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8 ANGELES COUNTY DEPARTMENT
OF PUBLIC HEALTH
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 ERICA JIMENEZ, individually and on
13 behalf of a class of similarly situated
14 individuals,

15 Plaintiff,

16 v.

17 DR. ERICA PAN, in her official
capacity as Director of the California
Department of Public Health;
18 DR. BARBARA FERRER, in her
official capacity as Director of the Los
Angeles County Department of Public
Health; MANUEL CARMONA, in his
20 official capacity as the Director of
Public Health for the Pasadena Public
Health Department; LOS ANGELES
21 COUNTY DEPARTMENT OF
PUBLIC HEALTH; and PASADENA
22 PUBLIC HEALTH DEPARTMENT,
23

24 Defendants.

CASE NO. 2:26-cv-03500 SPG (SPx)

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS PURSUANT TO F.R.C.P.
RULE 12(B)(1)**

*[Filed Concurrently with Memorandum
of Points and Authorities; Declaration
of Amnon Z. Siegel; [Proposed] Order]*

Hearing Date: September 30, 2026
Hearing Time: 1:30 p.m.
Courtroom: 5C

Assigned to the Hon. Sherilyn Peace
Garnett and Magistrate Judge Sheri Pym

MILLER BARONDESS, LLP

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1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF**
2 **RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that on September 30, 2026 at 1:30 p.m. in
4 courtroom 5C of the above-entitled court, the Hon. Sherilyn Peace Garnett,
5 presiding, Defendants DR. BARBARA FERRER and LOS ANGELES COUNTY
6 DEPARTMENT OF PUBLIC HEALTH (collectively, “Defendants”) will and
7 hereby do, move the Court for an order dismissing this action against Defendants
8 pursuant to Federal Rules of Civil Procedure (FRCP”) Rule 12(b)(1) for lack of
9 subject matter jurisdiction because Plaintiff does not have standing.

10 **Rule 7-3 Compliance Statement**

11 Defendants have satisfied all obligations under Local Rule 7-3. On June 29,
12 2026, Defendants sent Plaintiff’s counsel a meet and confer letter outlining
13 Defendants’ arguments. (Declaration of Amnon Z. Siegel, Ex. A.) On July 1, 2026,
14 the parties engaged in a videoconference meet and confer session, where they
15 discussed Defendants’ forthcoming motion to dismiss for lack of standing. (*Id.* ¶ 3.)
16 The parties could not come to a resolution on the standing issue. (*Id.* ¶ 4.) On
17 August 17, 2026, all defendants e-mailed Plaintiff’s counsel and asked whether
18 Plaintiff had reconsidered her position on standing. (*Id.* ¶ 5.) Plaintiff’s counsel
19 stated Plaintiff had not reconsidered, thereby necessitating this motion. (*Id.* ¶ 6.)
20

21 DATED: August 24, 2026

MILLER BARONDESS, LLP

22
23
24 By: 

25 AMNON Z. SIEGEL
26 Attorneys for Defendants
27 DR. BARBARA FERRER and LOS
28 ANGELES COUNTY DEPARTMENT
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26
27
28

CASE NO. 2:26-cv-03500 SPG (SPx)

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO F.R.C.P.
RULE 12(B)(1)**

*[Filed Concurrently with Notice of
Motion and Motion; Declaration of
Amnon Z. Siegel; [Proposed] Order]*

Assigned to the Hon. Sherilyn Peace
Garnett and Magistrate Judge Sheri Pym

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

From the start, Plaintiff’s Complaint raised serious questions as to whether she had standing to challenge her alleged “denial” of admission to the Black Infant Health (“BIH”) Program. But Plaintiff’s conduct since the filing of the Complaint confirms no standing exists. The record shows that she is not, and has never been, serious about joining the BIH Program, which is designed to combat the well-documented mortality crisis faced by Black women and infants. Rule 12(b)(1) mandates dismissal.

At the May 27, 2026, hearing on Plaintiff’s preliminary-injunction motion, the Court put it to Plaintiff’s counsel straight: Given Defendants’ position that Plaintiff is not ineligible for the BIH Program, has Plaintiff actually reached out to apply? (Declaration of Amnon Z. Siegel (“Siegel Decl.”) at Ex. B, 37:22–38:1.) Plaintiff’s counsel said no but indicated Plaintiff would enroll if offered a spot in the program. (*Id.* at 38:14–20.)

In the weeks that followed, Defendants heard nothing from Plaintiff. (Declaration of Amanda Cusick (“Cusick Decl.”) ¶¶ 7–8.)¹ So Defendants reached out. On July 8, 2026, the City of Pasadena sent Plaintiff a letter, inviting her to meet with a counselor to enroll in the program. (*Id.* ¶ 6 & Ex. A.) The City provided four dates for Plaintiff to meet with the counselor and told Plaintiff that, if those dates did not work, she could provide alternative dates. (*Id.*, Ex A.) Plaintiff never responded (*id.* ¶¶ 7–8), clearly demonstrating that she is not interested in pursuing enrollment.

It remains unclear why Plaintiff wanted to challenge the BIH Program, with which she wanted nothing to do in the first place. But what is clear is that Plaintiff

¹ Defendant Pasadena Public Health Department is filing the Cusick Declaration in connection with its joinder to Defendants’ motions. The County defendants incorporate that declaration herein in full.

1 is attempting to game the system and manufacture standing where none exists. The
2 law forbids it. Plaintiff's case should be dismissed with prejudice.

3 **II. BACKGROUND**

4 **A. Plaintiff's Complaint**

5 The Court is familiar with the BIH Program from the parties' briefing on
6 Plaintiff's motion for a preliminary injunction. (*See* County Opp. to Pl. Mot., Dkt.
7 24.) The BIH Program is a state-created program, administered through the County
8 and local municipalities, that is designed to combat the well-documented Black
9 infant and mother mortality crisis. (*See id.* at 3:25–11:28.)

10 On April 2, 2026, Plaintiff sued Dr. Barbara Ferrer and the Los Angeles
11 County Department of Public Health (collectively, the "County"), the Pasadena
12 Public Health Department and its director, and the director of the California
13 Department of Public Health. (*See* Compl., Dkt. 1.) Plaintiff alleged that, because
14 she was not Black, she and her infant were ineligible to participate in the BIH
15 Program. (*See id.* ¶¶ 16–25.) Plaintiff's Complaint concedes that she never applied
16 to the BIH Program. (Compl. ¶ 29.) The "Factual Allegations" section of the
17 Complaint contains no allegation that Plaintiff actually applied to the program—the
18 word "applied" does not appear anywhere. (*See id.* ¶¶ 16–25.)

19 On April 13, 2026, Plaintiff filed a motion for a preliminary injunction, and
20 asked the Court to grant her immediate entry into the BIH Program. (*See* Memo. in
21 Support of Pl. Mot., Dkt. 13-6.) In connection with that motion, the parties
22 submitted factual declarations and evidence that further crystallized Plaintiff's
23 failure to apply to the BIH Program. That evidence, which the County incorporates
24 herein, showed as follows:

25 Plaintiff is a 33-year-old woman. She declared that, on February 23, 2026,
26 she completed an interest form on the Pasadena Public Health Department webpage.
27 (Declaration of Erica Jimenez, Dkt. 13-5 ("Jimenez Decl.") ¶ 3.) On February 27,
28 2026, she spoke with a City of Pasadena employee who, according to Plaintiff, told

1 her that because she and her child are not Black or African-American, she was not
2 eligible for the program. (*Id.* ¶ 4.)

3 That is not what happened. (Declaration of McKenzie Scott, Dkt. 26-3
4 (“Scott Decl.”) ¶¶ 6–11.) Consistent with the training not to make eligibility
5 decisions during an initial phone call, the BIH staffer at the City of Pasadena
6 described the program and described other, similar resources in the County that
7 could provide Plaintiff with pregnancy-related services. (*Id.*) Indeed, Plaintiff’s
8 race was not even discussed during this lone phone call, and race is never discussed
9 during such preliminary calls. (*Id.*) Plaintiff was, however, provided with
10 information about other services and programs available to her. (*See* Jimenez Decl.
11 ¶ 4.)

12 Plaintiff did not actually apply for the BIH Program, only filling out an
13 interest form and stating that she is “ready and able to apply.” (*Id.* ¶ 6.) She does
14 not state that she wants to participate in the program or explain how she might
15 benefit from it. In sum, she filled out a short form, had one telephone call (where it
16 is disputed what was discussed), and did nothing else. She did not follow up. (*See*
17 Scott Decl. ¶ 12.)

18 The County is not aware of any individual being denied admission to the BIH
19 Program based solely on race or any policy or practice of denying admission to
20 applicants based solely on race. (Declaration of Melissa Franklin, Dkt. 24-1 ¶ 65.)
21 The State further confirms it is not aware of anyone who has been turned away
22 based on race. (*See* Declaration of Rita Nguyen, Dkt. 26-1.) And the City of
23 Pasadena is aware of several instances in which it has allowed individuals who did
24 not identify as Black to participate in the program; Pasadena’s policy and practice,
25 like the State’s, is not to turn anyone away from the BIH Program based solely on
26 race. (Scott Decl. ¶ 11.)

27 ///

28 ///

1 **B. The Court Questions Plaintiff’s Lack of an Application to the BIH**
2 **Program**

3 On May 27, 2026, the Court held a hearing on Plaintiff’s preliminary
4 injunction motion. (*See* Dkt. 34.) At the hearing, the Court noted that the
5 defendants’ evidence and declarations stated that Plaintiff was **not** categorically
6 excluded from the BIH Program based on her race. (Siegel Decl., Ex. A, at 37:12–
7 38:1.) The Court also asked whether in light of this information, Plaintiff had
8 reached out to any of the defendants to apply to the BIH Program. (*See id.*)

9 Plaintiff’s counsel deflected from Plaintiff’s inaction, stating that “[i]t’s not
10 on Ms. Jimenez to reach out.” (*Id.* at 38:2.) But he stated that Plaintiff would
11 “welcome” a stipulation to admit Plaintiff to the program. (*Id.* at 38:14–15.) As
12 would later come to light, this was false. The Court took the matter under
13 submission. (*Id.* at 42:8–10.)

