

Roundtable on the Future of Justice Policy

Examining Justice Reform and the Social Contract in the United States: Implications for Justice Policy and Practice

Hosted by the Justice Lab at Columbia University

Generously supported by the Ford Foundation and Charles and Lynn Schusterman Family Foundation

Unhousing the Poor: Interlocking Regimes of Racialized Policing

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The United States is in the midst of what is often described as a housing crisis. In cities such as Los Angeles, homelessness has surged in recent years. Around the country, while home foreclosures have slowed since the Great Recession of 2007-2009, an apparatus of evictions is systematically pushing tenants out of their homes. Such displacement is transforming metropolitan regions, with working-class communities of color now re-segregated at the far edges of urban life, as evident in our map of Black population change in Southern California, 2000-2018 (Appendix 1). New forms of housing commodification are also taking shape, with private equity firms such as the Blackstone Group acquiring and securitizing large swaths of rental housing, often in high-foreclosure tracts, capitalizing on the racialized dispossession that predatory financialization wrought just a decade ago.

Our research, at the [UCLA Luskin Institute on Inequality and Democracy](#), in collaboration with the [Anti-Eviction Mapping Project](#), and informed by the work of housing and racial justice movements in Los Angeles such as the [Los Angeles Community Action Network](#) and the [Stop LAPD Spying Coalition](#), is concerned with the structural mechanisms of **unhousing**. By this we mean the specific policies and actions through which the unhousing of people is produced and reproduced for financial profit and with political legitimacy. While we are keenly aware of the deepening financialization of housing in the United States, we draw attention to regimes of racialized policing that facilitate such capital accumulation. In particular, as detailed in this paper, we shed light on the **territorial logic of interlocking regimes of racialized policing** as a necessary condition for gentrification and displacement. Our emphasis on policing foregrounds the role of **state-organized violence**, including that in the service of global finance, as was evident in the case of militarized police action in Oakland, California, to support the property claims of Wedgewood Inc., a home-flipping company, against Moms4Housing (Burns, 2020).

In doing so, we interpret the current housing crisis not just as a symptom of neoliberal restructuring and austerity urbanism but rather as a distinctive conjuncture in a long history of **racial capitalism**. This history, as scholars of settler-colonialism have demonstrated, includes the repeated and forced removals of people of color as well as the theft of land through financial instruments such as foreclosure (Park, 2016). This history, as scholars of racial segregation have demonstrated, includes the meticulous iteration of red-lines and Black codes through housing policy. This history, as border studies scholars have emphasized, is entangled with immigration regimes, especially all of the ways in which migrant lives are subordinated through illegalization. In solidarity with housing and racial justice movements that are attentive to these histories, we analyze the present historical conjuncture as a moment of **racial banishment**, the expulsion of Black, Brown, and Indigenous bodies through the public means of policing and punishment. As Pete White, founder and director of the LA Community Action Network, often

puts it, displacement is when you have somewhere else to go; banishment is when there is nowhere for you to go – except jail or death (White, 2016).

But the present historical conjuncture also presents important political openings for imaginations and practices of housing justice. In the United States and elsewhere in the world, tenant unions, landless and unhoused collectives, anti-displacement organizations and more are fighting for the **right to remain**. We borrow the idea of the “[right to remain](#)” from the Downtown Eastside (DTES) neighborhood of Vancouver, Canada, that “has borne witness to a century and a half of dispossession and banishment, yet it remains today as a bustling place of racialized and low-income inhabitance, undergirded by a concerted political activism for human rights” (Masuda et al., 2019). Our [Housing Justice in Unequal Cities Network](#), a National Science Foundation Research Coordination Network, centers the knowledge and policy demands generated by such movements. We view such insurgency as part of a broader effort to resocialize the key infrastructures of life-making, be it housing or education or healthcare or climate, and to insist on **public goods in the public interest**. In the final section of this paper, we provide an outline of the main tenets of resocialized housing. However, the actualization of such visions of housing justice require not only the reinvention of housing but also the abolition of racialized regimes of policing.

While much of this paper was written prior to the onset of the COVID-19 pandemic, it remains relevant in the context of a crisis that has both exposed and deepened the lived inequalities of racial capitalism. Writing in the wake of Hurricane Katrina, housing policy scholars Chester Hartman and Gregory Squires (2006: 4) emphasized that “there is no such thing as a natural disaster,” and drew attention to the “long history of institutional structures and arrangements that have produced current realities.” The crisis at hand is not so much the containment of a virus as it is the **inertia of political institutions** to enact social protections for the vulnerable and disadvantaged. As detailed by our UCLA colleague, Gary Blasi, in a landmark report, [UD Day: Impending Evictions and Homelessness in Los Angeles](#), what is in the making is another round in the systematic unhousing of people. With 365,000 renter households at the risk of eviction, this will be **one of the largest mass displacements in the region**. But the COVID-19 crisis has also made visible the scope and scale of emergency powers wielded by the state, especially for the purpose of public health. A recent report, [Hotel California: Housing the Crisis](#), with Ananya Roy as the lead author, draws attention to the legal authority that government executives in California have during an emergency to commandeer private property and utilize it for the well-being of its people. While similar legal authority has long been used through eminent domain and redevelopment for the purposes of upscale urban development, it has rarely been mobilized for the purposes of social housing. **Can the public purpose tools that have perpetuated racial violence be appropriated and repurposed for racial justice?** This is one of the key issues at stake in the *Hotel California* report.

The national uprising for Black Lives provides an important reminder that housing justice is not possible without dismantling structural racism and the systems of prison and police that reproduce such racism. The COVID-19 pandemic has made visible the life-and-death stakes of structural racism but it is the uprising that has made possible **divestment from such racial violence**. It is our contention that such racial violence is manifested not in a single mode of racialized policing but rather in interlocking regimes with a distinctive territorialized logic. One example of this is the growing discussion of how Breonna Taylor’s murder by police must be understood in the context of a “major gentrification makeover.” As reported by Bailey and Duvall (2020), the search warrant was part of a police operation called “Place-Based Investigations” presumably focused on narcotics crimes but “more about speeding up the city’s multi-million dollar Vision Russell development plan.” Such connections are eerily reminiscent of our analysis of nuisance abatement in Los Angeles as an example of state-organized violence manifested in the unhousing of people and the racialized policing of communities of color.

