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14 Services, Centro Legal de la Raza, and
15 Coalition on Homelessness

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

CHRISTIAN NOEL PADILLA-MARTEL aka
CHRISTIAN PADILLA-MARTEL,

Defendant.

Case No. CGC-20-586763

**APPLICATION FOR LEAVE TO FILE
AMICI CURIAE BRIEF IN SUPPORT
OF DEFENDANT**

Hearing Date: April 27, 2021
Hearing Judge: Hon. Ethan P. Shulman
Time: 9:30 a.m.
Dept.: 302

Action Filed: September 24, 2020
Trial Date: None Set

Proposed Amici Brief lodged herewith

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Prospective Amici Curiae, Lawyers’ Committee for Civil Rights of the San Francisco Bay
3 Area, National Harm Reduction Coalition, Pangea Legal Services, Centro Legal de la Raza, and
4 Coalition on Homelessness, hereby request leave of the court to file its amici curiae brief lodged
5 herein in support of Defendants’ Opposition to Motion for Preliminary Injunction. This brief has
6 not been funded or authored by any party in this action. Counsel for Defendant have agreed not to
7 object to this amicus brief. The undersigned e-mailed counsel for Plaintiff on April 13, 2021 to
8 inform said counsel of Amici’s interest in filing the attached brief. Counsel for Plaintiff replied
9 with an e-mail on April 15, 2021, but did not respond with a position on the filing of the brief.

10 **STATEMENT OF INTEREST**

11 The **Lawyers’ Committee for Civil Rights of the San Francisco Bay Area’s**
12 (“LCCRSF”) goal is to dismantle systems of oppression and racism and to build an equitable, just
13 society. We advance the rights of people of color, immigrants, and low- income individuals through
14 direct legal services, impact litigation, and policy advocacy. We represent individuals in claims
15 related to physical and property injuries at the hands of police, and on excessive criminal and traffic
16 fines and fees that punish poverty. We employ impact litigation and policy advocacy to address the
17 harms of policing at a local and statewide level.

18 The **National Harm Reduction Coalition’s** mission is to promote the health and dignity
19 of individuals and communities affected by drug use. As a national advocacy and capacity building
20 organization, we aim to shift power and resources to people most vulnerable to structural violence
21 and racialized drug policies. Our North Star Statement is our guide, and therefore we seek to create
22 spaces for dialogue and action that help heal the harms caused by racialized drug policies. Through
23 our SF DOPE Project, the largest single-city naloxone distribution program in the country, we focus
24 on building power with community leaders to make naloxone accessible to people who use drugs
25 and people who love people who use drugs as criminalization only perpetuates racism and
26 inequitable outcomes. We believe in community-based solutions and addressing the root causes of
27
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1 overdose and drug use, rather than continue to look to and fund law enforcement operations, which
2 do nothing to decrease drug use, drug selling, and overdose rates in our communities.

3 **Pangea Legal Services** (“Pangea”) is a non-profit organization that provides low-cost and
4 free legal services to immigrants in removal proceedings, including asylum seekers and survivors
5 of human trafficking. In addition to direct legal services, Pangea also advocates on behalf of the
6 immigrant community through policy advocacy, education, and legal empowerment efforts. Pangea
7 has an office in San Francisco and represents San Francisco residents who have an interest in
8 preventing further racialized policing of migrant youth.

9 **Centro Legal de la Raza** (“Centro Legal”) was founded in 1969 to provide culturally and
10 linguistically appropriate legal aid services to low-income residents of the San Francisco Bay Area
11 and the Central Valley. Annually, Centro Legal’s Immigration Project provides free legal
12 representation and consultations to hundreds of noncitizens, including refugees and asylum-
13 seekers, some of whom are detained by federal immigration authorities after contact with state or
14 local law enforcement. Centro Legal has particular expertise advising clients on the complex
15 intersection of criminal and immigration law, including the immigration consequences of criminal
16 convictions, and in litigating immigration detention issues. Centro Legal frequently represents
17 detained noncitizens accused of selling or possessing drugs before the immigration courts (in bond
18 and removal proceedings), the Board of Immigration Appeals, the federal district courts (e.g., to
19 challenge unlawful detention via habeas corpus actions), and the federal Courts of Appeal.

20 The **Coalition on Homelessness** organizes homeless people and their allies to create
21 permanent solutions to homelessness. The Coalition on Homelessness has a home in the Tenderloin
22 and is deeply concerned with a carceral approach to socio-economic issues that do not address the
23 root causes of these issues. Many of those who are caught up in these forms of operations are
24 without housing and struggling to survive. Investing in treatment, safe housing and economic
25 development would go much further than a criminal justice rooted approach that alienates
26 individuals from their community and support systems.

1 **THE PROPOSED AMICI CURIAE WOULD ASSIST THE COURT IN DECIDING THIS**
2 **MATTER**

3 This Court has “broad discretion over the conduct of pending litigation,” which includes
4 the authority to grant applications for leave to file amicus briefs relevant to matters pending before
5 the Court. See *In re Marriage Cases* (2008) 43 Cal. 4th 757, 791, n.10 (“[T]he superior court . . .
6 retained the authority to determine the manner and extent of . . . participation as amici curiae that
7 would be of most assistance to the court.”). The Court should grant this Application because this
8 amici curiae brief will aid this Court’s consideration of the plaintiff’s motion for a preliminary
9 injunction by showing the proposed injunction would not achieve the City of San Francisco’s (“the
10 City’s”) stated goals of reducing violence in its Tenderloin District.


11 The proposed amici curiae brief presents legal argument opposing the City’s request for the
12 extraordinary injunctive relief of an order banishing Defendant from the Tenderloin neighborhood.
13 The brief explains how the City’s proposed injunction fails to address the root cause of the harms
14 in the Tenderloin while situating the injunction within the City’s long history of criminalization of
15 drugs and immigration. Amici argue that the City’s motion should be denied not only for failing to
16 prove Defendant’s alleged activity has caused the real harms in the neighborhood and that the
17 injunction encroaches on their constitutional rights, but that this injunction would further
18 criminalize communities impacted by poverty while ignoring available, effective solutions. If this
19 brief is not considered, the Court will have to decide important issues that strike at the core of our
20 ideals of civil liberties and equality without considering the irreparable harms the injunction would
21 have to Defendant and the Tenderloin community.

22 **CONCLUSION**

23 Amici respectfully request that the Court grant their Application for Leave and consider the
24 following amici curiae brief.

25 Dated: April 19, 2021

26 Respectfully, submitted,
27 LAWYERS’ COMMITTEE FOR CIVIL RIGHTS OF THE
28 SAN FRANCISCO BAY AREA

By: 
Tifanei N. Ressler-Moyer

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24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. BACKGROUND	1
A. The inequitable distribution of resources to San Francisco's Tenderloin District has exacerbated drug use and sales.....	1
B. The COVID-19 pandemic has destabilized the economy and health care access, aggravating the number of drug overdose deaths in San Francisco.....	3
C. The criminalization of drug use and sales has a long, racialized history in San Francisco.....	5
III. ARGUMENT	7
A. Mr. Padilla-Martel is not the cause-in-fact nor the proximate cause of the harms that the City and County of San Francisco seeks to redress.	8
B. A civil injunction against Mr. Padilla-Martel will not achieve public safety.....	10
1. A civil injunction will increase the likelihood of drug-related deaths, including overdose.....	10
2. A civil injunction may destabilize the life of Mr. Padilla-Martel, increasing the likelihood of victimization and/or death.....	11
C. A civil injunction, in this context, is functionally the same as criminalizing people accused of low-level drug sales and just as ineffective.....	12
D. A civil injunction will unnecessarily encroach on the constitutional rights of Mr. Padilla-Martel without actually addressing the complained of harms.	13
E. There are less disruptive and intrusive means to address the harms identified by the City and County of San Francisco.	15
1. Mr. Padilla-Martel and similarly situated individuals are entitled to public benefits and other social services that would improve health outcomes while reducing harm in the Tenderloin District.....	16
2. Harm reduction strategies are proven methods to improve health outcomes, reduce neighborhood violence, and mitigate the dangers of drug use.....	18
IV. CONCLUSION	20

1 **TABLE OF AUTHORITIES**

2 **Page**

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TABLE OF AUTHORITIES
(Continued)

Page

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I. INTRODUCTION

The City and County of San Francisco has presented the Court with a request for equitable relief that would expend enormous amounts of public resources on a failed drug control policy, one that uses nationality and race as a proxy for dangerousness.