14 **C. Plaintiff Ignores the Court’s Suggestion and Vanishes**

15 Although she professed that she was “ready and able” to join the BIH
16 Program, Plaintiff did not follow the Court’s lead in the weeks following the
17 hearing. Neither Plaintiff nor her counsel reached out to the City of Pasadena
18 concerning her enrollment into the BIH Program. (Cusick Decl. ¶ 4.) Given
19 Plaintiff’s inaction, the City reached out to Plaintiff regarding her supposed desire to
20 participate in the program. (*Id.* ¶ 6.)

21 On July 8, 2026, the City sent a letter to Plaintiff, through her counsel,
22 inviting her to pursue enrollment with the BIH Program. (*Id.* & Ex. A.) It outlined
23 the next steps Plaintiff needed to take, including setting an appointment with a
24 mental health professional (a requirement for all applicants). (*Id.*) And it provided
25 four dates for potential appointments: July 13, 15, 21, and 23. (*Id.*) The letter also
26 stated that, if none of those appointments worked for Plaintiff, she should reach out
27 and suggest an alternative date. (*Id.*)

28 ///

1 Plaintiff never responded to the letter, never scheduled an appointment, and
2 continues to not pursue the BIH Program. (*Id.* ¶¶ 7–8.)

3 **III. LEGAL STANDARD**

4 A Rule 12(b)(1) motion is the proper vehicle for a standing challenge. *E.g.*,
5 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “A Rule 12(b)(1) jurisdictional
6 attack may be facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035,
7 1039 (9th Cir. 2004) (“*Meyer*”). “In a facial attack, the challenger asserts that the
8 allegations contained in a complaint are insufficient on their face to invoke federal
9 jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the
10 allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Id.*

11 For a factual attack, such as the one at issue in this case, “the district court
12 may review evidence beyond the complaint without converting the motion to
13 dismiss into a motion for summary judgment.” *Meyer*, 373 F.3d at 1039. “*The*
14 *court need not presume the truthfulness of the plaintiff’s allegations.*” *Id.*
15 (emphasis added).

16 Because Plaintiff is the party invoking this Court’s jurisdiction, it is her
17 burden (not Defendants’) to establish jurisdiction. *E.g.*, *Brooke v. Rihh LP*, No. 19-
18 CV-06852-SI, 2020 WL 788889, at *2 (N.D. Cal. Feb. 18, 2020). “Once the
19 moving party has converted the motion to dismiss into a factual motion by
20 presenting affidavits or other evidence properly brought before the court, the party
21 opposing the motion must furnish affidavits or other evidence necessary to satisfy its
22 burden of establishing subject matter jurisdiction.” *Savage v. Glendale Union High*
23 *Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003).

24 **IV. ARGUMENT**

25 **A. Plaintiff Lacked Standing at the Time She Filed Her Case**

26 **1. Plaintiff Bears the High Burden of Establishing Standing**

27 “[C]ourts do not opine on legal issues in response to citizens who might
28 ‘roam the country in search of governmental wrongdoing.’” *Food & Drug Admin.*

1 *v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (“*Alliance*”). “By requiring
2 the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who
3 might have only a general legal, moral, ideological, or policy objection to a
4 particular government action.” *Id.* at 381; *City of Huntington Beach v. Newsom*, 790
5 F. Supp. 3d 812, 824 (C.D. Cal. 2025) (citing same). “The injury in fact
6 requirement prevents the federal courts from becoming a ‘vehicle for the vindication
7 of the value interests of concerned bystanders.’” *Alliance*, 602 U.S. at 382.

8 This common-sense principle guards against manufactured litigation; as such,
9 a plaintiff cannot maintain a lawsuit without the threshold showing of Article III
10 standing. *E.g.*, *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). To
11 satisfy standing, a plaintiff must show: “(1) injury in fact; (2) causation; and (3)
12 likelihood that a favorable decision will redress the injury.” *P.P. v. Compton*
13 *Unified Sch. Dist.*, 135 F. Supp. 3d 1098, 1122 (C.D. Cal. 2015).

14 “An ‘injury in fact’ consists of ‘an invasion of a legally protected interest
15 which is (a) concrete and particularized, and (b) actual or imminent, not conjectural
16 or hypothetical.’” *Id.* “In other words, the ‘threatened injury must be *certainly*
17 *impending* to constitute injury in fact’ and ‘allegations of *possible* future injury are
18 not sufficient.’” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir.
19 2018). The party invoking federal jurisdiction bears the burden of establishing
20 standing. *Am. Encore v. Fontes*, 152 F.4th 1097, 1110 (9th Cir. 2025).

21 “To survive a motion to dismiss for lack of constitutional standing, plaintiffs
22 must establish a ‘line of causation’ between defendants’ action and their alleged
23 harm that is more than ‘attenuated.’” *Maya v. Centex Corp.*, 658 F.3d 1060, 1070
24 (9th Cir. 2011). And the Court is not obligated to bend over backwards to find
25 standing for Plaintiff when she has not done so herself. *Fleming v. ProVest Cal.*
26 *LLC*, No. 21-CV-04462-LHK, 2021 WL 6063565, at *6 (N.D. Cal. Dec. 22, 2021)
27 (noting that the court need not “manufacture standing arguments” that are not
28 present in the pleadings).

2. **Plaintiff Lacks Standing – She Has Never Applied to the BIH
Program**

Courts have held that even where a plaintiff alleges a defendant prevented them from receiving services, there cannot be standing unless and until the plaintiff first *applies* for those services and is denied. *See, e.g., Alexandre v. Amazon.com, Inc.*, No. 22-CV-1459-MMA (VET), 2024 WL 2445705, at *4–5 (S.D. Cal. May 23, 2024). In *Alexandre*, plaintiffs claimed Amazon maintained an application policy that prevented them from being hired as delivery service partners, but they never applied before filing suit. *Id.* Amazon moved to dismiss on standing grounds; the plaintiffs responded by arguing that an application would have been a “futile gesture.” *Id.* The district court rejected that argument, finding that plaintiffs failed to demonstrate standing because they failed to apply to the program. *Id.* at *5.

Plaintiff’s failure to apply to the BIH program, despite being invited to do so by Defendants, dooms her Complaint. Plaintiff’s Complaint concedes that she never applied to the BIH Program. (Compl. ¶ 29.) The “Factual Allegations” section of the Complaint contains no allegation that Plaintiff actually applied to the program—the word “applied” does not appear anywhere. (*See id.* ¶¶ 16–25.)

Plaintiff’s failure to apply was further explored in the parties’ briefing on her motion for a preliminary injunction. (*See supra* Section II.A.) Defendants presented evidence controverting Plaintiff’s false statement that she was told she could not apply to the BIH Program. (Scott Decl. ¶¶ 6–11.) Plaintiff never submitted an application for the program (just an interest form) and was never actually denied services. Plaintiff does not even state that she applied to and *wants* to participate in BIH, only that she would be “ready and able to apply.” (Jimenez Decl. ¶ 6.) But when Plaintiff was invited to apply, she refused and ignored the City’s offer for a meeting to initiate the application process. (Cusick Decl. ¶¶ 7–8.) She thus lacks standing. *Alexandre*, 2024 WL 2445705, at *4–5.

B. Plaintiff's Post-Hearing Actions Underscore Her Lack of Standing

If the Court had any question as to whether Plaintiff's interest in the BIH Program was genuine, it need look no further than her actions (or inaction) following the parties' May 27 hearing.

As described above, on July 8, 2026, the City reached out to Plaintiff and offered her four dates where she could meet with a counselor to pursue enrollment in the BIH Program. (*See supra* Section II.C.) And it invited Plaintiff to provide alternative dates that were more convenient for her. (*Id.*) To date, Plaintiff has not responded to the letter and has seemingly abandoned her feigned interest to join the program entirely.

Courts roundly forbid attempts by plaintiffs to manufacture their own standing. *See, e.g., Alliance*, 602 U.S. at 394; *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) ("respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending"); *Int'l Partners for Ethical Care Inc v. Ferguson*, 146 F.4th 841, 848 (9th Cir. 2025) ("We have consistently held that self-inflicted harm doesn't satisfy the basic requirements for standing. Such harm does not amount to an 'injury' cognizable under Article III." (citation omitted)). That is exactly what Plaintiff is attempting to do here by perpetuating a lawsuit based on self-created harm. Put simply, Plaintiff cannot show standing for being denied entry to the BIH Program where she refused to apply to the program despite a specific invitation.

C. Plaintiff Cannot Otherwise Fabricate Standing

Any other attempts by Plaintiff to salvage standing cannot succeed. Although her Complaint is nominally pleaded as a class action, that cannot overcome the fact that Plaintiff herself lacks standing. It is well-settled that a plaintiff cannot create standing for herself based on the redressable injuries of third parties. *E.g., Hale v. Brinker Int'l, Inc.*, No. 21-CV-09978-VC, 2023 WL 5600293, at *1 (N.D. Cal. Aug. 29, 2023).

Nor can this case be salvaged by simply locating another class representative to replace Plaintiff. If the purported class representative lacks standing, “this means that the court never had jurisdiction over the matter” to begin with—and it cannot take any further action in the case. *Jamison v. Bank of Am., N.A.*, No. 2:16-CV-00422-KJM-AC, 2017 WL 3394120, at *6 (E.D. Cal. Aug. 8, 2017); 1 *Newberg & Rubenstein on Class Actions* § 2:8 (6th ed. 2026) (if class representative does not have standing, “the court lacks jurisdiction over the case and it must be dismissed,” noting “there is no opportunity for a substitute class representative to take the named plaintiff’s place because this means that the court never had jurisdiction over the matter”); *see also Summit Off. Park, Inc. v. U.S. Steel Corp.*, 639 F.2d 1278, 1281–82 (5th Cir. 1981) (where a plaintiff lacks standing, it also cannot “control the litigation by substituting new plaintiffs”; allowing Rule 15 amendment would provide Plaintiffs’ counsel unwarranted “power and control” akin to a lawsuit in search of a sponsor); *Gonzalez v. Procter & Gamble Co.*, 2006 WL 8455612, at *2 (S.D. Cal. Aug. 31, 2006) (following *Summit Office Park*).