I. INTERLOCKING REGIMES OF RACIALIZED POLICING

Los Angeles has a long history of racialized policing. The city can be understood as one of the key sites of expansive experimentation with systems of carcerality and surveillance, or what the Stop LAPD Spying Coalition has termed “the stalker state” (Khan, 2019: 135). In our research, we draw attention to interlocking regimes of racialized policing and argue that such regimes have a territorial logic that decisively shapes the terms and conditions of access to housing. From civil gang injunctions to municipal ordinances that target the unhoused, Los Angeles and many other cities, have created what Beckett and Herbert (2010: 1) describe as “banishment” or “legally imposed spatial exclusion.” Implicated in banishment is not only the forced mobility of repeated displacement, but also what Cacho (2012) has called “social death” or “racialized rightlessness.” Banishment is thus *racial* banishment, with state-organized violence directed at racialized bodies and communities that are repeatedly constructed as unruly, dangerous, and illegal. Racial banishment is thus also the necessary counterpart to what Lipsitz (1998) has called the “possessive investment in whiteness,” a structure of property entitlements that undergirds white personhood and power. In particular, we rely on Singh’s (2014) conceptualization of the “whiteness of police.” Singh (2014: 1091) conceptualizes whiteness “as a status conferring distinct—yet conjoined—social, political, and economic freedoms across a vertiginously unequal property order.” Whiteness, he emphasizes, does not issue directly from private property; “it emerges from the governance of property and its interests in relationship to those who have no property and who are therefore imagined to harbor a potentially criminal disregard for propertied order.” The whiteness of police is thus a crucial method “for regulating an unequal ordering of property relations.” Indeed, it is the relationship between property, personhood, and police that lies at the heart of our arguments about housing. While our research and this paper focus on Los Angeles with its especially dense collection of racial banishment tools and pioneering role in creating an apparatus of surveillance and policing to deploy such tools, our arguments extend to the broader question of housing in American cities.

A. “Racialized Rightlessness”: The Criminalization of the Unhoused

On March 14, 2016, the Legal Aid Foundation of Los Angeles filed a lawsuit against the City of Los Angeles (*Mitchell v. City of Los Angeles*) on behalf of four unhoused individuals and the Los Angeles Catholic Worker and Los Angeles Community Action Network for the illegal seizure and destruction of their property. The complaint argued that such forms of policing were violations of the rights of homeless plaintiffs under the Fourth, Fifth, and Fourteenth Amendments. A preliminary injunction issued about a month later placed restrictions on the City and its agents in the confiscation and destruction of the property of the homeless in Skid Row. In 2019, authorized by a City Council vote, the City Attorney of Los Angeles settled the case along the lines of this preliminary injunction. But while such protections were won in Skid Row, the unhoused in the rest of Los Angeles have been vulnerable to this common form of harassment, which have come to be called sweeps. In April 2016, the Los Angeles City Council passed through a near-unanimous vote a municipal ordinance to revise Los Angeles Municipal Code 56.11 prohibiting “the storage of unlimited amounts of personal property” in order to maintain “clean and sanitary public areas.” The ordinance limits the personal property of an unhoused person to 60 gallons and authorizes the police and sanitation departments of the city to remove and destroy “excess” property without warrant or notice. It also allows the Los Angeles Police Department to arrest anyone challenging these confiscations. As the [Services Not Sweeps Coalition](#) made up of over 35 community organizations in Los Angeles has argued, the ordinance enables repeated sweeps of homeless encampments and the deepening criminalization of the unhoused.

Subsequently, the Legal Aid Foundation of Los Angeles filed a lawsuit against the City of Los Angeles on behalf of seven unhoused residents and two community organizations, Ktown for All and the Association for Responsible and Equitable Public Spending, challenging the constitutionality of LAMC 56.11. The complaint shows that sanitation workers not only confiscated the belongings of the homeless but also immediately destroyed them rather than sending them to storage. A recent ruling in this case ordered the City to enforce the ordinance and found that it likely violates the Fourth and Fourteenth Amendments of the U.S. Constitution. As Jane Nguyen, co-founder of Ktown for All and one of the plaintiffs in the litigation [noted](#), “This law would have never been written if it was going to be used against people who were housed.”

LAMC 56.11 is only one ordinance in a vast repertoire of municipal tools that criminalize the unhoused in numerous cities. Dozier (2019: 9) provides a detailed analysis of the “shifting militarization of urban space” in Los Angeles, demonstrating ongoing struggles over policing, property relations, and the use of space. We argue that the effects of such municipal ordinances must be understood as spatial illegalization. As Roy’s (2009) long-standing scholarship on urban informality shows, it is the spatial practices of the poor and vulnerable, not those of the propertied classes, that are criminalized. Indeed, legal reason and legal authority are repeatedly deployed in order to carry out “the criminalization of innocent behavior.” We borrow this phrase from contestations over another municipal ordinance in Los Angeles, LAMC 85.02, which was initially passed in 1983 to prohibit vehicle dwelling. A legal challenge to the ordinance, *Desertrain v. City of Los Angeles*, made it to the Ninth Circuit Court of Appeals which ruled in 2014 that the ban on vehicle dwelling was unconstitutionally vague and encouraged arbitrary and discriminatory enforcement. In particular, the ruling states that “this broad and cryptic statute criminalizes innocent behavior, making it impossible for citizens to know how to keep their conduct within the pale.”¹ In 2016, the Los Angeles City Council passed an amended version of LAMC 85.02, renewing the spatial illegalization of vehicle dwelling in much of the city through a system of elaborate spatio-temporal rules.

What is at stake here are important questions about property and personhood. In a well-known essay, Baron (2004: 273) defines homelessness as “a problem not of poverty but of property.” The homeless, she emphasizes, belong to the legal category of “no property.” As LAMC 56.11 makes evident, the category of “no property” is a form of personhood that entails what Cacho (2012) has called “racialized rightlessness.” Indeed, it is not just that the unhoused are denied the civil and constitutional rights afforded to propertied citizens, but also that they are denied the right to exist. In a classic essay, Mitchell (1997: 305) determined that anti-homeless laws enact the “annihilation of space by law,” specifically, “annihilating the only spaces the homeless have left” and seeking to “annihilate homeless people themselves.” Two decades since the publication of Mitchell’s essay, such annihilation has expanded along with a significant expansion of the systematic unhousing of people.

The criminalization of the unhoused has become a key part of the larger story of racial banishment. Two points are especially pertinent for the purposes of this essay. First, banishment is often analyzed as civil death, a point to which we return later in this essay. It can also be understood as an instantiation of what Cacho (2012) calls “social death.” We interpret social death in relation to propertied citizenship and the annihilation and exile imposed on those who fall in the category of “no-property.” With this in mind, we follow Porter (2014: 398) in asking this important question: “For what is to become of those who cannot prove their worth across the thresholds of recognition?” In settler-capitalist nation-states such as the United States, the threshold of recognition is set by the logic of possession. As Porter argues, those excluded from “possessory recognisability” are placed outside the realms of value and worth and even rights. Second, we insist that the legal category of “no

¹ Accessed at <https://cdn.ca9.uscourts.gov/datastore/opinions/2014/06/19/11-56957.pdf>.

property” is not just a biopolitical category, concerned with the management of life through urban governance and social welfare provision, but also a necropolitical category that is about the enactment of death. Such necropolitics includes impunity for police killings of unhoused people as well as the many forms of “premature death” that abolitionist scholar Gilmore (2006: 28) views as the hallmark of racism. Today, the average life expectancy of an unhoused woman in Los Angeles is 48 years and that of an unhoused man is 51 years. Compare that to life expectancy rates in California which are 83 years for women and 79 years for men (Gorman and Rowan, 2019).

