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No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE CITY OF LOS ANGELES

CITY OF LOS ANGELES,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

LA ALLIANCE FOR HUMAN RIGHTS ET AL.,

Real Parties in Interest.

From the United States District Court
for the Central District of California
Case No. 2:20-cv-02291 | The Honorable David O. Carter

PETITION FOR A WRIT OF MANDAMUS AND EMERGENCY MOTION FOR IMMEDIATE STAY UNDER CIRCUIT RULE 27-3

**** RELIEF REQUESTED BY 9:00 A.M. ON FEBRUARY 10, 2026 ****

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CIRCUIT RULE 27-3 CERTIFICATE

Pursuant to Circuit Rule 27-3, I hereby certify that to avoid irreparable harm to petitioner City of Los Angeles, relief is needed in less than 21 days' time.

1. Regarding Circuit Rule 27-3(c)(i), counsel are as follows:

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2. Regarding Circuit Rule 27-3(c)(ii), the facts showing the existence and nature of the claimed emergency are set forth in detail below in

the Statement of the Case. In brief, the City seeks: (1) a writ of mandamus directing the district court to vacate its January 14 and February 4 orders expanding the scope of an ongoing contempt proceeding and (2) an administrative stay of the February 10 hearing that is set to address that expanded contempt hearing to ensure the Court has adequate time to consider this petition. If this emergency relief is not granted, the City will be compelled to defend itself in a contempt proceeding with inadequate notice of the charges against it, and that due-process violation has the potential for devastating consequences on the City's ability to protect its rights in parallel state-court litigation and to safeguard multiple privileges (including the attorney-client privilege and the deliberative-process privilege).

3. Regarding Circuit Rule 27-3(c)(iii), this petition could not have been filed earlier because the issues presented were not ripe for review until today, February 9, 2026, when the district court ruled on the City's second request for clarification of the scope of the proceedings and objection to those proceedings and did not stay the February 10 hearing.

4. Regarding Circuit Rule 27-3(c)(iv), counsel has been served the petition via e-mail. Plaintiffs indicated they will likely oppose, and

Intervenors indicated that they will determine their position after reviewing the petition and motion.

5. Regarding Circuit Rule 27-3(c)(v), as set forth in the Statement of the Case below, the City has sought—and been denied—relief from the district court. The City filed requests for clarification on the scope of the contempt proceedings and objections to those proceedings on January 20 and February 7, and requested a stay of the February 10 hearing by 12 p.m. on February 9. On February 9, the district court denied the request for a stay and confirmed that the hearing will commence on February 10 at 9:00 a.m. and that witness testimony may commence at that hearing.

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INTRODUCTION

The district court (Carter, J.) has sua sponte expanded the scope of an ongoing contempt proceeding to include topics related to a pending California state-court action—all because the court read about a decision in that case in the *L.A. Times*. The court will hold a hearing tomorrow morning to decide whether to hold the City of Los Angeles in contempt over what was said during two conferences with counsel in closed sessions of the City Council, and attorneys for the City may be called to testify. The City's assertion of attorney-client privilege, deliberative-process privilege, and legislative privilege over what was said in those closed sessions is the subject of ongoing state-court litigation regarding California's Brown Act. The district court's actions directly threaten to trample the City's rights and cause irreparable harm.

This matter is critically urgent. Absent immediate relief from this Court, the City is staring down the barrel of civil and potentially criminal contempt sanctions without knowing what it has been accused of doing wrong, and the district court is poised to force the City to disclose confidential and privileged information about closed sessions of the City Council. The City has repeatedly asked the district court to clarify the basis

of these new contempt charges or explain the jurisdictional basis for inquiring into an issue committed to another sovereign's judiciary, but in vain. The City and its employees also will be placed in the impossible position of having to disclose confidential information about closed sessions of the City Council—information that is impermissible to disclose under California law—and thereby waiving a series of privileges, or else not defend against the district court's threat of contempt sanctions. And to make matters worse, the district court has taken the extraordinarily unusual step of summoning the top federal and county prosecutors in Los Angeles to the contempt hearing. This Court should issue a writ of mandamus directing the district court to vacate its orders impermissibly expanding the scope of the contempt hearing. And to ensure that the Court has adequate time to consider this petition, it should administratively stay the February 10 contempt hearing.

This case is now in its sixth year. In 2020, the LA Alliance for Human Rights asserted a raft of claims challenging the City of Los Angeles's homelessness policies. In 2021, the district court issued a sweeping injunction requiring the City to put $1 billion into escrow for homelessness initiatives and to offer shelter to all homeless residents within 180 days.

This Court vacated that injunction, holding it bore no relation to the Alliance's actual claims and was supported almost entirely with extra-record evidence (chiefly newspaper articles) dug up by the district court. *LA Alliance for Human Rights v. County of Los Angeles*, 14 F.4th 947 (9th Cir. 2021).

On remand, the Alliance and the City entered into a settlement agreement that called for the City to create thousands of new shelter and housing opportunities and to reduce the number of homeless encampments, among other things. That agreement has become a platform for the district court to dictate homelessness policy to the City. In 2025 alone, the court presided over two lengthy evidentiary hearings that amounted to full trials; the second one (which began in November 2025 and remains ongoing) threatens to hold the City in contempt for an ever-growing list of vague reasons. The City has appealed from three separate orders the district court has issued and today filed its opening brief in those three consolidated appeals. Nos. 25-4623, 25-6760, 26-221. Although the City does not make the request lightly, the City submits in that brief not only that the challenged orders should be reversed but also

that the district court's inappropriate and irregular approach to this case justifies reassignment to a different district judge on remand.

This petition addresses the district court's latest expansion of the ongoing contempt proceedings. Those proceedings began in November 2025 after a monitor appointed by the court said the City had not promptly cooperated with him. (The appointment of that monitor is the subject of one of the City's three pending appeals, and this Court granted an emergency motion to stay his appointment pending appeal. No. 25-6760 Dkt. 25.1.) The district court has repeatedly enlarged the scope of the contempt proceedings, most recently in a pair of sua sponte orders focusing on issues that are already being litigated in state court and that the district court read about in the *L.A. Times*. The City has been accused in that separate action of violating California's Brown Act by holding closed sessions of the City Council to discuss issues relating to the settlement agreement in this case. In that ongoing proceeding, which has not reached a final judgment (which would be subject to appeal), the City has defended the closed sessions, including by invoking the attorney-client privilege and the deliberative-process privilege.

The City cannot defend itself against charges of supposed misconduct in connection with the ongoing state-court proceeding without forfeiting the privilege issues that are currently being litigated there. The district court responded to the City's objections and requests for clarification of what the City is accused of doing not by meaningfully clarifying its order but instead by scheduling a contempt hearing solely on this new issue for February 10. And the court has, without any explanation, requested the presence of the top federal and state prosecutors in Los Angeles (and directed the parties to serve them with its order setting the hearing). The City requested a stay of this hearing, but the district court declined to address the request, effectively denying it.

This Court should stop the hearing in its tracks. The district court has violated the City's due-process right to fair notice because it has never stated the basis of the charges against the City. Anyone charged with contempt has a right to know what he supposedly did wrong, but the district court has refused to state its case. It has gestured at a supposedly false "representation" about a City Council "vote," but didn't cite anything or explain what the statement might be; the City has no idea. And the problem isn't just that the district court has refused to explain

what the City may have done wrong. Each potential basis for this expanded contempt is deeply troubling.

To the extent that the basis is the City's alleged noncompliance with the Brown Act, the district court has no jurisdiction to adjudicate that issue and doing so would impermissibly interfere with pending state-court proceedings. The parties in this case gave the district court limited jurisdiction to enforce their settlement agreement, not the limitless power to police compliance with state law. And even when they otherwise possess jurisdiction, federal district courts generally have no power to interfere with ongoing state litigation. The state court's resolution of the Brown Act issues isn't final, and the City will appeal from the decision once it is final (which will automatically stay the ruling pending appeal). The district court's contempt hearing threatens to demolish the City's appellate rights in state court.

To the extent that the district court seeks to have the City defend the unspecified representations about what happened during the closed City Council meetings, the City could do so only by forgoing the privilege objections that it is currently litigating in state court and disclosing the contents of the closed sessions (which California law prohibits). In other

words, the only way the City could defend itself against accusations of misrepresentations about what happened in those sessions is by forsaking the very privilege that it means to defend in state court. But the district court evidently aims to coerce City employees to reveal what was said in those closed sessions—an attempt at coercion made all the more troubling by the court's request that top prosecutors attend the hearing.

To the extent the district court wishes to decide whether the City Council was required to have a formal vote to approve one of the plans related to the settlement in the case, the proceedings will interfere with the City's ability to structure its own internal affairs. Nothing empowers the court to dictate legislative procedures to the City. If the court is contemplating ordering the City to follow different procedures to address encampment reductions, that would be a clear violation of the anti-commandeering principle of the Tenth Amendment.

The orders under review are the latest chapter in the saga of a district court that has lost sight of its role in enforcing the terms of the parties' settlement agreement and the limited powers of an Article III judge. Even after this Court admonished the district court not to invent new theories not raised by the parties or to engage in extra-record research to

support them, the district court persisted in doing precisely that. Sua sponte instituting contempt proceedings after reading in the *L.A. Times* about a non-final ruling in a separate state-court case is not now and never has been the proper role of a federal judge.

This Court should issue a writ of mandamus directing the district court to vacate its January 14 and February 4 orders expanding the scope of the contempt hearing. And to ensure that it has adequate time to consider this petition, this Court should administratively stay the hearing on those orders before that hearing commences at 9:00 a.m. on February 10.

STATEMENT OF THE CASE

A. After the City is sued over its homelessness policy, the district court orders the City to set aside $1 billion, and this Court stays and then vacates the order.

In 2020, the LA Alliance for Human Rights, a group formed predominantly by business and property owners, sued the City and County of Los Angeles, claiming their policies had exacerbated problems caused by homelessness, including crime and fires. Other local organizations, including the Los Angeles Community Action Network, intervened in the

case, which (they argued) might affect their rights under a settlement agreement with the City. 1App1; 1App23.

In January 2021, the district court sua sponte ordered the City, County, Alliance, and Intervenors to brief "all equitable remedies available to the Court that would require the City . . . to take action to provide relief to the homeless community." *LA Alliance*, 14 F.4th at 953-54. The Alliance construed the court's order as an invitation to move for a preliminary injunction. The court granted the motion, ordering "the escrow of $1 billion to address the homelessness crisis, offers of shelter or housing to all unhoused individuals in Skid Row within 180 days, and numerous audits and reports." *Id.* at 952.

This Court stayed and ultimately vacated the injunction, holding that "the district court's order [wa]s largely based on unpled claims and theories," which were supported only by the court's "impermissibl[e] resort to independent research and extra-record evidence." *LA Alliance*, 14 F.4th at 952. Because "the district court granted relief based on claims that Plaintiffs did not allege, supported by novel legal theories that Plaintiffs did not argue, or against Defendants against whom the claim was not pled," the injunction was unlawful. *Id.* at 957.

B. The parties settle, but their settlement agreement becomes a wellspring of further litigation that has led to three appeals to this Court.

On remand, the Alliance and City entered into a settlement agreement. 1App143. The parties agreed, among other things, that the Alliance would dismiss its claims with prejudice, 1App159, and that the City would negotiate with the Alliance over a plan "for encampment engagement, cleaning, and reduction," 1App152. After significant negotiations, the City agreed that it would remove 9,800 tents, makeshift shelters, cars, and RVs by June 30, 2026. 1App252; 1App259. The district court approved the settlement agreement in June 2022. 1App170.

Since then, though, the district court has continued to treat this case like active litigation, holding 40-plus hearings, status conferences, and other proceedings. The court has insisted on attempting to actively influence the City's homelessness policy, even if it has "a great chance of reversal." 7App1624. For example, the court warned in January 2025 that "2025 w[ould] be the year of action taken by the Court" and expressed "hope" that it would "either have the idiocy or courage to act." 2App482. Last year was, in fact, marked by considerable "action" on the

part of the district court—action that has led to three appeals to this Court.

1. After the Alliance filed a series of motions claiming the City had not complied with the parties' settlement agreement, *e.g.*, 2App342, the district court stated that it could "make [City officials'] lives miserable" by, among other things, "impos[ing] a receivership," 7App1560. The court also told the City officials that it "want[s] two more years of jurisdiction . . . through the [2028] Olympic Games" in Los Angeles because "I don't trust you as an institution." 7App1561. Shortly after that hearing, the court ordered an evidentiary hearing on settlement compliance. 3App484. That hearing, which amounted to a full-blown trial, spanned seven court days in May 2025.

In June 2025, the district court cited "decades" of perceived policy failures to address homelessness in an order holding that the City had breached the settlement agreement in four ways. 4App474. The court ordered various remedies, including the appointment of a monitor who would verify the City's data, "oversee compliance," and "ask the hard questions on behalf of Angelenos." 4App803; 4App807. The court ordered the parties to meet and confer to select a monitor, subject to the Court's

approval. 4App802. And it invited the Alliance and Intervenors to seek attorneys' fees "[a]s a sanction for the City's noncompliance." 4App805. The City appealed from the order. 4App809.

2. The Alliance and Intervenors did, in fact, move for fees, and the district court awarded them almost $2 million. 5App1243. The court began its order by relying once again on some of the extra-record materials that had led this Court to vacate the preliminary injunction in 2021. 5App1246. After citing more than a dozen news articles, the court determined the Alliance and Intervenors "deserve to be compensated" because this litigation "brought about significant and material benefits to the Los Angeles community." 5App1251. The City appealed from the fees order. 5App1129.