Similarly, the fact that Plaintiff retained a lawyer and may have incurred fees and costs does not confer standing. A plaintiff cannot create standing simply by filing a lawsuit and sustaining litigation costs. *Friends of the Earth v. Sanderson Farms, Inc.*, No. 17-CV-03592-RS, 2019 WL 3457787, at *4 (N.D. Cal. July 31, 2019), *aff’d*, 992 F.3d 939 (9th Cir. 2021) (noting that plaintiffs cannot rely on evidence after the filing of their lawsuit to support their standing to sue); *Rechnitz v. Transamerica Life Ins. Co.*, No. LACV 17-03970-VAP(AFMx), 2018 WL 6164267, at *4 (C.D. Cal. July 18, 2018) (“Plaintiffs’ incurrence of attorneys’ fees does not constitute a concrete injury”).

The same is true regarding time that Plaintiff feels she has wasted or lost in connection with her claim or perceived harm—that does not confer standing. Such wasted time must be “inextricably bound up in a cognizable injury.” *Manzanarez v. Madera Collection Servs.*, 722 F. Supp. 3d 1074, 1080 (E.D. Cal. 2024) (citation

1 omitted). “[T]o allow otherwise would enable litigants to ‘manufacture standing
2 merely by inflicting harm on themselves.’” *Id.* Because there is no cognizable
3 injury, there is no standing, no matter how Plaintiff might characterize other forms
4 of harm.

5 **D. Plaintiff Cannot Amend Her Complaint**

6 The Court should preclude Plaintiff from amending her Complaint for two
7 reasons.

8 ***First***, the law prevents Plaintiff from amending her complaint to plead new
9 facts regarding standing. This is so because “[t]he existence of federal jurisdiction
10 ordinarily depends on the facts ***as they exist when the complaint is filed.***” *Lujan v.*
11 *Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (bold added); *Righthaven, LLC v.*
12 *Hyatt*, No. 2:10-CV-01736-KJD-RJJ, 2011 WL 3652532, at *2 (D. Nev. Aug. 19,
13 2011) (citing *Lujan* and denying plaintiff opportunity to amend complaint to create
14 standing). Plaintiff is foreclosed from adding new facts to manufacture standing
15 where none exists.

16 ***Second***, even if Plaintiff were allowed to amend her Complaint, any
17 amendment would be futile. Plaintiff has shown her hand via her post-hearing
18 conduct—namely, refusing to apply when invited to. Her feigned interest in the
19 BIH program was an artifice designed solely to bring a lawsuit. But the Supreme
20 Court has made clear that Plaintiff’s “ideological[] or policy objection” is simply not
21 enough to confer standing. *Alliance*, 602 U.S. at 381. This case is at an end.

22 **V. CONCLUSION**

23 For all the foregoing reasons, the Court should grant the Motion and dismiss
24 this case with prejudice, without leave to amend.
25
26
27
28

1 DATED: August 24, 2026

MILLER BARONDESS, LLP



4 By: _____

5 AMNON Z. SIEGEL

6 Attorneys for Defendants

7 DR. BARBARA FERRER and LOS
8 ANGELES COUNTY DEPARTMENT
9 OF PUBLIC HEALTH

MILLER BARONDESS, LLP

ATTORNEYS AT LAW

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants DR. BARBARA FERRER and LOS ANGELES COUNTY DEPARTMENT OF PUBLIC HEALTH, certifies that this brief contains 3,189 words and does not exceed 25 pages, which:

☐ complies with the word limit of L.R. 11-6.1.

☒ complies with the limits set by this Court's standing order.

DATED: August 24, 2026



Amnon Z. Siegel

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7 Attorneys for Defendants
DR. BARBARA FERRER and LOS
8 ANGELES COUNTY DEPARTMENT
9 OF PUBLIC HEALTH

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 ERICA JIMENEZ, individually and on
13 behalf of a class of similarly situated
14 individuals,

15 Plaintiff,

16 v.

17 DR. ERICA PAN, in her official
capacity as Director of the California
Department of Public Health;
18 DR. BARBARA FERRER, in her
official capacity as Director of the Los
19 Angeles County Department of Public
Health; MANUEL CARMONA, in his
20 official capacity as the Director of
Public Health for the Pasadena Public
21 Health Department; LOS ANGELES
COUNTY DEPARTMENT OF
22 PUBLIC HEALTH; and PASADENA
PUBLIC HEALTH DEPARTMENT,

23 Defendants.
24
25
26
27
28

CASE NO. 2:26-cv-03500 SPG (SPx)

**DECLARATION OF AMNON Z.
SIEGEL IN SUPPORT OF COUNTY
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO F.R.C.P.
RULE 12(B)(1)**

*[Filed Concurrently with Notice of
Motion and Motion; Memorandum of
Point and Authorities; [Proposed]
Order]*

Hearing Date: September 30, 2026
Hearing Time: 1:30 p.m.
Courtroom: 5C

Assigned to the Hon. Sherilyn Peace
Garnett and Magistrate Judge Sheri Pym

DECLARATION OF AMNON Z. SIEGEL

I, Amnon Z. Siegel, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Miller Barondess, LLP, counsel of record for Defendants DR. BARBARA FERRER and LOS ANGELES COUNTY DEPARTMENT OF PUBLIC HEALTH (collectively, the “County Defendants”). I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify to all of said facts. I make this declaration in support of County Defendants’ Motion to Dismiss Pursuant to F.R.C.P. Rule 12(b)(1) (“Motion”).

Meet and Confer Efforts

2. On June 29, 2026, on behalf of the County Defendants, I sent Plaintiff’s counsel a meet and confer letter outlining Defendants’ arguments. A true and correct copy of that letter is attached hereto as **Exhibit A**.

3. On July 1, 2026, the parties engaged in a videoconference meet and confer session, where they discussed the County Defendants’ forthcoming motion to dismiss for lack of standing.

4. The parties could not come to a resolution on the standing issue.

5. On August 17, 2026, all defendants e-mailed Plaintiff’s counsel and asked whether Plaintiff had reconsidered her position on standing.

6. Plaintiff’s counsel stated Plaintiff had not reconsidered, thereby necessitating this motion.

The City of Pasadena’s Letter

7. On July 8, 2026, the City of Pasadena sent Plaintiff’s counsel a letter that invited Ms. Jimenez to proceed with completing the additional steps for enrollment in the Black Infant Health (“BIH”) program. I was copied on the transmission of that letter.

8. Since that time, Plaintiff’s counsel has not reached out to me or the County regarding her pursuit of enrollment in the BIH Program.

1 **Preliminary Injunction Hearing**

2 9. On May 27, 2026, the Court held a hearing on Plaintiff's Motion for a
3 Preliminary Injunction. I attended that hearing on behalf of the County Defendants.
4 A true and correct copy of the hearing transcript is attached hereto as **Exhibit B**.

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct.

7 Executed on this 24th day of August, 2026, at Los Angeles, California.

8
9
10 

11 _____
12 Amnon Z. Siegel
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INDEX OF EXHIBITS TO THE DECLARATION OF AMNON Z. SIEGEL

Exhibit Letter	Description	Pg. No.
A.	<u>June 29, 2026 A. Siegel Letter to A. Quinio</u>	<u>5 - 8</u>
B.	<u>Transcript from May 27, 2026 Hearing on Preliminary Injunction</u>	<u>9 - 52</u>

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EXHIBIT A

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June 29, 2026

AMNON Z. SIEGEL
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VIA E-MAIL

Andrew R. Quinio
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
AQuinio@pacificlegal.org

Re: *Jimenez v. Dr. Erica Pan, et al.*, Case No. 2:26-cv-3500-SPG-SP, in the United States District Court for the Central District of California

Dear Mr. Quinio:

This letter pertains to County defendants Dr. Barbara Ferrer and the Los Angeles County Department of Public Health's (collectively the "County") forthcoming Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). This e-mail is intended to initiate the meet-and-confer process as required by Local Rule 7-3 and the Court's standing order. **Please let me know times on June 30 or July 1 you are available for a video conference.**

The County intends to move to dismiss pursuant to 12(b)(1) based on Plaintiff's lack of standing. In order to facilitate our discussion, the County's current position is below.

A. Plaintiff Must Establish The Threshold Element of Standing

"A motion to dismiss for lack of standing under Article III is properly raised in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1)." *E.g., Wells v. United States Liab. Ins. Co.*, No. 222CV08583JLSAGR, 2023 WL 4761551, at *2 (C.D. Cal. June 15, 2023) To satisfy the standing threshold, a plaintiff must show that she suffered "an invasion of a legally protected interest" that is "concrete and particularized" **and** "actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), *as revised* (May 24, 2016).

"[C]ourts do not opine on legal issues in response to citizens who might 'roam the country in search of governmental wrongdoing.'" *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024). This common-sense principle guards against manufactured litigation; as such, a plaintiff cannot maintain a lawsuit without the threshold showing of Article

MILLER BARONDESS, LLP

Andrew Quinio
June 29, 2026
Page 2

III standing. “In other words, the ‘threatened injury must be certainly impending to constitute injury in fact’ and ‘allegations of possible future injury are not sufficient.’” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018).

It follows that, where a plaintiff is able to avail themselves of a remedy to redress their claimed injury, they cannot ignore such relief simply to perpetuate their claim. *Cain v. Johnson Health Tech N. Am., Inc.*, No. EDCV 23-195 JGB (KKX), 2023 WL 12154889, at *8 (C.D. Cal. June 23, 2023) (“a plaintiff cannot ‘manufacture standing’ by refusing to accept an offer that fully redressed his injury”).