Amici submit this brief to bring the Court’s attention to the discriminatory practices that inform the City’s requests, the detrimental impacts of the relief sought, and to support the Defendant’s position that while the harms identified by the City—drug overdose, waste on its sidewalks, and disquieted residents—are very real, they cannot be ameliorated with the City’s proposal. In fact, the relief sought would exacerbate the very harms the City seeks to redress.

The City’s proposed civil injunction merely replicates efforts that have failed through the criminal justice system: targeting low-level drug sellers in an attempt to address a complex health crisis, while neglecting the root causes of the crisis. The City fails to prove that Mr. Padilla-Martel caused the harms in its Tenderloin District, and so to limit his liberty would encroach on his constitutional rights. The City has not, but must instead, invest in science-supported solutions that could actually interrupt the cycles of drug overdose in the neighborhood.

Amici ask the court to decline to expand the reach of the City’s inefficacious and harmful drug control policies, and to deny the motion for preliminary injunction.

II. BACKGROUND

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A. The inequitable distribution of resources to San Francisco's Tenderloin District has exacerbated drug use and sales.

San Francisco’s Tenderloin District faces “very real challenges,” just as the City contends.¹ But excessive drug use and sales are not the root cause.² The City’s failure to provide adequate resources and services for its most vulnerable residents has created and sustained the dangers of its Tenderloin District.

The Tenderloin has a population of 45,587 within a square mile; it is the most densely

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¹ Pl.’s Mem. P. & A. Supp. Mot. Prelim. Inj. 11; *see also* Def.’s Dem. 11.

² *See* Joya Esagoff, *The Vicious Cycle of Poverty and Unmet Community Health Needs in San Francisco’s Tenderloin Neighborhood: Solutions Based on Stakeholder Perceptions* (Aug. 2, 2020) (Master’s Capstone Project, University of San Francisco) (on file with the University of San Francisco).

1 populated area of San Francisco.³ Although the median household income in San Francisco is
2 \$112,449, in the Tenderloin district the median income is nearly forty-percent less at \$70,325.⁴ A
3 2013 report commissioned by the City found that in the Tenderloin, “[m]ore than one-third of
4 households survive on less than \$15,000 per year and more than 10 percent are unemployed”; the
5 numbers are very likely greater today.⁵

6 As a result of the Tenderloin’s high concentration of poverty, the overall health of its
7 residents is dismal.⁶ “Tenderloin residents are disproportionately affected by a number of health
8 issues including low birth weight, heart disease, drug overdose, suicide, and premature death due
9 to HIV/AIDS.”⁷ Compared to San Francisco’s other neighborhoods, its Tenderloin district “also
10 has the highest age-adjusted rate of preventable emergency room (ER) visits.” *Id.*

11 Tenderloin district residents lack the types of services that ameliorate the effects of poverty.⁸
12 “Tenderloin residents face... residential housing stock that lacks cooking facilities, a dearth of
13 groceries and other retail outlets that sell affordable and nutritious food, and limited knowledge on
14 how to prepare healthy meals.”⁹ “[T]here are many unmet community health needs that the
15 [Tenderloin] struggles with, thus engendering a cycle of poverty and worsening health outcomes,
16 and still more poverty.”¹⁰

17 Poverty is a major factor in the use of drugs, drug sales, and the risk of overdose.¹¹ Its

18 ³ Christopher Cook, *What Crowding Looks Like During a Pandemic: Dismal Days in the*
19 *Tenderloin*, San Francisco Public Press, August 8, 2020 (“almost 2.5 times the citywide density of
20 18,939 people per square mile.”).

21 ⁴ QuickFacts – San Francisco city, California, United States Census Bureau,
22 <https://www.census.gov/quickfacts/fact/table/sanfranciscocitycalifornia/INC110219#INC110219>
(last visited Apr. 11, 2021); Tenderloin Demographics, Point2Homes,
23 [https://www.point2homes.com/US/Neighborhood/CA/San-Francisco-County/San-](https://www.point2homes.com/US/Neighborhood/CA/San-Francisco-County/San-Francisco/Tenderloin-Demographics.html)
24 [Francisco/Tenderloin-Demographics.html](https://www.point2homes.com/US/Neighborhood/CA/San-Francisco-County/San-Francisco/Tenderloin-Demographics.html) (last visited Apr. 11, 2021).

25 ⁵ Harder Company Community Research, *A Changing Landscape: Food Security and Services in*
26 *San Francisco’s Tenderloin* 3 (2013).

27 ⁶ *Id.* at 9-10.

28 ⁷ *Id.*

⁸ Esagoff, *supra* note 2, at 40.

⁹ Harder Company Community Research, *supra* note 5, at 3.

¹⁰ *Id.* at 5.

¹¹ Adam J Visconti et al., *Opioid Overdose Deaths in the City and County of San Francisco: Prevalence, Distribution, and Disparities*, 92 J. Urb. Health: Bulletin of the N.Y. Acad. of Med. 758, 759 (2015) (“Opioid overdose deaths [are] concentrated in central San Francisco neighborhoods... with high poverty rates, high numbers of single room occupancy hotels, and high levels of opioid-related drug arrests.”). *See also* Esagoff, *supra* note, at 14.

1 combination—poverty and drug use—increases the risk of homelessness.¹² It is no surprise then
2 that the Tenderloin also has the highest numbers of unhoused people and drug overdoses.¹³
3 “Poverty has...thoroughly exacerbated the drug problem in the [Tenderloin] neighborhood, by
4 leaving so many with the impression that they have no other recourse than to sell drugs, if they
5 want to survive economically.”¹⁴ Compounding the insidious effects of poverty in the Tenderloin
6 is the threat of human trafficking; some people find themselves without a choice at all, forced to
7 sell and use drugs in the district.¹⁵ In many documented incidences, people also sell drugs in the
8 Tenderloin in exchange for access to safe housing for themselves and their family.¹⁶

9 **B. The COVID-19 pandemic has destabilized the economy and health care**
10 **access, aggravating the number of drug overdose deaths in San Francisco.**

11 The City states that “[t]he deadliest public health crisis in our community in 2020 was not
12 COVID-19... [r]ather, it was accidental drug overdoses.”¹⁷ However, San Francisco’s distressing
13 increase in death rate from drug use is deeply connected to the pandemic.¹⁸

14 The COVID-19 pandemic has “devastated the nation’s economy.”¹⁹ In a weakened
15 economy, the dangers of drug use are intensified.²⁰ The risks of “opioid-related deaths and

16 ¹² See Ronald G. Thompson, Jr. et al., *Substance-Use Disorders and Poverty as Prospective*
17 *Predictors of First-Time Homelessness in the United States*, 103 Am. J. Pub. Health 282 (2013).

18 ¹³ Harder Company Community Research, *supra* note 5, at 3.

19 ¹⁴ *Id.*

20 ¹⁵ Julie Lim and Minouche Kandel, HUMAN TRAFFICKING REPORT IN SAN FRANCISCO, CITY AND
21 COUNTY OF SAN FRANCISCO DEPARTMENT ON THE STATUS OF WOMEN 1 (2015) (“San Francisco is
22 a hub for human trafficking.”); see also Louise Shelley, *The Relationship of Drug and Human*
23 *Trafficking: A Global Perspective*, 18 Eur. J. Crim. Policy Res. 241, 250 (2012) (explaining that
24 “the diverse forms of drugs intersect in different ways with the many forms of human trafficking,”
25 and providing evidence that “[d]ifferent drugs are used by traffickers for different purposes to
26 increase dependence and enhance productivity.”); Judy Chang et al., *COVID-19 - Enacting a 'New*
27 *Normal' for People Who Use Drugs*, 83 Int. J. Drug Policy 1 (2020) (“Many people who sell drugs
28 do so as a matter of survival.”).