3. The parties complied with the district court's order by jointly proposing a monitor. 4App813. But the district court criticized the parties' proposal, 4App825-827, and instead encouraged the parties to select Daniel Garrie, whom it had called several days before the status conference about the monitor role, 4App915. After City Council meetings didn't result in Garrie's approval, the court unilaterally appointed him anyway.

4App907-909. The City appealed from the order appointing Garrie as monitor. 4App910.

Notwithstanding that appeal, Garrie filed his first status report on November 3. 4App917. In the report, Garrie complained about the City's request that he contact the City's counsel for information instead of directly contacting City officials or employees. 4App918; 4App928; 4App939-945. In response to Garrie's report, the court ordered the City to show cause why it shouldn't be held in contempt. The district court began the show-cause hearing by discussion a news article describing the fees the City's outside counsel charges, 5App1099, and ordered the City to publicly file its contracts with outside counsel, 4App1011.

The City filed an emergency motion with this Court seeking a stay of the monitor order and the contempt proceedings. This Court granted the motion in part, staying the monitor order but permitting the district court to hold contempt proceedings. No. 25-6760 Dkt. 25.1. This Court also later consolidated the City's three appeals relating to settlement compliance, fees, and monitor appointment.

C. In the course of an ongoing contempt proceeding, the district court sua sponte raises issues relating to a separate state-court proceeding that it read about in the newspaper.

Contempt proceedings—which amount to a second trial within a year—have been held intermittently in the district court since mid-November 2025. Those proceedings were launched with an order on November 7 directing the City to "show cause why it should not be held in contempt for the issues raised in" reports filed by the monitor and special master chosen by the court, which "detail[ed] delays in the City of Los Angeles's" obligations under the parties' settlement agreement and the court's order deciding the City had breached that agreement. 4App972.

The City has repeatedly objected to the threat of contempt sanctions absent a clear explanation of the charges against it, and it has also repeatedly asked for clarification of the issues to be addressed in the contempt hearings. 4App1008, 5App1232, 5App1238, 6App1488, 6App1497. The district court's consistent response to these objections and inquiries has been to further expand the scope of the contempt hearing. In a November 14 order, the court stated that the basis for the contempt hearing was its "concern[] that the City has demonstrated a continuous pattern of delay stretching back in time far further than the issues raised in the

Special Master and Monitor's Reports." 5App1189. The court said it would consider "past instances of delay in complying with the Court's orders as a basis for holding the City in contempt," attached a document from early 2024, and called for the issuance of subpoenas to witnesses who could testify about that document. 5App1190. The court also stated the contempt hearing would "cover whether the City has complied with the obligations of Section 7.1 of the Settlement Agreement," which calls for the City to report certain figures in quarterly status reports. 5App1190-91.

The City objected again and sought further clarification, explaining, among other things, that vague references to past "delay" did not give the City an adequate understanding of the charges leveled against it, and that there was no basis for holding a contempt hearing to address the City's compliance with the monitor-appointment order, which had already been stayed by this Court. 5App1233-34; 5App1239-40.

The district court held several days of the evidentiary hearing in November, December, and January. At the January 12 hearing, the court announced that it had learned of the *CANGRESS* state-court litigation from the *L.A. Times*. 6App1392-93. The City explained that it was

"premature" to discuss *CANGRESS* because the issue had not been finally resolved; the trial court had not even issued a judgment, and the appeal had not commenced. 6App1398-1400. Yet the district court two days later issued an order expanding the hearing's scope again. This time, the court stated that, "[b]ased upon newly reported information, there is reason to believe that the City of Los Angeles may have engaged in additional, previously unknown misconduct related to the 2022 settlement agreement when the City knowingly, willfully, and intentionally misrepresented material facts to the Court." 5App1285.

The district court cited "reports published in the mainstream media," including one from the *L.A. Times* (attached to its order), and the "ruling" of a state trial-court judge in *CANGRESS v. City of Los Angeles* (also attached to the order) describing a "violation of the Brown Act." 5App1285-86. The Brown Act generally requires the meetings of city councils to be open but permits closed sessions to discuss privileged information (e.g., about litigation strategy in pending cases). Cal. Gov. Code § 54953(a). The court in *CANGRESS* decided a City Council meeting addressing the reduction of encampments under the settlement agreement in this case did not address litigation strategy and should

have been held in public. 5App1292-93. Even though the dispute is whether the session should have been open or closed (not whether the City validly approved the underlying plan), the district court expressed "concern[] about the City's representation that the City Council had passed the homeless encampment reduction plan" and "add[ed] this new factual allegation to the current [contempt] proceeding" and directed the City "to prepare itself to respond to this new allegation" as well." 5App1285-86.

The City objected on January 20 to this further expansion of the contempt proceedings. It explained that the ruling in *CANGRESS* has not been reduced to a final judgment; that the City intends to appeal from any judgment that issues; and that, by interfering in that separate litigation, the court was requiring the City to choose "between (1) effectively giving up its right to appeal in the *CANGRESS* litigation by disclosing matters it contends are privileged, or (2) forgoing its right to fully defend itself in the contempt proceedings in this Court." 6App1489. The City submitted the district court should abstain from any interference in the state-court proceedings until they had run their course. 6App1489-90. In the alternative, the City urged the court to "clarify the new scope of

these proceedings"; the City explained that although the court had referred to a "representation" by the City, it "did not identify a specific representation, when any such representation was made, or who made it on the City's behalf." 6App1490. Without that information, the City objected, it would "be deprived of a fair opportunity to investigate the facts and prepare its defense against a finding of contempt." 6App1490.

The district court did not directly rule on this objection. Instead, on February 4, the court set a hearing for February 10 at 9:00 a.m. and stated that this "contempt hearing shall focus solely on the alleged Brown Act violation and potential misrepresentations made to the Court regarding the encampment reduction resolution," with further proceedings on other topics to be held later. 6App1492. The court also requested the attendance of the Mayor, the City Council President, the CEO of the Los Angeles Homeless Services Authority, First Assistant U.S. Attorney Bill Essayli, and District Attorney Nathan Hochman. 6App1493. Later that day, the court directed the parties to serve its order on Mr. Essayli and Mr. Hochman. 6App1494.

The City promptly objected to this order and sought a stay of the February 10 hearing because the court's order "deprives the City of due

process and fair notice of the basis of the purported contempt, sets a hearing that will interfere with a pending case in the court of another sovereign, improperly seeks privileged information, and appears to inject the threat of criminal prosecutions into the proceedings by requesting the attendance of the top federal and local prosecutors in Los Angeles." 6App1498. The City explained, among other things, that the court "still has not identified any representations that will be at issue in the upcoming hearing"; in fact, the City had no idea what representations the court could have in mind because "the City is not aware of . . . any representations made by the City regarding a City Council vote." 6App1499. Intervenors responded that they do not oppose the City's request for a stay to the extent it relates to the Brown Act litigation, but that the proceeding can move forward as it relates to the City's representations about the approval of the encampment reduction plan. 7App1648. Intervenors requested that attorneys from the City Attorney's office and the City Administrative Officer be available to testify at the hearing. 7App1652.

The district court did not respond to the City's first objection. On February 9, the court denied the City's stay request and clarified only that the hearing would involve an alleged "misrepresent[ation] [of] a

material fact . . . concerning action taken by the Los Angeles City Council on or about January 31, 2025," without specifying what representation is at issue, who made it, and where it was made. 7App1671-72. The contempt hearing relating to the *CANGRESS* litigation is scheduled to go forward at 9:00 am on February 10, and the district court has directed that "[t]he parties should be prepared to proceed with testimony on February 10 if, after hearing from counsel, the Court determines that is appropriate." 7App1672.

STATEMENT OF THE ISSUES

Whether the district court has deprived the City of fair notice of the charges against it in the contempt hearing scheduled for February 10 and whether there is any lawful basis, consistent with the Constitution, the court's limited jurisdiction, and comity with state courts, for the district court to adjudicate issues that are being litigated in a pending state-court case.

RELIEF SOUGHT

This Court should issue a writ of mandamus directing the district court to vacate its January 14 and February 4 orders expanding the scope of the contempt hearing. To ensure that the Court has adequate time to

consider this petition, it should administratively stay the February 10 hearing to the extent it relates to those orders.

LEGAL STANDARD

This Court considers five factors in determining whether to issue a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651:

1. The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires.
2. The petitioner will be damaged or prejudiced in a way not correctable on appeal.
3. The district court's order is clearly erroneous as a matter of law.
4. The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules.
5. The district court's order raises new and important problems, or issues of law of first impression.

Douglas v. U.S. Dist. Court, 495 F.3d 1062, 1065-66 (9th Cir. 2007) (per curiam) (quoting *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 654-55 (9th Cir. 1977)).

Only "the third factor, clear error as a matter of law, is a necessary condition for granting a writ of mandamus"; the "remaining *Bauman* factors, while useful as an analytical framework, seldom yield 'bright-line

distinctions.'" *In re Van Dusen*, 654 F.3d 838, 841 (9th Cir. 2011); *see also Valenzuela-Gonzalez v. U.S. Dist. Court*, 915 F.2d 1276, 1279 (9th Cir. 1990) ("no single factor is determinative, and all five factors need not be satisfied at once") (citations omitted).

REASONS FOR GRANTING WRIT RELIEF

The *Bauman* factors support immediate relief from this Court. The district court has clearly erred as a matter of law in denying the City fair notice of the contempt charges and potential sanctions. That due-process violation will have devastating consequences on the City's ability to protect its interests in parallel state-court litigation and to safeguard its privileges. Because the orders under review are only the latest in the long line of orders manifesting the district court's extreme disregard of the limits on its authority and the City's rights, and because mandamus is the only effective remedy, this Court should issue the requested writ of mandamus.

I. The district court denied the City due process by refusing to explain the basis of its contempt charge.

The order at issue satisfies the indispensable factor for mandamus relief because the district court deprived the City of its right to fair notice before a contempt proceeding. "A fundamental principle in our legal

system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

Those principles apply with full force in the context of contempt. The notice must be sufficient to "inform the contemnor of the nature of the charge and enable the contemnor to prepare a [specific] defense." *United States v. Powers*, 629 F.2d 619, 625 (9th Cir. 1980). The notice also must alert the contemnor of the "possible types of [] sanctions." *Cole v. U.S. Dist. Court for Dist. of Idaho*, 366 F.3d 813, 821 (9th Cir. 2004).

Such notice is indispensable whether a court ultimately imposes civil or criminal contempt sanctions. *E.g.*, *Cole*, 366 F.3d at 821. Because even "civil contempt is a severe remedy," "principles of basic fairness require that those enjoined receive explicit notice of what conduct is outlawed before being held in civil contempt." *Taggart v. Lorenzen*, 587 U.S. 554, 561 (2019) (cleaned up). The Due Process Clause's guarantee of adequate notice is "essential in view of the heightened potential for abuse posed by the contempt power," such that "the provision of these procedural protections accords with our historic notions of elementary

fairness." *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th Cir. 2005) (quoting *Taylor v. Hayes*, 418 U.S. 488, 500 (1974)).

The district court violated that constitutionally required guarantee. In its January 14 order, relying on "reports published in the mainstream media" the court expressed "concern[]" that the City had violated the Brown Act and had falsely represented that the City Council "voted to pass" the settlement agreement's encampment-reduction plan. 5App1285-96. The City objected that the court's order "did not identify any specific representation, when any such representation was made, or who made it on the City's behalf." 6App1490. The court ignored that objection, issuing an order on February 4 scheduling the hearing on February 10 that repeated the same allegations from the January 14 order and doubling down on February 9 while still not identifying any specific representations that could form the basis for contempt. 6App1492; 7App1671.

The district court has kept the City entirely in the dark about the basis for the alleged contempt. As far as the City knows, no one speaking on behalf of the City has ever represented to the court that the City Council "voted," in closed session or otherwise. to approve the encampment-

reduction plan. 5App1286. The City is aware of only one representation to the court, which occurred on April 4, 2024, regarding the presentation and approval of the encampment-reduction plan: that "[t]he 9,800 encampment reduction plan and milestones were presented to the City Council on January 31, 2024, which approved them without delay." 1App259. That representation says nothing about a vote of the City Council.

The district court's shoot-first, ask-questions-later approach to setting a contempt hearing has put the City in the untenable position of attempting to mount a defense when it has no idea what statement is at issue—who said something potentially false, where, and under what circumstances. The court's orders come nowhere close to "inform[ing] the [City] of the nature of the charge and enabl[ing] the [City] to prepare a [specific] defense." *Powers*, 629 F.2d at 625. That woefully inadequate notice has hampered the City's due-process right to assert "every available defense" at the hearing scheduled tomorrow. *Lindsey v. Normet*, 405 U.S. 56, 66 (1972).

The lack of fair notice is even more dangerous here because the district court has steered the hearing directly into criminal contempt by

adding charges based on "'completed act[s] of disobedience'"—an alleged violation of an open-meetings law and a past statement that someone made somewhere. *Mine Workers v. Bagwell*, 512 U.S. 821, 828 (1994). But the orders provide no notice of the possible sanctions, which will affect whether the City is "entitled to the full panoply of procedural protections that are normally reserved for defendants charged with a criminal offense, such as an independent prosecutor, proof beyond a reasonable doubt, and a jury trial." *Lasar*, 399 F.3d at 1110. And a threat of criminal prosecution hangs in the air, now that the district court has summoned to the hearing District Attorney Hochman, the official who is charged with enforcing Brown Act violations, along with the top federal prosecutor in Los Angeles, First Assistant U.S. Attorney Bill Essayli.