Courts have held that even where a plaintiff alleges a defendant’s action prevented them from receiving services, there cannot be standing unless and until the plaintiff first applies for those services and is denied. *See, e.g., Alexandre v. Amazon.com, Inc.*, No. 22-cv-1459-MMA (VET), 2024 WL 2445705, at *4 (S.D. Cal. May 23, 2024). In *Alexandre*, plaintiffs claimed Amazon maintained an application policy that prevented them from being hired as delivery service partners, but they never applied before filing suit. *Id.* Amazon moved to dismiss on standing grounds; the plaintiffs responded by arguing that an application would have been a “futile gesture.” *Id.* The district court rejected that argument, finding that plaintiffs failed to demonstrate standing because they failed to apply to the program. *Id.* at *5.

B. Plaintiff Cannot Demonstrate Standing

Plaintiff cannot establish standing.

Plaintiff has not suffered an injury in fact. The declaration of Pasadena Public Health Department employee McKenzie Scott that was submitted in conjunction with the preliminary injunction briefing confirms that the City of Pasadena never told Plaintiff that she could not participate in the BIH Program. Plaintiff never submitted an application for the program (just an interest form), never availed herself of the BIH Program’s exception procedure, and was never actually denied services. Plaintiff does not even state that she applied to and wants to participate in BIH, only that she would be “ready and able to apply.” She thus lacks standing. *Alexandre*, 2024 WL 2445705, at *4. Plaintiff has not applied to the program, despite being told that she can.

In addition, at the hearing, the Court encouraged Plaintiff to submit an application for the BIH Program. The Court questioned why Plaintiff had not done so, despite the fact that several weeks had passed since the defendants submitted declarations stating that Plaintiff was capable of being accepted to the BIH Program. It has been more than a month since that hearing, and Plaintiff *still* has not applied, despite the invitation remaining open. Plaintiff cannot refuse the Court’s suggestion and sit on her hands in an attempt to manufacture standing.

MILLER BARONDESS, LLP

Andrew Quinio
June 29, 2026
Page 3

We look forward to discussing these issues with you on our videoconference. Again, please let me know what times work for you on June 30 or July 1.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Amnon Z. Siegel', with a stylized, flowing script.

Amnon Z. Siegel

AZS:SGW

cc
Jennifer Perkell
Jennifer Bunshoft
Amanda Cusick

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3
4 ERICA JIMENEZ, et al.,) Case No. LA CV 26-03500-SPG
5 Plaintiffs,) (SPx)
6 vs.) Los Angeles, California
7 DR. ERICA PAN, et al.,) Wednesday, May 27, 2026
8 Defendants.) (2:11 p.m. to 3:11 p.m.)
9)

10 TRANSCRIPT OF PLAINTIFF MOTION FOR PRELIMINARY INJUNCTION
11 [13]
12 BEFORE THE HONORABLE SHERILYN PEACE GARNETT
13 UNITED STATES DISTRICT JUDGE

14 Appearances: See next page.
15 Court Reporter: Recorded; CourtSmart
16 Courtroom Deputy: Patricia Gomez
17 Transcribed by: C. Okonta
18 Echo Reporting, Inc.
19 9711 Cactus Street
20 Suite B
21 Lakeside, CA 92040
22 (858) 453-7590
23

24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 APPEARANCES:

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Los Angeles, California; Wednesday, May 27, 2026 2:11 PM

--o0o--

(Call to Order)

THE CLERK: Calling item number four, civil case
26-3500, Erica Jimenez, et al. versus Doctor Erica Pan, et
al.

Counsel, please make your appearances, beginning
with the Plaintiff.

MR. QUINIO: Good afternoon, your Honor. Andrew
Quinio for Plaintiff Erica Jimenez.

THE COURT: Good afternoon.

MS. CUSICK: Good afternoon, your Honor. Amanda
Cusick for the City of Pasadena.

THE COURT: Good afternoon.

MS. BUNSHOFT: Good afternoon, your Honor.
Jennifer Bunshoft on behalf of Defendant, Director Pan from
the California Department of Public Health.

THE COURT: Good afternoon.

MR. SIEGEL: Good afternoon, your Honor. Amnon
Siegel on behalf of Defendant, Doctor Barbara Ferrer, the
County of Los Angeles Public Health Officer, and the County
of Los Angeles.

THE COURT: Good afternoon.

MR. WILLIAMSON: Good afternoon, your Honor.
Steven Williamson, also with the County Defendants.

1 THE COURT: Good afternoon.

2 THE CLERK: Please be seated.

3 THE COURT: This is here for Plaintiff's motion
4 for preliminary injunction. Basically, my understanding of
5 the case is that Plaintiff applied -- no, Plaintiff filled
6 out an online interest form for a program entitled, one
7 moment, the Black Infant Health Program, designed, according
8 to the submissions to the Court, to address issues
9 surrounding Black infant mortality. And according to the
10 Plaintiff, after filling out the online interest form, she
11 had a conversation with somebody from the program, last name
12 McKenzie. And according to the Plaintiff, Ms. McKenzie
13 asked for the Plaintiff's race. And when she was informed
14 that Plaintiff is not African American or Black and the
15 father of the child is not African American or Black and the
16 child is not African American or Black, that she was told
17 the program was not for her.

18 So Plaintiff is seeking a mandatory injunction to
19 be -- well, I'm going to ask for clarity on that. And the
20 Defendants are arguing that there's a lack of standing and
21 that the likelihood of success has not been shown. That's
22 my assessment. Have I missed anything? Okay.

23 Well, it's Plaintiff's motion. Would you like to
24 be heard briefly?

25 MR. QUINIO: Yes, your Honor.

1 THE COURT: Quick question, do you agree that it's
2 a mandatory injunction that you're seeking?

3 MR. QUINIO: Your Honor, I believe it's
4 prohibitory.

5 THE COURT: How so?

6 MR. QUINIO: Because we're only asking the
7 Defendants to implement the program without regard to race.
8 We're not asking them to do anything extra beyond complying
9 with the Equal Protection Clause.

10 THE COURT: Well, you're not asking for them to
11 maintain the status quo, which would be to implement the
12 program as is, as opposed to doing something affirmative,
13 which is to not implement the program as is and to ignore
14 the name of the program and the purpose of the program and
15 the legislative intent of the program and do something
16 different. I'll say different because the Defense
17 disagrees. We'll get to that. But to do something that is
18 not status quo, to affirmatively allow the Plaintiff in,
19 notwithstanding that, facially, she doesn't fit the name of
20 the program. So it's a mandatory injunction, wouldn't you
21 say?

22 MR. QUINIO: I think when framed like that, your
23 Honor, it would be mandatory. It was our -- it was our
24 assertion that because we're seeking the status quo of
25 constitutionality that it would be prohibitory.

1 THE COURT: That's an interesting theory.

2 MR. QUINIO: Well -- but, nonetheless, your Honor
3 is right that we are asking them to admit her to the program
4 and allow her to participate in the program without regard
5 to her race.

6 THE COURT: Okay. So given that, then you would
7 agree that the standard is higher than what you've
8 articulated in your papers in that your client has to show
9 that the facts are clearly in her favor.

10 MR. QUINIO: And I think we have shown that those
11 facts are clearly in her favor, your Honor. I think we
12 would still have some issue about the mandatory versus
13 prohibitory, but, nonetheless, whether it is either -- under
14 either standard, I think we clearly show the facts are in
15 her favor.

16 THE COURT: Let me ask you this, has your client
17 actually applied for the program?

18 MR. QUINIO: She has, your Honor. She has.

19 THE COURT: So what is the application process?
20 You just fill out this online interest form, and you're in
21 or not?

22 MR. QUINIO: The form is an interest and
23 eligibility form. From what she understands from the
24 program, you submit that, and then you receive a call or
25 have a phone call or a communication with the program

1 coordinator. From there, according to the Defendants,
2 that's when you begin the process of getting admitted into
3 the program after some other steps.

4 THE COURT: So there's no online application or
5 anything of the equivalent?

6 MR. QUINIO: The online application was the
7 eligibility form. That was the preliminary step.

8 THE COURT: Okay.

9 MR. QUINIO: Beyond that, the -- beyond that, it's
10 out of Ms. Jimenez' control essentially how she gets into
11 the program.

12 THE COURT: Okay. So she filled out this online
13 interest form, and then she received a call, and she says
14 that during that call she was asked her race, and she was
15 told that the program was not for her. The Defense says, or
16 Ms. McKenzie says, "I didn't ask her about her race, and I
17 never told her that the program was not for her." Does the
18 Court have to make a factual determination or credibility
19 determination for this preliminary injunction?

20 MR. QUINIO: I don't believe so, your Honor.

21 THE COURT: Why not?

22 MR. QUINIO: In a preliminary injunction, the
23 standards of evidence are actually relaxed because of the
24 expeditious requirement or the expeditious nature of the
25 preliminary relief. That's under Herb Reed Enterprises vs.

1 Florida Entertainment Management, excuse --

2 THE COURT: So is it your position, Plaintiff,
3 that the Court doesn't consider other declarations or the
4 Court just sticks to the allegations of the complaint and
5 the factual statements in the preliminary injunction motion?

6 MR. QUINIO: The Court can certainly consider
7 other declarations and other evidence.

8 THE COURT: Well, then if I consider Ms.
9 McKenzie's declaration, doesn't the Court have to make a
10 credibility determination? Because your client says she was
11 asked about her race and told program is not for her, and
12 Ms. McKenzie says, "I didn't ask her about her race, and I
13 didn't tell her the program wasn't for her."

14 MR. QUINIO: Yes, your Honor. You can make the
15 credibility determination. I think what I'm getting at,
16 your Honor, is that it doesn't weigh in favor or against my
17 client, given the other competing evidence. There's no
18 burden on my client because of the --

19 THE COURT: What if I disagree with you? What if
20 I weigh Ms. McKenzie's recitation of the facts more -- as
21 more credible than your client's recitation of the facts?
22 And Ms. McKenzie says, "Well, I never asked her about her
23 race, and I never asked her that -- or I never told her that
24 the program was not for her." Then has your client, for
25 standing purposes, applied, or was she just kind of

1 interested and filled out an online form?

