

**No. 20-70272, 20-70464**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CENTER FOR COMMUNITY ACTION & ENVIRONMENTAL  
JUSTICE; *et al.*,  
*Petitioners*,

v.

FEDERAL AVIATION ADMINISTRATION; *et al.*,  
*Respondents*,

EASTGATE BLDG 1, LLC; SAN BERNARDINO INTERNATIONAL  
AIRPORT AUTHORITY,  
*Intervenors*.

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STATE OF CALIFORNIA,  
*Petitioner*,

v.

FEDERAL AVIATION ADMINISTRATION; *ET AL.*,  
Respondents.

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On Petition for Review of an Order of the Federal Aviation Administration

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**MOTION OF COMMUNITIES FOR A BETTER ENVIRONMENT AND  
PEOPLE'S COLLECTIVE FOR ENVIRONMENTAL JUSTICE FOR  
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITION  
FOR EN BANC AND PANEL REHEARING**

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## INTRODUCTION

Pursuant to Circuit Rule 29-2, Communities for a Better Environment (“CBE”) and People’s Collective for Environmental Justice (“PCEJ”) respectfully move for leave to submit the attached brief as *amici curiae* in support of the petitions of Center for Community Action & Environmental Justice, et al., Petitioners for en banc rehearing of this Court’s revised October 11, 2022 decision (“the Panel decision”) denying a petition challenging the Amazon Eastgate project at San Bernardino Airport. As required by Circuit Rule 29-3, CBE sought the parties’ consent to file an amicus brief. However, CBE did not receive the parties’ consent. A copy of *amici curiae*’s proposed brief accompanies this motion.

## CBE AND PCEJ’S STATEMENT OF INTEREST

*Amicus Curiae* Communities for a Better Environment (“CBE”) is a California non-profit environmental health and justice organization. Since 1978, CBE has been organizing residents in frontline communities to advance their vision of environmental, racial, and social justice.

As a leading California environmental justice organization, CBE participates in a number of strategic alliances at the local, state and national levels such as: (1) Coalition for Clean and Safe Ports, a national alliance of over 200 organizations, which helped pass a Clean Trucks Program at the California Air Resources Board, resulting in a 90 percent reduction in diesel emissions from trucks that service California's ports; (2) Coalition for Environmental Health and Justice, a local coalition of public health, legal aid, and environmental justice organizations using the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.* to highlight the environmental and social concerns of the proposed widening of the southern portion of the I-710 corridor; (3) Climate Justice Alliance, a national collaborative of over 35 community-based and movement-supporting organizations uniting frontline communities to create local living economies to address the root causes of climate change; and (4) California Environmental Justice Alliance, a coalition of groups throughout California advancing environmental justice by advocating for policy changes at the state level.

Through organizing, education, and leadership development, CBE is committed to empowering communities to transform environmental conditions and improve health outcomes in low-income communities and communities of color. CBE has adult and youth members in Northern and Southern California who reside in Richmond, East Oakland, Wilmington, Long Beach and Southeast Los Angeles. These working-class Black and Latinx communities depend on NEPA to understand the impacts federally-permitted projects will have on their community's health and the environment. CBE also represents its members' interests by monitoring federal agency actions and litigate, if necessary, using NEPA and the California Environmental Quality Act ("CEQA"), Pub. Res. Code, § 21000 *et seq.* to assert their rights.

CBE is deeply concerned by the flood of federally-approved projects the Panel decision will bring to environmental justice communities. Defending how NEPA has traditionally been interpreted is an opportunity to protect and advance environmental review processes to ensure they consider the environmental health and wellbeing of all people impacted by projects, not just wealthy and well-resourced communities.

*Amicus Curiae* PCEJ is an unincorporated nonprofit association dedicated to building community power in the Inland Empire to fight against pollution and environmental racism. Founded in 2020, PCEJ represents over 1,000 community members in the Inland Empire who are impacted by the freight and logistics industry. Since its inception, PCEJ has advocated for strong environmental laws, rules, and regulations to reduce pollution from the freight and logistics industry. For the past five years, PCEJ staff and members have advocated for regulatory measures to reduce pollution from indirect sources, such as warehouses, including by providing public comment at District meetings and submitting comment letters. PCEJ also developed a report analyzing the impacts of warehouse pollution on environmental justice communities in the South Coast, exposing the environmental impacts and health and safety risks presented by the logistics industry. Preserving strong environmental review processes rooted in public participation is essential to reducing the pollution burdens of PCEJ members, many of whom reside in areas most impacted by warehouse pollution and diesel truck emissions.