The lack of constitutionally adequate notice is grounds for mandamus relief. As this Court has held, "mandamus lies both to compel compliance with due process requirements and to provide the court jurisdiction 'to declare the due process requirements applicable to [the challenged] proceedings.'" *Elliott v. Weinberger*, 564 F.2d 1219, 1226 (9th Cir. 1977), *rev'd in part on other grounds sub nom. Califano v. Yamasaki*, 442 U.S. 682 (1979); *see also, e.g.*, *In re Am. Med. Sys., Inc.*, 75 F.3d 1069,

1086 (6th Cir. 1996) (granting mandamus because defendant's "due-process rights were violated" when district court refused to give notice and an opportunity to be heard); *In re Temple*, 851 F.2d 1269, 1272-73 (11th Cir. 1988) (same).

This Court should exercise that power to prevent a clear infringement of the City's constitutional right to know the specific allegations against it and mount an appropriate defense.

II. The City is likely to suffer irreparable harm that cannot be corrected on appeal.

The district court's refusal to clarify the basis of the purported contempt is preventing the City from adequately protecting important rights. The right to fair notice and an opportunity to be heard comes before all others—that right is *how* a party asserts its other rights. While being cagey as to what, exactly, the City could have done wrong, the orders gesture in three directions, all of which would be unacceptable. By shrouding the charges in ambiguity, the district court has created an unacceptable risk that the City won't be able to safeguard the integrity of the existing state-court proceedings, prevent the disclosure of privileged information, and vindicate the City Council's prerogatives to structure

its own proceedings. Mandamus relief is appropriate because none of these harms can be undone after the fact.

1. After reviewing "reports published in the mainstream media" and a non-final ruling from the Los Angeles County Superior Court, the district court expressed concern that the City may have acted "in violation of the Brown Act," which generally requires city councils to hold open hearings. 6App1492 (quoting 5App285-86). That issue could not possibly be a basis for civil contempt. The district court has limited ancillary jurisdiction only to enforce the terms of the parties' settlement agreement. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380 (1994). That agreement did not give the district court a limitless mandate to police the City's compliance with state laws, much less empower the district court to conduct contempt proceedings that piggyback off any state-court ruling against the City. Mandamus exists for cases like these, where the district court has threatened to exceed the "lawful exercise of its prescribed jurisdiction." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380 (2004).

Abstention principles further support granting mandamus relief. There is a "strong federal policy against federal-court interference with

pending state judicial proceedings absent extraordinary circumstances." *Middlesex Cnty. Ethics Comm. v. Garden State Barr Ass'n*, 457 U.S. 423, 431 (1982). The state-court ruling that the closed sessions were not privileged is not even final. 5App1294. The City objected to CANGRESS's proposed judgment and writ of mandate, and that objection is pending before the court. 6App1504. If the objection is overruled, the City will appeal from the judgment, which would result in an automatic stay of the order until the appeal is final. *See Daly v. San Bernardino County Board of Supervisors*, 11 Cal. 5th 1030, 1052 (2021) (mandatory injunction resulting from adjudication of Brown Act violation automatically stayed pending appeal).

The district court wishes to hold a contempt hearing on whether the City complied with the Brown Act that *leaps ahead* of the ongoing state-court proceedings—the only judiciary with jurisdiction to decide those state-law issues in the first place. *Lake Luciana, LLC v. Cnty. of Napa*, 2009 WL 3707110 (N.D. Cal. Nov. 4, 2009) (abstaining from deciding whether defendant had complied with Brown Act). Because the California courts alone have the power to determine whether the City has complied with the Brown Act, the district court has no basis to wield

contempt to "interfere in the procedures by which states administer their judicial system and ensure compliance with their judgments." *Rynearson v. Ferguson*, 903 F.3d 920, 926 (9th Cir. 2018). Yet the City has been unable to secure a decision on its abstention arguments, despite multiple attempts, 6App1488, 6App1497, because of the district court's refusal to give fair notice of the charges or to address the City's objections.

2. The district court has accused the City of misrepresenting what occurred during the City Council's closed session. That accusation puts the contempt hearing on a path to destroy the City's ability to appeal from the not-yet-final order of the Los Angeles County Superior Court, or else not defend itself in this proceeding. To prove that it accurately represented the events in closed session, the City would have to produce evidence about the discussions that took place in the closed session. And Intervenors have already indicated that they plan to call attorneys for the City Attorney's office and the City Administrative Officer to testify. 7App1652. The City asserts privilege over this evidence for multiple reasons, including the attorney-client privilege, the deliberative-process privilege, the legislative privilege, and the official-information privilege. 6App1505-08. While that invocation of privilege is hotly disputed in the

case pending in state court, California has adopted procedural protections that ensure that no evidence will be disclosed until the appellate process runs its course. *Daly*, 11 Cal. 5th at 1052.

No remedy can correct the harm that will befall the City if it is "'erroneously required to disclose privileged materials or communications'" because of the district court's focus on what was said during the Council meeting. *Hernandez v. Tanninen*, 604 F.3d 1095, 1101 (9th Cir. 2010); *see Karnoski v. Trump*, 926 F.3d 1180, 1203 (9th Cir. 2019) ("unique features" of the deliberative-process privilege warranted mandamus vacating discovery order). As the Second Circuit has observed in granting mandamus relief, "timing matters: Once the 'cat *is* out of the bag,' the right against disclosure cannot later be vindicated." *In re Roman Catholic Diocese of Albany*, 745 F.3d 30, 36 (2d Cir. 2014) (cleaned up).

The City also cannot adequately protect its privileges during a contempt hearing focused on the contents of privileged City Council meetings. For one thing, the City shouldn't need to "'choose between being in contempt of court and violating [the] law.'" *In re Philippine Nat'l Bank*, 397 F.3d 768, 774 (9th Cir. 2005). This dilemma "'clearly constitutes severe prejudice that could not be remedied on direct appeal.'" *Id.* For

another thing, the City cannot control whether its employees choose to disclose privileged information on threat of contempt sanction. The orders thus put the City's employees in an impossible position because they could potentially face discipline for disclosing "confidential information that has been acquired by being present in a closed session" when the City Council has not "authorize[d] disclosure of that confidential information." Cal. Gov. Code § 54963(a).

3. The final premise of the orders expanding the scope of the contempt hearing is the district court's apparent belief that the City Council could approve the encampment-reduction plan only through a formal "vote." 6App1492 (quoting 5App1285). As the City explained in its objection to the proposed judgment and writ of mandate in the *CANGRESS* action, "the Encampment Reduction Plan . . . did not require a formal vote of the City Council to effectuate approval." 6App1507. But the more fundamental problem is that federal courts have no authority to sit in judgment of whether legislative bodies have followed their own procedures.

The contempt hearing is on a collision course with constitutionally grounded principles of federalism. The City Council holds "the exclusive

power to organize its business, prescribe the rules of its proceedings and preserve order at its meetings." Los Angeles Charter § 242. Yet the district court appears to be threatening to hold a contempt proceeding on whether the City Council could approve a plan only through a formal vote. If that is what the court's opaque order means to charge, any attempt to commandeer the local legislative process to require a vote for the plan would violate the Tenth Amendment. *New York v. United States*, 505 U.S. 144, 161 (1992).

The Supreme Court has found it "difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law," contrary to "principles of federalism." *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984). And that intrusion on the inner workings of the City Council would irreparably harm the Council's ability to determine its own procedures and would be uncorrectable on a later appeal. *Rizzo v. Goode*, 423 U.S. 362, 380 (1976).

In short, the problem here isn't merely that the district court hasn't stated the basis of the contempt hearing. Any possible basis for contempt would lead the court to transgress other important constraints, including

its limited jurisdiction, the comity owed to pending state-court proceedings considering the City's privileges, and the federalism buffer that allows cities to structure their own internal affairs.

III. The district court has persistently disregarded the adversarial process and the City's rights.

The district court's sua sponte decision to introduce vague grounds for contempt after it "bec[a]me aware of reports published in the mainstream media" is part of a longstanding pattern of extra-judicial research. 5App1286. The district court's ceaseless resort to the newspaper as a call to action in this litigation and its disregard of the party-presentation principle make mandamus relief particularly warranted here. When an error is "not an isolated occurrence," this Court "place[s] significant weight on this factor" because it demonstrates "a continuing need for relief." *In re United States*, 791 F.3d 945, 960 (9th Cir. 2015).

Earlier in this same case, this Court warned that district courts may not do their own research to direct litigation. When this Court vacated the district court's "sweeping" preliminary injunction requiring the City and County to escrow $1 billion to address the homelessness crisis and make offers of shelter or housing to all homeless people on Skid Row within 180 days, it explained that the injunction was based on the district

court's own "unpled claims and theories" and that the court had "impermissibly resorted to independent research and extra-record evidence" such as newspaper articles. *LA Alliance*, 14 F.4th at 952. The district court later confessed that, when it issued the preliminary injunction that this Court ultimately vacated, it "had a pretty good idea . . . [it] was going to get reversed" but acted anyway because it was frustrated that "[n]othing was happening" and believed it had "no place else to go" to alleviate homelessness. 7App1623.

Reversal did nothing to diminish the district court's evident belief that reporting in newspapers and extra-record research should drive the direction of these proceedings:

- The district court has proclaimed its responsibility to "get involved when [it] read[s] something ridiculous" about the City in a "Los Angeles Times article." 7App1570.
- The court's order awarding attorney's fees and costs to the Alliance and Intervenors began with an introduction faulting the City for a supposed "lack of oversite [sic] and corruption." 5App1246. The court supported that narrative by citing 16 news articles despite this Court's warning not to go outside the record.

5App1245-52. The court even block-quoted the preliminary-injunction order that this Court vacated, including the assertion (accompanied by a footnote citing three news articles) that "[r]ecent investigations into City-funded housing projects for the homeless demonstrate a lack of government oversight has allowed the proliferation of corruption." 5App1246.

- During the contempt proceedings, the court brought up a news article describing fees charged by the City's outside counsel, 5App1099, and ordered the City to publicly file its contracts with outside counsel, 4App1011.
- The court has otherwise made clear that its understanding of the case is rooted in its beliefs about the City's supposed decades-long institutional failure to address homelessness. 4App747; 7App1624; 2App357; 1App135. Those beliefs are largely untethered to evidence that was presented by the parties or that the City had a meaningful opportunity to challenge, but are instead rooted vaguely in "articles that go back in the 1980s." 2App335; accord 7App1533.

In short, the district court has not followed this Court's instruction to stick to the issues and record as framed by the parties. To the contrary, the district court has made clear its desire to take extreme measures that it acknowledges rest on shaky legal footing, declaring that "2025 will be the year of action taken by the Court if needed," that it will "take the result of that from the Ninth Circuit," 2App482, and that it would not be "complicit" in the homelessness crisis even if its unorthodox decisions have a "great chance of reversal," 7App1624.

Relief is especially warranted because this recurring error is now arising in the contempt context. The district court's repeated resort to its own research and extra-record evidence satisfies not only the fourth but also the fifth *Bauman* factor—whether its orders raise new and important problems. Although the City need not demonstrate both factors because they are "often mutually exclusive," *In re Mersho*, 6 F.4th 891, 903 (9th Cir. 2021), this is an atypical situation where both are present because the oft-repeated error arises in a "new context," *In re Kirkland*, 75 F.4th 1030, 1051 (9th Cir. 2023). The district court is repeating its same error—but now in the contempt context that is especially prone to judicial abuse.

IV. The City has no other adequate means to obtain fair notice and defend itself in the expanded contempt proceeding.

Mandamus is the only effective remedy left for the district court's stark departure from due process and its evident desire to probe issues that are off limits to federal courts. The City has twice objected to the expanded contempt proceedings and requested notice from the court regarding the subject of those proceedings. 6App1488, 6App1497. In responding to only the second request, the court refused to identify any particular statement or to ensure adequate review of the City's abstention, privilege, and federalism arguments before the court orders witness testimony that invades the City's rights. 7App1671-72. The City also cannot take an appeal because there will be no final decision under 28 U.S.C. § 1291 "unless a contempt order is issued and sanctions have been imposed," at which point the contempt hearing may have already undermined the parallel state-court proceedings, the City's privileges, and the City Council's internal autonomy. *Phillipine Nat'l Bank*, 397 F.3d at 774.

The City also can do nothing in the separate state-court proceeding to protect its interests while the district court from moving forward with the expanded contempt hearing. While the *CANGRESS* judgment will likely be automatically stayed once the City appeals, *see Daly*, 11 Cal. 5th

at 1052, the state court cannot protect its own jurisdiction by enjoining the district court from proceeding any farther down this dangerous path, *see Advanced Bionics Corp. v. Medtronic, Inc.*, 29 Cal. 4th 697, 706-07 (2002) (recognizing state court's limited ability to enjoin parallel proceedings in a separate jurisdiction). As a result, the City's only viable option to obtain the relief it seeks is through this mandamus petition.

CONCLUSION

This Court should issue a writ of mandamus directing the district court to vacate its January 14 and February 4 orders expanding the scope of the contempt hearing. And to ensure that the Court has adequate time to consider this petition, it should administratively stay the hearing relating to those orders that is set to commence at 9:00 a.m. on February 10.