29 ¹⁶ Nate Gartrell, *Man Gets Five Years for his Role in Bay Area Drug Trafficking Ring as a Teen*,
30 Mercury News, Mar. 3, 2021 (“Prospective street-level dealers are often offered access to cheaper-
31 than-average housing in the Bay Area as a recruitment tool, in exchange for being bused to the
32 Tenderloin and selling drugs on a daily basis.”).

33 ¹⁷ Pl.’s Mem. P. & A. to Supp. Mot. Prelim. Inj. 8.

34 ¹⁸ Victoria Udalova, *Racial Inequality in Pandemic Mortality Widens When Age, Indirect Impact*
35 *Taken Into Account*, United States Census Bureau Feb. 16, 2021. (“Some of the differences between
36 excess all-cause mortality and COVID mortality may reflect choices in what is labeled a ‘COVID
37 death,’ which may include both overcounting and undercounting.”)

38 ¹⁹ *Id.*

39 ²⁰ Alex Hollingsworth et al., *Macroeconomic Conditions and Opioid Abuse* 26 (Nat’l Bureau of
40 Economic Research, Working Paper No. 23192, 2017).

1 [emergency hospitalizations] increase during times of economic weakness.”²¹ According to a study,
2 it is possible

3 that the dominant factor linking macroeconomic conditions to
4 adverse drug outcomes is that fatal and near fatal abuse of opioids
5 often (and increasingly over time) reflects a physical manifestation
6 of mental health problems that have long been known to rise during
7 periods of economic decline... [I]t seems likely that consumption of
8 these drugs rise when economic conditions worsen and that some of
9 this increased use leads to adverse outcomes including emergency
10 department visits or death.²²

11 The high risk of drug overdose during uncertain economic times has compounded the deadly effects
12 of the pandemic and increased the pandemic’s “all-cause mortality rate.”²³

13 In all corners of the United States, there has been a dramatic increase in drug overdoses
14 during the pandemic. The Center for Disease Control and Prevention issued a health advisory
15 reporting an unprecedented increase in deaths from opioid use during the pandemic. “Over 81,000
16 drug overdose deaths occurred in the United States in the 12 months ending in May 2020, the
17 highest number of overdose deaths ever recorded in a 12-month period.”²⁴ “More than 40 states
18 have reported increased in opioid-related mortality as well as ongoing concerns for those with
19 mental illness or substance use disorder.”²⁵

20 San Francisco is facing these same grim realities. Approximately 699 community members
21 died from drug overdoses in 2020, a fifty-nine percent increase from 2019.²⁶ Because the pandemic

22 ²¹ *Id.* at 26; *see also* Chang et al., *supra* note 15, at 1 (“People who use drugs, of which there are an
23 estimated 35 million globally, are particularly vulnerable during times of crisis.”).

24 ²² Alex Hollingsworth et al., *supra* note 20, at 26.

25 ²³ Udalova, *supra* note 18; *see also* Maria Polyakova et al., *Initial economic damage from the
26 COVID-19 pandemic in the United States is more widespread across ages and geographies than
27 initial mortality impacts*, 117 PNAS (2020).

28 ²⁴ Overdose Deaths Accelerating During COVID-19, Centers for Disease Control and Prevention
(Dec. 17, 2020), <https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html>.

²⁵ AMERICAN MEDICAL ASSOCIATION, ISSUE BRIEF: REPORTS OF INCREASES IN OPIOID AND OTHER
DRUG-RELATED OVERDOSE AND OTHER CONCERNS DURING COVID PANDEMIC (Mar. 3, 2021); *see
also* Rachel Becker, *A collision of epidemics: Coronavirus disrupts addiction treatment*,
CalMatters (Jun. 16, 2020) (explaining that “several local health departments in California as well
as emergency rooms participating in a statewide treatment effort are seeing signs that fewer people
addicted to drugs are receiving treatment since the pandemic reached California.”).

²⁶ Office of the Chief Medical Examiner, Preliminary Accidental Drug Overdose Data Reports for
January 2020 through December 2020 (Mar. 22, 2021) (hereinafter OCME),
<https://sf.gov/resource/2020/ocme-accidental-overdose-reports>. *Cf.* Joshua Sabatini, *San
Francisco’s 2020 overdose deaths soar 59 percent to 699*, S.F. Examiner, Jan.14, 2021; Rachel
Scheier, *San Francisco struggles to stem ‘horrific’ uptick in opioid overdoses, drug abuse*, L.A.

1 has destabilized the economy and (already precarious) access to health care, it has increased the
2 risk of drug overdose in San Francisco and around the United States.

3 Punishing drug sale and use has proven ineffective to reduce this risk, and there is an urgent
4 need for the City to prioritize “remov[ing] barriers to evidence-based treatment for those with a
5 substance use disorder as well as for harm reduction services, including sterile needle and syringe
6 services and naloxone.”²⁷

7 **C. The criminalization of drug use and sales has a long, racialized history in San**
8 **Francisco.**

9 The City is seeking injunctive relief in civil court, but has not provided any explanation of
10 how that would be more effective than what is available—and it has already pursued—through
11 criminal court. An injunctive order barring people from entering the entire neighborhood would
12 still require the participation of prosecutors, law enforcement, and existing criminal law to establish
13 evidence and to enforce the order if violated.²⁸ Such an order would replicate the bias and racism
14 inherent in criminal drug law enforcement and expand its reach.²⁹

15 San Francisco has unsuccessfully attempted to reduce drug use by u using the criminal court
16 system to take people out of their communities since the turn of the twentieth century, often relying
17 on race (and nationality) as a proxy for criminality. In 1875, San Francisco became the first city in
18 the United States to ban the use and sale of narcotics.³⁰ The legislation prohibited and criminalized
19 the use of opium, specifically targeting activities of Chinese migrants.³¹ The legislation incited a
20 trend of narcotic prohibitions that reverberated internationally and produced consistently

21 Times, Dec. 31, 2020.

22 ²⁷ American Medical Association, *supra* note 26, at 1.

23 ²⁸ See, e.g., *People v. Lim*, 18 Cal. 2d 872, 880 (1941) (“[A]fter imprisonment and fine for violation
24 of the equity injunction, [a defendant] may be subjected under the criminal law to similar
25 punishment for the same acts.”).

26 ²⁹ Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 Stan. L. & Pol’y Rev.
27 257, 261-278 (2009) (describing how race has impacted who public officials target and criminalize
28 for drug sales with no proof of its efficacy).

29 ³⁰ Patrick McCaffery, *Drug War Origins: How American Opium Politics Led to the Establishment*
30 of International Narcotics Prohibition 28 (May 2019) (Master’s Thesis, Harvard Extension School)
31 (on file with Harvard Library).

32 ³¹ *Id.* at 15 (“Despite the significantly larger swath of Americans who consumed opium via the
33 socially acceptable manners of consumption, authorities only deem[ed] Chinese opium habits as
34 detrimental.”); see also A Brief History of the Drug War, Drug Policy Alliance,
35 drugpolicy.org/issues/brief-history-drug-war (last visited Apr. 13, 2021).

1 *unsuccessful* results.³² Notwithstanding the early-on evidence against aggressive enforcement of
2 drug sale and use, San Francisco persisted with this policy.

3 For example, in 2013, San Francisco police partnered with the U.S. Drug Enforcement
4 Agency to target, arrest, and incarcerate people selling drugs in the Tenderloin district.³³ Like the
5 crackdown on opium, people of color were targeted and criminalized, but drug use continued. Every
6 person who was prosecuted as a result of this operation was Black, despite clear evidence that non-
7 Black people were participating in drug sales.³⁴ The United States District Court for the Northern
8 District of California found “substantial evidence suggestive of racially selective enforcement by
9 the San Francisco Police Department and other federal enforcement in connection with the conduct
10 of [the operation].”³⁵ If the goal was to reduce drug use and its effects, this effort was both
11 unsuccessful and racially discriminatory.