CBE and PCEJ have a direct and immediate interest in the Court rehearing the Panel decision. This decision involves matters of exceptional importance, touching on NEPA's procedural safeguards that defend vulnerable community members from negative environmental impacts of federal agency actions. The Panel decision would have a chilling effect on future NEPA challenges by petitioners seeking to correct the harms of deficient environmental review.

### ARGUMENT

This Court has broad discretion to allow participation of *amici curiae*.<sup>1</sup> The role of *amici curiae* is three-fold: (1) to assist in a case of general public interest; (2) to supplement the efforts of counsel; and (3) to draw the court's attention to law that escaped consideration.<sup>2</sup> The Court may also exercise its discretion to grant amicus status in order to avail itself of the benefit of "thorough and erudite legal arguments."<sup>3</sup> Moreover, per Ninth Circuit Advisory Committee Note to Rule 29-2,

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<sup>1</sup> *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

<sup>2</sup> *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982).

<sup>3</sup> *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987).

“[t]he Court considers the filing of amicus curiae briefs related to petitions for rehearing or en banc review to be appropriate only when the post-disposition deliberations involve novel or particularly complex issues.”

**A. CBE and PCEJ Has a Substantial Interest in the Court’s Disposition of the Petitions for Rehearing.**

The Panel decision in this matter will significantly impact CBE and PCEJ’s interests, and the interests of frontline communities generally, because the Panel’s new interpretation of NEPA shifts the burden from responsible agencies to future NEPA petitioners to prove that significant environmental harms will result from proposed agency actions. The Panel decision requires petitioners to demonstrate and point to affirmative evidence in the record to show significant harm, even when an agency fails to provide or examine available evidence relevant to the environmental harms at issue. This decision has the potential to change well-established NEPA case law by shifting the burden from agencies to petitioners to take on the cost of environmental review and prove the likelihood of environmental impacts. If the Panel’s decision stands, it would create confusion and inconsistency in how agencies approve and review NEPA projects, negatively impacting the

rights and interests of CBE and PCEJ's members who live near industrially zoned areas that are prime targets for logistics-related projects. As Petitioners explain in their petition, these issues are both novel and complex, and their resolution will significantly impact Black and brown communities residing near federally-approved projects.

As *amici*, CBE and PCEJ represent hundreds of environmental justice communities and frontline residents throughout the state. *Amici* are uniquely situated to offer context for this Court and provide insight into the practical ramifications of shifting the burden of proof for NEPA petitioners seeking to correct the harms of inadequate agency review. The Panel decision's departure from well-established Ninth Circuit case law means that responsible agencies would not take the requisite hard look at a proposed project's potential to negatively impact the natural environment. Allowing this decision to stand would have an outsized impact on low-income communities of color, many of whom are already disproportionately affected by pollution and denied potential alternatives and mitigation measures that could improve health and safety outcomes for generations.



**B. CBE and PCEJ Will Provide Helpful Information to the Court.**

The Court will benefit from CBE and PCEJ's substantial experience with the NEPA review process. The court may further draw from *amici's* deep understanding of the consequences of significantly expanding and developing polluting industries in already highly pollution burdened communities. CBE and PCEJ can also provide a unique perspective on the disruptive consequences the Panel's decision will have on future NEPA challenges and how NEPA is implemented in this Circuit. CBE's history as one of the oldest environmental justice organizations in the country, paired with PCEJ's expertise on the freight and logistics industry, will provide the Court with invaluable insight on the significant racial implications of the majority's departure from Ninth Circuit precedent.

**CONCLUSION**

The Panel's decision directly impacts the rights of CBE and PCEJ's members. The Court should have information on the practical consequences that vulnerable residents will face if the Panel decision is not revised. Because *amici* will be affected by this split decision and may assist the Court through their lived experiences and unique

perspectives, *amici* respectfully request the permission of this Court to file an amicus brief highlighting environmental justice issues and concerns in this case.

For the foregoing reasons, *amici* respectfully request this Court to grant its motion for leave and accept the proposed amicus brief in support of Petitioners' petition for en banc and panel rehearing.

Dated: December 5, 2022

Respectfully submitted,

By: /s/ Alison M. Hahm

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 5, 2022.

I certify that all participants in the case are registered as CM/ECF and will receive service by the appellate CM/ECF system.

By: /s/ Alison M. Hahm  
Alison M. Hahm

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**AMICUS CURIAE IN SUPPORT OF PETITIONERS’  
PETITION FOR REHEARING EN BANC**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Communities for a Better Environment (“CBE”) and People’s Collective for Environmental Justice (“PCEJ”) respectfully submit the following Corporate Disclosure Statement:

CBE is a non-profit corporation. It has no parent corporation, and no publicly held corporation own 10% or more of its stock.

PCEJ is an unincorporated nonprofit association. It has no parent corporation, and no publicly held corporation own 10% or more of its stock.