Dated: February 9, 2026

Respectfully submitted,

/s/ *Theane D. Evangelis*
Theane D. Evangelis

Counsel for Petitioner
City of Los Angeles

CERTIFICATE OF RELATED CASES

Under Circuit Rule 28-2.6, the City of Los Angeles identifies *LA Alliance for Human Rights v. City of Los Angeles*, No. 25-4623; *LA Alliance for Human Rights v. City of Los Angeles*, No. 25-6760; and *LA Alliance for Human Rights v. City of Los Angeles*, No. 26-221 as proceedings related to this case.

This Court consolidated these three appeals, all of which challenge orders made by the same district court in the same case that gives rise to this mandamus petition.

Dated: February 9, 2026

/s/ *Theane D. Evangelis*
Theane D. Evangelis

Counsel for Petitioner
City of Los Angeles

CERTIFICATE OF COMPLIANCE

This petition complies with Federal Rules of Appellate Procedure 21(d)(1) and 32(g) and Circuit Rules 21-2(c) and 32-3(2) because it contains 7,754 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

The petition's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because the petition has been presented in 14-point New Century Schoolbook type.

Dated: February 9, 2026

/s/ *Theane D. Evangelis*
Theane D. Evangelis

Counsel for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, I electronically filed the foregoing petition with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. I further certify that on the same day, I caused the petition to be served by email and by commercial carrier for next-day delivery on:

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I also caused the petition to be hand-delivered to the district court in Courtroom 10A, 411 West 4th Street, in Santa Ana.

Dated: February 9, 2026

Respectfully submitted,

/s/ *Theane D. Evangelis*
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No. 26-784

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE CITY OF LOS ANGELES

CITY OF LOS ANGELES,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

LA ALLIANCE FOR HUMAN RIGHTS ET AL.,

LA CAN

LA CATHOLIC WORKER

Real Parties in Interest.

From the United States District Court
Central District of California
Case No. 2:20-cv-02291 | Hon. David O. Carter

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I. Introduction

The district court (Carter, J.) is acting pursuant to its inherent authority to sua sponte question the veracity of statements made by the City of Los Angeles in a prior contempt proceeding. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The need for the inquiry arose after the City Attorney's office made a seemingly contrary statement in an ancillary action against the City that is currently pending in state court. Rather than provide the Court with an explanation of the contradiction, the City filed this petition for an extraordinary writ of mandamus to prevent the Court from conducting that inquiry. There is no basis for the Court to grant the City's petition.

The Court's current inquiry into the City of Los Angeles's conduct stems from a stipulation filed in this case in April 2024 to resolve a prior settlement enforcement action against the City. The prior enforcement action was based on the City's failure to comply with a material provision of the settlement. In the stipulation between the City and the LA Alliance, the City represented that the City Council of the City of Los Angeles approved an Encampment Reduction Plan (ERP) that it was required to approve by the terms of the settlement.

Ten months later, in response to an inquiry by Intervenors about the vote tally of that approval and an allegation that the City violated the state's Open Meetings Act when it approved the plan, the City Attorney's office responded that the City Council

did not, in fact, vote to approve the ERP. LA CAN subsequently filed a petition in state court, challenging the City's actions under the Brown Act. ("Brown Act Litigation").

In January 2026, the Court in this case became aware of the proceedings in state court after the state court ruled that the City did violate the Brown Act by discussing the ERP in closed session. As a result of that ruling, the district court in this case became aware of the City's seemingly conflicting statements in the two different court cases. In response, the Court expanded an existing contempt proceeding against the City to investigate "whether an authorized representative of the City of Los Angeles…willfully misrepresented a material fact or facts to this Court concerning action taken by the Los Angele City Council on or about January 31, 2025." 7App1672.

To avoid having to explain the City's seemingly conflicting positions in the two cases, the City has filed this writ of mandamus, asking this Court to save it from the district court's inquiry. But rather than rest on the Court's actual order to support its position, the City all but ignores a subsequent order issued by the Court the day the City filed this petition, clarifying that the Court is not investigating the City's possible Brown Act violations, but rather, limiting its investigation only to the veracity of the statements made by the City in January 2024 related to the approval of the ERP.

That inquiry falls well within the Court's inherent authority to investigate potential fraud on the court, and the line of inquiry being pursued by the Court stems from the City's own statements about what occurred during the closed session meeting. Yet relying almost exclusively on prior orders and ignoring the City's own disclosure of what happened in the closed session, the City argues that the Court cannot investigate the potential misrepresentations—now, or potentially ever.

There is simply no basis for the Court to grant the City's petition for a writ of mandamus. At bottom, the City's petition is little more than a last ditch effort to save its representatives from having to explain their positions to the Court. But that effort fails because it ignores the Court's most recent clarifying order and fails to identify an error of law, let alone a clear error as a matter of law that is necessary to support a writ of mandamus by this Court. The Court should deny the City's petition and allow the Court to proceed.

II. Statement of the Case

In 2020, a group of business and property owners in Skid Row, along with individual property owners and residents, filed the underlying litigation. 1App1. The LA Alliance alleged, *inter alia*, that the jurisdictions had allowed nuisances to exist in Skid Row by failing to clear homeless encampments and seeking an injunction to compel the clearing of encampments. *Id.* Petitioner LA CAN, a community based organization in Skid Row with hundreds of unhoused members, intervened in the

matter, based on their interest in protecting their unhoused members from increased criminalization and the loss of their belongings, along with LA Catholic Worker, another. 1App23.

The City ultimately settled with the LA Alliance in spring 2022. 1App143. As part of the settlement, the City agreed to construct new units to accommodate 60% of unsheltered persons and develop plans and milestones for meeting its shelter bed obligations. 1App152. As relevant here, City also agreed to "create plans and develop milestones and deadlines for … the City's plan for encampment engagement, cleaning, and reduction" in each council district and the city as a whole. *Id.,* Section 5.2(iv), (ii). The settlement provided that the case would be dismissed but requested the Court to retain jurisdiction to enforce the terms of the settlement. *Id.* The Court approved the settlement on June 14, 2022, incorporated the settlement into an enforceable order by the Court, and dismissed the case against the City. 1App170.

On February 2, 2024, the LA Alliance filed a motion for sanctions against the City of Los Angeles, alleging in part that the City had not timely fulfilled its obligations under the settlement agreement to create and approve the Encampment Reduction Plan (ERP), as required by Section 5.2 of the Settlement Agreement. 1App171. In the declaration in support of the motion, counsel for the LA Alliance stated that she had been informed that the City Council had considered and approved

the ERP on January 31, 2024 and she had been provided the plan on February 1, 2024. 1App178. The "milestone goals" she was provided were attached to her declaration. 1App178, 255. This was the first time that the City Council's consideration, let alone approval of the ERP, had been disclosed publicly.

Following a number of hearings on Plaintiffs' motion for settlement enforcement, the City and the Plaintiffs entered into a stipulation of facts related to the leadup to the approval of the ERP. In the stipulation, the City represented that: "**The 9,800 encampment reduction plan and milestones were presented to the City Council on January 31, 2024, which approved them without delay**." 1App259. The stipulation was signed by Scott Marcus, Chief Assistant City Attorney, but the approved ERP was not filed with the stipulation. *Id.*

In October 2024, LA CAN sent a letter to the City regarding potential violations of the state's open meetings act, the Brown Act, related to the January 31, 2024 City Council meeting in which the City Attorney's office represented that the ERP was approved. 7App1654. In response to LA CAN's position that the City had violated the Brown Act by failing to disclose the City Council tally of the vote to approve the ERP, the City Attorney's office defended its failure to disclose the vote by representing to LA CAN that "no vote was taken" during the January 31, 2024 meeting. 7App1655.

In January 2025, LA CAN filed an action in Los Angeles Superior Court,

CANGRESS v. City of Los Angeles, ("Brown Act Litigation"), challenging in relevant part the City of Los Angeles's consideration of the ERP in closed session, which LA CAN maintained was a violation of the state's Open Meetings Act, the Ralph M. Brown Act, Ca. Gov't Code § 54950 *et seq*. In November 2025, the trial court held a trial on the merits and on January 5, 2026, issued a ruling in LA CAN's favor. The ruling was covered by the *LA Times*, which included facts about the City's apparent contradictory statements that the City Council had approved the ERP but that no vote had been taken to do so. 5App1299.

Less than a week later, the Court in this case held a hearing in an ongoing contempt proceeding related to the City's alleged violations of the Court's order incorporating the settlement agreement in the case. During the hearing, the Court informed the parties that he had become aware of the Brown Act Litigation. 6App1323:1-7 ("Is the Court supposed to accept this encampment reduction from the City—don't answer it now. I want to discuss this with you at 3:30 or 4:00.). The Court later explained his concern stemmed in part from the potential that ruling would invalidate the ERP approval, resulting in the City Council having to reconsider and approve the ERP in open session as a result of the ruling. Given that the approval of the ERP had formed the basis for many of the subsequent proceedings and City Council's prior delays in taking up other issues related to the settlement, the Court expressed concern that the possible invalidation of the approval

would impact the monitoring of the settlement, an issue squarely before the Court. "If I don't have, because of these Brown Act violations, an encampment resolution approved by the Council, how long is it going to take to get this back to the council for public hearing because it may be argued to the Court that I don't have an encampment resolution right now." 6App1393-94. *See also* 6App1403 (raising concerns about the consequences of the Brown Act for purposes of settlement enforcement).

The Court also raised a separate but related concern, that the *LA Times* reporting had suggested that the City Council had not actually approved the ERP because the City Council had not voted on the measure. The seeming contradictory statements raised concerns for the Court that the ERP was not approved and that the statements that it had were actually material misrepresentations to the Court in the course of prior enforcement proceedings. *See* 5App1299-1304.

Shortly thereafter, the Court issued an order regarding the potential Brown Act violations, ordering the parties to provide the Court with the briefing schedule in the Brown Act Litigation. 5App1285-86.

On February 4, 2026, as part of a scheduling order related to a pending motion by the City of Los Angeles, the Court informed the parties that the Court would move also forward with contempt proceedings against the City related to the potential Brown Act violation. 6App1492.

The Court's initial February 4, 2026 order was based on two concerns: 1) that the City's Brown Act violation would result in the ERP being vacated as a result of the violation—a well-known remedy under the Brown Act,—and that it would have ramifications for the LA Alliance litigation, given the prior settlement enforcement actions, and 2) that there were material misrepresentations that came to light as a result of the Brown Act Litigation, which was then reported in the press. *Id.*

On February 7, 2026, the City filed objections to the Court's order, arguing that that hearing was inappropriate, given the ongoing Brown Act Litigation. 6App1498. LA CAN filed a response to the City's objections, clarifying for the Court that the Brown Act Litigation would not have the effect of invalidating the approval of the Encampment Reduction Plan. 7App1645. Although the Brown Act allows a party to seek to invalidate the underlying action at issue upon a finding of a violation of the act, *see* Cal. Gov't Code § 54960.1, LA CAN had not sought to undo the underlying approval of the ERP. Instead, it was seeking other remedies, including declaratory relief that the City had violated the Brown Act and related prospective relief allowable under the Act. 7App1646-47. LA CAN also agreed that a stay regarding contempt stemming from the Brown Act violations was appropriate, but suggested that the Court could address its second concern, namely the veracity of the statements by the City's representatives to the Court that the City Council had

approved the ERP, despite subsequent representations by the City Attorney's office that no vote was taken. 7App1648-52.

On February 9, 2026, before the City's unilateral noon deadline, the Court issued a clarifying order. 7App1672-73. The Court's latest order clarifies that the focus of the hearing would not focus not on whether the City violated the Brown Act, but instead, on whether the City Council actually approved the ERP and if not, whether the City Attorney's office made material misrepresentations that it had. The explicit focus of the hearing was "whether an authorized representative of the City of Los Angeles…willfully misrepresented a material fact or facts to this Court concerning action taken by the Los Angeles City Council on or about January 31, 2025." 7App1672. The order went on to inform the parties that the Court would hear argument about how the contempt proceeding should proceed and the order of witnesses to be presented. 7App1673.

Less than four hours later, the City filed its emergency petition for writ of mandamus, asking this Court to administratively stay the hearing on February 10, 2026 and grant a writ of mandamus to prevent the Court from going holding the hearing at all. The petition makes only one reference to the Court's February 9, 2026 clarification, instead choosing to focus the entire petition on the Court's prior orders and the suggestion that the hearing would focus on the Brown Act Litigation and potential Brown Act violations. *See* City Petition for Writ of Mandamus at 19-20

(noting only that the Court denied the stay request and clarified only that the hearing would involve an alleged "misrepresent[ation of] a material fact. . . concerning action taken by the Los Angeles City Council on or about January 31, 2025").

On February 9, 2026, this Court denied the administrative stay but ordered Real Parties in Interest to file a response within seven days.

III. Statement of the Issues

Whether the Court's January 14 and February 4, 2026 orders, as clarified by the February 9, 2026 order, indicating the Court's intention to inquire into the factual basis of the City's representation that the ERP was approved by the City Council, impinge on state court proceedings adjudicating whether the City Council violated the state's open meetings law by discussing the plan in closed session; and whether the Court's order was clearly erroneous as a matter of law.