It is our assessment that the criminalization of the unhoused is a significant barrier to housing justice in the United States. Such spatial illegalization has also become the dominant homelessness policy, including in large and diverse cities that often trumpet their progressive stance on social issues. We conclude this section with two instances of such persistent commitment to criminalization. First, one of the few legal bulwarks against the expanding criminalization of the unhoused has been the Ninth Circuit Court of Appeals 2018 decision on the case *Martin v. City of Boise*, first filed by homeless plaintiffs in Boise in 2009 to challenge the illegalization of sleeping in public. Among other things, the ruling stated that the “imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter” unconstitutionally criminalized homeless status and violated the Eighth Amendment’s Cruel and Unusual Punishment clause.² In 2019, conservative attorneys such as Theodore Olson and law firms such as Gibson Dunn petitioned the Supreme Court to overturn the ruling, which applies to nine Western states including California. In their brochure on the case, Gibson Dunn presents homeless encampments as a significant threat to public health and safety, arguing that “medieval diseases such as typhus, as well as typhoid fever and tuberculosis, have re-emerged particularly from encampments.” Indeed, the Gibson Dunn brochure pins every urban problem, from crime to environmental harm, on the unhoused.³ While the Supreme Court denied the petition to review the case, a victory for a nationwide movement spearheaded by the National Law Center on Homelessness and Poverty,⁴ it is worth considering the long list of amicus briefs filed in favor of the petition.⁵ From business improvement districts to chambers of commerce, from resident associations to nonprofit organizations, the *amici curiae* provide a glimpse of the propertied and powerful who drive the criminalization of the unhoused.

Second, in Los Angeles, prior to the onset of the COVID-19 pandemic, Mayor Eric Garcetti, despite political differences, reached an alliance with the Trump administration for federal funds to address homelessness in the city. While Trump himself has unleashed Twitter rants about homelessness in California, threatening to invoke sweeping emergency powers to “clean up” the problem, the Garcetti-Trump alliance spoke the language of partnership. Not surprisingly, criminalization and carcerality were a key part of such partnerships with Ben Carson, HUD Secretary, noting that it was necessary to “uncuff law enforcement so that people can be removed now and placed in transitional places” (Bierman et al., 2020). Indeed, in a letter obtained by the *Los Angeles Times* (Smith et al., 2020), Carson insists that federal aid will depend on policy changes in Los Angeles, including “empowering and utilizing local law enforcement” and “reducing housing regulations to expedite affordable housing construction.”

² Accessed at <https://harvardlawreview.org/2019/12/martin-v-city-of-boise/>.

³ Accessed at
<https://www.gibsondunn.com/wp-content/uploads/2019/08/Martin-v.-Boise-White-Paper.pdf>,
page 5.

⁴ Accessed at <https://nlchp.org/Supreme-Court-Martin-v-Boise/>.

⁵ Accessed at
<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-247.html>.

Such threats are in keeping with the long history of welfare in the United States, with the extension of relief often contingent on policing.

B. Gang Injunctions by Another Name: Tenancy as Public Nuisance

In November 2017, the Los Angeles City Attorney filed a complaint for abatement and injunction (BC683661) against the owner of Chesapeake Apartments, a 17-acre, 425-apartment complex in the Baldwin Village neighborhood of South Central Los Angeles. Home to approximately 1,500 tenants, the complex is covered by the Los Angeles Rent Stabilization Ordinance, which limits rent increases as well as “no-fault” evictions. Arguing that “the Property has been plagued by rampant crime for decades” and was thus a “dangerous, gang and narcotics-related public nuisance,” the complaint asks for the establishment of extensive security systems at the property with direct access by the Los Angeles Police Department to these systems of monitoring and surveillance. The preliminary injunction, filed in March 2018, details these forms of security enhancements including video monitoring and electronic access control systems and private security guards. It also details various tenant screening procedures and “house rules” for tenants, requiring the property owner to evict tenants who violate such rules. The Chesapeake Apartments lawsuit is only one of scores of nuisance abatement complaints filed each year by the Los Angeles City Attorney. However, this case is unusual because in an unprecedented turn of events, tenants demanded, and were granted, legal standing in the case proceedings. While the City Attorney labeled the property a “hotbed of terror” and insisted that the nuisance abatement lawsuit was an action to “take back our communities” (Tchekmedyan, 2017), tenants rejected such portrayals of criminality and critiqued the security systems as expanded policing and surveillance. In the settlement filed in September 2018, Chesapeake tenants, as intervening defendants, won a time-bound prohibition of the property’s removal from the rental market as part of a set of “tenant and community benefits,” a temporary, yet important, protection from the rapid gentrification surrounding the apartment complex which is now only a few blocks from a newly built Los Angeles Metro Line station and other residential and commercial developments.

The Chesapeake Apartments lawsuit was filed by the Los Angeles City Attorney under the Citywide Nuisance Abatement Program (CNAP) which was established in 1997 to target nuisance properties. Typically, CNAP cases deploy a combination of narcotics abatement, public nuisance, and unfair competition law to enact the “reformation of property” (*People v. Bayside Land Co.*, 1920) and “the abatement of nuisance as a long established and well recognized exercise of the state’s police power” (*People v. Barbiere*, 1917). They are part of a variegated national landscape of crime-free rental housing ordinances and nuisance property ordinances whereby landlords are required to evict tenants who are found to be causing nuisance (Werth, 2013). Much of the academic and advocacy scholarship focuses on two aspects of these ordinances. First, as evident in a series of legal challenges by the ACLU, such ordinances are seen to be punishment for victims, rather than perpetrators, of crime.⁶ Indeed, such ordinances can impede tenants facing threatening circumstances, such as domestic violence, from calling the police, a process we term the criminalization of vulnerability. Second, Desmond and Valdez (2012), interpret such ordinances as “coercive third-party policing of the urban poor,” where policing responsibilities are assigned to non-police actors. Across the nation, nuisance ordinances have faced repeated legal challenge, famously in *Briggs v. Borough of Norristown*, a federal lawsuit filed by the ACLU that led to a HUD Conciliation Agreement in 2014.

⁶ Accessed at

<https://www.aclu.org/other/i-am-not-nuisance-local-ordinances-punish-victims-crime>.

