

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

YESICA PRADO, et al.,

Plaintiffs,

v.

CITY OF BERKELEY,

Defendants.

Case No. 23-cv-04537-EMC

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

Docket Nos. 178, 193–94, 199, 205

**I. INTRODUCTION & BACKGROUND**

This matter arises out of the City of Berkeley’s planned abatement of the encampment located along 8th Street and Harrison Street (the “Harrison Encampment” or “Encampment”).

On March 5, 2026, Plaintiffs Yesica Prado, Erin Spencer, Amber Whitson, Jermaine White, and Monique Williams, and organizational plaintiff Where Do We Go Berkeley, filed a motion for a temporary restraining order (“TRO”). Dkt. 178. The Court issued a TRO on March 7, 2026, granting protection with respect to vehicle seizures and denying Plaintiffs’ remaining requests.<sup>1</sup> Dkt. 187. The Court ruled that the City could not seize, impound, or destroy any vehicles in the planned abatement zone “absent a specific, fact-based determination that the particular vehicle obstructs traffic or poses a concrete public safety threat.” *Id.*

The City subsequently filed the Declaration of Peter Radu presenting the results of specific

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<sup>1</sup> The Court’s order on the TRO request denied the following forms of relief because Plaintiffs had not shown a likelihood of success on the merits: (1) designation of a relocation site where residents would not face further abatement actions; and (2) replacement of destroyed survival equipment such as tents and sleeping bags. The Court also left open “any future motion for relief” based on ADA accommodation requests, which is briefed in the related case, *Berkeley Homeless Union v. City of Berkeley*, No. 25-cv-01414-EMC, and addressed by the Court’s order on the parties’ preliminary injunction. Dkt. 289.

1 vehicle inspections. Dkt. 193. The declaration describes vehicles in detail by their make and  
 2 model, color, license plate number, and parking location. *Id.* It also purports to describe specific  
 3 safety risks associated with each vehicle. The Court received further briefing from both sides on  
 4 the vehicle-specific evidence. Dkts. 194, 199, 205. For the reasons set forth below, the motion is  
 5 **GRANTED IN PART AND DENIED IN PART.**

## 6 **II. DISCUSSION**

7 A party seeking a preliminary injunction must show “that he is likely to succeed on the  
 8 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
 9 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
 10 *NRDC, Inc.*, 555 U.S. 7, 20 (2008).

11 For the reasons previously stated, the Court finds Plaintiffs have established a likelihood of  
 12 irreparable harm absent the relief granted herein. As to the balance of equities and public interest,  
 13 those factors lie in relative equipoise. Plaintiffs have established that the loss of shelter is a  
 14 significant risk that would expose them to the elements and threaten their physical safety. On the  
 15 other hand, the City has made a substantial showing that the leptospirosis outbreak poses a serious  
 16 and growing risk of harm to Encampment residents and the surrounding community. Accordingly,  
 17 Plaintiffs’ showing on the likelihood of success on the merits is decisive here. *See Meinecke v.*  
 18 *City of Seattle*, 99 F.4th 514, 521 (9th Cir. 2024) (likelihood of success on the merits “is the most  
 19 important factor in the preliminary injunction analysis”).

### 20 **A. Safe Relocation Site**

21 First, Plaintiffs request an order requiring the City to designate a safe relocation site  
 22 outside the abatement zone. The Court’s TRO order denied this relief, and the Court affirms that  
 23 denial. Dkt. 187. The Court’s order on the parties’ cross-motions for summary judgment in the  
 24 related *Berkeley Homeless Union v. City of Berkeley* (“*BHU*”) case concludes that such an  
 25 accommodation would be both an unreasonable accommodation and a fundamental alteration of  
 26 the City’s program. No. 25-cv-01414-EMC, Dkt. 288. That reasoning applies with equal force  
 27 here. Accordingly, Plaintiffs have not demonstrated a likelihood of success on the merits as to this  
 28 form of relief, and the motion for preliminary injunction is **DENIED IN PART** with respect to the

1 designation of a relocation site.