IV. Grounds for Denial of the Writ of Mandamus

a. The Court's Operative February 9, 2026 Order Does Not Impinge on The Brown Act Litigation

The bulk of the City's argument in support of its petition for a writ of mandamus rests on the City's contention that the district court proceedings will impermissibly infringe on the Brown Act Litigation currently pending in LA Superior Court. This argument fails for a number of reasons. First, the issues before the state court are wholly separate and distinct from the ones at issue in this litigation. Specifically,

the Brown Act Litigation challenges the propriety of legality of convening a closed session to discuss and enact a policy mandated by the settlement agreement in this case. On the other hand, the issue the Court in this case is concerned with is the potential misrepresentation by the City Attorney's office that the City Council approved the ERP. That issue is explicitly *not* before the state court. In fact, when petitioner LA CAN raised the argument that the closed session allowed the City to hide a potential violation of the City Charter and council rules by approving the ERP without a vote, the City argued that the violation of the charter and city council rules were a "red herring" and not at issue in the state court proceedings. Intervenors and Real Parties in Interest's Motion for Judicial Notice (RJN), Exh. A at 18-19.

Second, and most important, the hearing ordered by the Court on February 9, 2026 did not concern the City's possible violations of the Brown Act. While it is true that when the Court initially learned of the Brown Act Litigation, the Court raised concerns about Judge Kin's ruling and its potential implications for the LA Alliance litigation. The Court's inquiry into the Brown Act Litigation stemmed from a justified concern that a ruling could invalidate the ERP, the approval of which had been the subject of a number of court proceedings to date, including the contempt proceedings in June 2025 that are the subject of a separate Ninth Circuit appeal. The Court's stated concern was that the invalidation of the ERP approval would have consequences for the underlying litigation, particularly if either party then argued

that the ERP was also invalid for purposes of the LA Alliance litigation. Accordingly, the Court focused its attention on the potential implications of violations of the Brown Act for the LA Alliance Litigation. 7App1671-72.

In response to the Intervenor's assurance that any remedy ordered by the state court in the Brown Act litigation would not invalidate the proceedings—and the City and Intervenors' shared concern that a ruling related to the Brown Act litigation could impede those proceedings, the Court clarified that it would not move forward with contempt proceedings related to any potential violation of the Brown Act. *Id.*

Yet that significant recalibration of the issues before the Court in the February 9, 2026 order is barely acknowledged in the City's petition for writ of mandamus. The City makes almost no mention of the Court's clear concession to the concerns raised by the City and shared by the Intervenors, that focusing on the Brown Act could impede the underlying litigation. Instead, throughout the petition, the City continues to refer to the hearing as "contempt hearing related to the CANGRESS litigation." Pet. at 20.

Regardless of whether a court hearing on the City's compliance with the Brown Act would have been warranted, that is not the hearing the Court clarified on February 9, 2026 would be conducted the next day. As of February 9, 2026, *before* the City filed the petition for an extraordinary writ of mandamus, the only issue the Court was considering was whether the City made material misrepresentations to the

Court when it stated that that the City Council approved the ERP without delay. 7App1672.

The City's almost complete disregard for the Court's February 9, 2026 clarifying order undermines any argument the City has that the Court intended to interfere with the state court proceedings—which make up the bulk of the City's petition for a writ of mandamus.

b. The Court's Order is Not Clearly Erroneous as a Matter of Law

Considering the order the Court actually issued, the City's petition for a writ of mandamus still should be denied, because the City does not show that the Court clearly erred as a matter of law in ordering the hearing to go forward.

As the City outlines in its petition, in deciding whether to grant extraordinary mandamus relief like the relief requested by the City, this Court considers five factors:

(1) whether the petitioner has other adequate means, such as a direct appeal, to attain the relief he or she desires;

(2) whether the petitioner will be damaged or prejudiced in a way not correctable on appeal;

(3) whether the district court's order is clearly erroneous as a matter of law;

(4) whether the district court's order makes an "oft-repeated error," or "manifests a persistent disregard of the federal rules"; and

(5) whether the district court's order raises new and important problems, or legal issues of first impression.

In re Van Dusen, 654 F.3d 838, 841 (9th Cir. 2011), citing *Bauman v. U.S. Dist. Court,* 557 F.2d 650, 654–55 (9th Cir.1977).

Not all of the factors are equal. The third factor, whether the Court's order is "clearly erroneous as a matter of law" is a necessary condition for granting a writ of mandamus." *In re Van Dusen*, 654 F.3d at 841 (holding that although the Court favored the petitioner's interpretation of the law over the district court's, that the district court's interpretation was not a clear enough order to meet the "extraordinary" bar necessary to grant mandamus review). *See also Douglas v. U.S., Dist. Ct. for Cent. Dist. of Ca.*, 557 F.3d 1062, 1066-67 (9th Cir. 2007) (per curium).

This Court's analysis should begin and end with the third factor, because the Court's order is not clearly erroneous as a matter of law. "Clear error is a highly deferential standard of review in the mandamus context, an order is clearly erroneous for purposes of a mandamus petition if we are left with the definite and firm conviction that a mistake has been committed." *In re Henson*, 869 F.3d 1052, 1058 (9th Cir. 2017) (internal citations removed). "Clear error is a highly deferential standard of review. Mandamus will not issue merely because the petitioner has identified legal error. "Rather," the court must have "a definite and firm conviction that the district court's interpretation ... was incorrect." *Id.*

Here, the City comes nowhere near meeting the "clearly erroneous" standard for the Court's order regarding the February 10, 2026 hearing, given the Court's February 9, 2026 clarification.

Following the disclosure of facts in a separate court proceeding that appeared to contradict statements made in these court proceedings, the Court raised questions about this apparent contradiction to the parties. The Court first raised the issue at a hearing on January 12, 2026 when the Court uncovered the inconsistency. Then, the Court raised the issue again and clarified its position in subsequent orders on January 14 and February 4, 2026. In response to the City's objections and Intervenors' response, the Court issued a further order on February 9, 2026, clarifying that the hearing was not related to violations of the Brown Act but instead ordering an evidentiary hearing to resolve the issue of the City's apparent contradiction and to determine whether "an authorized representative of the City of Los Angeles…willfully misrepresented a material fact or facts to this Court concerning action taken by the Los Angele City Council on or about January 31, 2025." 7App1671. Ordering an evidentiary hearing to inquire into the veracity of statements submitted to the Court is not, as the City contends, "a clear error of law." On the contrary, it is well within the Court's authority, especially given the current state of the proceedings, to investigate potential contemptuous misconduct by the City. "All federal courts are vested with inherent powers enabling them to manage

their cases and courtrooms effectively and to ensure obedience to their orders. *F.J. Hanshaw Enterprises, Inc. v. Emerald River Development, Inc*., 244 F.3d 1128, 1136 (9th Cir. 2001). *See also Chambers*, 501 U.S. at 44. This necessarily includes investigating potential misrepresentations made to the Court. As the U.S. Supreme Court has made clear, "a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. *Id. See also Universal Oil Products Co. v. Root Refining Co*. 328 U.S. 575, 580 (U.S. 1946).

In an attempt to meet the necessary threshold issue of a clear error as a matter of law, the City makes a number of arguments about the Court's order, cobbling together a parade of horribles to meet the high bar of "clear error." The City fails to do so however, because standing alone and taken together, nothing about the Court's order should leave this Court with the required "definite and firm conviction that the district court" acted in error. *In re Henson*, 869 F.3d at 1058.

i. The Court's orders, taken in the context of the litigation, provides adequate notice to the city

The City argues that the Court clearly erred as a matter of law by failing to inform the City of the nature of the "contempt charge" to enable it to prepare for a defense. Writ Petition at 23. As an initial matter, the City is not challenging a finding of contempt, but rather, the process chosen by the Court to investigate

potential contemptuous conduct by the City. At bottom, the City is arguing it is entitled to extraordinary mandamus to prevent the due process afforded by the Court.

But the City's feigned ignorance about the basis for the hearing is disingenuous at best. The Court's orders are clear that the Court is concerned about whether the City's authorized representatives misrepresented to the Court that the ERP was approved by the City Council on January 31, 2025, in light of subsequent disclosures by the City Attorney's office that the City Council did not actually vote to approve the ERP. While the Court could have been more explicit in its orders, taken in the context of the litigation, the Court's orders provide more than sufficient notice to the City to prepare for the hearing.

When the Court first raised concerns about the Brown Act Litigation, the discussion with the Court centered in park on whether the ERP was approved, given there was no vote. During the January 14, 2026 hearing in which the Court first raised the issue, Intervenors' counsel explicitly flagged this point to the Court in response to the Court's questions about the relevance of the Brown Act litigation to the underlying LA Alliance litigation. *See e.g.*, 6AR1400. ("What I would say is relevant to these proceedings is that the underlying representation by the City of Los Angeles in a declaration to this court and then in subsequent testimony was that the City of Los Angeles, the city council, approved the encampment reduction plan, and

yet when the petitioner, intervenors in this case, asked the City Clerk for the vote, the City attorney's office represented that no vote was taken.").

The Court later summarized that he was concerned that the ERP was not properly approved because no vote was taken and that if the ERP was invalidated as a result of the ERP, the City Council would slow walk approval of the ERP, raising similar issues to the ones that had occupied the Court's time for months. 6AR1403:4-24. Far from having "no idea what statement is at issue," Pet. at 25 this is the context in which the Court's January 14, February 4, and February 9 orders must be read, and taken together, the City had ample evidence of "who said something potentially false, where, and under what circumstances." *Id.*

The City also takes issue with the fact that representatives of the City never explicitly stated that the ERP was "voted on" by the City Council and only that the ERP was approved. But that is precisely the issue at the evidentiary hearing—to determine if the ERP actually was approved. The Los Angeles City Charter expressly provides that "(e)xcept as otherwise provided in the Charter, action by the Council shall be taken by a majority vote of the entire membership of the Council." Los Angeles City Charter, Section 244, Quorum and Vote Necessary to Take Action, RJN, Exh. B. Moreover, the operative City Council Rules provide in relevant part that the City Council must vote to take any actions. Rules of the Los Angeles City Council, Rule 25, RJN, Exh. C. The City's statements have to be taken in the context

they are made. In this case, a lawyer for the City represented that the City Council approved the ERP. The legal context in which that statement arises gives rise to an understanding that the ERP was "approved" given the only process outlined in the City Charter and City Council rules for that approval, via a vote of the City Council.

Yet subsequent representations by the City Attorney's Office, which came to the Court's attention as a result of reporting by the *LA Times* related to the Brown Act litigation, raised concerns for the Court because the City Council did not, in fact, vote to approve the ERP as required by the City Charter and City Rules. That begs the question whether the ERP was actually approved, as an attorney for the City represented in a stipulation to the Court. That is the question raised in the operative February 9, 2026 order.

To the extent the order could have stated more clearly it was concerned that specific individuals made material misrepresentations to the Court, the Court's decision to remain circumspect about stating that allegation explicitly in a publicly -available court filing does not deprive the City of due process. On the contrary, the Court has steadfastly avoided outright naming individuals or suggesting in more explicit terms that they misrepresented facts to the Court—strong accusations against any officer of the Court or City official. The Court's instinct to avoid these accusations in court filings and instead, to allow the City to provide an explanation

for the seemingly inexplicable contradiction shows judicial restraint rather than, as the City argues, depriving the City of its due process rights.

ii. The City opened the door to questions about the approval of the ERP

The City completely misses the mark when it argues that it is a clear error of law for the Court to require the City to disclose the process by which the ERP was approved, given its own disclosure that the ERP was "approved without delay" by the City Council but also was not actually voted on by the City Council. Far from a "clear error of law," the City itself opened the door to questions about how the ERP was approved when it put both those statements in the record, first to defend against a prior settlement enforcement action and then to defend against allegations that it violated the Brown Act.

In response to the Court's inquiry into the contradiction between these two statements, the City has taken an untenable and absolute position related to the January 31, 2025 meeting. Specifically, the City argues that because the City Council held a closed session on January 31, 2024, nothing that occurred in the closed session can be disclosed to the Court. According to the City, everything that occurred during the meeting is protected from disclosure, and the City need not answer any questions about what actually occurred during the meeting. Putting aside the question of whether attorney-client privilege or any other privilege would

actually cover the discussion of the ERP (a fact the City contends is before the state court in the Brown Act Litigation), the only relevant question is whether those privileges cover disclosure of the process used by the City Council to approve the ERP in light of the fact that the City—of its own volition—already represented to the Court that the ERP was approved and facts about that approval process. The answer is no.

First, the fact of the City Council's approval of the ERP and the process by which the City Council approved the ERP is not protected by either attorney-client privilege or the deliberative process privilege. "An attorney's involvement in, or recommendation of, a transaction does not place a cloak of secrecy around all the incidents of such a transaction." *Matter of Fischel*, 557 F.2d 209, 212 (9th Cir. 1977). What is at issue is *not* communications between the City Attorneys' office and the City Council, but rather, the process by which the City Council approved the ERP. Likewise, even assuming the deliberative process privilege would apply to the City Council's consideration of the ERP (an issue the Court need not decide), the deliberative process privilege covers the process of deliberation, not the actual approval, which is all that is at issue in the hearing. "For the deliberative process privilege to apply, the material must be 'predecisional' and 'deliberative.'" *Karnoski v. Trump*, 926 F.3d 1180, 1204 (9th Cir. 2019) (quoting *In re Sealed Case*,

121 F.3d 729, 737 (D.C. Cir. 1997). Here, the issue is not about the deliberation, but rather, the decision itself.

But even if the process by which the City Council approved the ERP were protected by one of the privileges or fell within the Brown Act's prohibition on disclosing the contents of a closed session, Ca. Gov't Code 54963(a), the City itself already rang that bell. In the course of this litigation, the City represented to the Court 1) that the ERP was presented to the City Council, which approved it without delay; and 2) details about the process by which the ERP was approved, e.g., that it was not voted on by the City Council. Both of these disclosures, which would appear to contradict each other, open the door for the City to explain the process by which the ERP actually was approved. *See Chevron Corp. v. Pennzoil Co*., 974 F.2d 1156, 1162 (9th Cir. 1992). The City's attempt to use the facts of the approval of the ERP to stave off sanctions in this case and prevent a Brown Act lawsuit in another case, yet refuse to answer any questions that would allow the Court to verify the veracity of those statements, especially in light of the apparent contradiction, is almost definitionally the use of the privileges as "a sword and a shield." *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2nd Cir 1991). The Court is well within its authority to prohibit it. Even assuming, *arguendo,* that the process by which the City Council approved the ERP could constitute a privileged communication as the City contends, "a party . . . may not selectively disclosed privileged communications that it

considers helpful while claiming privilege on damaging communications relating to the same subject." *Chiron Corp. v. Genentech, Inc.* 179 F.Supp.2d 1182, 1186 (E.D. Cal. 2001).