We argue that CNAP, which does not deploy such direct mechanisms of tenant eviction, reveals complex structures of territorialized policing that enact racial banishment. We also disagree with the argument about third-party policing and continue to place emphasis on the role of state-organized and state-instituted violence, as well as legal reason and authority, in such forms of governance. In particular, programs such as CNAP point to the extensive apparatus of direct policing, surveillance, and sting operations at constant work in targeted neighborhoods. Nuisance law, as Silverstein (2020: 125) has recently shown, is part of a broader repertoire of “state-mandated evictions.”

Our research in Los Angeles analyzes the 96 CNAP cases that were filed by the City Attorney between 2013 and 2018, of which Chesapeake Apartments is one. These cases mostly target housing, be it single-family dwellings or multi-family rental buildings, and residential hotels and motels. A large number of these properties are located in South Central Los Angeles, specifically in census tracts where Black residents make up 30% or more of the population (see Appendix 2). We surmise that CNAP lawsuits have an effect on tenant evictions. It is nearly impossible though to determine and track evictions caused by such lawsuits, because of the deliberate failure of city agencies to maintain eviction records, because of the sealing of eviction records in California, and because of the vast scope of informal pressure to leave that these lawsuits allow landlords to wield over tenants. But it is also our contention that the pushing out of tenants, in formal and informal ways, is only a part of the story of public nuisance and its effects on communities. CNAP has its roots in California’s Unlawful Detainer Pilot Program, launched in 1999 with the intention of authorizing city attorneys to initiate evictions of tenants on the grounds of drug trafficking and the unlawful possession of weapons (Graziani and Reichle, 2020). CNAP cases also often deploy municipal ordinances, such as LAMC 47.50, which prohibits a landlord from allowing tenants involved in criminal activity on or within a 1000-foot radius from the boundary of the property. But CNAP’s scope is much broader than the eviction of specific tenants and brings to light the territorial logic of interlocking regimes of racialized policing.

What is at stake in CNAP complaints, injunctions and settlements is the construction of an intimate relationship between police and property. Narcotics and nuisance abatement serve as the pretext for a vast expansion of police presence and surveillance at residential properties, from the inspection of guest and tenant records “upon request and without warrant,” to multi-camera video monitoring systems with direct feed to police departments, to key fobs, codes, and clickers for specific police offers to all access points for the property. It is the distinctive nature of public nuisance law that enables the exercise of the state’s police power for the benefit of “an entire community or neighborhood” (California Civil Code section 3480). CNAP conjoins this legal reason with the Narcotics Abatement Act (California Health & Safety Code section 11570) which directs such abatement at buildings and places used for the storing or selling of controlled substances and gives the state considerable power over the regulation and governance of private property. CNAP lawsuits place properties in the direct control of the City Attorney’s office as well as the Los Angeles Police Department who then determine nuisance abatement actions and the maintenance of security and safety. In the wake of the 2019 death of Los Angeles community leader and hip-hop artist, Nipsey Hussle, his business partner, David Gross released a CNAP “demand letter” that they had received from the Los Angeles City Attorney (Sulaiman, 2019; letter appears in Appendix 3). Behind each such letter stands a police investigation, typically into gang activity. Recently, information activist, Michael Kohlhaas revealed that while the Los Angeles City Attorney filed 30 nuisance abatement lawsuits in 2018 and 2019, the office issued 479 demand letters against properties in the same time period.⁷ Our communications with

⁷ Accessed at
<https://michaelkohlhaas.org/wp/2020/01/15/in-2018-and-2019-the-los-angeles-city-attorney-sent->

the Los Angeles City Attorney office clarifies this number to indicate that these are “property referrals,” not necessarily demand letters. Nevertheless, it indicates the vast scope of policing and surveillance.

We view city-level programs such as CNAP as the consolidation of what abolitionist scholars and movements have termed the “stalker state” (Khan, 2019), a sprawling apparatus of surveillance systems, predictive policing algorithms, and spatialized imaginaries of crime and terror. Other California cities have their own variants of this program, such as Oakland’s Nuisance Eviction Ordinance managed by the city’s administration (Silverstein, 2020; Graziani and Reichle, 2020). More generally, as the 2017 ACLU lawsuit against the City of Hesperia, California shows, city governments have been enacting and enforcing numerous municipal ordinances designed to ensure exclusion from housing. The ACLU complaint⁸ pinpoints various ordinances including “crime free rental housing” which provides significant power to the city, especially the police, to force the eviction of tenants by landlords. It is our assessment that such programs, concentrated in neighborhoods that are on the frontlines of gentrification, as is the case with CNAP, enact the racial banishment of targeted bodies. As noted earlier, evictions, whether or not they can be fully counted and documented, are one piece of this banishment. CNAP complaints and injunctions are filled with instructions to property owners from the City Attorney on the eviction of tenants with criminal history and those found to be in violation of “house rules.” But also present is the pervasive emphasis on street gangs with CNAP complaints that are rife with tabloid-style descriptions of gang activity. We thus argue that CNAP and other such public nuisance frameworks are extensions of gang injunctions. Amidst growing legal challenges to gang injunctions and scandals around gang databases, public nuisance ordinances and programs might very well be the new means of exclusion and expulsion, or gang injunctions by another name. In fact, a report authored by key prosecutors at the Los Angeles City Attorney’s office explicitly describes property abatements as “the other gang injunction,” noting that their role is to take out gang headquarters (Cristall and Forman-Echols, 2009). Through a close reading of CNAP documents, including complaints, preliminary injunctions, and settlements, as well as interviews with current and past prosecutors at the Los Angeles City Attorney’s office, we conclude that disrupting the territorial power of gangs is a crucial aspect of this particular deployment of public nuisance law. Especially important here is the interlocking nature of regimes of policing, connecting gang injunctions and property abatements, both civil actions, with evictions through municipal ordinances as well as the unlawful detainer pilot program. We are especially interested in the significance of these multiple and often conjoined banishment tools that deploy the framework of public nuisance. Thus, the report on property abatements states that “when there is not enough evidence to bring an abatement lawsuit...prosecutors will evaluate whether gang members and/or associates can be evicted under existing laws” (Cristall and Forman-Echols, 2009: 12). But property abatement is a powerful tool, one that allows for unprecedented territorial control and for urban redevelopment. One example of this comes from a 2004 CNAP lawsuit that led to the demolition, three years later, of an apartment complex in South Central Los Angeles, that was depicted as a notorious “gang headquarters”⁹. The then-existing Community Redevelopment Agency of the City of Los Angeles (CRA-LA) laid out a plan to redevelop the site into townhomes as “catalysts for economic development.” The

[out-479-demand-letters-in-nuisance-abatement-cases-and-filed-30-cases-in-court-according-to-deputy-city-attorney-bethelwel-wil/](#).

⁸ Accessed at

<https://www.aclusocal.org/sites/default/files/wp-content/uploads/2016/05/1.CPT .DCT .Complaint-for-Injunctive-and-Declaratory-Relief-and-Damages-16.05.04.pdf>.