2 B. Replacement of Property

3 Second, Plaintiffs ask for an order requiring the City to furnish replacement survival gear  
4 — including tents, sleeping gear, and clothing — that it seizes and destroys as part of the  
5 abatement. The Court incorporates by reference its analysis of this claim in its order on the  
6 parties' cross-motions for summary judgment in the *BHU* case. No. 25-cv-01414-EMC, Dkt. 288.  
7 For residents who have not submitted ADA accommodation requests, the City's advance notice of  
8 over one month satisfies the constitutional minimum. *See Shipp v. Schaaf*, 379 F. Supp. 3d 1033  
9 (N.D. Cal. 2019); *Sullivan v. City of Berkeley*, 383 F. Supp. 3d 976 (N.D. Cal. 2019). The Court  
10 reasserts, however, that the City's storage obligations are not wholly eliminated by the  
11 leptospirosis outbreak. As the *BHU* summary judgment order explained, the City may decline to  
12 handle or store items that are observably wet, muddy, and plausibly contaminated with  
13 leptospirosis, but generalized assertions about leptospirosis risks do not satisfy the City's burden  
14 of demonstrating that any storage is categorically unsafe or infeasible. No. 25-cv-01414-EMC,  
15 Dkt. 288. The City must act in compliance with the *BHU* summary judgment order, which  
16 explains constitutional minimum standards governing the seizure and destruction of property  
17 during Encampment abatement operations. The City has not demonstrated that property such as  
18 medical equipment and mobility devices cannot be safely handled and stored, particularly given  
19 the availability of, *e.g.*, PPE and plastic bags.

20 Relatedly, the Court's summary judgment order in *BHU* explained that the destruction of  
21 tents may trigger the state-created danger doctrine. No. 25-cv-01414-EMC, Dkt. 288.  
22 Accordingly, as a constitutional minimum, the City may not destroy tents or primary shelters of  
23 residents unless it is voluntarily abandoned or the City makes a specific, documented finding that  
24 the tent or shelter item poses a threat to public health or safety that cannot be addressed through  
25 bagging, containment or other less intrusive handling measures. To the extent that the City's  
26 abatement, including enforcement of rules governing the occupation of space on sidewalks, would  
27 result in the destruction of tents or shelters through no fault of the unhoused resident, the City is  
28 obligated to allow the unhoused individual to retain their tent, consider reasonable

1 accommodations allowing for continued shelter, or provide a replacement tent that will  
2 accommodate the City’s maintenance of reasonable passage on the sidewalks. *See id.*, Dkt. 288.

3 Accordingly, the motion for preliminary injunction is **GRANTED IN PART AND**  
4 **DENIED IN PART** with respect to the seizure of property claims.

5 C. Vehicle Seizures

6 Finally, the Court addresses the vehicle seizure claim. The constitutional framework for  
7 vehicle seizures was explained in this Court’s prior rulings and in the *BHU* summary judgment  
8 order. Dkt. 87; No. 25-cv-01414-EMC, Dkt. 288. The impoundment of RVs implicates the  
9 Fourth Amendment’s protection against unreasonable seizures, *see* Dkt. 87 at 26 (“The City has  
10 the burden to establish that the taking was warranted on a fact-specific basis.”) (citing *U.S. v.*  
11 *Cervantes*, 703 F.3d 1135, 1144 (9th Cir. 2012)), and the state-created danger doctrine under the  
12 Due Process Clause. *See id.* at 50 (“When Plaintiffs’ shelter and personal belongings are  
13 destroyed, and they have no safe shelter alternative nor means to protect themselves from the  
14 elements, the state has made plaintiffs’ conditions worse.”); *Janosko v. City of Oakland*, 2023 WL  
15 187499, at \*3 (N.D. Cal. Jan. 13, 2023) (holding that removal of shelter “affirmatively expose[s]  
16 [unhoused plaintiffs] to harsher, more dangerous conditions”); *Alfred v. City of Vallejo*, 2025 WL  
17 435900, at \*9 (E.D. Cal. Feb. 7, 2025).

18 As noted in the *BHU* summary judgement order, the City may invoke the community  
19 caretaker doctrine to seize vehicles, but only upon a specific, individualized showing that the  
20 particular vehicle obstructs traffic or presents a concrete, documented threat to public health and  
21 safety. No. 25-cv-01414-EMC, Dkt. 288. Here the City has presented evidence of a potential  
22 health threat posed by the vehicles. Dkt. 193. But as explained in the *BHU* summary judgment  
23 order, it has not made an individualized showing of the magnitude of the threat posed by each  
24 vehicle. No. 25-cv-01414-EMC, Dkt. 288. More importantly, even if a potential threat to public  
25 health is demonstrated, before seizing a vehicle used as shelter, the City must attempt less  
26 restrictive alternatives, including targeted pest treatment, nuisance abatement orders, debris  
27 removal, sealing of open engine compartments, and assisted voluntary relocation — or it must  
28 demonstrate with particularity why such alternatives are infeasible due to that specific vehicle and

1 occupant. *Id.*

2 Furthermore, the affirmative act of seizing and destroying a vehicle that serves as shelter  
3 implicates the state-created danger doctrine, as such a seizure would transform an unhoused but  
4 sheltered person into one who is unhoused and unsheltered. *Id.* The City must therefore undergo  
5 a graduated framework similar to that applied under the Fourth Amendment and procedural due  
6 process. *Id.*

7 Where a vehicle is used for storage only and not as primary shelter, the constitutional harm  
8 is less acute, and the protection against such seizure rests on the Fourth Amendment, not the state-  
9 created danger doctrine (which applies to shelter/housing). Under the Fourth Amendment, the  
10 requirement of a specific, individualized fact-based showing of a concrete public safety threat, and  
11 the opportunity for remediation, remain in effect.