Far from a "clear error as a matter of law," the Court did not commit an error when it issued an order to convene a hearing to address the question of the veracity of material statements made by the City to fend off another motion for sanctions, especially because those statements appear to contradict other statements made by the City to fend off yet other litigation. And if that hearing requires the disclosure of facts to support the City's own representation that it took a specific course of action, the Court's determination that the City should face questions only about the basis upon which the City's authorized representative made his statements is not clear error. It is no error at all.

"The power to unearth such a fraud is the power to unearth it effectively." *Universal Oil Products Co.* 328 U.S. at 580. The City cannot hide behind the Brown Act, or worse, the Brown Act Litigation, to prevent the Court from interrogating whether the City made material misrepresentations about facts that the City itself chose to disclose. It certainly is not clear error as a matter of law for the Court to determine that doing so is necessary to preserve the integrity of the court proceedings.

V. Conclusion

The City has not met its burden of showing the Court committed clear error by ordering an evidentiary hearing to question the City about the bases for its prior representations to the Court. This Court should deny the City's petition for a writ of mandamus.

Dated: February 17, 2026

By: *s/ Shayla R. Myers*

Shayla R. Myers
LEGAL AID FOUNDATION OF LOS ANGELES

Counsel for Intervenors and Real Parties in Interest Los Angeles Community Action Network and Los Angeles Catholic Worker

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rules of Appellate Procedure 21(d)(1) and 32(g) and Circuit Rules 21-2(c) and 32-3(2) because it contains 5833 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f). The brief's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because the petition has been presented in 14-point Times New Roman type.

Dated: February 17, 2026

By: *s/ Shayla R. Myers*
Shayla R. Myers

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing INTEVENOR/REAL PARTIES IN INTEREST ANSWERING BRIEF with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system.

I further certify that on the same day, I caused the answer to be served by email and by messenger service for next-day delivery on:

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Case No. 26-784

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LA ALLIANCE FOR HUMAN RIGHTS, a non-profit corporation,

Plaintiff-Appellee,

v.

CITY OF LOS ANGELES, a municipal entity; COUNTY OF LOS ANGELES, a municipal entity,

Defendants-Appellants,

Appeal from the United States District Court, for the Central District of California,
Case No. 2:20-cv-02291 DOC (KES)
The Honorable David O. Carter, United States District Judge

APPELLEE'S RESPONSE TO APPELLANT'S PETITION FOR WRIT OF MANDAMUS AND EMERGENCY MOTION FOR IMMEDIATE STAY

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RESPONSE TO APPELLANT'S PETITION FOR WRIT OF MANDAMUS AND EMERGENCY MOTION FOR IMMEDIATE STAY

In its second emergency motion in this case in a matter of months, the City again seeks to prevent a hearing that this Court has already determined should proceed. The City now deploys *Younger* abstention as the latest reason for this Court to step in where it previously chose not to. But because the ongoing contempt hearing has not and will not "enjoin[ed] the [state] proceeding, or have the practical effect of doing so," *Younger* abstention is neither warranted nor required. *Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 882 (9th Cir. 2011).

A. Brief Statement of Facts and Procedural History

The LA Alliance for Human Rights brought this case in 2020, faulting the City's constitutional and statutory failures on homelessness. In 2022, the City and the LA Alliance resolved the case, signing a Settlement Agreement that required the City to meet certain benchmarks and deadlines for bed creation and encampment reduction, and to report key metrics on a quarterly basis. (1App140.) The City proceeded to violate the Settlement Agreement immediately, which resulted in a stipulated settlement and sanctions in 2024. (1ResApp005.) The City's violations continued, which led to an evidentiary hearing, a court finding of several violations of the City's obligations, and an award of attorney's fees in 2025. (4App747, 4App1243.)

Later in 2025, a new set of City violations triggered a new evidentiary hearing, which is ongoing. (1ResApp006.) In the midst of that hearing, media reports revealed that a judge on the Los Angeles Superior Court had concluded that the City had violated the Brown Act through its closed-session approval of one the City's encampment reduction obligations under the Settlement Agreement. (Ruling on Verified Pet. for Writ of Mandate, *Cangress v. City of Los Angeles*, Case No. 25STCP00261 (L.A. Super. Ct. Jan. 5, 2006) ("Brown Act decision").)

On January 14, 2026, the district court issued an order (5App1285) that noted the issuance of the Brown Act decision and expressed concern that the facts found in the Brown Act decision raised questions about the accuracy of the City's representation to this Court that the "9,800 encampment reduction plan and milestones were presented to the City Council on January 31, 2024, which approved them without delay." (1ResApp004 at ¶ 8.) The district court observed that the city council's approval was "a critical and material issue before the Court" in this case. (5App1286.)

The Court then issued an order on February 4, 2026, setting a hearing re contempt on the issue of the alleged Brown Act violation and "potential misrepresentations made to the Court regarding the encampment reduction resolution." (6App1492.)

On February 7, 2026, the City filed objections to the hearing and asked the district court to stay the hearing, claiming the City was being denied notice and due process and seeking abstention under *Younger v. Harris*, 401 U.S. 37, 43 (1971). (6App1497.)

On February 9, 2026, the district court filed an order responding to the City's objections:

- stating that it "understands and appreciates the importance of protecting the integrity of all proceedings conducted before it and amends its notice with that responsibility in mind,"
- reiterating its concern that an "authorized representative of the City of Los Angeles may have willfully misrepresented a material fact or facts to this Court concerning action taken by the Los Angeles City Council on or about January 31, 2025;"
- noting that its "concern can best be resolved after the Court considers evidence that will clarify the facts related to that issue."

(1ResApp008-009.) The court also denied the City's request for a stay of the hearing and confirmed the hearing would proceed the following day.

The same day, the City filed the instant petition, asking this Court to intervene and issue an administrative stay that would prevent the district court from conducting a hearing to try to figure out whether it had been lied to by the City, and—

remarkably—asking this Court to reassign the case to another judge. (City's Pet. for a Writ of Mandamus ("Pet."), Feb. 9, 2026, Dkt. No. 1-1.) This Court denied the stay that evening. (Order, Feb. 9, 2026, Dkt. No. 12-1.)

The hearing went forward on February 10, 2026. The hearing opened with the Court observing, "I want to ensure that all parties and intervenors are provided with due process and the opportunity to be heard." (1ResApp015.) What followed was a litany of City objections to the proceedings, another City request to stay the hearing, and more than an hour of oral argument over the City's due process, privilege, and *Younger* complaints. (1ResApp015-047.) Following oral argument, the district court observed,

> I want to think about your arguments concerning *Younger* [absention] for a few moments, and certainly courtesy to the circuit. So I want a little bit of time for reflection. This has raised the issue of whether, in fact, a vote was even taken. I tentatively believe that this can be resolved without intruding on the State Brown Act litigation pending before Judge Kin, but I very much appreciate your oral arguments today, and I want to reflect on that once again after your arguments to the Court today.

(1ResApp056-057.) After taking a 50-minute recess, the district court said the following:

> After thoughtful deliberation and consideration, this Court still believes it can resolve the misrepresentation issue without intruding into the State Brown Act litigation if the testimony in this Court is focused and limited and respectful of any applicable privilege claim. … We're going to get the facts out on this limited issue, but what's really an issue here is a very narrow issue that I've said repeatedly can be resolved quickly and is separate and distinct from the state court proceedings, that privileges can be protected by focusing on this very narrow issue.

(1ResApp068.) The hearing then proceeded, with testimony from one City witness. In response to certain questions, City objected on the basis of privilege and instructed the witness not to answer. When those objections and instructions were made, the district court did not order the witness to answer, and instead allowed the witness not to answer and took the objection under submission. (*See, e.g.*, 1ResApp082-083 ("Q. How did the city council approve the plan? [Counsel for the City]: Objection, Your Honor. I would instruct the witness not to answer to the extent the answer to that question -- THE COURT: I'm not going to sustain it, but I'm going to take that

under submission. You don't have to answer that at the present time. I want to think about that question.").) The district court also took great care to protect privileged communications. (1ResApp084 ("I want to be very careful about any disclosure of any communications, but an act is substantially different. And when this question is asked, I'm going to limit your answer to your subjective or your meaning or mindset about what approval meant. I want to be very careful that your answer doesn't involve communication with members of the council. Is that clear? And if not, I'll restate that.").) The court did not rule on the objections during the February 10 hearing, and the privilege questions raised by the objections remain under submission to the district court. The hearing is set to continue on February 18, 2026.

As the above recitation—and the transcript of the February 10 hearing—make clear, the City's concerns about the hearing are overwrought and misplaced. While the City claims that "the district court is poised to force the City to disclose confidential and privileged information about closed sessions of the City Council," that simply did not happen—to the contrary, the district court took great care concerning the City's privilege objections and did not force the City to disclose privileged information. The district court's cautious, respectful-of-the-privilege approach exposes the City's alarmist, speculative assertions that undergird this petition. The sky has not fallen. And in the event the district court requires the City to answer a question despite a privilege-based instruction not to answer, the City

witness can refuse to answer, and if the district court imposes consequences for any City refusals to answer, the City can appeal those sanctions. What it cannot do is preempt the district court's fact-finding.

B. The City's Due Process Objections Are Invented

Similarly flawed are the City's due process complaints. The City claimed to be unclear about what statements would be the subject of the hearing. In both its two orders (recounted above), and at the outset of the hearing, the court was crystal clear:

> The issue regarding potential misrepresentations made by the City to this Court initially arose when the City attorney seemed to represent to this Court that a vote had been taken in closed session by the City Council on the encampment reduction plan on January 31st of 2024. This representation was seemingly soon contradicted when the City attorney represented that there was nothing to report from the City Council's closed session that occurred that day. There's been subsequent testimony before this Court that, in fact, no vote was taken. These contradictions and others lead to this inquiry about whether a vote was, in fact, taken concerning the encampment reduction plan in closed session on January 31st, 2024.

(1ResApp014-015.) The City responded by immediately identifying the statement that was the subject of the district court's concern:

> [T]here is really no reason for us to be having this proceeding so we're just still in the dark about where in the record that supposed representation was. So we haven't found one. We -- it's our position we never made any representation about a vote. Our best guess was a joint stipulation that was filed on April 4th, 2024, which, of course, the Court is familiar with where the parties said that 9,800 -- the 9,800 encampment resolution plan and milestones was [*sic*] presented to the City Council on January 31st, 2024 which approved them without delay. There's nothing about that statement that's untrue.

(1ResApp018-019.) Within minutes of the district court's opening comments, the City had "guessed" correctly about the very representation the district court identified. Because it was not guesswork—it was based on the notice already provided by the district court, which was adequate and sufficient.

C. Younger Abstention is Inapplicable and Unwarranted

The City's last stand is its call for *Younger* abstention. But as the February 10 hearing transcript makes clear, the hearing did not and will not "have the practical

effect of enjoining, ongoing state court proceedings." *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007). The district court's orders and the ongoing hearing do not threaten to stop the state court Brown Act litigation. Taking evidence concerning whether the Court was lied to by the City about what happened behind closed city council doors will have zero impact on the state court's consideration of the narrow Brown Act litigation issue: whether "the City's approval of the ERP and MOU during closed sessions on January 31, 2024, and May 1, 2024 violated the Brown Act." Brown Act Decision at 9 (5App1296.) Put differently, the relief that would be granted in this case concerning a City misrepresentation to the district court would not interfere in any way with very different question of whether the City should have made decisions in closed session. What the City actually posits is a *potential* for conflict between this case and the Brown Act litigation, which this Court has held is not enough:

> In short, as the Court has often repeated, the mere potential for conflict in the results of adjudications, is not the kind of interference that merits federal court abstention. Rather, the possibility of a race to judgment is inherent in a system of dual sovereigns and, in the absence of exceptional circumstances, that possibility alone is insufficient to overcome the weighty interest in the federal courts

> exercising their jurisdiction over cases properly before them.

Green v. City of Tucson, 255 F.3d 1086, 1097 (9th Cir. 2001). To the extent there is a potential for duplication in the district court's hearing, that's not enough to require abstention. *Id.* ("Since the possibility of duplicative litigation is a price of federalism, the prospect of such duplication, without more, does not constitute interference with state court proceedings justifying a federal court's dismissal of a case properly within its jurisdiction.").

There is another reason abstention isn't required here: the state interest at stake here is not vital enough to trigger *Younger*. As this Court put it:

> To establish a vital interest in the state's judicial functions, an abstention proponent must assert more than a state's generic interest in the resolution of an individual case or in the enforcement of a single state court judgment. Likewise, a state's interest in a universal judicial value such as prompt resolution of cases is not cognizable for purposes of *Younger* abstention. Rather, the interest at stake must go to the core of the administration of a State's judicial system, and its importance must be measured by considering its significance broadly.