2 MR. QUINIO: Yes, your Honor. And we would of
3 course disagree if it was weighed against Mrs. Jimenez,
4 because the other facts and the other public information
5 about this program is consistent with what Ms. Jimenez
6 experienced. Notwithstanding the name of the program,
7 notwithstanding the very extensive opposition that the
8 Defendants have mounted against our preliminary injunction
9 motion, if the program was not conditioned on the race of
10 the applicant, then there's nothing for the Defendants to
11 oppose.

12 THE COURT: But the Defendants are saying it's not
13 conditioned, that what they actually do is that they make
14 determinations after somebody has applied on whether the
15 program will benefit that person. And some of those
16 determinations have not been race based. Other people who
17 are not Black or African American, who do not have Black or
18 African American kids have gotten into the program,
19 according to them, also based on facts that they have
20 submitted.

21 MR. QUINIO: Right. And two things, your Honor.
22 Number one, what -- that assertion, again, conflicts with
23 all of the information about this program. Number two, what
24 the Defendants are specifically saying --

25 THE COURT: What information exactly does it

1 conflict with?

2 MR. QUINIO: The California Department of Public
3 Health website specifically says that this program serves
4 Black mothers and Black infants. The form that Ms. Jimenez
5 submitted, the interest and eligibility form, asks
6 specifically if her race is African American or the race of
7 her infant is African American. The goals asserted by the
8 Defendants are to make sure the mortality rates for Black
9 mothers and Black infants are specifically addressed.

10 THE COURT: That kind of makes sense, what you're
11 saying, based on your complaint, which apparently asserts a
12 facial challenge to the program itself. But we're here on
13 the preliminary hearing, and it seems that what you have or
14 how you've worded it is that you're asserting or your client
15 is asserting an as-applied-to-her challenge, as applied. So
16 there's an issue there, number one.

17 And, number two, as applied to her, the Court
18 would necessarily look to other applications and/or consider
19 other evidence in terms of whether she's some outlier or
20 whether she's not.

21 MR. QUINIO: Yes, your Honor. And with respect to
22 those who were supposedly admitted, notwithstanding the race
23 not conforming with what the program says, I again want to
24 specifically look at what Defendants are saying here.
25 They're saying that they have admitted individuals who have

1 not self-identified as Black or African American. That
2 doesn't mean that the Defendants have not admitted people
3 who they have perceived to be of the right race. And where
4 -- the facts agree here, and I think this is very important
5 to look at, both Mrs. Jimenez and both Mrs. Scott state that
6 alternatives were discussed to this program. And that seems
7 to suggest that if there was an ability to admit Mrs.
8 Jimenez notwithstanding her race, she wouldn't have been
9 offered these options, these alternative options.

10 THE COURT: That's not what the Defendants are
11 saying. And I'm not trying to make their arguments for
12 them. It's in the papers. According to the Defendants,
13 they always or -- I won't say always, but they do offer
14 alternatives as well. So, again, Ms. Jimenez has not
15 necessarily demonstrated that she is an outlier for this as-
16 applied challenge.

17 MR. QUINIO: And I emphasize that difference
18 again, your Honor. It doesn't seem like a big difference,
19 but it actually is, because being able to tell a -- an
20 applicant there are alternatives permits the Defendants to
21 say that we don't actually explicitly turn people away from
22 the program based on their race. That they're encouraging
23 or offering alternatives is enough of a rejection or is
24 enough to indicate that this is a program that's not for an
25 applicant based on race.

1 What I'm -- the point I'm making is that they're
2 able to say that they don't explicitly reject individuals,
3 but there seems to be a practice and a policy of providing
4 these alternatives in a way that discourages applicants who
5 might not be the right race, like Mrs. Jimenez. That's
6 consistent with what her experiences was. That's consistent
7 with what Mrs. Scott was saying.

8 THE COURT: Okay. Is your client ready and able
9 to apply?

10 MR. QUINIO: She is, your Honor, which is why she
11 submitted the eligibility form. And that's sufficient for
12 her to have standing in this case, your Honor. It is -- the
13 injury to her is her inability to compete for a spot in this
14 program on an equal footing. She was denied that on the
15 basis of her not having the right race.

16 THE COURT: If I believe her declaration over Ms.
17 McKenzie.

18 MR. QUINIO: Yes, your Honor. And, again, that
19 declaration is in the context of all the public information
20 about this program that indicates that this is a race-
21 conscious program and what the Defendants have said about
22 why this program needs to be race conscious for all of the
23 interests and all of the goals that they have stated.

24 THE COURT: I guess I'm struggling with you kind
25 of flip-flopping back and forth between facial versus as-

1 applied. And that's kind of where I'm struggling. So,
2 again, my concern is that your client has to make a clear or
3 show that the facts are clearly, clearly in her favor,
4 assuming this is a mandatory injunction. If it's not, then
5 she has to show a likelihood of success. And here, number
6 one, the Court has to make a factual determination out the
7 gate as to whether to believe her versus Ms. McKenzie. That
8 doesn't -- is not necessarily conducive to a preliminary
9 injunction at this stage of the proceedings, as opposed to
10 summary judgment or trial. And, number two, your client's
11 declaration just says that she's ready and able to apply. I
12 would love to hear from Defendants what it all entails to
13 apply. Is it enough to just submit an interest and then
14 have a conversation and then that's -- then you can bring
15 suit because you don't like what you heard, or something
16 more required. Number three, in looking at the arguments
17 that were made in the briefing, you liken this to a
18 affirmative-action-type case with discrimination as opposed
19 to what this is, and it's something different. On the
20 Plaintiff's side, your briefing points out that the only
21 basis for the government officials to be doing what they're
22 doing, to include the legislature, is to remedy past
23 discrimination, and it -- the briefing seems to ignore,
24 quite frankly, the very basis for this program and whether
25 or not strict scrutiny -- whether or not it would survive

1 strict scrutiny. Those are my issues as far as the
2 Plaintiffs are concerned.

3 If you want a few moments to address those issues?

4 MR. QUINIO: Yes, your Honor.

5 First of all -- I will address her applying and
6 the extent of this being an affirmative action, a race-
7 conscious program.

8 First of all, with respect to her applying to this
9 program, the farthest that she could go, given the race-
10 conscious criteria of this and the fact that there was a --
11 essentially a gatekeeper in the form of Mrs. Scott, was to
12 submit that eligibility form. And as she has -- as she has
13 declared, discovering that this -- or being told that this
14 program was not for her because of her race, that's as far
15 as she could go. It would be inflating the standing
16 requirement if there was an additional demand of her, for
17 instance, to continue on and persist and perhaps even show
18 up in -- to the office and demand that she be admitted to
19 the program. She's -- she did everything she had to do and
20 she could do within her power to show that she was ready,
21 willing, and able to apply.

22 With respect to the extent of this program and its
23 use of race and it being an affirmative action program, the
24 -- ultimately, the Defendants here have not disavowed the
25 use of race or the presence of race or race consciousness in

1 this program. The Supreme Court has been very clear that
2 there are only two compelling interests that would satisfy
3 strict scrutiny, and the Defendants here admit that the
4 interests here are not either of those, which is to remedy
5 specific instances of past discrimination and to prevent
6 violence in prisons, which is not applicable here. The
7 Defendants say that this is -- the interest here is a
8 forward-facing health program. Despite the salutary impact
9 of that reason, it is not a sufficient compelling interest
10 under Students for Fair Admission vs. Harvard. The Defense
11 --

12 THE COURT: That's a affirmative action case?

13 MR. QUINIO: Yes, it is, your Honor.

14 THE COURT: And the Supreme Court said this
15 applies to everybody in every context where race is used as
16 a factor?

17 MR. QUINIO: Yes, your Honor. So this is -- in
18 Students for Fair Admission vs. Harvard, there was no --
19 there was no indication or no argument by the court that the
20 Equal Protection Clause varies in application depending on
21 the industry or depending on the subject. The strict
22 scrutiny analysis that the court put forward in Students for
23 Fair Admission borrowed for -- borrowed from Reno vs. Shaw,
24 which is a redistricting voting rights case. It also
25 borrowed from City of Richmond vs. Croson, which was a

1 minority contracting case. Just recently, the Supreme Court
2 decided Louisiana vs. Callais, which cited to Students for
3 Fair Admission. Louisiana vs. Callais was a voting rights
4 redistricting case. So the strict scrutiny analysis here
5 and the compelling interests that were asserted in Students
6 for Fair Admission is absolutely applicable here, and the
7 Defendants don't satisfy that.

8 THE COURT: Okay. Thank you.

9 MR. QUINIO: Your Honor.

10 THE COURT: Defense. Any one of you.

11 MR. SIEGEL: It might be two of us, your Honor,
12 but I'm going --

13 THE COURT: All right.

14 MR. SIEGEL: -- to let the State start, if that's
15 okay.

16 MS. BUNSHOFT: Good afternoon, your Honor.
17 Jennifer Bunshoft on behalf of Director Pan.

18 And so because the County and the State have
19 similar arguments, we are going to divide it up to avoid
20 redundancy. So I'll address standing and the lack of
21 imminent harm and the -- sort of the general argument that
22 the program does not even discriminate on the basis of race.
23 And then Counsel will address the strict scrutiny argument.

24 THE COURT: Okay.

25 MS. BUNSHOFT: So, as your Honor noted, the issue

1 with standing here is that the -- their allegation is
2 completely contradicted by Ms. Scott. And, you know, even
3 now, after she has been made aware, if she was unaware
4 before, that the program does not discriminate on the basis
5 of race and that it -- she could be admitted if she actually
6 went through the process, she still has not even sought to
7 apply, which really calls into question whether she wants to
8 be part of this program.

9 THE COURT: Can I ask you, is the application
10 process just filling out the online interest form?

11 MS. BUNSHOFT: No, your Honor, it is not. And
12 that is --

13 THE COURT: What else does it entail?

14 MS. BUNSHOFT: So that's just for the original
15 informational call. But after that, there would need to be
16 an expression from the potential applicant that they want to
17 be considered for this program. And if so, then that person
18 would be connected with a mental health specialist who would
19 do some evaluations and so forth. And then they would meet
20 to discuss the program. But there's a lot more that goes
21 into it. It's not just filling out an interest form and
22 saying, "Oh, well, I don't think I could be admitted because
23 it's called the Black Infant Health Program, and I'm not" --

24 THE COURT: When you say that there needs to be an
25 expression that they want to be considered, isn't the online

1 interest form that expression?