12 Nevertheless, San Francisco police continued to “inundate[]” the courts with drug arrests
13 of “low-level street dealers.”³⁶ The City’s police have used “buy-busts” to arrest individuals selling
14 drugs. In a “buy-bust,” an undercover police officer buys a small quantity of drugs and arrest the
15 seller.³⁷ A review of the San Francisco Public Defender’s cases between January 2017 and April
16 2019 showed that 93% of those convicted through “buy-busts” were Black or Brown, and 74%
17 were Latinx.³⁸ The quantities of drugs seized in the “buy-bust” operations are incredibly small – in
18 almost half of the San Francisco Public Defender’s cases, the quantity was less than two grams. *Id.*
19 The street level enforcement in San Francisco targets low-level sellers and people who use drugs,
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21 ³² McCaffery, *supra* note 30, at 28, 50 (“while prohibitionist laws claim to protect society, the
22 consequences of enforcement produce public safety and public health concerns that are far worse
than the negative effects of narcotic use.”)

23 ³³ Press Release, Drug Enforcement Agency, U.S. Attorney Tackles Drug Dealing Around Schools
In Tenderloin (Dec. 9, 2013), [https://www.dea.gov/press-releases/2013/12/09/us-attorney-tackles-](https://www.dea.gov/press-releases/2013/12/09/us-attorney-tackles-drug-dealing-around-schools-tenderloin)
24 [drug-dealing-around-schools-tenderloin](https://www.dea.gov/press-releases/2013/12/09/us-attorney-tackles-drug-dealing-around-schools-tenderloin).

25 ³⁴ *United States v. Mumphrey*, 193 F. Supp. 3d 1040 (N.D. Cal. 2016) (“All together . . . 37
individuals were prosecuted [under the operation]. All 37 individuals are African American.”)

26 ³⁵ *United States v. Matthew Mumphrey*, Order Granting in Part and Denying in Part Defendant’s
Motion to Compel, Case No. 14-cr-00643-EMC (June 30, 2016).

27 ³⁶ Jeff Adachi and Tal Klement, *The War on Crumbs*, 91 Or. L. Rev. 1319, 1320 (2013).

28 ³⁷ *Id.*

³⁸ Hadi Razzaq, SF’s Failed ‘War on Drugs’ needs innovation to transform the status quo, S.F.
Examiner, Nov. 7, 2019, [https://www.sfoxaminer.com/opinion/sfs-failed-war-on-drugs-needs-](https://www.sfoxaminer.com/opinion/sfs-failed-war-on-drugs-needs-innovation-to-transform-the-status-quo/)
innovation-to-transform-the-status-quo/.

1 who are too often people of color and migrants, and results in mere crumbs of drugs seized: “This
2 enforcement tactic targets the wrong people and wastes valuable public resources.”³⁹

3 The City has plenty of evidence that uprooting individual drug sellers or users will not lead
4 to a significant reduction in drug use in the Tenderloin. Still, in 2019, in partnership with San
5 Francisco Police Department a nexus of fifteen federal law enforcement agencies launched yet
6 another operation: the Federal Initiative for the Tenderloin.⁴⁰ One-hundred and fifty people were
7 criminally charged in connection with the operation.⁴¹ The initiative targeted “those lowest on the
8 drug trafficking chain: street-level dealers, who by estimates articulated in court filings, make as
9 little as \$50 a day selling drugs.”⁴² Nearly all individuals charged under the Federal Initiative for
10 the Tenderloin were Honduran nationals, “each defendant[had a] similar background: stories of
11 childhoods spent in shacks . . . without running water, or dangerous journeys to the United States
12 to escape violence or extreme poverty . . .”⁴³ And meanwhile, overdoses continued to skyrocket.⁴⁴

13 III. ARGUMENT

14 In seeking to enjoin him from entering its Tenderloin district, the City and County of San
15 Francisco have accused Christian Padilla-Martel of causing a myriad of social harms.⁴⁵ If this
16 Court orders Mr. Padilla-Martel, and presumably the “many” others accused of drug-related crimes,
17 to be exiled, the City contends that the social harms present in its district will end—or at least be

18 _____
19 ³⁹ Adachi and Klement, *supra* note 36, at 1320.

20 ⁴⁰ Evan Sernoffsky, *Feds launch initiative to crack down on drug dealing in SF's Tenderloin*, The
21 S.F. Chronicle, Aug. 7, 2019, <https://www.sfchronicle.com/crime/article/Feds-launch-initiative-to-crack-down-on-drug-14288145.php>; Press Release, U.S. Attorney’s Office of the Northern District
22 of California, Federal Prosecutions Demonstrate a Sustained Effort to Bring Law and Order to the
23 Tenderloin District of San Francisco (Feb. 26, 2021).

24 ⁴¹ *Federal Initiative for the Tenderloin*, U.S. Department of Justice (Apr. 8, 2020),
25 <https://www.justice.gov/usao-ndca/federal-initiative-tenderloin>.

26 ⁴² Nate Gartrell, *‘Basically what’s happening here is the creation of a deportation pipeline’: DA,*
27 *critics say Tenderloin initiative is being used to dodge sanctuary laws*, Mercury News, December
28 24, 2020.

29 ⁴³ *Id.* The impact of drug enforcement on migrant communities is devastating. There are substantial
30 immigration consequences that stem from drug convictions: a conviction for a “controlled
31 substance,” including a simple possession offense makes the individual subject to mandatory
32 detention. 8 U.S.C. 1226(c). Drug related convictions render individuals inadmissible, deportable,
33 and statutorily ineligible for most forms of discretionary relief. 8 USC § 1227(a)(2), 8 USC §
34 1182(a)(2). While San Francisco maintains its status as a sanctuary city, operations like the Federal
35 Initiative for the Tenderloin and other enforcement efforts pose serious risk to migrants.

36 ⁴⁴ OCME, *supra* note 26.

37 ⁴⁵ Pl.’s Mot. for Prelim. Inj. 8.

1 diminished.⁴⁶ The City’s contentions are based in a now-debunked theory that removing people
2 alleged to sell drugs will reduce the use of drugs, the risks of overdose, and the impact of each on
3 communities.⁴⁷

4 The crimes of which Mr. Padilla-Martel is accused are not the cause-in-fact nor the
5 proximate cause of the devastating realities that the City poignantly describes in its brief.⁴⁸
6 Enjoining Mr. Padilla-Martel, and others similarly accused of drug-related crimes in the Tenderloin
7 district, from entering the district is unlikely to prevent or mitigate the negative experiences detailed
8 by the declarants.⁴⁹ In fact, banishing Mr. Padilla-Martel is likely to exacerbate the very ills the
9 City is seeking to redress and cause Mr. Padilla-Martel and others irreparable and grave harm.

10 **A. Mr. Padilla-Martel is not the cause-in-fact nor the proximate cause of the**
11 **harms that the City and County of San Francisco seeks to redress.**

12 For a public nuisance claim, “[c]ausation is an essential element.”⁵⁰ Causation must be
13 determined in two parts. First, the City must establish that Mr. Padilla-Martel was the actual cause
14 of the dangers in the Tenderloin.⁵¹ Second, should the Court find the City has established Mr.
15 Padilla-Martel was the actual cause, the City must then establish that Mr. Padilla-Martel was the
16 proximate cause of the apparent injury.⁵²

17 Actual cause requires conduct be “a substantial factor in bringing about the injury.”⁵³ “[A]
18 force which plays only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage, or
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20 ⁴⁶ *Id.* at 18-19.

21 ⁴⁷ Jennifer J. Carroll et al., *The Protective Effect of Trusted Dealers Against Opioid Overdose in the*
22 *U.S.*, 78 Int. J. Drug Pol’y 1 (Apr. 2020) (“[E]fforts to deter through increased criminalization
23 simply restrict the characteristics of illegal behaviors, altering how (not whether) individuals
24 produce or distribute illicit substances, occasionally resulting in increased risk to consumers of
25 substance use-related harms.”); *See also* Christopher J. Coyne and Abigail R. Hall, *Four Decades*
and Counting; The Continued Failure of the War on Drugs, Cato Institute (2017),
<https://www.cato.org/policy-analysis/four-decades-counting-continued-failure-war-drugs>; Dahliah
26 Heller, Chloe Cockburn, and gabriel sayegh, *Healthcare Not Handcuffs: Putting the Affordable*
Care Act to Work for Criminal Justice and Drug Law Reform (2013).