12 As explained in the Court's *BHU* summary judgment order, *id.*, before proceeding to  
13 forcibly impound or destroy vehicles without consent, constitutional standards mandate that the  
14 City: (1) make a specific, fact-based determination — beyond mere parking violations,  
15 inoperability, or expired registration — that the particular vehicle obstructs traffic or poses a  
16 concrete, individualized public health or safety threat; (2) provide the vehicle's owner with written  
17 notice of the specific findings, an opportunity to respond, and a reasonable opportunity to  
18 remediate the identified condition or voluntarily relocate the vehicle; and (3) pursue less restrictive  
19 alternatives, including targeted cleaning, pest treatment, containment orders, and assisted  
20 relocation, or demonstrate with particularity why such alternatives are ineffective for the given  
21 vehicle and occupant. *Id.* Only upon satisfaction of all three requirements may the City proceed  
22 to more drastic measures such as impoundment. Moreover, prior to the destruction of any vehicle,  
23 the City must further demonstrate that no alternative remedy can adequately mitigate the health or  
24 safety risk presented by the vehicle. *Id.*

25 Accordingly, the Court finds a likelihood of success on the merits with respect to the  
26 vehicle-related constitutional claims, and the motion for preliminary injunction is **GRANTED IN**  
27 **PART** with respect to such relief.

28

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs’ motion for preliminary injunction is **GRANTED IN**  
3 **PART AND DENIED IN PART.**

4 Pending final adjudication of this case, the City is hereby enjoined as follows:

5 1. The City shall assist with physical relocation or storage of property unless that property  
6 is plausibly contaminated with leptospirosis or presents a genuine health or safety risk. The City  
7 must consider methods of safely handling and storing items that do not present an obvious risk to  
8 health and safety.

9 2. The City is prohibited from summarily destroying property necessary for survival (*i.e.*,  
10 tents, sleeping equipment, and clothing), if it cannot be moved by the individual, without  
11 providing a replacement therefor. To the extent abatement and enforcement of sidewalk space  
12 limitations would result in the destruction of tents, the City must either: (1) allow the unhoused  
13 individual to retain their tent if it can be relocated to an area in which does not unreasonably  
14 obstruct sidewalk passage (*e.g.* allowing for six-foot corridor), or (2) provide a replacement tent  
15 that will accommodate the City’s maintenance of reasonable passage (*e.g.* six feet) on sidewalks.

16 3. The City is prohibited from towing, impounding, or destroying vehicles without first (1)  
17 making an individualized determination that the specific vehicle obstructs traffic or presents an  
18 actual health or safety threat, (2) providing the vehicle owner with notice and a reasonable  
19 opportunity to abate said conditions, and (3) pursuing less restrictive alternatives to impoundment  
20 or destruction. Prior to the destruction of any vehicle, the City must further demonstrate that no  
21 alternative remedy can adequately mitigate the health or safety risk presented by the vehicle.

22 In all other respects, the Plaintiff’s motion for preliminary injunction is denied.

23 Plaintiffs are a putative class of indigent unhoused individuals, and the City has not  
24 requested a bond as security for the entry of preliminary injunctive relief. Accordingly, Plaintiffs  
25 are not required to post bond in this action. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th  
26 Cir. 1999) (district court has discretion to determine whether to require bond); *Cota v. Maxwell-*  
27 *Jolly*, 688 F. Supp. 2d 980, 1001 (N.D. Cal. 2010) (“The Court WAIVES the requirement for the  
28 posting of a bond as security for the entry of preliminary injunctive relief on the grounds of

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1 Plaintiffs’ indigency.”); *V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1123 (N.D. Cal. 2009) (“The Court  
2 waives the bond requirement for Plaintiffs because they are indigent and to ensure their ability to  
3 access the courts on behalf of themselves and other class members.”).

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7 **IT IS SO ORDERED.**

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9 Dated: April 3, 2026

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12 EDWARD M. CHEN  
13 United States District Judge  
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