### **RULE 29 STATEMENT**

Pursuant to Fed. R. App. P. 29(a)(4)(E), *Amicus* states that no party or party's counsel authored this brief in whole or in part, and that no other person besides *Amicus* or its counsel contributed money that was intended to fund preparing or submitting the brief.

/s/ Alison M. Hahm

Alison M. Hahm

## INTRODUCTION

A panel of this Court (“the Panel”) denied a petition for review challenging the Federal Aviation Administration’s (“FAA”) Record of Decision, which found no significant environmental impacts resulting from the approval of a massive package distribution center located at the San Bernardino International Airport. The Panel’s errant reading of established case law threatens anyone living near federally-permitted projects, and its new standard will inevitably amplify the burdens that environmental justice communities experience. Although the panel revised its decision on October 11, 2022, the amended decision fails to correct the Panel’s troubling divergence from decades of Ninth Circuit precedent and subverts the cornerstone of the National Environmental Policy Act (“NEPA”), public participation and informed government decision-making. Communities for a Better Environment (“CBE”) and People’s Collective for Environmental Justice (“PCEJ”) urge this Court to grant en banc rehearing to rectify the Panel’s errors.

As stated in Judge Rawlinson’s dissent, environmental racism is defined as “the creation, construction, and enforcement of environmental laws that have a disproportionate and disparate impact

upon a particular race[.]”<sup>1</sup> The Panel’s decision undermines NEPA’s action-forcing purpose and communities’ right to know the consequences of federal projects in their neighborhoods.

NEPA<sup>2</sup> is a lifeline for community members. For frontline residents, equitable access to the NEPA review process is an opportunity to advocate for themselves against harmful land use decisions, improve proposed projects and safeguard future generations’ right to a healthy environment. According to Inland Empire residents like Amy Vasquez, the onerous burden that the Panel’s decision places on poor community members to provide affirmative evidence of significant harms—when potential for significant harms is readily apparent—would leave poor community members with “nowhere left to turn.”<sup>3</sup>

The issues presented in this case threaten the overwhelmingly Black and Latinx residents near the Amazon airport terminal, many of

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<sup>1</sup> Op. 46 (Rawlinson, J., dissent) (quoting Pamela Duncan, *Environmental Racism: Recognition, Litigation, and Alleviation*, 6 Tul. Env’t L.J. 317, 325 (1993)).

<sup>2</sup> 42 U.S.C. §§ 4321 *et seq.*

<sup>3</sup> Amy Vasquez Test., add. A2 (Jan. 6, 2022).

whom already suffer from some of the worst air quality in the nation.<sup>4</sup> However, the environmental justice concerns presented by Amazon's latest airport terminal are not unique. California's extensive freight system, much of which is federally-regulated, is responsible for approximately half of California's overall air pollution.<sup>5</sup> The Amazon terminal, which will bring cardiac and respiratory disease, cancer, and premature death to residents of San Bernardino, is only the newest addition to a system that disparately threatens California's poor and minority communities.

The expansion of e-commerce and goods distribution channels has severely and disparately impacted environmental justice communities throughout California. Warehouses and channels of freight distribution exist disproportionately in low-income communities of color and are correlated with other cumulative sources of pollution. The Panel's decision will have a ripple effect on the primarily Black and brown communities that so often reside or work near freight infrastructure in

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<sup>4</sup> Op. 46 (Rawlinson, J., dissenting).

<sup>5</sup> Cal. Air Res. Bd., [\*Update on California Actions to Minimize Community Health Impacts from Freight\*](#), at 6 (Mar. 21, 2019).

California and across the country, from overburdened seaports, to busy freeways, to the shadow of warehouses and distribution centers.

The Panel's new burden of proof for challenging agency decisions under NEPA will erode NEPA's "express purpose" of encouraging public participation in the decision-making process.<sup>6</sup> Consequently, we urge this Court to grant en banc rehearing.

### **STATEMENT OF INTEREST**

*Amicus Curiae* CBE is a California non-profit environmental health and justice organization. Since 1978, CBE has been organizing residents in frontline communities to advance their vision of environmental, racial, and social justice.

As a leading California environmental justice organization, CBE participates in a number of strategic alliances at the local, state and national level such as: (1) Coalition for Clean and Safe Ports, a national alliance of over 200 organizations, which helped pass a Clean Trucks Program at the California Air Resources Board, resulting in a 90 percent reduction in diesel emissions from trucks that service California's ports; (2) Coalition for Environmental Health and Justice, a

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<sup>6</sup> *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (1988).

local coalition of public health, legal aid, and environmental justice organizations using NEPA to highlight the environmental and social concerns of the proposed widening of the southern portion of the I-710 corridor; (3) Climate Justice Alliance, a national collaborative of over 35 community-based and movement-supporting organizations uniting frontline communities to create local living economies to address the root causes of climate change; and (4) California Environmental Justice Alliance, a coalition of groups throughout California advancing environmental justice by advocating for policy changes at the state level.