⁹ Accessed at

<http://www.crala.org/internet-site/Media/upload/2007-05-07%20PR-69th%20and%20Main%20Gang%20HQ%20Rehab.pdf>.

brief CRA-LA report indicates that “tenants who were not directly involved in the criminal activity at the apartment buildings received relocation money from the property owners or from the City of Los Angeles...to relocate throughout the city.” Such relocation, which we interpret as part of the serial displacement of communities of color, is presented as “opening up a long hoped-for avenue of escape for tenants who previously had none.”

While we do not have the space in this paper to provide a detailed analysis of gang injunctions, it is worth making a few points in relation to housing insecurity and racial banishment. Los Angeles, in particular, has played a pioneering role in gang injunctions with the first initiated in 1987. Such injunctions and subsequent legal rulings frame gangs as public nuisance, ban alleged gang members from certain spatial zones of the city, and enact, as in the case of municipal ordinances targeting the unhoused, the criminalization of innocent behavior, such as congregating in groups in public, wearing certain clothes, and so forth. As Muniz (2014: 217) notes, these are “activities and behavior that are unremarkable and legal in other jurisdictions.” Not surprisingly, property abatement actions echo many of the controversial aspects of gang injunctions. Both, for example, are civil remedies without the procedural protections of criminal law (Yoo, 1994). Prosecutors at the Los Angeles City Attorney’s office proudly state the benefits of such an approach, from the lack of the right to jury trial to a lower burden of proof in the civil courts (Cristall and Forman-Echols, 2009). While the California Supreme Court ruled in *People ex. rel. Gallo v. Acuna* (1998) to uphold the constitutionality of gang injunctions, the debate continues about the vague provisions through which injunctions, including public nuisance abatement injunctions, rely on guilt by association (Werdegar, 1999). CNAP lawsuits often list residents who are permanently banned from a property. The source of such names is simply the discretionary knowledge of police officers.

We interpret such interlocking regimes of racialized policing, and their targeted and yet expansive territorial logic, as continuous with structures of carcerality that are rooted in racial capitalism, notably in the tracking of enslaved and fugitive Black bodies (Ramirez, 2019) and the making of vagrancy ordinances, such as Black Codes in the postbellum era (Stewart, 1998; Bass, 2001). It is not a coincidence that such ledgers, codes, and ordinances were meant to maintain white control over property, notably Black personhood constituted as property. Today, racialized policing extends the framework of public nuisance from property to personhood.

C. The Forfeiture of Public Housing

Public nuisance law is not new. It is also not unique to the United States. As the work of Bhan (2016) and Ghertner (2015) has shown, in Delhi, India, since the early 2000s, there has been a proliferation of public interest litigation that deploys the framework of public nuisance in order to enact slum demolitions. Ghertner (2015: 105) argues that “individuals or groups themselves become possible nuisance categories.” In the case of the United States, we are interested in determining the specific historical conjuncture at which the legal reason of public nuisance is activated as the grounds for the forms of racialized policing and consequent displacement that we outlined in the previous section.

It is our contention that the restructuring of public housing through the War on Drugs sets the stage for the legal and carceral regimes that are implemented through programs such as CNAP. As Waks (2018) shows, starting in 1988, and deepened through the “One Strike and You’re Out” policy of 1996, federal mandates enabled, and even required, public housing authorities to evict residents on drug-related charges. Indeed, in the first six months after the adoption of the One Strike policy, public housing evictions increased nationally from 9,835 to 19,405, an 84% increase (Waks, 2018). The subsequent Supreme Court decision in *Department of Housing and Urban*

Development v. Rucker (2002) made public housing evictions even more prevalent, with the court upholding lease terminations for any drug-related criminal activity by public housing tenants or their household members or guests, on or off public housing activities, regardless of tenants' knowledge of the prohibited activity (Zmora, 2009). Indeed, as Dickinson (2015: 21) argues, "the no-fault rule was at the epicenter of the Supreme Court ruling in Rucker."

Waks (2018: 199) provides a convincing argument that state and local policies mirrored "the punitive structure and tone of the federal approach" (see also Ramsey, 2018). California's Unlawful Detainer Pilot Program and subsequent programs such as CNAP in Los Angeles can be seen as extensions to private property of what was already in full effect in public housing nationwide. Such historicization is important to counter the argument made by Herbert and Beckett (2017: 29, 35) that "banishment is failed public policy," not "effective or humane" and "highly counterproductive and highly costly." We interpret banishment as a costly and inhumane approach to public policy that is effective as the forfeiture of housing and the erasure of rights. This forfeiture was systematically constructed in the 1990s through policies of privatization and criminalization with public housing as a vitally important precedent and experiment for broader policies of banishment. As Hinton (2016: 288-289) has shown in her influential book, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*, there is a longer through-line in the policies and ideas that have turned public housing a key site of "crime control" and "defensible space" and ensured a "carceral climate" in housing projects.

Subsidized and public housing continue to be key sites of racialized policing and spatial exclusion. Ground-breaking research by Rahim Kurwa (2018) follows Section 8 Housing Choice Voucher holders to the far periphery of the Los Angeles metropolitan region, the Antelope Valley. With the demolition and gentrification of public housing, such as through the Hope VI program, Section 8 vouchers have emerged as one of the few remaining forms of subsidized housing. In addition, as Kurwa notes, Section 8 vouchers have been celebrated as promoting residential mobility and racial integration. Kurwa exposes the lie of such promises, showing how Black voucher holders are targeted by racialized regimes of policing that seek to criminalize and evict such renters. Hayat (2016) characterizes this as "the policing of integration." In particular, Kurwa (2019) brings to light participatory policing regimes where residents are encouraged to enact surveillance, engage in private vigilantism, and file complaints with municipal code enforcement and other local authorities against Black Section 8 voucher holders. In turn, municipal codes have been amended to ensure that such complaints lead to evictions, thus pushing out Black renters who have already been displaced from South Central Los Angeles and other Black neighborhoods to the Antelope Valley. The Antelope Valley is not unique in such forms of policing. Similar processes have unfolded in Antioch, California, on the far periphery of the San Francisco Bay Area, where residents formed citizens' organizations to monitor and criminalize Section 8 renters and where the Antioch City Council created a specialized police target Section 8 renters (Ocen, 2012). It is important to note that such criminalization results not only in evictions but also in the complete loss of housing subsidies. Kurwa finds that the rate of Section 8 terminations in Lancaster, one of the key urban nodes in the Antelope Valley, is five times higher than the average for Los Angeles County. What is at work are conjoined structures and interconnected geographies of racial banishment embedded in a national legal regime. As Zmora (2009) notes, since the Rucker decision, legal decisions have extended the reach of evictions and terminations to Section 8, granting landlords the same discretionary power as public housing authorities.