27 ⁴⁸ Pl.’s Mot. for Prelim. Inj. 11-13.

28 ⁴⁹ *Id.* at 12.

⁵⁰ *Citizens for Odor Nuisance Abatement (CONA) v. City of San Diego*, 8 Cal. App. 5th 350, 359
(2017); *see also People v. ConAgra Grocery Products Co.*, 17 Cal. App. 5th 51, 101 (2017).

⁵¹ *See Lombardo v. Huysentruyt*, 91 Cal. App. 4th 656, 665–66 (2001).

⁵² *Id.*

⁵³ *Id.* at 665.

1 loss is not a substantial factor.”⁵⁴ If a person’s actions occurred “concurrently with other forces to
2 produce the harm, it is a substantial factor, so long as ‘the injury, or its full extent, would not have
3 occurred but for that conduct.’”⁵⁵ Where the cause-in-fact, or but-for, standards apply, the City will
4 have to prove that the harms would not have occurred in the absence of Mr. Padilla-Martel’ conduct.

5 Proximate cause exists where actual cause is satisfied and there are no circumstances to
6 relieve the actor from liability.⁵⁶ “A plaintiff must establish that the defendant's wrongful conduct
7 was not “too remote from the current hazard to be its ‘legal cause.’”⁵⁷ “Proximate cause is ordinarily
8 concerned... with the various considerations of policy that limit an actor's responsibility for the
9 consequences of his conduct.”⁵⁸

10 The City cannot establish cause. The City’s argument is merely theoretical.

11 Mr. Padilla-Martel was arrested on multiple occasions for low-level drug offenses.⁵⁹ One
12 person, accused of *any* drug offense, cannot alone create or sustain the overwhelming, layered, and
13 long-existing social problems of the Tenderloin. The removal of any one drug dealer, or even 150,
14 has shown no impact on rampant drug use in the past.⁶⁰ Further, the City’s own policies do far
15 more to create the harmful socio-economic environment than the cumulative impact of drug sales
16 .⁶¹

17 The City’s reliance upon *Lew v. Superior Ct.* to illustrate Mr. Padilla-Martel' liability is
18 labored under delusion.⁶² In *Lew*, seventy-five plaintiffs filed actions against the owner of an
19 apartment building.⁶³ The owner had failed to take practical steps to prevent the building from
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21 _____
22 ⁵⁴ *Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 969 (1997), *as modified on denial of reh'g*
(Oct. 22, 1997) *citing People v. Caldwell*, 36 Cal. 3d 210, 220 (1984).

23 ⁵⁵ *City and County of San Francisco v. Purdue Pharma, L.P.*, No. 3:18-CV-07591-CRB, 2020 WL
24 5816488, at *40 (N.D. Cal. Sept. 30, 2020) *citing In re Ethan C.*, 54 Cal. 4th 610, 640 (2012); *see*
also *ConAgra*, 17 Cal. App. 5th at 102 (applying the test of whether defendants’ conduct “played
at least a ‘minor’ role in creating the nuisance that now exists.”).

25 ⁵⁶ *Lombardo*, 17 Cal. App. 4th at 665–66.

26 ⁵⁷ *Purdue Pharma L.P.*, No. 3:18-CV-07591-CRB at 39.

27 ⁵⁸ *Purdue Pharma*, No. 3:18-CV-07591-CRB at 42 (internal citations omitted).

28 ⁵⁹ Pl.’s Mem. P. & A. to Supp. Mot. Prelim. Inj. 9.

⁶⁰ See *supra* note 40.

⁶¹ See *supra* sections II.A, IV.D-E.

⁶² *Lew v. Superior Ct.*, 20 Cal. App. 4th 866, 869 (1993).

⁶³ *Id.* at 869.

1 “being used as a center for sale and distribution of drugs.”⁶⁴ The plaintiffs demonstrated to the court
2 that, although there was some evidence of the owner cooperating with law enforcement, there was
3 “no evidence...presented that [the owners] were unable to discuss solutions with neighbors and
4 tenants or to take ordinary steps to ensure the peaceful enjoyment of the apartments in the
5 complex.”⁶⁵ By failing to implement practical solutions, the owner clearly “did not take all
6 reasonable measures available to them to control their property.”⁶⁶

7 The irony here is that while the actions that precipitated the harm against the apartment
8 residents is analogous to the harm experienced by the City’s residents, the inaction by the apartment
9 owner is analogous to the inaction by the City, and neither the alleged harm nor the actions by Mr.
10 Padilla-Martel are represented in *Lew*. This action by the City against Mr. Padilla-Martel obfuscates
11 the fact that the dangers of the Tenderloin are conditions of poverty, and the City has failed to take
12 “ordinary” and efficacious steps to ameliorate such dangers with sufficient services and access to
13 affordable housing.⁶⁷

14 **B. A civil injunction against Mr. Padilla-Martel will not achieve public safety.**

15 The City alleges that Mr. Padilla-Martel is one participant in the drug market of the
16 Tenderloin district. It does not allege that she controls the market nor has any particular control
17 over the innumerable harms endured by residents of the Tenderloin. The City cannot justify the
18 remedy it seeks against Mr. Padilla-Martel, because its proposed remedy will not prevent the
19 dangers associated with drug use in the Tenderloin; in fact, its proposed remedy will almost
20 certainly intensify the harm it seeks to redress.

- 21 1. A civil injunction will increase the likelihood of drug-related deaths,
22 including overdose.

23 As described in section III.C., to target and penalize the supply of drugs is an ineffective
24 strategy to combat the harms identified by the City; indeed, the City has acknowledged that
25 criminalizing Mr. Padilla-Martel and others has been entirely ineffective. A civil process that all-

26 _____
27 ⁶⁴ *Id.* at 870.

⁶⁵ *Id.*

⁶⁶ *Id.* at 874-75.

28 ⁶⁷ *Id.* At 870; *see also infra*. IV. E.

1 but duplicates the criminal process will not fare any better.⁶⁸ Dr. Lee Hofer, a medical
2 anthropologist, reported that “[i]n most instances, demand for illegal drugs has driven supply, not
3 the other way around – and people who sell or distribute drugs have little influence on the demand
4 for drugs.”⁶⁹ In fact, historically, when one drug supplier is removed by law enforcement, another
5 drug supplier replaces the removed seller.⁷⁰

6 In addition to being an ineffective strategy, removing the drug supply is also a dangerous
7 strategy. Exiling people who are well-known to drug users eradicates “trusted sellers from
8 communities, forcing users to buy from people they don’t know and making an already unregulated
9 and unpredictable drug supply even less predictable.”⁷¹ This disruption in the market is well-known
10 to lead to overdose deaths, because it introduces riskier drug use and renders it less likely people
11 will call for help when something goes wrong.⁷² The introduction of law enforcement, an element
12 that even a civil injunction would require for enforcement, “actually increase[s] violence in these
13 markets by disrupting the interpersonal relationships and territorial agreements that keep some drug
14 markets operating smoothly.”⁷³

15 2. A civil injunction may destabilize the life of Mr. Padilla-Martel, increasing
16 the likelihood of victimization and/or death.

17 From our experience at the San Francisco Public Defender’s Office,
18 those on the street are often unemployed and undereducated teenagers:
19 the special education kid or high school dropout raised by his
20 grandmother because his parents have also been incarcerated. Others
21 who are arrested tell us that they are indentured and are paying off
22 debts to the “coyotes” who brought them here.⁷⁴

23 The narrative used to criminalize, or otherwise penalize, people who sell drugs is often
24 inaccurate and laden with stereotypes. The reality is that frequently the people who sell drugs are
25 using drugs and need health and treatment services just the same as the users referenced in the

26 ⁶⁸ Pl.’s Mem. P. & A. Supp. Mot. Prelim. Inj. 8.

27 ⁶⁹ *Rethinking the “Drug Dealer,”* Drug Policy Alliance (Dec. 2019),
28 https://drugpolicy.org/sites/default/files/dpa-rethinking-the-drug-dealer_0.pdf.

⁷⁰ *Id.*

⁷¹ *Id.* at 7.

⁷² *Id.*

⁷³ *Id.* at 2; *infra* sect. IV.C. (describing that civil enforcement is functionally the same as criminal enforcement, and just as ineffective).