2 MS. BUNSHOFT: Well, that's an interest form. And
3 then, as Ms. Scott said, you know, there would have to be
4 some indication after providing information to say, "Yes,
5 that sounds good."

6 And to the point about talking about different
7 programs, I mean that's just the general practice to let an
8 applicant or potential applicant know, you know, not only
9 about the Black Infant Health Program, but about these other
10 programs, because there's a lot of programs that are offered
11 by, you know, the County and the City that may have other
12 benefits. And, you know, the Black Infant Health Program is
13 a very specific program with, you know, 10 group meetings
14 before birth of the infant, and then 10 after, and that may
15 not be what everyone chooses to go. So -- I mean --

16 THE COURT: Let me ask you this.

17 MS. BUNSHOFT: Yes.

18 THE COURT: If I were to accept the declaration of
19 the Plaintiff over Ms. -- is it McKenzie Scott?

20 MS. BUNSHOFT: It is, yes.

21 THE COURT: I keep calling her Ms. McKenzie, and I
22 apologize to Ms. Scott.

23 If I were to accept the Plaintiff's declaration
24 and find it more credible than Ms. Scott, because the really
25 do conflict in terms of their account of this telephone

1 conversation, then the record would be that Ms. -- or the
2 Plaintiff filled out this online interest form, received a
3 phone call from the program or a person from the program and
4 was told that because she did not fit the racial criteria,
5 the program was not for her. Click. Is that enough for
6 standing?

7 MS. BUNSHOFT: I mean, that's not enough, given
8 the fact that she has to -- you know, the burden is on her
9 to demonstrate the facts, and so to find her statement more
10 credible than a conflicting statement would not comply with
11 the requirements for -- you know, for her burden on a
12 preliminary injunction and also her burden on standing. But
13 if the Court nonetheless were to say, "Well, I'll ignore the
14 sworn testimony of Doctor -- I mean, of Ms. Scott," then --
15 it just says she's, you know, ready and able to. But she
16 doesn't say she actually requested during that conversation
17 to be, you know, part of the program.

18 THE COURT: And to be clear, "Ready and able" is
19 kind of a legal conclusion. There are no facts necessarily
20 supporting it, so I tend to agree with you. But what I'm
21 grappling with is, in the standing argument, there are cases
22 that say that a plaintiff should not have to go through the
23 futility of applying for something and being denied before
24 they have standing. And then there are cases that say that
25 the plaintiff has to be ready and able, and the Court has to

1 figure out where this case falls in between those standards.
2 Maybe they're on top of each other as opposed to there's a
3 gap, but it kind of feels like a gap. And, factually, I'm
4 trying to figure out where it falls within the gap.

5 MS. BUNSHOFT: Right. Well, here, the case law
6 about when the futility exception applies says that it has
7 to be clear that the person would not be admitted to the
8 program. There has to be a clear exclusionary policy. And
9 that's simply not the case here. I mean, at best, she could
10 say, well, it was maybe unclear to her.

11 THE COURT: Doesn't the say Black?

12 MS. BUNSHOFT: Well, the title reflects that the
13 focus is on Black women and infants to address a critical
14 health issue, but that doesn't mean that it only admits
15 women who identify as Black.

16 THE COURT: So the average plaintiff has to kind
17 of probe beyond the title to know that they can apply, even
18 though -- you know, I would think the average person might
19 be dissuaded by the title itself.

20 MS. BUNSHOFT: I mean, if someone is dissuaded,
21 that's not -- that does not mean that the program excludes.
22 And that's really what this is about. Case law doesn't say
23 that if someone looks at a website and makes an assumption
24 that is incorrect that it doesn't apply to them and doesn't
25 apply on that basis, that that is stating a constitutional

1 violation.

2 THE COURT: Which brings me to my next question,
3 because, as I pointed out with Plaintiff, he was like -- the
4 complaint is -- seems to be asserting a facial challenge to
5 the program and its title, yet the preliminary injunction
6 motion seems to be asserting an as-applied challenge.
7 Anything to say about that?

8 MS. BUNSHOFT: Yes. I mean, it does -- the relief
9 that's sought through the injunction is for her to be
10 admitted into the program. And the fact is that based on
11 all of the record evidence that's been submitted by
12 Defendants, there's no reason she cannot be admitted into
13 the program. There's no policy saying that she's excluded
14 because of her race. She simply has not applied. She has
15 not said, "I want to be part of this program" for -- to even
16 test that. So it seems, you know, highly premature for her
17 to be here seeking such relief when -- without having
18 actually applied. If somehow she were denied based on her
19 race, that would be a different story. But that's not the
20 case. And based on all of the evidence, that seems highly
21 unlikely. So there's simply no -- nothing warranting an
22 injunction here to force the State to do something.

23 THE COURT: Out of curiosity, and not to trample
24 on any sort of negotiations or discussions, at the point
25 that the Defendants got this here complaint and preliminary

1 injunction, did the Defendants ever go, "You know what?
2 Just come on into the program"? Or -- I mean, this could
3 have all gone away or be moot.

4 MS. BUNSHOFT: I think the surprising thing,
5 having, you know, put forth that in the opposition, that
6 Plaintiffs didn't just say, "Okay. I'm going to call back
7 McKenzie Scott and say, 'I understand that I can be in the
8 program. Let's move forward.'" And she didn't do that.
9 And the burden is on here --

10 THE COURT: And McKenzie Scott didn't call her,
11 right --

12 MS. BUNSHOFT: No, but the --

13 THE COURT: -- and say, "Hey, you can be in the
14 program. Why are we doing all of this?"

15 MS. BUNSHOFT: That is true. But, you know,
16 again, this is a preliminary injunction motion with a really
17 heavy burden on Plaintiff. It's an extraordinary remedy,
18 and they need to make a clear showing. So that is something
19 that she should have done should -- if she truly had wanted
20 to be part of this program, and she still could do. There's
21 nothing prohibiting her from calling her up and saying, "I
22 would like to be part of this program."

23 THE COURT: Okay.

24 MS. BUNSHOFT: And then in terms of the question
25 about, you know, whether there's a barrier or that there's

1 an inability to compete on equal footing, those cases deal
2 with, you know, competition in a bidding or application
3 process. And that's simply not what we have here. In those
4 cases, in like the Northeastern Florida cases, there's some
5 sort of limited resource or benefit, a contract, but there's
6 only few contracts that may be awarded, but not everyone
7 gets one, or an admission to law school or medical school.
8 There's a finite number of spots that they're competing for.
9 But there's been no evidence to suggest that this -- you
10 know, this is a competitive process to become a part of the
11 program. There's no allegation whatsoever that people have
12 been told, "Oh, you can't be a part of this program because
13 there's not enough spots" and that there's some competition
14 between Black and non-Black participants for limited spots.
15 So that really distinguishes that line of cases where there
16 is no competition involved in this program.

17 And so, you know, given the clear evidence from
18 Ms. Scott that not only did she not say "this program is not
19 for you," but that it would not be something that she would
20 ever do on this preliminary calls -- and she didn't know
21 Plaintiff's race either, didn't ask for Plaintiff's race,
22 and that there's, you know, much more of the process that
23 needs to take place before someone is enrolled in the
24 program, coupled with the record evidence from Doctor Nguyen
25 from CDPH and Doctor Franklin from the County, which both

1 confirm that the program is not intended and does not have a
2 policy to exclude on the basis of race, and the testimony
3 from Doctor Nguyen and Ms. Scott that, in fact, people who
4 are not Black have, in fact, been admitted into the program
5 in the past, all of those suggest that the recitation from
6 Plaintiff that she was told it wasn't -- she couldn't apply
7 for the program is simply not credible. And in any event,
8 given that this is a preliminary injunction and she has the
9 burden of making a clear showing of standing, it does not
10 support standing in this case. And, you know, without
11 standing, the Court need go no further because she has no
12 entitlement to a preliminary injunction if she doesn't have
13 standing.

14 But even assuming she did for the sake of
15 argument, there is another serious issue here, which is the
16 lack of imminent irreparable harm. In their moving papers,
17 Plaintiff argued that she needed this preliminary injunction
18 immediately because she needed the services and would time
19 out of the program when her infant reaches six months. But
20 after getting the opposition, in the reply, Plaintiff back
21 away from and, in fact, even disavow this argument that they
22 have actual imminent harm. And so -- I mean, that argument
23 is abandoned. There is -- she can show no harm to her from
24 not being part of the program because she simply has not
25 applied, and the evidence shows that there's no policy of

1 excluding people based on race, should they seek to be part
2 of the program.

3 And so, again, this gets back to, you know, a
4 self-created harm, in the Ninth Circuit, the court found
5 that if you create the harm, that doesn't constitute
6 irreparable imminent harm. And that's -- here, if she's
7 still not applying to the program and going through the
8 process, perhaps to avoid, you know, not -- being a part of
9 it and then not being able to pursue this litigation
10 further, then that -- that's certainly not harm for purposes
11 of preliminary injunction motion.

12 THE COURT: So your argument is it's self-created
13 harm because she's on notice that there's a possibility she
14 could apply to and be admitted into the program, but she
15 chooses not to, instead going forward with this litigation.

16 MS. BUNSHOFT: And also in terms of not only BIH
17 program services, but she's not even -- there's no evidence
18 she's availed herself of any of the other programs that
19 would provide benefits to her and her infant currently --

20 THE COURT: Okay.

21 MS. BUNSHOFT: -- as we speak. And Plaintiffs,
22 instead, they state that there's a presumption that there's
23 imminent harm because there's a constitutional violation
24 here and there's a likelihood of success on that claim.
25 And, you know, Counsel for the County will address that

1 point more fully, but there is no likelihood of success on
2 the merits. She hasn't shown an entitlement or that there's
3 been discrimination. And in any event, it is a rebuttable
4 presumption, doesn't apply in all instances. And most of
5 the cases, you know, that they cited, for instance, are
6 dealing with cases where there's clearly harm, like
7 immigrants locked up and, you know, needing to get out of
8 detention. There's nothing like that here. So this simply
9 is not a presumption that should apply here where she hasn't
10 shown that she has actually tried to avail herself of the
11 program or to -- and to participate in it in the face of
12 records -- evidence showing that there is not an exclusion.