Antioch, as well as the Antelope Valley, have been the terrain of fierce legal contestation over such forms of policing. As Hayat (2016) details, in 2015, the cities of Lancaster and Palmdale, the Los Angeles County Sheriff's Department, and the Housing Authority of Los Angeles County reached settlements with the Department of

Justice over various violations including the Fair Housing Act, “for intentional race-based exclusion and discrimination of Black Families.” While these Fair Housing settlements are important, we view the scope of exclusion faced by Section 8 renters to be drastic. The termination of subsidies constitutes a form of civil and social death. It is not only a termination of the tenant’s rights to domicile and residence but also is the loss of possessory rights, including rights to public resources and to community. With this in mind, we are interested in a line of argument presented by Waks (2018: 207) that reinscribes evictions as civil forfeiture, or “the loss of an individual’s property interest based on purported criminal activity.” Such loss is not only that of a leasehold interest but the even more severe penalty of the loss of the means of housing. As Waks notes, in *United States v. Robinson* (1989) decision of the District Court of Rhode Island, the judge recognized such loss arguing that the “penalty of forfeiture of the defendant’s lease...would be in effect, a sentence of homelessness for the defendant and her three young children.” In the case of public housing evictions and Section 8 voucher terminations, such sentences of homelessness can be permanent. They are part of a broader historical shift whereby public housing itself, as a resource and ideal, was forfeited by poor communities of color, either through demolition and gentrification or through interlocking regimes of racialized policing.

Such an argument about forfeiture is related to, and yet separate from, ongoing legal discussion about public nuisance and private property. As Miller (1998: 245) outlines, public nuisance constitutes an exception to regulatory taking, i.e. “government regulation of private property for which compensation is constitutionally required.” Miller notes that “in a series of cases decided in the fifty-year period between 1878 and 1928, the Court repeatedly upheld the right of the government to destroy private property without a prior hearing to abate a public nuisance.” We are interested in how the police power of the state is activated in relation to private property, and ultimately racialized personhood, in contemporary times. For example, Glesner (1992) traces how, under public nuisance law, landlords, even “innocent owners,” can be held liable for the criminal activities of tenants and can risk forfeiture of property connected with these activities. Such provisions, Glesner shows, emerged in the 1980s as part of various amendments to federal statutes that waged the War on Drugs, making the forfeiture of a landlord’s property possible if it “facilitated” a drug violation and with the government needing to show only probable cause, established by hearsay and circumstantial evidence in nuisance abatement proceedings, to seize the property.

But we view the matter of evictions and terminations from public and subsidized housing somewhat differently. Such forfeiture is loss of possessory rights by a tenant, not a landlord, and it raises an important question about whether tenants have right to property. Indeed, Ewert (2016), building on an argument by Reich (1965), argues that public benefits must be understood as property. Ewert notes that the Supreme Court, specifically in *Goldberg v. Kelly* (1970), not only found that welfare recipients were entitled to due process protections when such welfare benefits were threatened but also acknowledged that “welfare provides the means to obtain essential food, clothing, housing, and medical care.” Indeed, Ewert (2016: 66) insists that “courts across the country have consistently found that people have a property interest in subsidized rental housing.” But such protected property interests are thoroughly undermined by One Strike and other eviction policies. Indeed, as Ewert notes, One Strike negates due process protections, denying public housing tenants publicly-paid or appointed counsel in termination proceedings. Such rightlessness is justified through the civil nature of the proceedings.

II. HOUSING AS A SOCIAL CONTRACT

The present historical conjuncture is a moment of deepening housing insecurity for working-class communities of color as well as expanding rightlessness for the unhoused. But it is also a moment of fierce social mobilization by new and renewed housing justice movements, which are closely allied with the national uprising for Black Lives. If we take seriously the political opening created by such struggles, then we are faced with the exciting possibility of a new determination to articulate and enact housing as a social contract. In this brief conclusion, we outline key elements of such a vision.

Rights Without Conditions

In 1944, during his State of the Union Speech, President Roosevelt put forward a Second Bill of Rights. Arguing that the political rights guaranteed by the Constitution and the Bill of Rights had “proved inadequate to assure us equality in the pursuit of happiness,” FDR made the case for “economic security and independence” as the bedrock of “true individual freedom.” His list of rights included “the right of every family to a decent home”¹⁰. Delivered in the midst of a world war that would soon transform into the Cold War, the Second Bill of Rights is a striking example of American liberalism and its imagination of rights. The political rights that FDR so assuredly affirms are tenuous for those subject to persistent discrimination, exclusion, and banishment.

In keeping with a vast body of social science and legal scholarship, we argue that the hallmark of American democracy is a system of rights that are contingent and conditional. As De Genova and Roy (2020: 352) have recently argued, in liberal democracies, such rightlessness applies not only to those designated as disposable and deportable migrants but also to “minoritised citizens.” We also argue that these relationships of contingency and conditionality are mediated by the police power of the state, specifically the “whiteness of police.” What is at stake is dispossession, by which we mean not just the loss of property and place but also that of personhood. We further argue that such loss must be understood in the long history of U.S. settler-colonialism, slavery, and imperialism which are interlocking regimes of extraction, expropriation, and subjection. Possession, as the possession of property and the possession of personhood, inevitably linked to one another, has been the domain of racialized power. Indeed, as Harris (1993: 1709), in her landmark essay on “Whiteness as Property” has noted, whiteness, “initially constructed as a form of racial identity” has “evolved into a form of property, historically and presently acknowledged and protected in American law.” It is with this in mind, that Roy (2017: A1) has asked: “what politics of home and land is possible outside the grid of secure possession and sovereign self?”

We caution against the simple invocation of rights in the struggle for housing justice. One example comes from recent debates in California about the right to shelter. As outlined by Darrell Steinberg (2019), co-chair of the Governor’s Homeless and Supportive Housing Advisory Task Force, in an opinion essay in the *Los Angeles Times*, this approach seeks to establish “the legal right of all people to sleep inside either through executive, legislative or court action” as well as “an obligation for those camping on the streets or on the riverbanks to come inside.” The problem that this right intends to address is not houselessness but rather that “the courts have been clear that cities and counties can’t enforce illegal camping laws unless shelter is available.” We return full circle to the overwhelming enthusiasm, expressed in amicus briefs, to overturn *Martin v. Boise* and thus ensure such enforcement. As Blasi notes, the “right to shelter” is being conveniently interpreted to include a “legal obligation to utilize shelter.”

¹⁰ Accessed at <https://www.presidency.ucsb.edu/documents/state-the-union-message-congress>.

Needless to say, a quite different portfolio of rights – from rent stabilization protections to right to counsel for tenants to just-cause eviction laws to rent cancellation – are possible. Housing justice movements are insisting upon such rights and more ambitiously, calling for a Homes Guarantee. Our research contributes to this call for a Homes Guarantee and argues that such frameworks must address the structural mechanisms of racial banishment that we have outlined in this paper. We conclude by drawing attention to two, noting that these complex processes will have to be theorized and tackled in order to advance housing as a social contract.