⁷⁴ Adachi and Klement, *supra* note 36, at 1321.

1 City’s brief. To expel such a person without inquiry into their needs for support and treatment
2 places them at a substantial and unnecessary risk of overdosing themselves.

3 Moreover, many people who sell drugs in the Tenderloin district are coerced into doing
4 so.⁷⁵ Their poverty, psychological health, social condition (e.g. lack of strong social networks),
5 gender identification, and age make them vulnerable to exploitation by human traffickers.⁷⁶ The
6 nature of human trafficking is so abusive and exploitative, it’s possible that violating a stay away
7 order is safer than confronting the violence that awaits someone who defies the direction of the
8 person who forced their labor.⁷⁷ Said another way, a civil injunction may place the person at grave
9 risk of harm or death.

10 **C. A civil injunction, in this context, is functionally the same as criminalizing**
11 **people accused of low-level drug sales and just as ineffective.**

12 The City’s action against Mr. Padilla-Martel is packaged as a novel step outside of the
13 criminal justice system to address the crises of the Tenderloin. Yet a civil injunction’s enforcement
14 mechanisms are dependent upon collaboration with the same actors of the criminal court system,
15 including law enforcement.⁷⁸ The City is simply doubling down on failed drug control policies in
16 a new venue.⁷⁹

17 The collateral consequences of a civil injunction are similar to criminalization, too. The
18 irreparable harms were seen following San Francisco’s failed gang injunctions: “For the people on
19 the list, the injunction — which pops up on any search engine — still serves as a barrier for jobs,

20
21 ⁷⁵ Emily M. Murase, Ph.D., Human Trafficking Report in San Francisco, City and County of San
22 Francisco Department on the Status of Women 1 (2015) (“San Francisco is a hub for human
23 trafficking.”); *see also* Shelley, *supra* note 15, at 250 (2012)

24 ⁷⁶ *Id.*; Gartrell, *supra* note 42 (“Some are recruited out of homeless shelters with promises of
25 housing, said Daisy Gavarrete, a social worker in San Francisco who said she has witnessed the
26 recruitment firsthand.”).

27 ⁷⁷ *See e.g.*, Tala Hartsough, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*,
13 Hasting’s Women’s L.J. 77 (2002).

28 ⁷⁸ *See, e.g., Lim*, 18 Cal. 2d at 880; *see also* Office of the Public Defender City and County of San
Francisco, Frequently Asked Questions: Gang Injunctions, [http://sfpublicdefender.org/wp-
content/uploads/sites/2/2007/10/faq-gang-injx.pdf](http://sfpublicdefender.org/wp-content/uploads/sites/2/2007/10/faq-gang-injx.pdf), (last visited Apr. 11, 2021) (explaining that
violations of an injunctive order “can be pursued civilly by the City Attorney, for monetary
penalties and up to five days in county jail for each violation, or prosecuted criminally by the
District Attorney, as a misdemeanor for up to six months in county jail.”)

⁷⁹ *See infra* II. C. (explaining that increased enforcement in the Tenderloin has not reduced
overdose deaths or improved the safety of the community).

1 housing, and a way out of street life. And it's a life sentence with no chance of parole.”⁸⁰ To claim
2 a civil injunction does not carry the same consequences of a criminal drug offense nor contribute
3 in the same manner to the war on drugs ignores the fact that this civil injunction stems from
4 incidents for which Mr. Padilla-Martel has already been charged.⁸¹

5 If granted, the injunction can have serious immigration consequences for non-citizens as
6 well.⁸² While not a criminal conviction, enforcement of the injunction could still be basis for
7 removal under the Immigration and Nationality Act.⁸³ When weaponized to exclude and
8 criminalize in this way, civil injunctions are part and parcel of the carceral-deportation system.

9 Further, the resources required for this type of enforcement are both tremendous and
10 wasteful, stripping funding away from essential social services that are proven to reduce poverty
11 and drug-related harms.⁸⁴ And the collateral consequences of targeting people for low-level drug
12 sales are irreparable, often including impossible barriers in accessing housing or benefits and
13 deportation.⁸⁵

14 **D. A civil injunction will unnecessarily encroach on the constitutional rights of**
15 **Mr. Padilla-Martel without actually addressing the complained of harms.**

16 The City must, but cannot, provide evidence that it has a legitimate interest in banishing
17 people accused of low-level drug sales from the Tenderloin, that its proposed remedy will actually
18 address the social conditions of the Tenderloin, or that the remedy is at all tailored for that purpose.

19 Amici offer two cases, *City of New York v. Andrews* and *Johnson v. City of Cincinnati*,
20 which examine similar location-based restrictions.⁸⁶ In each, the courts determined the respective

21 ⁸⁰ See also Chris Roberts, *SF's Short-Lived Experiment with Gang Injunctions has Permanent*
22 *Consequences*, SF Weekly, Dec. 9, 2015, [https://www.sfweekly.com/news/sfs-short-lived-](https://www.sfweekly.com/news/sfs-short-lived-experiment-with-gang-injunctions-has-permanent-consequences/)
23 [experiment-with-gang-injunctions-has-permanent-consequences/](https://www.sfweekly.com/news/sfs-short-lived-experiment-with-gang-injunctions-has-permanent-consequences/) (describing how the City “hasn't
24 sought further injunctions... since 2011. But the effects are still being felt.”); City and County of
25 San Francisco Human Rights Commission, *Community Voices: The Human Rights Impact of the*
26 *War on Drugs 10* (April 12, 2012) (describing collateral consequences for one young person, with
27 a history of severe trauma and substance use, who faced serious immigration consequences as a
28 result of the injunctions).

⁸¹ Pl.’s Mot. for Prelim. Inj. 9-11.

⁸² See *supra* III. C.

⁸³ INA § 212(a)(2)(C) (“reason to believe” drug trafficking, or INA § 237(a)(2)(B)(ii) (admission to habitual drug abuse/addiction)).

⁸⁴ Adachi, *supra* note 36, at 1321; see also sect. IV.D.1.

⁸⁵ Adachi, *supra* note 36, at 1321.

⁸⁶ 719 N.Y.S.2d 442, 448 (Sup. Ct. 2000); 310 F.3d 484, 488 (6th Cir. 2002).

1 cities failed to justify their injunctions, because neither city could demonstrate their effectiveness
2 nor their usefulness.⁸⁷

3 In *City of New York*, the court examined the government’s claim of nuisance and request
4 for injunctive relief to restrict prostitution in Queens Plaza.⁸⁸ The court provided several reasons
5 why, despite recognizing that prostitution may constitute a nuisance, the government had failed to
6 demonstrate that the remedy would not unnecessarily burden the defendants’ constitutional
7 liberties.⁸⁹ First,

8 Rather than tailor the proposed injunction to the prostitution offenses, the
9 City seeks to prohibit all activity by the defendants in the Queens Plaza area:
10 good, bad or indifferent, lawful or unlawful, innocent or guilty. . . It thus
restricts the defendants' liberties far more than is necessary to prohibit the
illegal activity.⁹⁰

11 Second, “since there is no proof whatsoever that these defendants control the prostitution trade in
12 the area, as distinct from merely participating in it, the proposed injunction does not in fact ensure
13 that the defendants' banishment will produce any corresponding benefit to the City by eradicating
14 that trade.”⁹¹ Third, the government could not show defendants created the nuisance, or that the
15 government could justify the remedy, or likelihood of success on the merits; the court found that
16 the balance tipped against the government.⁹² Ultimately, the Court concluded “that the injunction
17 sought by the City here intrudes upon the defendants' constitutional freedoms to travel and remain
18 in the Queens Plaza area, far more than is necessary to serve the legitimate governmental interest
19 in suppressing the prostitution trade there.”⁹³

20 Like in *City of New York*, the City must, but cannot, prove something more than a legitimate
21 interest. It must show some level of certainty that the proposed injunction will remedy harms
22 associated with drug sales and use in the Tenderloin. As noted above and below, the constitutional
23 concerns elevate the importance of the City’s burden here.

25 ⁸⁷ *Id.*

26 ⁸⁸ 719 N.Y.S.2d at 448.

