of the trust, and the DOJ cannot advance a contrary position here.

B. The District Court Had Jurisdiction Over Plaintiffs' Rehabilitation Act Claims.

Defendants argue on appeal that the VJRA strips the District Court of jurisdiction over this matter, because whether housing is a necessary accommodation for veterans is a benefits determination under the VA's purview. Dkt. 58 at 25. Like the District Court, the EO acknowledges that housing is not a benefit that Plaintiffs need the VA to adjudicate, but instead a necessary means for homeless veterans to "seek and receive the care, benefits, and services to which they are entitled." EO No. 14296§ 2(a); 90 Fed. Reg. 20369, 20369. Indeed, housing is a form of relief veterans are unable to access through VA's benefits review process. 1-ER-128–29; *see also Veterans for Common Sense v. Shinseki* ("*VCS*"), 678 F.3d 1013, 1030 n.21 (9th Cir. 2012) (en banc) (a district

[4] *Supra* n.1.

court's jurisdiction is proper over claims that do not require it to reevaluate the VA secretary's specific benefits determinations). As the EO reinforces, housing is the necessary vehicle to access these already-adjudicated benefits, not the benefit itself. Therefore, claims about systemic lack of access to housing must be adjudicated by a district court so veterans are not left "in a jurisdictional no man's land." Dkt. 76 at 23. The EO's treatment of this issue forecloses any contrary argument from the DOJ.

C. The EO Affirms the Basis for Plaintiffs' Rehabilitation Act Claims.

In prior briefing, the DOJ argued that the absence of supportive housing caused neither Plaintiffs' lack of access to healthcare benefits nor the increased risk of veteran institutionalization. Dkt. 58 at 38, 41. The EO flatly contradicts the DOJ's assertions on this point. Conversely, it establishes that housing ensures that "homeless veterans . . . can seek and receive the care, benefits, and services to which they are entitled," like "substance abuse or addiction treatment." EO No. 14296 §§ 2(a), (d); 90 Fed. Reg. 20369, 20369–70. The EO affirms that the lack of housing not only bars Plaintiffs from meaningfully accessing their benefits, but that housing is critical to the VA's healthcare plan, the absence of which forces veterans into jails and hospitals to receive healthcare.

The EO also undermines the DOJ's argument that the District Court's order: (1) "fundamentally alter[s] VA's approach to housing Veterans"; (2) "would impose exorbitant costs on VA"; and (3) "would cause the [Grounds] to become less hospitable for Veterans with disabilities who reside there." Dkt. 58 at 48–51. To the contrary, the EO requires a plan to build housing on the Grounds at a scale and speed that *exceeds*

the phased-in plan for the 2,550 units the District Court ordered. *Compare* EO No. 14296 § 2(e); 90 Fed. Reg. 20369, 20370 (requiring 6,000 housing units be built by January 1, 2028) *with* 1-ER-169–70 (requiring construction of 750 temporary supportive housing units within 18 months, and 1,800 permanent supportive housing units by fall 2030). This presidential directive "restores" the Grounds to their original purpose of "hous[ing] disabled veterans," and requires that housing supplement, rather than supplant, the VA's cooperative efforts with HUD to "use vouchers to support homeless veterans in" Los Angeles. EO No. 14296 §§ 1, 2(e), 3; 90 Fed. Reg. 20369, 20369–70.

The EO further eliminates the DOJ's argument that constructing supportive housing would put an unreasonable strain on the VA's budget by directing other "departments or agencies" to cooperate with the VA to reallocate funds to construct housing on the Grounds. EO No. 14296 § 2(c). Lastly, the EO concludes that additional housing on the Grounds would contribute to, rather than harm, the health and wellbeing of disabled veterans by "restor[ing] self-sufficiency . . . among homeless veterans" and returning the population to "productive work and community engagement." *Id.* The EO outright decimates both the DOJ's challenges to the merits of Plaintiffs' Rehabilitation Act claims and its fundamental alteration defense.

D. The EO Confirms the Illegality of VA's Leases.

The DOJ previously argued that the District Court's land-use injunctions of the VA's third-party leases exceeded the Court's authority. Dkt. 58 at 63. Now, however, the Executive states, in no uncertain terms, that the VA wrongfully entered into leases

with "a private school, private companies, and [UCLA's] baseball team [], sometimes at significantly below-market prices," while upwards of 3,000 veterans in Los Angeles lacked housing. EO No. 14296 § 1; 90 Fed. Reg. 20369, 20369. Secretary Collins' statement further acknowledges the "decades of mismanagement," wherein the VA leased the Grounds "to a wealthy and exclusive private school and the [UCLA] baseball team," but recognizes that the EO will ensure the Grounds are "being used as intended: to benefit Veterans."[5] Because the leases did not "principally benefit veterans," the EO affirms that the District Court did not overreach but appropriately prevented the VA from renegotiating the leases. *See Nat'l Res. Def. Council v. Sw. Marine, Inc.*, 236 F.3d 985, 1000 (9th Cir. 2000) (when "equitable measures are reasonably calculated to 'remedy an established wrong,' they are not an abuse of discretion."). Like the District Court's order, the EO goes beyond the VA OIG's conclusions, and recognizes that UCLA's lease is also noncompliant with federal law. EO No. 14296 § 1; 90 Fed. Reg. 20369, 20369. Therefore, the EO fully undermines the DOJ's previous position.

II. The Judiciary Has the Staying Power to Ensure Housing is Built.

In its opposition to Plaintiffs-Appellees' motion for supplemental briefing, the DOJ argued that the EO "underscores the government's commitment to housing [v]eterans and makes clear why it was improper for the district court to attempt to usurp VA's control over the West LA Campus." Dkt. 99.1. While the EO affirms the

[5] *Supra* n.1.

President's commitment to housing veterans, it also signals that the VA has disregarded the commitment required of it by law and has instead continuously "fail[ed] veterans when they needed help most." EO No. 14296 § 1; 90 Fed. Reg. 20369, 20369. Above all, the EO makes clear that intervention was and is necessary.

The EO's recognition that the VA has spurned its statutory obligations confirms the continued need for the District Court's order. Though the EO directs completion of 6,000 housing units by January 2028, a few delays could push completion into a new presidential administration with new policy priorities. The judiciary, by contrast, is "a branch with tenure and authority independent of direct electoral control." *Loving v. United States*, 517 U.S. 748, 758 (1996); *Green v. Connally*, 330 F. Supp. 1150, 1170–71 (D.D.C.) (Plaintiffs were "entitled to [ ] relief on an enduring . . . basis, not [one] that could be withdrawn with a[n] administration shift"), *aff'd sub nom Coit v. Green*, 404 U.S. 997 (1971). Only an enforceable court order will ensure that the VA will faithfully execute the EO's requirements, "keeping [its] promises" to disabled veterans once and for all.

CONCLUSION

For the reasons set forth above and in Plaintiffs-Appellees' Answering Brief, the judgment of the district court should be affirmed. In the alternative, this Court should remand to the District Court to consider, in the first instance, the impact of the EO on its decision and how the EO will operate alongside the relief granted.

Dated: May 29, 2025

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 2,645 words, according to Microsoft Word.

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