The Urban Geography of Rights

The study of banishment as a historical practice reminds us that perpetual exile from a territory of sovereign rule, for example a kingdom, brought about “civil death” which meant both a “complete suspension of the individual’s civil and political rights” and the loss of property including the seizure by the state of all goods “remaining within the relevant jurisdiction” (Kingston, 2005: 26). In our paper, we have sought to highlight such forms of exile, civil death, and forfeiture. But there is a distinctive urban geography to such rightlessness and thus to the necessary assertion of rights.

In the United States, there is a well-established pattern of racial segregation evident in urban geographies of red-lined containment. However, an emerging body of scholarship, points to the new spatial formations of segregation that take the form of peripheralization rather than ghettoization (Schafran and Wegmann, 2012). As we have already noted and as evident in our map of Black population change in Southern California (appendix 1), working-class communities of color are being pushed out of urban cores and relegated to the far margins of urban life. A far cry from the protected white suburbanization of the homeownership boom, such peripheralization must not be read as Black mobility or racial integration. Indeed, as the cases of Antioch as well as of the Antelope Valley indicate, such exurban sites are zones of racialized surveillance and legal violence driven by what Ocen (2012: 1546) calls “white collective action.”

With such emergent processes in mind, we emphasize the importance of *place-based rights*, notably the right to remain, a phrase we borrow from housing justice movements in Vancouver’s Downtown Eastside or DTES (Masuda et al., 2019). Such a right, they note, is necessarily collective and spans material, existential, cultural, and political forms of remaining. “Born out of the stubborn durability of the DTES is the realization of a right that exceeds the bundle of individual rights in legal and policy discourses that loom large over the daily life of the city (Masuda et al., 2019: 15).

Housing in the Public Interest

As part of his influential scholarship on property and the law, Blomley (2012: 917) makes the case for paying attention to “the distinctiveness of police” as a governmental logic. This logic, he notes, “sidesteps rights altogether” (Blomley, 2012: 931) and instead speaks in the registers of well-being, health, and the interests of the state. Blomley reminds us of Ernst Freund’s (1904: iii) conceptualization of the police as “the power of promoting the public welfare by restraining and regulating the use of liberty and property.” The invocation of public welfare, Blomley notes (2019: 926) requires what Novak (1996: 116) terms the “legal construction of publicity.” This is precisely what is evident in the territorial logics of police we have outlined in this paper. These regimes of racialized policing repeatedly ignore civil, constitutional, and human rights invoking public welfare and public interest. With this in mind, we argue that one terrain of housing justice struggle is public interest itself. In the

United States, and in many other liberal democracies, the protection of property has been cast as continuous with the state's interests. As Bhan (2016) and Ghertner (2015) show, in India, the propertied classes are actively using public interest litigation, specifically nuisance law, to displace and exclude the poor from urban neighborhoods. What would a resignification of public interest entail for housing justice?

From Oakland to Berlin, from Barcelona to Los Angeles, such a question is now part of the politics of the possible. Public purpose tools such as eminent domain and expropriation are under consideration by city governments to block evictions and protect low-income tenants. Legal scholars are foregrounding the property interests of tenants in subsidized and public housing, and indeed in public benefits more broadly, thereby casting evictions and terminations as forfeiture. Such frameworks and strategies are a direct challenge to the police logics that we have detailed in this paper, for they insist on a full accounting of public interest rather than the narrow scope of nuisance, crime, and public safety protected by legal reason and authority. We anticipate that in the coming years, tenant unions and other social movements will push hard for housing in the public interest. For example, in *Hotel California: Housing the Crisis*, Ananya Roy and co-authors argue for the public acquisition of vacant hospitality properties and their conversion into social housing. Yet, such work will be outflanked if the interlocking regimes of racialized policing that we have detailed are not tackled and dismantled. This is an urgent task and requires action in all our cities and at a national scale.

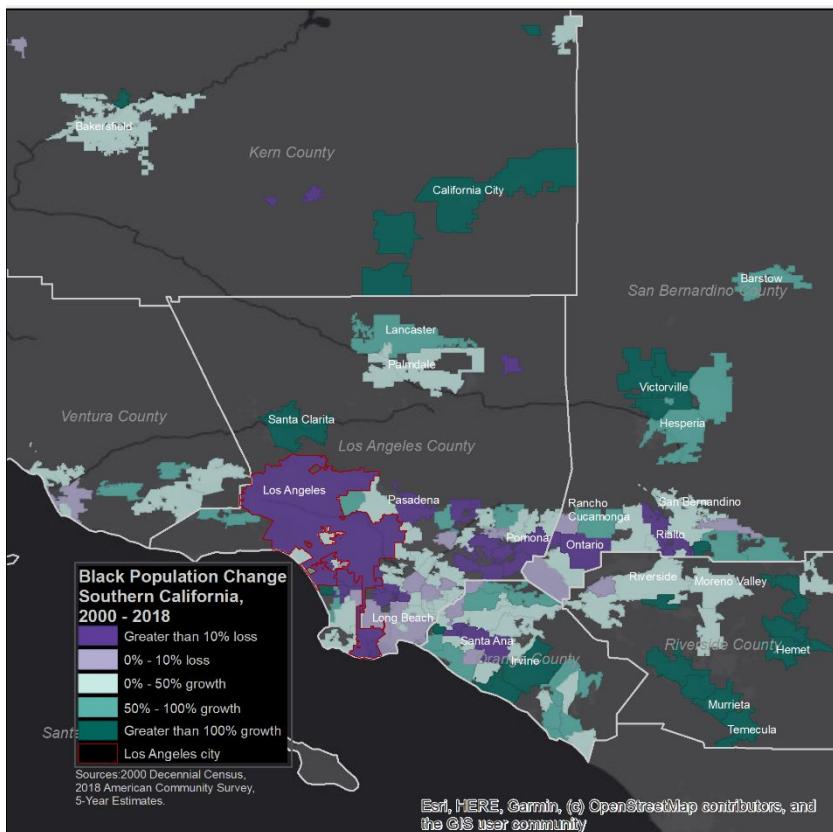
ACKNOWLEDGEMENTS

The UCLA Luskin Institute on Inequality and Democracy acknowledges the Tongva peoples as the traditional land caretakers of [Tovaangar](#) (Los Angeles basin, So. Channel Islands) and are grateful to have the opportunity to work for the taraaxatom (indigenous peoples) in this place. As a land grant institution, we pay our respects to Honuukvetam (Ancestors), 'Ahiihirom (Elders), and 'eyoohiinkem (our relatives/relations) past, present and emerging.

The authors of this paper thank Shayla Myers for her intellectual guidance of the research and analysis underpinning this paper and Adrian Riskin for generously sharing material. Our work seeks to learn from, and contribute to, the movements and communities on the frontlines of housing justice struggle in Los Angeles as well as in other cities.