27 ⁸⁹ *Id.* at 448, 453.

28 ⁹⁰ *Id.* at 453.

⁹¹ *Id.*

⁹² *Id.* at 448.

⁹³ *Id.* at 454.

1 In *Johnson v. City of Cincinnati*, the Sixth Circuit addressed an ordinance which banned
2 those convicted of an enumerated drug offense from the Over the Rhine area in Cincinnati.⁹⁴ In
3 ruling the ordinance invoked the right to interstate travel, the court applied strict scrutiny, which
4 asks whether the city proved the ordinance was the least restrictive measure to accomplish its
5 legitimate interest.⁹⁵ The court asked “whether any other methods exist to achieve the desired
6 results of enhancing the quality of life and protecting the health, safety, and welfare of citizens in
7 high drug-crime neighborhoods. ‘[I]f there are other, reasonable ways to achieve those goals with
8 a lesser burden on constitutionally protected activity, a State may not choose the way of greater
9 interference. If it acts at all, it must choose ‘less drastic means.’”⁹⁶

10 It is not enough for the City to merely list the conditions of its Tenderloin District. Not only
11 has the City failed to demonstrate any possibility that banishing people accused of low-level drug
12 sales will address its Tenderloin District’s dangerous conditions, but mounting evidence suggests
13 that an injunction order will irreparably harm Mr. Padilla-Martel. Amici believe it is past time for
14 the City to end its failed drug control policies.

15 **E. There are less disruptive and intrusive means to address the harms identified**
16 **by the City and County of San Francisco.**

17 The City identifies numerous, serious harms in the Tenderloin community, which it
18 improperly attributes to Mr. Padilla-Martel’s alleged low-level drug sales.⁹⁷ The City wrongly
19 claims that an injunction banishing Mr. Padilla-Martel from the neighborhood will address these
20 harms to the community, and will not cause Mr. Padilla-Martel irreparable harm.⁹⁸ The City fails
21 to imagine less disruptive and intrusive means that would address the serious harms that impact all
22 of the Tenderloin’s residents and visitors, such as taking advantage of existing public benefits,
23 social services, and harm reduction-based strategies to manage public health crises and reduce
24 reliance on drugs.

25
26 ⁹⁴ *Johnson*, 310 F.3d at 488.

27 ⁹⁵ *Id.* at 502.

28 ⁹⁶ *Id.* at 503 (citing *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972)).

⁹⁷ Pl.’s Mem. P. & A. Supp. Mot. Prelim. Inj. 11–13.

⁹⁸ *See id.* at 19–22.

1 1. Mr. Padilla-Martel and similarly situated individuals are entitled to public
2 benefits and other social services that would improve health outcomes
3 while reducing harm in the Tenderloin District.

4 A strong social safety net and access to social services reduces drug use.⁹⁹ As discussed
5 *infra* III. D., the continued criminalization of drug production, sales, and use has failed to protect
6 our communities.

7 The complaint filed against Mr. Padilla-Martel was in concert with 27 other civil injunctions
8 against alleged low-level drug dealers in an attempt to banish them from the Tenderloin in the name
9 of public safety.¹⁰⁰ Seventeen of these people are transitional aged youth, and may be migrants.¹⁰¹

10 One example of benefits—which are easily accessible and yet underutilized by the City—
11 are those available through the Trafficking Victims Protection Act of 2000 and Trafficking Victims
12 Protection Reauthorization Act of 2003.¹⁰² In California, once a licensed social worker or attorney
13 identifies someone as a “survivor of trafficking,” the person can begin accessing state benefits
14 without having started the process of applying for a T-Visa or other immigration relief. These social
15 services and benefits help to reduce not only the likelihood of coercive drug sales, but also the risks
16 associated with drug use.

17 Many migrant youths are coerced into drug sales after they arrived in the United States as
18 unaccompanied minors.¹⁰³ Arriving as an unaccompanied minor means navigating education, the

19 ⁹⁹ See, e.g., Sheila Kennedy, *Ideology, Inequality, and the Safety Net*, Inequality.org, Dec. 16, 2016,
20 <https://inequality.org/research/shredding-social-safety-net/> (“Overwhelming evidence shows that a
21 strong social safety net reduces crime”); see also Patrick Sharkey et al., *Community and the Crime
22 Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 Am. Socio. Rev. 1214, 1234
23 (2017) (“[W]e find strong evidence that establishment of community nonprofits had a substantively
24 meaningful negative effect on murder, violent crime, and property crime.”); Irvin Waller and Dick
25 Weiler, *Crime Prevention Through Social Development: An Overview with Sources*, Canadian
26 Council on Social Development, <https://www.ojp.gov/pdffiles1/Digitization/103113NCJRS.pdf>
27 (last visited Apr. 10, 2021) (“[C]rime could be prevented by targeted social development programs,
28 such as those aimed at improving the family, housing, school or work experiences of disadvantaged
29 Canadians.”).

30 ¹⁰⁰ *Herrera Files 28 Civil Lawsuits to Keep Known Drug Dealers Out of the Tenderloin*, City
31 Attorney of San Francisco (Sept. 24, 2020), [https://www.sfcityattorney.org/2020/09/24/herrera-
32 files-28-civil-lawsuits-to-keep-known-drug-dealers-out-of-the-tenderloin/](https://www.sfcityattorney.org/2020/09/24/herrera-files-28-civil-lawsuits-to-keep-known-drug-dealers-out-of-the-tenderloin/).

33 ¹⁰¹ *Community Fact Sheet: City Attorney Dennis Herrera’s Civil Injunctions in the Tenderloin*,
34 End the Injunctions Collaborative (Feb. 18, 2021),
35 <https://docs.google.com/document/d/18jitqoVJxMjAobwvRzcxAhFjp-dshD5P/edit>.

36 ¹⁰² *Human Trafficking Victims*, California Department of Social Services (last visited Apr. 13,
37 2021), <https://www.cdss.ca.gov/trafficking-victims>.

38 ¹⁰³ *Id.* at 2.

1 trauma of migration, employment, and supporting their communities monetarily on their own.¹⁰⁴
2 In addition to the risks and trauma of migration, there is the additional risk of labor trafficking.¹⁰⁵
3 The City is well aware of the particular risks to migrant youth of trafficking, drug dealing, and
4 trauma.¹⁰⁶

5 Notwithstanding the institutional barriers migrant youth face in accessing services, there is
6 a social safety net they could access with the help of city employees or city-funded programs that
7 would not only improve their personal health outcomes but reduce drug use and enhance public
8 safety.¹⁰⁷

9 Rather than offering assistance in accessing the social safety net that could provide needed
10 support to Mr. Padilla-Martel and the other people, the City has arrested and convicted them, and
11

12 ¹⁰⁴ *Id.*

13 ¹⁰⁵ See *Child Labor Trafficking in California: October 2019 Update*, Coalition to Abolish Slavery
14 and Trafficking (Oct. 2019), [https://www.castla.org/wp-](https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf)
15 [content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf](https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf) (trafficked children are
16 often forced to commit criminal acts like drug dealing[.]”); see also *Northern California High*
17 *Intensity Drug Trafficking Area Drug Market Analysis*, U.S. Department of Justice (June 2007),
18 <https://www.justice.gov/archive/ndic/pubs23/23934/23934p.pdf> (outlining criminal drug
19 trafficking operations uncovered in Northern California).

20 ¹⁰⁶ See *infra*. III. A, *infra*. III. C, regarding the poverty-related crises and alleged criminal activity
21 in the Tenderloin.