Portrero Hills Landfill, Inc. v. Cnty. of Solano, 657 F.3d 876, 886 (9th Cir. 2011). The City makes no attempt to articulate the vital interest here and falls far short of "considering [the interest's] significance broadly" as required by this Court. The garden variety interests of a state judiciary to adjudicate cases or issue writs of mandates is not enough under *Younger*. *Id.* Because the City identifies no such vital interest, it cannot hope to succeed and the writ should be denied.

D. The City Is Attempting to Avoid Accountability By Targeting the District Court

The tell in the City's petition is buried on page 4: the City is unhappy with the district court's efforts to hold the City accountable for its failures to comply with a landmark Settlement Agreement on homelessness and now wants to be rid of this pesky judge. (Pet. at 4 ("the district court's inappropriate and irregular approach to this case justifies reassignment to a different judge on remand").) But the district court has done nothing more than (i) hold hearings to enforce the terms of a Settlement Agreement the City voluntarily entered into, (ii) determine that the City has indeed violated the Agreement, repeatedly, and now, (iii) inquired into the City's lack of candor to the Court about a key element of the Settlement Agreement over which the City agreed the district court would exercise continuing jurisdiction. The district court has inherent authority to conduct such an inquiry. *Fink v. Gomez*, 239 F.3d 989, 994 (9th Cir. 2001) ("We hold that an attorney's reckless misstatements

of law and fact, when coupled with an improper purpose, such as an attempt to influence or manipulate proceedings in one case in order to gain tactical advantage in another case, are sanctionable under a court's inherent power. [Such] a determination . . . rests in the sound discretion of the district court."); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (the inherent power of a federal court permits it "to control admission to its bar and to discipline attorneys who appear before it").

The City's strawman complaints about the district court judge—reading in the newspaper about another court decision and setting an evidentiary hearing to examine a potential misrepresentation in his own courtroom about a key settlement issue, holding hearings at Plaintiff's request to resolve allegations of violations of the settlement agreement, and resolving those allegations by, *inter alia*, ordering the parties to agree on a monitor already called for by the settlement agreement —fail to demonstrate "personal bias or [] unusual circumstances" required for reassignment. *Smith v. Mulvaney*, 827 F.2d 558, 562 (9th Cir. 1987) (citations omitted). Indeed, this Court reassigns district judges "only in rare and extraordinary circumstances" none of which exist in this case. *Air-Sea Forwarders, Inc. v. Air Asia Co., Ltd*, 880 F.2d 176, 191 (9th Cir. 1989). This is a complicated and high-profile case about a critical issue impacting the Los Angeles area. News articles abound and it is entirely proper to raise issues identified in the public sphere which may impact

the settlement agreement here—particularly when the City explicitly agreed to active judicial oversight and enforcement. (1App148 at § 2.) There is simply nothing improper about reading updates in the news and asking the parties about the truth of the contents or scheduling hearings to identify facts—a fact implicitly acknowledged by the City when it failed to cite a single case on point amongst its litany of complaints.[1]

It is worth underscoring the fact that nearly four years ago, **the City expressly agreed to this district judge exercising continued, active jurisdiction over the Settlement Agreement**, but clearly now regrets that decision. That regret has coincided with a more aggressive City litigation strategy that has forced the Plaintiffs and the district court to conduct lengthy evidentiary hearings that have resulted in several adverse rulings that have displeased the City. But displeasure with judicial scrutiny is simply not the kind of "unusual circumstances" that warrant the

[1] The City only cites this Court's opinion in *LA All. for Hum. Rts. v. Cnty. of Los Angeles*, as critical of the district court's "independent research"—but there this Court was actually critical of the district court's apparent judicial notice of the *truth* of non-record matters rather than their existence. 14 F.4th 947, 957 (9th Cir. 2021) ("The district court relied on hundreds of facts contained in various publications for their truth, and a significant number of facts directly underlying the injunctive relief are subject to reasonable dispute."). Conversely, the City cannot and does not point to a single instance of the district court taking judicial notice of the truth of contested matters reported in the media since this Court's decision in 2021—well before any settlement agreement was entered into. And the City fails to cite a single case from any jurisdiction in which a district judge was faulted for inquiring into a party's lack of candor to the court based on another court's findings and media reports.

extraordinary step of reassignment. *Mulvaney*, 827 F.2d 558 at 562. And such displeasure certainly cannot clear the high bar for mandamus relief. *In re Bundy*, 840 F.3d 1034, 1040 (9th Cir. 2016), *subsequent mandamus proceeding*, 852 F.3d 945 (9th Cir. 2017) (mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes") (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). Because of this, the City's petition should be denied in its entirety.

DATED: February 17, 2026

Respectfully submitted,

/s/ *Matthew Donald Umhofer*

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CERTIFICATE OF COMPLIANCE

I am the attorney for Plaintiff-Appellee LA Alliance for Human Rights. Pursuant to Federal Rules of Appellate Procedure ("Fed. R. App. P.") Rule 32(g), I certify that this brief complies with the word limit of Fed. R. App. P. Rule 21(d)(1) because it contains **3,103** words, excluding the items exempted by Fed. R. App. P. Rule 32(f). The brief's type size and typeface comply with Fed. R. App. P. Rules 32(a)(5) and (6).

DATED: February 17, 2026

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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No. 26-784

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE CITY OF LOS ANGELES

CITY OF LOS ANGELES,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

LA ALLIANCE FOR HUMAN RIGHTS ET AL.,

Real Parties in Interest.

From the United States District Court
for the Central District of California
Case No. 2:20-cv-02291 | The Honorable David O. Carter

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INTRODUCTION

When it filed its petition, the City was in the dark about the district court's theory of contempt after multiple ignored requests for clarity. The contempt charge has now come into the light, and it has only confirmed the grave risk to the City's rights and the impropriety of the district court's adjudication of issues of California municipal law that have nothing to do with the parties' settlement agreement. The court has used the City's truthful representation that the City Council approved an encampment-reduction plan during a January 31, 2024 closed session as a springboard to inquire into *how* the City Council approved the plan, even though the California courts are in the process of deciding whether the session should have been closed and whether the session involved privileged discussions with counsel. The district court is also exploring whether the Council approved the plan in conformance with the City Charter and its own rules—issues far beyond the proper scope of any federal action.

No good can come from continuing this contempt proceeding, which has already seen two City lawyers forced to testify under oath and numerous attempts to inquire into what happened during a closed session

of the City Council. The settlement agreement does not grant the district court jurisdiction to sit in judgment of the City Council's approval process. The Constitution forbids that interference. Abstention principles confirm that the court should have stayed its hand, given the ongoing state-court proceeding addressing overlapping issues. And the City's privileges hang in the balance each day that its lawyers are interrogated about confidential deliberations relating to the plan's undisputed approval.

The district court is set to resume the contempt hearing in mid-March. SuppApp144. Across two days, the proceeding has already teetered on gutting the City's right to appeal in the Brown Act litigation and exposing privileged information. This Court should not allow a third day of privilege grenades to be lobbed at the City's witnesses, who have already been forced to choose between disclosing confidential and privileged information or disobeying a direction to answer from the district court. Before the hearing resumes, this Court should either issue a writ of mandamus vacating the orders expanding the contempt charges into this perilous space or at least issue a stay while the Court considers the petition.

UPDATE TO STATEMENT OF THE CASE

The day after the City filed its mandamus petition, the district court held a contempt hearing focused on "possible misrepresentations made by representatives of the City, related to the approval of the encampment reduction plan in January of 2024." SuppApp5. Consistent with the district court's request, 6App1493, First Assistant U.S. Attorney Bill Essayli and District Attorney Nathan Hochman attended the hearing, SuppApp54.

At the hearing, the district court explained that "[t]he issue regarding potential misrepresentations made by the City to this Court initially arose when the City attorney seemed to represent to this Court that a vote had been taken in closed session by the City Council on the encampment reduction plan on January 31st of 2024," which supposedly contradicts the City's "subsequent testimony" that no vote was taken. SuppApp5. The court also opined that investigating the issue was critical because "democracy depends upon transparency." SuppApp123.

The City renewed its objections that the district court could not conduct that inquiry "without completely nullifying the city's rights in the state court proceeding" over potential violations of the Brown Act and

invading the attorney-client privilege, deliberative-process privilege, legislative-process privilege, and official-information privilege because the only way for the City to defend itself would be to divulge what happened in the closed session. SuppApp7, SuppApp120. Intervenors acknowledged that they "don't disagree with the City's position that we should leave the Brown Act litigation to itself," but maintained the court should "interrogat[e] the veracity" of the City's representations regarding the approval of the encampment-reduction plan. SuppApp16. Although Intervenors conceded that "the City did not say and the City Attorney's Office did not represent that a vote was taken," they insisted that, "when the City Attorney's Office states that the City Council approved without delay a plan, it is implicit . . . that was done consistent with the City charter." SuppApp17-18.

Despite the City's objections, the district court allowed testimony to proceed because it "tentatively believe[d]" the issue could be resolved "without intruding on the State Brown Act litigation." SuppApp47. Shortly before the first witness testified, the court finally clarified what it believed the City's misrepresentations were—"facts signed by the Chief Assistant City Attorney, Scott Marcus, then counsel of record for the City

of Los Angeles" stating that "the 9,800 encampment reduction plan and milestones were presented to the city council on January 31st 2024, which approved them without delay" and City Administrative Officer Matthew Szabo's testimony that the plan was approved. SuppApp46-47.

Before hearing testimony, the district court played for the courtroom parts of a YouTube video of the "rather lengthy" January 31, 2024 City Council meeting. SuppApp42. The court had never mentioned this video before, and no party had brought it to the attention of the court. The court paused the video to identify City Council members and Mr. Marcus. SuppApp44. The court then pointed out when the City Council proceeded to a closed session and when the closed session ended. SuppApp45. At that point in the video, an unidentified speaker asks, "Mr. City Attorney, is there anything to report from the closed session," and another speaker responds, "There is not." *Id.*

The district court then heard testimony from Mr. Marcus, a City lawyer who was counsel of record in this action for several years. Intervenors and the Alliance repeatedly asked questions that Mr. Marcus could not answer without divulging privileged and confidential information about the closed session:

- Intervenors asked Mr. Marcus, "How did the city council approve the plan?" and "What process did the city council use to approve the plan if it did not use a voting process?" SuppApp73-74. The City objected, and the court took the objections under submission. *Id.*
- Intervenors asked Mr. Marcus, "When you stated in this declaration to the Court that the city council approved that the milestones were presented to the city council on January 31st, which approved them without delay, what did you mean by the term approved?" SuppApp74. The Court overruled the City's objection. SuppApp75.
- The Alliance asked Mr. Marcus why he submitted the encampment-reduction plan to the City Council for approval. SuppApp102. The Court overruled the City's objection, and Mr. Marcus refused to answer the question because doing so would invade privilege. *Id.*
- Intervenors asked Mr. Marcus what factors determine what constitutes approval by the City Council. SuppApp119. The court again overruled the City's objection, and Mr. Marcus again

declined to answer the question because it would invade attorney-client privilege. *Id.*

- Intervenors asked Mr. Marcus, "What facts support your testimony that you observed—that you believed that the City Council approved the encampment reduction plan?" SuppApp126. Despite the City's objection, the court told Mr. Marcus "you can answer," but he again declined. SuppApp126-27.

The City's counsel informed the district court that they represent the City, not Mr. Marcus, and that he was being placed in "an untenable situation where he needs separate advice about whether or not he should follow the Court's order." SuppApp125. Counsel also asked the court for a stay and an opportunity to brief this issue and for Mr. Marcus to consult separate counsel. *Id.* The court did not grant those requests, but it suggested that it wanted to put the witness testimony "in a package" for this Court to decide the issue. SuppApp131.

Following the hearing, the City filed a renewed objection to the expanded contempt proceeding. The City explained that the questions of the Alliance and Intervenors "confirm that this proceeding intrudes on

multiple privileges" and is on a "collision course" with Brown Act litigation in state court. SuppApp137.

The court resumed the proceeding the following week. SuppApp152. The court heard testimony from Assistant City Attorney Strefan Fauble. SuppApp179. The questioning of Mr. Fauble generally focused on the City Charter and City Rules. The City objected to questioning that called for Mr. Fauble to divulge the contents of closed sessions. SuppApp191. At the end of the hearing, the court continued the proceeding to March to give the parties time to mediate unrelated issues. SuppApp260-61. The court suggested it "may be inclined to hold this matter in abeyance to see if there can be cooperation on other issues," including the selection of a monitor. SuppApp254-255.

REASONS FOR GRANTING WRIT RELIEF

I. The district court lacks authority to police the City Council's approval of the encampment-reduction plan.

After long refusing even to identify any supposed misrepresentation, the district court finally pointed at the February 10 hearing to the City's statement in an April 2024 stipulation that "[t]he 9,800 encampment reduction plan and milestones were presented to the City Council on January 31, 2024, which approved them without delay" and

Mr. Szabo's testimony that the plan was approved. 1App259; SuppApp46-47. The district court mused that "the City attorney seemed to represent to this Court that a vote had been taken," which supposedly contradicts "subsequent testimony before this Court that, in fact, no vote was taken." SuppApp5. Because the City did *not* state that a vote had been taken, the district court has now revealed (as Intervenors confirm) that the theory of contempt is that the City *implicitly* represented that the plan was approved "via a vote of the City Council" because a roll-call vote supposedly is "the only process outlined in the City Charter and City Council rules." Intervenors Ans. 19.