13 THE COURT: Okay.

14 MS. BUNSHOFT: So another point is that -- and it
15 would not -- it's not an appropriate use of an injunction
16 to require something that there's no need for. I mean,
17 that's essentially what they're asking for here, especially
18 since any injunction would be limited to Plaintiff herself
19 under the Ninth Circuit Vasquez Perdomo case and Trump v.
20 CASA and not on behalf of class members who -- you know, she
21 has not made any effort to bring that class into or show
22 entitlement at this stage of the litigation.

23 The -- in turning to the -- like, a lack of
24 success on the merits, I'll simply say that the department
25 has made the argument that there's no need to even address

1 strict scrutiny because the program does not exclude on the
2 basis of race. And, you know, that is set forth in
3 declarations of Doctor Nguyen in paragraphs 45 to 52, Doctor
4 Franklin in paragraph 65, and Ms. Scott in paragraph 11. So
5 the fact that, you know, the program is -- has a certain
6 title or a certain focus does not mean that it discriminates
7 and does not admit people who do not fall within that focus.
8 And there's nothing inappropriate about a public health
9 program with a specific focus on a particular race. And the
10 Parents Involved in Community Schools case confirmed that,
11 you know, outreach and program design focused on particular
12 race does not implicate an Equal Protection Claim.

13 So for that reason, we would argue there's no need
14 to subject this to strict scrutiny. However, I'll turn it
15 over to Counsel for LA County to explain why even if strict
16 scrutiny applied, this -- the BIH program would meet it,
17 unless you have any further questions for me.

18 THE COURT: I do not. Thank you.

19 MS. BUNSHOFT: Thank you, your Honor.

20 MR. SIEGEL: Good afternoon, your Honor.

21 THE COURT: Good afternoon.

22 MR. SIEGEL: At the risk of giving the Court an
23 opportunity to question another government attorney, we
24 decided to split the argument this way. I think it makes
25 sense.

1 The County, the State, and the City of Pasadena
2 are quite proud to stand behind this program. We're proud
3 because we believe it represents the best of what government
4 can and should do, identify a crisis -- this is a
5 significant health policy issue as set forth in the briefs,
6 identified at every level of government as a significant
7 health policy issue that can't just be waved away as
8 Plaintiff attempts to do in its brief by claiming, "Those
9 are just numbers." They aren't. These are not mere
10 abstractions as set forth in the declaration, supported by
11 significant evidence, scholarly research, scientific
12 literature, all of which heavily backs the program. The
13 State marshaled the evidence, the legislature did, in 1989,
14 came after the Heckler Report from the U.S. Department of
15 Health and Human Services. And it made specific findings
16 and specific declarations that have nothing to do with
17 remedying past instances of discrimination or racial
18 balancing. Nothing at all. It had everything to do with a
19 forward-looking public health intervention to address this
20 very serious public health crisis. And the program
21 continues to exist today -- we hope one day it will no
22 longer be needed -- for one simple reason, in Los Angeles
23 County, Black mothers and infants are dying at three to four
24 times the rate of other groups.

25 The question before the Court, thus, on strict

1 scrutiny, assuming it applies, assuming you get past all the
2 hurdles my colleague discussed, is, may the government act
3 to save the lives of mothers and infants who are dying at
4 alarming, disproportionate rates? And the County submits --
5 the Defendant submit the answer is an emphatic yes, your
6 Honor. The stakes could not be higher. We submitted a
7 number of cases talking about the solemn duty of government,
8 probably the most solemn duty of government, to protect and
9 preserve life. Without life, you don't have liberty and you
10 don't have the pursuit of happiness. You don't even have
11 the opportunity for it. So the stakes here, we submit,
12 could not be higher. And any attempt by the Plaintiff to
13 say there is not a compelling State interest here, we simply
14 -- we believe falls flat and does not deserve credence.

15 THE COURT: Understood. And let's say I agree
16 with you. Plaintiff has argued that the standard is that
17 any such program has to be put in place to remedy past
18 discrimination. What do you say? What is the standard?

19 MR. SIEGEL: I believe that the Plaintiff is
20 extrapolating and extending Supreme Court precedent beyond
21 what the Supreme Court has actually said. Okay. The
22 Supreme Court has not foreclosed a forward-looking public
23 health intervention to protect and preserve life of women
24 and newborns. They have not said that. They have
25 identified two instances where such programs can satisfy,

1 but they haven't said, "And all other instances are forever
2 precluded, and we announce that, for now, any program that
3 comes in front of us will be invalidated unless it's
4 protecting safety of prison institutions or the affirmative
5 action, remedying past discrimination, racial quotas type
6 issues."

7 THE COURT: Given the direction that the Supreme
8 Court seems to be going, is it the case that -- I find it
9 hard to accept that such forward-looking programs have not
10 been in place for -- I mean, this one has been in place
11 since the '80s. So what standard does the Court apply to
12 this particular program? Because I guess I'm not satisfied
13 with "the Supreme Court has not foreclosed this."

14 MR. SIEGEL: Well, the standard is strict
15 scrutiny, but that doesn't mean -- context still matters in
16 strict scrutiny. Strict scrutiny does not mean absolute
17 death and you don't get past the front gate. And context
18 very much matters. The Supreme Court has said that time and
19 again. They said it in Grutter vs. Bollinger that "not
20 every decision influenced by race is equally objectionable."
21 This is a different context. States, of course, have a
22 compelling interest to protect life. The Ninth Circuit in
23 Mitchell vs. Washington, which was not addressed whatsoever
24 by the Plaintiff in its reply, talked about scientific
25 literature and scholarly research based on empirical data,

1 epidemiological empirical data, just as this program is, can
2 establish a compelling interest for a government program
3 targeting specific health interventions at different races.
4 Okay. And they've said that. There's a lot -- we cited a
5 lot of cases, albeit concurrences and not the controlling
6 basis for the decision, where the court has said, "We could
7 see situations where health issues, significant health
8 policy issues being addressed by government, can constitute
9 or can satisfy the strict scrutiny standard. So Plaintiff
10 has certainly not pointed us to any case that says, "This
11 program must be defeated because it is not addressing only
12 two instances in which the Supreme Court said you can
13 satisfy strict scrutiny." They have not cited any such
14 case, and there isn't any such case that we've been able to
15 find either.

16 The State did not create this program on a whim,
17 and it doesn't administer it on a whim. In fact, as
18 recently as 2006, a very comprehensive analysis was done by
19 UCSF about this program. This is set forth in our briefing.
20 And I think it's important when you talk about the strict
21 scrutiny standard, to look at not only the initiation of the
22 program, which is set forth in detail in our briefs, but
23 also the continuous evolution of the program to make sure
24 that we are targeting the most effective and most promising
25 health intervention to the most vulnerable in our

1 population, which is what the Black Infant Health Program is
2 designed to do. We have seen improvements. There are
3 continuous evaluations done. California DPH did one
4 recently, and they found improvements in a number of areas.
5 The work is not quite done yet, but that doesn't mean that
6 the program isn't narrowly tailored. It is very much
7 narrowly tailored. In fact, in the County, it's limited in
8 scope to three service areas where we have the highest
9 discrepancies, where we have found the biggest gap in
10 mortality rates and the highest mortality rates among Black
11 women and infants in the County compared to other groups.
12 It only applies to approximately 450 people annually, albeit
13 that's not a cap, so this is not a university admission
14 zero-sum game. That's just approximately how many people
15 are served. And it is a narrow time period. It's during
16 pregnancy and six months postpartum. That is narrow
17 tailoring. The -- other attempts have been made, and this
18 is not even required by strict scrutiny that you
19 specifically try and fail, but as part of the narrow
20 tailoring analysis, the Court can take into account that
21 over the decades, other what I would call broad-based or
22 generic prenatal interventions have been attempted. And
23 both Doctor Nguyen and Doctor Franklin have submitted
24 declarations saying the research -- the scholarly research,
25 the scientific literature all find that those broad-based

1 generic prenatal programs are not effective in addressing
2 this very significant mortality gap issue that we're trying
3 to address. And, in fact, they go further and say the most
4 promising program is something like this current Black
5 Infant -- iteration of the Black Infant Health Program to
6 make a change. And it's currently the only approach that
7 has shown documented progress.

8 THE COURT: Are you saying basically it's in the
9 name that attracts more individuals who need this sort of
10 programming?

11 MR. SIEGEL: Absolutely. I mean, it is targeted
12 to a specific health policy issue affecting our society that
13 is strikingly and disproportionately impacting a certain
14 community within the population. That does not on its face
15 make the program a violation of strict scrutiny or contrary
16 to the constitutional standards of Equal Protection.

17 THE COURT: What about as applied to Plaintiff?

18 MR. SIEGEL: I think you start getting into some
19 of the issues that was addressed by my colleague from the
20 State of California, because I think, as applied, we have
21 some serious issues with the Plaintiff's submission here.
22 It's a conclusory six-paragraph declaration, which says, "I
23 had one conversation -- I filled out an interest form," not
24 in the record, we don't have the form, "I had one telephone
25 call. By the way, I -- the woman called me first. It took

1 a few days. I had one phone call. The phone call was less
2 than 10 minutes long." And, of course, there's a dispute
3 about the evidence, which your Honor has correctly
4 identified. And then after that, she does nothing. She
5 doesn't do anything in reply or otherwise to say, "I want to
6 participate in the program." She says, "I'm ready and
7 able." That's different than "I want to." She doesn't say
8 that she thinks she would benefit from the program. She
9 doesn't really explain anything about why she wants to be in
10 the program, and we submit she doesn't really want to be in
11 the program.