22 ¹⁰⁷ See *Policy Priorities for Transitional Age Youth: Vision and Goals 2014–2016*, TAYSF City
23 and County of San Francisco (2014),
24 [https://sfgov.org/youthcommission/sites/default/files/FileCenter/Documents/48565-D%20-](https://sfgov.org/youthcommission/sites/default/files/FileCenter/Documents/48565-D%20-%20TAYSF_PolicyPrioritiesdoc.pdf)
25 [%20TAYSF_PolicyPrioritiesdoc.pdf](https://sfgov.org/youthcommission/sites/default/files/FileCenter/Documents/48565-D%20-%20TAYSF_PolicyPrioritiesdoc.pdf) (outlining a vision created by a governmental taskforce
26 created to address the wide-ranging challenges transition-aged youth face in accessing needed
27 services and support); *San Francisco’s Most Vulnerable Young Adults Need You Now*, TAYSF
28 City and County of San Francisco (2011),
[https://sfgov.org/youthcommission/sites/default/files/FileCenter/Documents/44255-](https://sfgov.org/youthcommission/sites/default/files/FileCenter/Documents/44255-TAYSF%20Progress%20Report%202011.pdf)
TAYSF%20Progress%20Report%202011.pdf (“[TAY] often experience systemic barriers and
bureaucracy.”); *Unaccompanied Children: Resources and Services for Affected Minors*, Office of
Civic Engagement and Immigrant Affairs (Aug. 25, 2014),
[https://sfgov.org/oceia/sites/default/files/FileCenter/Documents/12211-](https://sfgov.org/oceia/sites/default/files/FileCenter/Documents/12211-SFCC%20UAC%20Resources_Eng%208%2025%202014F.pdf)
SFCC%20UAC%20Resources_Eng%208%2025%202014F.pdf (list developed by the San
Francisco Office of Civic Engagement and Immigrant Affairs listing over 40 organizations, city
programs, and offices available to assist migrant youth); see also *Services Available to Survivors*
of Trafficking, Office of the Administration for Children & Families: Office on Trafficking in
Persons (last reviewed on July 8, 2020), [https://www.acf.hhs.gov/otip/victim-assistance/services-](https://www.acf.hhs.gov/otip/victim-assistance/services-available-victims-trafficking)
available-victims-trafficking (description of Federal programs for victims of trafficking in
nutrition, medical services, mental health, monetary assistance, employment, witness protection
and services during investigation and other services regardless of citizenship status); *Trafficking*
and Crime Victims Assistance Program, California Department of Social Services (last visited
Apr. 10, 2021), <https://www.cdss.ca.gov/inforesources/tecvap> (state program for trafficking
victims offering cash assistance, food benefits, employment and social services).

1 now seeks to banish them from the very community that could provide them assistance. The
2 banishment zone in this preliminary injunction would bar Mr. Padilla-Martel from accessing many
3 organizations in the Tenderloin that provide housing, mental health services, food, harm reduction
4 services, legal services, and more.¹⁰⁸

5 The City has the opportunity to connect people with well-established and effective services
6 in San Francisco and lean on statewide or federal relief programs that would reduce drug use and
7 sales. Yet, in pursuing a civil injunction banishing Mr. Padilla-Martel from the Tenderloin, the City
8 constructs even more barriers to effective services while actualizing a new face of the war on drugs
9 and criminalization of migration.

- 10 2. Harm reduction strategies are proven methods to improve health outcomes,
11 reduce neighborhood violence, and mitigate the dangers of drug use.

12 In addition to public benefits and social services, the City should use harm reduction as a
13 strategy to mitigate the damaging impacts of drug use.¹⁰⁹ Harm reduction is a way of preventing
14 disease and promoting health that “meets people where they are” rather than making judgments
15 about where they should be in terms of their personal health and lifestyle.¹¹⁰ Implementing harm
16 reduction practices widely is not just sound public health policy; it is a human rights imperative
17 that requires strong leadership.¹¹¹

18 ¹⁰⁸ See, e.g., *Our Work*, Tenderloin Neighborhood Development Corporation (last visited Apr. 10,
19 2021), <https://www.tndc.org/our-work> (describing Tenderloin Neighborhood Development
20 Corporation’s affordable housing, social services, and mental health programs in the Tenderloin);
21 *What We Do*, Hospitality House (last visited Apr. 10, 2021),
22 <https://www.hospitalityhouse.org/what-we-do.html> (outlining Hospitality House’s “six diverse,
23 integrated programs” to help people—including many people in the Tenderloin—overcome
24 “chronic poverty and its effects”); *Glide Programs*, Glide (last visited Apr. 10, 2021),
25 <https://www.glide.org/programs/> (detailing nine programs—mostly provided in the Tenderloin—
26 that provide a range of services and assistance to “the most vulnerable people in our community”).

27 ¹⁰⁹ *Principles of Harm Reduction*, National Harm Reduction Coalition (last visited Apr. 10, 2021),
28 <https://harmreduction.org/about-us/principles-of-harm-reduction/> (“Harm reduction is a set of
practical strategies and ideas aimed at reducing negative consequences associated with drug use
[and is] also a movement for social justice built on a belief in, and respect for, the rights of people
who use drugs.”).

¹¹⁰ *We Know What to Do: Harm Reduction and Human Rights in North Carolina*, Human Rights
Watch (Sept. 2011),
https://www.hrw.org/sites/default/files/related_material/us0911brochurewebwcover_0.pdf.

¹¹¹ See United Nations, Committee on Economic, Social and Cultural Rights, General Comment
Adopted by the Committee on Economic, Social and Cultural Rights Under Article 12 of the
International Covenant of Economic, Social and Cultural Rights, General Comment No. 14, U.N.
Doc. E/C.12/2000/4 (2000); see also Aila Hoss, *Legalizing Harm Reduction*, 80 Ohio St. L. J. 825

1 Decriminalization and embracing harm reduction have proven successful in curbing
2 overdose deaths in Portugal. In 2001, Portugal decriminalized the acquisition, use, and possession
3 of illicit drugs in quantities up to a 10-day supply.¹¹² At the same time, Portugal invested substantial
4 resources into treatment and harm reduction services.¹¹³ When police find people in possession of
5 drugs, they give them an administrative violation ticket, akin to a traffic ticket in the United
6 States.¹¹⁴ The person is then required to meet with a commission, made up of a social worker, a
7 medical professional, and a lawyer, that is designed to respond to any health needs.¹¹⁵ As a result,
8 overdose deaths decreased from 80 deaths to 16 deaths in 2012.¹¹⁶ The number of people receiving
9 drug treatment increased significantly, too.¹¹⁷ Portugal’s success demonstrates that if harm
10 reduction strategies were employed by the City without exiling people from the Tenderloin,
11 meaningful change and a reduction of the harms of drug use would follow.

12 Recognizing the mounting evidence in support of harm reduction, the San Francisco Board
13 of Supervisors has called for the utilization of harm reduction strategies to address the public health
14 crisis of drug use and overdoses.¹¹⁸ After that resolution passed in January 2020, but before any
15 recommendations were implemented, the City saw its most devastating year of overdose deaths:
16 699 individuals passed away due to accidental overdose, most in the Tenderloin.¹¹⁹

17
18 (calling for wider legalization and implementation of harm reduction strategies to curb overdoses
and other adverse health outcomes associated with substance use).

19 ¹¹² See Lei n.º 30/2000 de 29 de Novembro [Act no. 30/2000 of 29 November],
20 <https://dre.pt/pesquisa/-/search/599720/details/maximized> (Port.); see also Glenn Greenwald, *Drug
Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies* 2 (Cato
Institute 2009).

21 ¹¹³ See Caitlin Elizabeth Hughes and Alex Stevens, *What Can We Learn from the Portuguese
Decriminalization of Illicit Drugs?*, 50 *Brit. J. Criminology* 999, 1002 (2010) (discussing the
22 government’s focus on “expanding policies and resources across the areas of prevention, harm
reduction, treatment, social reintegration and supply reduction”).

23 ¹¹⁴ See *id.*

24 ¹¹⁵ See *id.*

25 ¹¹⁶ *Drug Decriminalization in Portugal Learning from a Health and Human-Centered Approach*,
Drug Policy Alliance (2018), [https://drugpolicy.org/sites/default/files/dpa-drug-decriminalization-
portugal-health-human-centered-approach_0.pdf](https://drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf).

26 ¹¹⁷ *Id.*

27 ¹¹⁸ S.F. Board of Supervisors, Resolution 2-20 (2020) (“Further Resolved, That the Board of
Supervisors requests the Department of Public Health to present a comprehensive plan on how to
address this public health crisis including . . . [by] identify[ing] existing models of detox and drop-
in centers and how to best expand those services”).

28 ¹¹⁹ OCME, *supra* note 26.