That clarification leaves no doubt about the district court's lack of jurisdiction over the contempt proceeding. Everyone agrees the City Council *did* approve the encampment-reduction plan—just as the April 2024 stipulation states. Intervenors also admit (Ans. 12) that no party is trying to invalidate that plan. So the theory of contempt turns exclusively not on any factual misrepresentation, but instead on the district court's legal intuitions about how the City Council *should* have considered the plan. But in this post-dismissal context, the court has ancillary jurisdiction only to enforce the terms of the parties' settlement

agreement. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380 (1994). Nothing in the pertinent provision of the settlement agreement (§ 5.2) dictates the process by which the City Council must approve plans to implement that provision. 1App152. Because a truthful representation about the City Council's approval could not unlock the doors for a highly intrusive exploration of the Council's approval process, mandamus is the proper remedy to restrain the district court to the "lawful exercise of its prescribed jurisdiction." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380 (2004).

Even if ancillary jurisdiction under the settlement agreement permitted review of the City's compliance with its own approval procedures, the district court would have no power to instruct the City that the plan must be approved in any particular manner. The Tenth Amendment prevents federal courts from commandeering the local legislative process. *New York v. United States*, 505 U.S. 144, 161 (1992). And any attempt to determine whether the City Council approved the plan through the process required by local law would undermine "principles of federalism" that the settlement agreement could not override. *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984).

What's more, this entire contempt proceeding rests on a blatant misunderstanding of the rules that govern the City Council's proceedings—which only underscores why federal courts do not intrude on this process to begin with. The City Charter and Council Rules catalog numerous instances in which no formal vote is required, particularly in the context of litigation. As Mr. Marcus testified, the City Council "can approve things by a vote, they can approve things on unanimous consent. They can approve things via consensus. They can approve things via discussion." SuppApp104. And as Mr. Fauble testified, approval can happen by "unanimous approval" or a "generalized agreement." SuppApp215.

Intervenors misread the City Charter in arguing (Ans. 18) that the City Council could approve the encampment-reduction plan only by a vote. As Mr. Fauble explained, the Charter is a document of limitation—not authorization—so the City Council possesses inherent authority except as limited by the Charter. SuppApp194. Although City Charter § 244 generally requires the Council to take certain acts through voting, that provision is subject to exceptions "otherwise provided in the Charter." L.A. City Charter Art. II, § 244. One such exception is § 272, which

establishes an attorney-client relationship between the City Attorney—a separately elected official—and the Council. *Id.* Art. II, § 272 ("The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations."). When the Council acts in its capacity as a client in litigation (not as a legislative body), § 272 does not require the Council to take a formal vote to "direct[]" litigation. *Id.*

The City Council Rules further undercut the district court's misimpression (shared by Intervenors) that the City Council could approve the plan only through a roll-call vote. City Council Rule 49 provides that, while certain inapplicable enumerated activities require roll-call votes, "[o]n other matters, if opportunity is given and no objection is raised, the Presiding Officer may announce a unanimous approval of an item under consideration." L.A. City Council Rules ch. VIII, rule 49.

Clarification thus confirmed rather than cured the "clear error" that mars the contempt charges. *In re Van Dusen*, 654 F.3d 838, 841 (9th Cir. 2011). The district court has no jurisdiction to probe the processes by which the City Council approved the encampment-reduction plan.

And its charge of misrepresentation rests on a clearly erroneous premise that the Council could approve the plan only by a vote.

II. Even if the district court had the power to adjudicate the propriety of the City Council's approval, the contempt proceeding would still interfere with pending state-court litigation.

The second clear error here is the contempt hearing's inevitable collision with the *CANGRESS* litigation in California court. Pet. 29-32. As Intervenors see things, the district court averted any conflict by supposedly abandoning any focus on the alleged Brown Act violation in its February 9 order. Ans. 11-12. But Intervenors cannot put daylight between the Brown Act litigation and the supposed misrepresentation concerning the closed session because the two are inextricably intertwined—not "wholly separate and distinct." *Id.* at 10.

This Court need only see what happened the *next day* at the February 10 hearing when Mr. Marcus was barraged with questions about the events that took place during the City Council's closed session. Intervenors and the Alliance repeatedly asked Mr. Marcus to divulge what occurred during the closed session. *See supra*, at 5-7. They asked those questions because Intervenors see the key "issue at the evidentiary hearing" as whether "the [encampment-reduction plan] actually was

approved" by the City Council during its closed session on January 31, 2024. Ans. 18. Intervenors never explain how the City could prove that the Council approved the plan without explaining *what* it did during the closed session—information whose confidentiality and privileged status is currently being litigated in the California courts, which is the proper forum for Brown Act disputes.

For much the same reason, the Alliance blinks reality in asserting (Ans. 9) that the contempt hearing "will have zero impact on the" Brown Act litigation in state court. The case for abstention no longer rests on a mere "*potential* for conflict" (*id.*)—the February 10 hearing put any doubts to rest on mere potential. Because Intervenors and the Alliance are questioning the City's lawyers about the contents of the Council's closed session as the California courts consider whether those contents should remain confidential, this proceeding risks destroying the City's appellate rights before the trial court has even entered a final judgment in *CANGRESS*. The vital state interest in compliance with the Brown Act requires abstention under *Younger v. Harris*, 401 U.S. 37 (1971). *See, e.g.*, *Lake Luciana, LLC v. County of Napa*, 2009 WL 3707110 (N.D. Cal. Nov. 4, 2009).

The district court all but admitted an intent to overtake the Brown Act litigation in declaring at the February 10 hearing that "democracy depends on transparency." SuppApp123. The City wholly agrees that transparency is an important democratic value—one that the Legislature has carefully balanced against competing considerations in the Brown Act. But democracy is not advanced by a federal court's imposition of its *own* preferences for even broader transparency by forcing witnesses to disclose information from closed sessions in direct violation of that Act. That is quite literally the opposite of democracy.

Intervenors and the Alliance cannot mask the reality that this proceeding is on an inevitable collision course with the Brown Act and the *CANGRESS* litigation, which is ongoing, has not resulted in a final judgment, and will be subject to appellate review. This Court's intervention is regrettably necessary to avoid irreparable harm to the City that will result from the district court's clear legal error.

III. The proceeding has and will continue to put witnesses in an impossible position.

The City's privileges are now in a more precarious state than ever, as their protection lies in the hands of three people—two City attorneys and one high-ranking City official—who have and will continue to be

forced to choose between disclosing confidential and privileged information that the Brown Act (and, for the City's lawyers, the Rules of Professional Conduct) prohibit them from revealing, or refusing the Court's direction to answer questions that would require such disclosures.

On February 10, after taking under submission numerous City objections to questions to Mr. Marcus from the Alliance and Intervenors, the district court instructed Mr. Marcus to answer four of those questions but then waffled on enforcing his instruction when he still refused to answer. SuppApp96, SuppApp102, SuppApp119, SuppApp126-27. The only reason this privileged information wasn't revealed in open court is because Mr. Marcus refused to answer at great personal and professional risk. And the district court has shown the exact opposite of a "cautious, respectful-of-the-privilege approach." Alliance Ans. 6. The arbitrary pattern of daring witnesses to disclose privileged information while declining to impose a sanction that would expose the privilege rulings to appellate review only underscores the need for mandamus relief.

The Alliance suggests (Ans. 7) the City should simply "appeal [any] sanctions" imposed "if the district court imposes consequences for any City refusals to answer" similar questions. But the Alliance never

explains how the City might prevent or even mitigate the harm of privileged information being revealed if witnesses choose to answer questions under court order instead of risking a contempt sanction. Even if a witness could force appellate review by being held in contempt, this Court has never tolerated forcing litigants or witnesses to "'choose between being in contempt of court and violating [the] law'"—here, the Brown Act. *In re Philippine Nat'l Bank*, 397 F.3d 768, 774 (9th Cir. 2005).

Intervenors attempt to justify this unacceptable state of affairs on the theory that the City "opened the door to questions about the approval of the" encampment-reduction plan (Ans. 20) and has purportedly used privilege as both a sword and shield (*id.* at 22). But Intervenors' sword-and-shield argument would apply only if the City "affirmatively place[d] its attorney-client communications at issue," "implicitly waiv[ing] the privilege." *Rock River Commc'ns, Inc. v. Universal Music Grp., Inc.*, 745 F.3d 343, 353 (9th Cir. 2014). To use privilege as a sword and shield, the City would need to rely on privileged communications and then refuse to disclose them.

That's not what happened here. The City didn't put privileged communications at issue by announcing that the Council had approved the

plan any more than an attorney puts privileged discussions about strategy at issue by announcing the *unprivileged* information that a client, after those discussions, has agreed to accept a settlement offer or voluntarily dismiss its claims. *Rodriguez v. Seabreeze Jetlev LLC*, 620 F. Supp. 3d 1009, 1021 (N.D. Cal. 2022).

Even Intervenors recognize (Ans. 21) that the City hasn't put at issue privileged "communications between the City Attorneys' office and the City Council, but rather, the process by which the City Council approved the" encampment-reduction plan. The *district court's* unsupported skepticism about the accuracy of the City's representation of this non-privileged approval does not amount to the *City's* waiver of privilege. *Cf. Rock River Commc'ns, Inc.*, 745 F.3d at 353 (a plaintiff's assertion of the sham exception to a defendant's *Noerr-Pennington* defense did not amount to the defendant's waiver of privilege).

In short, there's no basis in fact or law to find any waiver of privilege here. The district court's contention that disclosure is necessary because the "door was opened" and privileged was "used as a sword and shield," SuppApp126, amounts to clear legal error. This Court should not hesitate to redirect the district court's focus to the terms of the settlement

agreement and provide guidance regarding appropriate guardrails to prevent interference with the Brown Act proceeding. At a minimum, this Court should correct the district court's mistaken understanding that merely announcing the City Council's approval amounted to a waiver of privilege, particularly in light of the district court's desire to send these issues "up to the circuit in a package" so that the district court "can be corrected by the circuit" if its privilege rulings are incorrect. Supp-App130-131.

IV. The district court's erratic track record confirms that this Court should stay the hearing before the City suffers irreversible harm.

With little to say in defense of a contempt proceeding that has veered off course from the settlement agreement into municipal-law issues that the district court has no authority decide, the Alliance takes aim (Ans. 11-14) at the City's request in a *different* brief that this Court reassign the case to a new judge on remand from the consolidated appeals. No. 25-4623 Dkt. 21.1 at 89-106. The Alliance spins (Ans. 12) a sanitized account in which Judge Carter simply "read[] in the newspaper about another court decision and set[] an evidentiary hearing to examine

a potential misrepresentation in his own courtroom about a key settlement issue."

Far from griping about a "pesky judge" who is concerned about settlement compliance, Alliance Ans. 11, the City strenuously objects to the manner in which the district judge has shed the role of neutral adjudicator. The judge has proclaimed himself the Mayor's "worst nightmare," threatened to make the City's officials' "lives miserable" or their careers "dead politically," and frankly announced that "I don't trust you as an institution" in seeking to expand his authority beyond the settlement agreement. No. 25-4623 Dkt. 21.1 at 94-95, 98. He has persisted in flouting the party-presentation principle, under which "courts 'call balls and strikes'; they don't get a turn at bat." *Clark v. Sweeney*, 607 U.S. 7,9 (2025) (per curium); *see LA Alliance for Human Rights v. County of Los Angeles*, 14 F.4th 947, 953 (9th Cir. 2021). The judge has also reminisced about his numerous past ex parte interactions with City leaders (before the City registered its objection to them), and the time when the former Mayor proclaimed his "membership in the Judge Carter fan club Los Angeles chapter." SuppApp175-176. And he has strayed far beyond the terms of the settlement agreement. This proceeding is a perfect example:

The parties are now a million miles away from anything that the settlement agreement commits to the district court's authority, with the evidentiary hearing focused on the City Charter, the City Council's Rules, the Brown Act, and the City's privileges.

To be clear, this petition does not raise the City's reassignment request, which is an issue for another day in the consolidated appeals. But this Court should not blind itself to the way that the district judge has conducted this case for the past six years. By the next filing in this Court, it may very well be too late for this Court to do anything about the dangerous game of privilege roulette being played below.

CONCLUSION

This Court should issue a writ of mandamus directing the district court to vacate its January 14, February 4, and February 9 orders expanding the scope of the contempt hearing. If the Court has not ruled on the petition by the time that the hearing resumes in mid-March, the Court should stay any further proceedings.

Dated: February 20, 2026

Respectfully submitted,

/s/ *Theane D. Evangelis*
Theane D. Evangelis

Counsel for Petitioner
City of Los Angeles

CERTIFICATE OF COMPLIANCE

This reply complies with Federal Rules of Appellate Procedure 21(d)(1) and 32(g) and Circuit Rules 21-2(c) and 32-3(2) because it contains 4,091 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

The reply's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because the reply has been presented in 14-point New Century Schoolbook type.

Dated: February 20, 2026

/s/ Theane D. Evangelis
Theane D. Evangelis

Counsel for Petitioner
City of Los Angeles

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2026, I electronically filed the foregoing reply with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system.

I also caused the reply to be hand-delivered to the district court in Courtroom 10A, 411 West 4th Street, in Santa Ana.

Dated: February 20, 2026

Respectfully submitted,

/s/ *Theane D. Evangelis*
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