12 So I think that's -- it's a complicated question,
13 as applied. I think it starts getting into a lot of these
14 other issues about this particular Plaintiff, who we do not
15 believe has established a sufficient injury in fact for
16 standing nor the necessary irreparable harm that's required
17 to obtain an extraordinary preliminary injunction.

18 The last thing I would say, dovetailing off your
19 Honor's question to Plaintiff's counsel, was that I agree
20 with the Court, to the extent the Court was making that
21 suggestion -- I'm not going to put words in your mouth --
22 that this is very different than the affirmative action line
23 of cases. And the Plaintiff can continue sort of setting up
24 that strawman and saying, "Well, in the affirmative action
25 cases, this is what the court requires," and Plaintiff

1 claims that really the only instance in which you can
2 suffice or satisfy the strict scrutiny standard is when
3 you're trying to remedy past instances of discrimination and
4 you prove all these other things that apply to racial quotas
5 and contracting or other zero-sum games like affirmative
6 action programs. I submit that's not the governing law,
7 and, more importantly, that is not the purpose of this
8 program. And we said it over and over again. And on the
9 reply brief, Plaintiff just goes back to its same statement,
10 "This is -- you know, it doesn't satisfy strict scrutiny
11 because it's not remedying past instances of
12 discrimination." We agree. I'm sorry, we strongly disagree
13 with the Plaintiff. I think I've already addressed this
14 point, your Honor, so unless you have any further questions,
15 I would submit.

16 THE COURT: Okay.

17 MR. SIEGEL: Thank you.

18 MR. QUINIO: Thank you, your Honor. Just to
19 address some of the points made by the Defendants.

20 The Defendants have not presented any case that
21 says that a forward-looking health program satisfies strict
22 scrutiny. The Supreme Court was very clear that the Equal
23 Protection Clause means that eliminating discrimination
24 means eliminating all of it and that distinctions on the
25 basis of ancestry among a people whose institutions were

1 founded on equality is odious. And so to carve out these
2 exceptions beyond the two rare exceptions that the Supreme
3 Court set forth in Students for Fair Admission vs. Harvard
4 goes against that principle. Again, despite the salutary
5 impact of the reasons for this health program, that still
6 doesn't satisfy strict scrutiny. It's a different question
7 whether the goals are worthy and whether it is
8 constitutional under the 14th Amendment. These may be
9 worthy goals, but it's not sufficient under Equal Protection
10 Clause analysis and strict scrutiny analysis.

11 THE COURT: Let's say I don't even get there.
12 Let's say that I look at the declaration, and it says that
13 your client is ready and able to participate in this
14 program. You would agree that that's conclusory.

15 MR. QUINIO: It's not, your Honor, because the
16 facts that were submitted by Ms. Jimenez in her declaration
17 and, again, the facts surrounding her application indicate
18 that that's as far as she could go, submitting that interest
19 form. And I want to emphasize, that interest form is not
20 just the -- it's the interest form. So if you're interested
21 in the program, you submit the interest form. It's also an
22 eligibility form because it asks you questions that indicate
23 your eligibility, including whether you identify as Black or
24 your baby identifies as Black. The assertion that
25 submitting this form is not enough contravenes the form

1 itself. This is the only form for the Black Infant Health
2 Program. Submitting this form doesn't avail you of the
3 other programs. It is specifically for the Black Infant
4 Health Program. So submitting the form for the Black Infant
5 Health Program means you are interested in the Black Infant
6 Health Program. This is before the Court in our moving
7 papers. I would direct the Court to page 10 of our points
8 and authorities. It's -- the form is linked there. And,
9 again, it is titled Interest Eligibility Form. And it asks,
10 among the other questions, do you or your baby identify as
11 Black or African American? Yes, your Honor.

12 THE COURT: I'm not even sure what this has to do
13 with anything, but your client got the opposition. The
14 Defendant said, "We let other people in." Your client has
15 or has not reached out?

16 MR. QUINIO: She hasn't reached out, because to
17 the Plaintiff, to Ms. Jimenez, this is still a program that
18 excludes her on the basis of race. And Defendants --

19 THE COURT: But apparently the Opposition says
20 it's not.

21 MR. QUINIO: The Opposition --

22 THE COURT: The title may exclude her, according
23 to Ms. Jimenez, but the Opposition says that other
24 individuals who are not falling within the category of the
25 title have been allowed in the program. So with that

1 additional knowledge, has your client reached out?

2 MR. QUINIO: It's not on Ms. Jimenez to reach out,
3 especially given that the Defendants still have not
4 disavowed the presence of race or race consciousness in the
5 program. Their opposition makes very clear, without its
6 focus -- without the program's focus on Black and African
7 American women and infants, that this program would not be
8 successful.

9 THE COURT: I go back to the facial versus as-
10 applied. This preliminary injunction is as applied to her.
11 What is the Court to do with the fact that she has not
12 applied, given the additional knowledge that she has?
13 Anything?

14 MR. QUINIO: And -- well -- and we welcome the
15 Defendants to work out a stipulation to admit her to the
16 program. But the overwhelming facts that are consistent
17 with her experience still show -- and, again, absence a
18 disavowal by the Defendants of there being race in this
19 program -- would suggest that she still -- it would still be
20 futile for her to apply.

21 THE COURT: Well, one of the things the Court has
22 to consider is irreparable injury. And it sounds like or at
23 least the argument is, from what I gather from the
24 Plaintiffs, that the injury becomes irreparable around
25 September of 2026.

1 MR. QUINIO: That's correct, your Honor.

2 THE COURT: Yet, here we are, and Ms. Jimenez has
3 not applied with the new knowledge that other individuals
4 who are not falling within the title of the program have
5 been allowed in. Is it really irreparable for purposes of a
6 preliminary injunction, as opposed to seeking damages, you
7 know, on her complaint?

8 MR. QUINIO: Yes, your Honor.

9 And, again, the Defendant -- or the Plaintiff is
10 allowed to rely on the representations of the Defendants, to
11 the extent that the eligibility here is dependent on her
12 race and that she would apparently do harm to the program if
13 they admit her. That's what they've said in their
14 opposition. So to put the -- again, that --

15 THE COURT: Have they said that? And to the --
16 when you say "to the extent," a lot is hinging on that "to
17 the extent" part. The Court has to make a decision as to
18 whether or not she's met -- satisfied all of the Winter's
19 factors. And I'm struggling with irreparable harm. I'm
20 struggling with likelihood of success and/or a clear showing
21 that the facts are in her favor, given all that has been
22 presented to the Court.

23 MR. QUINIO: What's been presented to the Court,
24 your Honor, is a dispute between what the Defendants are
25 saying and what their own program shows as far as

1 eligibility and the presence of race. Whereas Mrs. Jimenez'
2 experience is consistent with what she has seen in the
3 public-facing information, which is that this serves
4 individuals who don't share her race, and thus she's
5 excluded, it would be futile for her to be admitted. She is
6 competing on unequal footing. That is an irreparable harm
7 in and of itself. That constitutional injury constitutes an
8 irreparable harm.

9 I do want to point out, your Honor, and I
10 apologize for going back to this question of whether this is
11 prohibitory or mandatory, and I just want to direct the
12 Court's attention to this particular case -- let me just
13 pull it up -- Arizona Dream Act Coalition vs. Brewer at 757
14 F.3d 1053, an injunction -- it held that an injunction
15 against enforcement of a likely unconstitutional policy was
16 prohibitory rather than mandatory. Likewise, Bay Area
17 Addiction Research and Treatment Incorporated vs. City of
18 Antioch, 179 F.3d 725, which held that an injunction against
19 enforcement of an ordinance that likely violated federal law
20 was prohibitory rather than mandatory. We are asserting
21 that the Black Infant Health Program and its eligibility
22 criteria likely violates federal law, likely violates the
23 Constitution.

24 I want to also address the Mitchell case, Mitchell
25 vs. Washington. That case never held that a program that

1 addresses health satisfies strict scrutiny as a compelling
2 interest. What it said was it could imagine that that could
3 be a compelling interest, but, ultimately, the court decided
4 that the defendant there didn't satisfy the compelling
5 interest -- didn't put forward a compelling interest. And,
6 again, that case predates Students for Fair Admission vs.
7 Harvard, which again only provides those two instances of
8 compelling -- of a compelling interest.

9 And just going back again, your Honor, I'll wrap
10 up with this, regarding Mrs. Jimenez' ability to avail
11 herself of this program and whether what she did was
12 sufficient. I would direct the Court's attention to
13 Monterey Mechanical Company vs. Wilson which found that
14 there the plaintiffs in submitting a bid for a contract that
15 was subject to minority subcontractor requirements was
16 enough to give themselves standing, was enough to show that
17 they were ready, willing, and able to apply for this program
18 -- for that contract. Again, Mrs. Jimenez went as far as
19 she could in applying by submitting that interest and
20 eligibility form. She's done more than the plaintiffs in
21 Amazon vs. Alexandre, where the plaintiffs there didn't even
22 submit a contract. At issue there was a contract for
23 delivery services -- providing delivery services on behalf
24 of Amazon. The plaintiffs were found not to have standing
25 because they never even submitted anything to indicate that

1 they wanted to be part of this program -- or part of that
2 contract. Mrs. Jimenez has done more in this case, to the
3 extent she could, because she was prohibited based on her
4 race.

5 Unless there are any other questions, your Honor,
6 we ask that the preliminary injunction be granted.

7 THE COURT: Okay. Thank you.

8 I'm going to take this matter under submission. I
9 will consider the arguments that have been made, as well as
10 the briefing, and I hope to issue a ruling soon.

11 Anything further?

12 MR. SIEGEL: Thank you, your Honor.

13 MS. BUNSHOFT: Thank you, your Honor.

14 MR. QUINIO: Thank you, your Honor. No.

15 THE COURT: All right. Thank you.

16 THE CLERK: This court is adjourned.

17 (Proceedings concluded.)
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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Chinago Okonta 6/12/2026
Transcriber Date

FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

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