APPENDIX 1

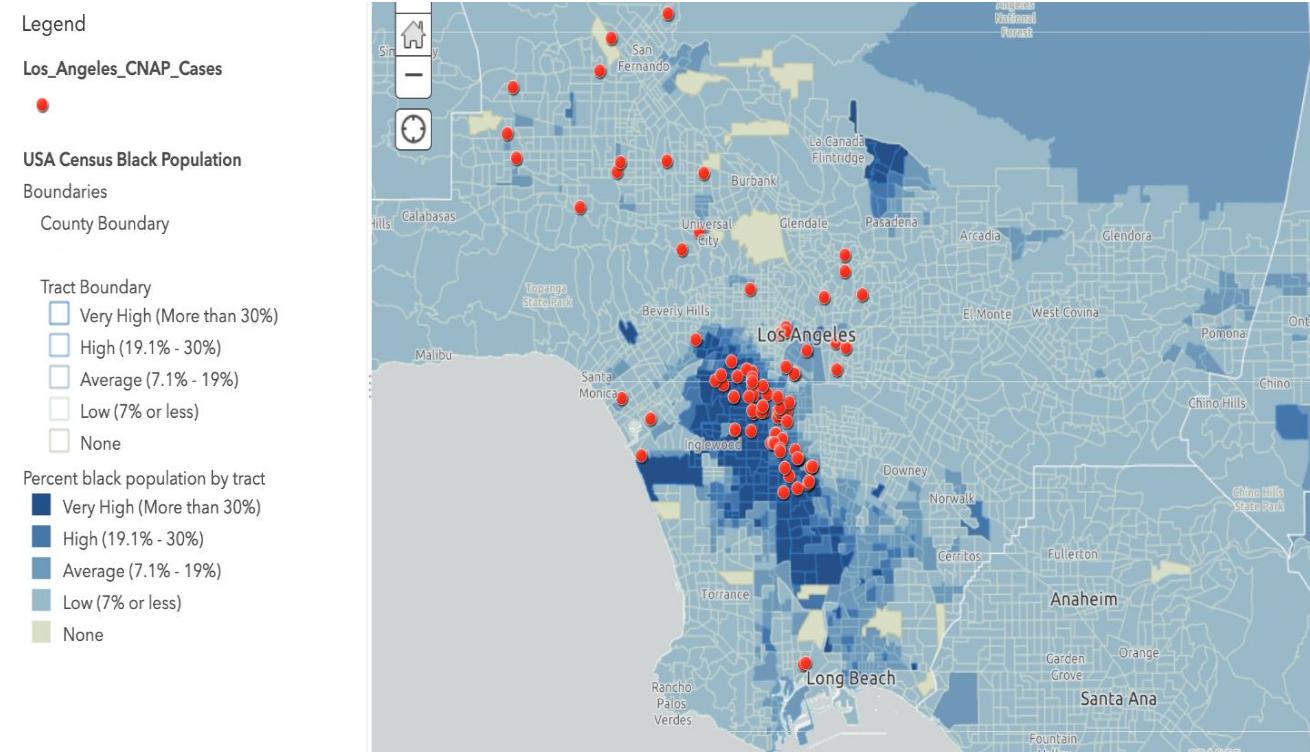
Map 2: Black Population Change in Southern California, 2000-2018



Source: UCLA Luskin Institute on Inequality and Democracy; map prepared by Pamela Stephens

APPENDIX 2

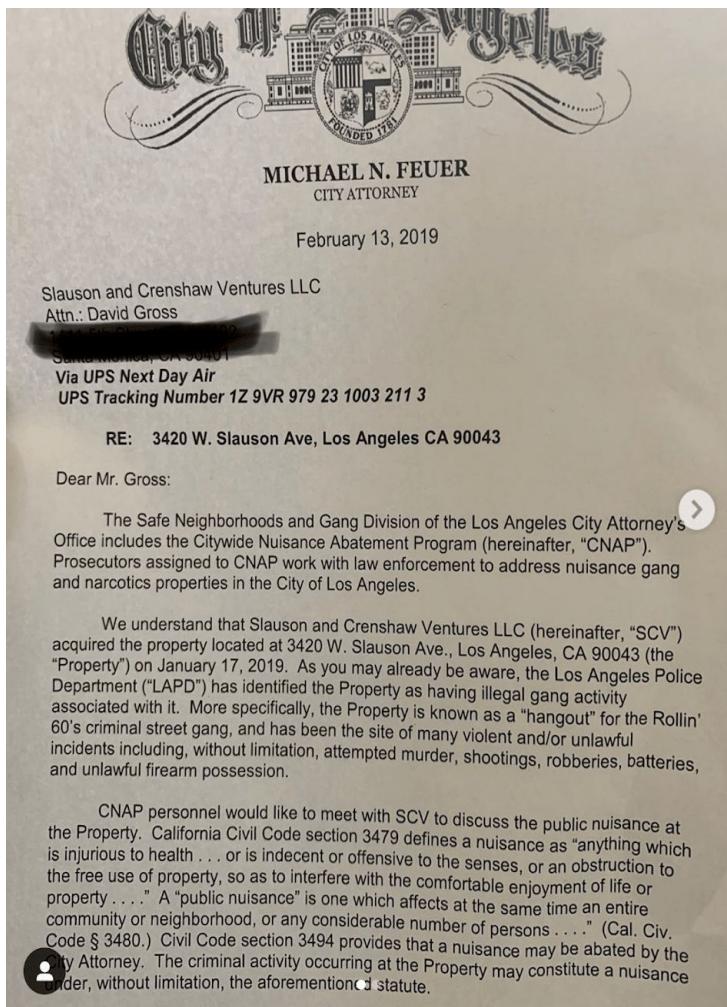
Map 2: CNAP Lawsuits, 2013-2018 in relation to census tracts with Black population



Source: UCLA Luskin Institute on Inequality and Democracy; map prepared by Terra Graziani

APPENDIX 3

Figure 1: CNAP Demand Letter sent to Slauson and Crenshaw Ventures LLC. Source: <https://la.streetsblog.org/2019/08/15/nipsey-hussle-understood-cities-better-than-you-why-didnt-you-know-who-he-was/>



david.a.gross • Following
The Marathon Store ...

david.a.gross After two NYTimes articles in the past month (one in which the City Attorney leaked these docs and others)and an LA Times article coming - I have to speak.

It was never my intention to go public with this because 1) it's damaging for the world to think I'm being investigated or engaged in conflict with a city agency 2) It's not my story to fully tell and 3) they play the long game and will surely find a way to fuck us...

So I've just been playing it cool for the past 6 months while essentially locked in a standoff with the LA City Attorney and the LAPD over Slauson Plaza

Liked by mhdcd8 and 18,497 others

AUGUST 3

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