Through organizing, education, and leadership development, CBE empowers communities to transform environmental conditions and improve health outcomes in low-income communities and communities of color. CBE has adult and youth members in Northern and Southern California who reside in Richmond, East Oakland, Wilmington, Long Beach and Southeast Los Angeles. These working-class Black and Latinx communities depend on NEPA to understand the impacts that federally-permitted projects will have on their community's health and the environment. CBE also represents its members' interests by



monitoring federal agency actions and litigates, if necessary, using NEPA and the California Environmental Quality Act (“CEQA”),<sup>7</sup> to assert their rights.

*Amicus Curiae* PCEJ is an unincorporated nonprofit association dedicated to building community power in the Inland Empire to fight against pollution and environmental racism. Founded in 2020, PCEJ represents over 1,000 community members in the Inland Empire who are impacted by the freight and logistics industry. Since its inception, PCEJ has advocated for strong environmental laws, rules, and regulations to reduce pollution from the freight and logistics industry. For the past five years, PCEJ staff and members have advocated for regulatory measures to reduce pollution from indirect sources, such as warehouses, including by providing public comment and submitting comment letters to the District. PCEJ also developed a report analyzing the impacts of warehouse pollution on environmental justice communities in the South Coast, exposing the environmental impacts and health and safety risks presented by the logistics industry. Preserving strong environmental review processes rooted in public

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<sup>7</sup> Pub. Res. Code, §§ 21000 *et seq.*

participation is essential to reducing the pollution burdens of PCEJ members, many of whom reside in areas most impacted by warehouse expansions and diesel truck emissions.

*Amici Curiae* CBE and PCEJ are deeply concerned that this Court's recent decision will unlawfully alter how NEPA is implemented in this Circuit. Upholding NEPA's original intent and purpose is an opportunity to protect the health and wellbeing of all communities impacted by projects, not just wealthy and well-resourced residents.

## ARGUMENT

### **I. The Panel's Errant Interpretation of NEPA Threatens to Undermine Environmental Review on Port-Related Projects Adjacent to Overburdened Communities.**

Seaports in the United States serve a vital role in domestic and international trade, handling over 95 percent of the country's overseas cargo by volume, which is then transported to its destination by truck or by train.<sup>8</sup> This Court has acknowledged that “[a]lthough the ports are an economic boon for the Los Angeles region, they also affect air quality

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<sup>8</sup> Jocelyn Vivar and Mark Vallianatos, The Impact Project, *Tracking Harm: Health and Environmental Impacts of Rail Yards* (2012); U.S. Env'tl Prot. Agency, *Ports Primer: The Role of Ports* (last visited Dec. 5, 2022).

in the surrounding area, especially in the adjacent communities of San Pedro and Wilmington. These impacts are projected to worsen with the rise in container volume at the ports.”<sup>9</sup>

Port operations demand the use of heavily-polluting drayage equipment, marine vessels, railyards, and trucks, each of which negatively impacts the health of those living alongside these ports.<sup>10</sup> Due to these locally and nationally important trade-offs, federal agencies have been involved in numerous port-related projects under NEPA.

Southern California, where CBE and PCEJ organize, hosts the largest port system in the United States. The Ports of Long Beach and Los Angeles (collectively, “the Port Complex”) are, respectively, the first and second largest ports in the nation.<sup>11</sup> Together, they account for about 40 percent of the waterborne cargo that enters the country.<sup>12</sup> Notwithstanding the astronomical quantity of freight that already

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<sup>9</sup> *Nat. Res. Def. Council v. U.S. Dept. of Transp.*, 770 F.3d 1260, 1262 (9th Cir. 2014).

<sup>10</sup> Justine Calma, [California Budget Aims to Clear Up Port Congestion and Pollution](#), The Verge (Jan. 11, 2022).

<sup>11</sup> Port of L.A., [San Pedro Bay Ports Announce New Measures to Speed Cargo Throughput](#) (Sept. 17, 2021).

<sup>12</sup> *Id.*

passes through the Port Complex, throughput will rise dramatically in the coming years.<sup>13</sup>

To accommodate this, the Port Complex will undergo significant expansions in coming decades, including through federal projects. For example, in March 2021, a marine terminal operator applied to the U.S. Army Corps of Engineers to resume a \$62 million terminal improvement project at the Port of Los Angeles that would expand operations and accommodate new, larger marine vessels.<sup>14</sup> As recently as December 2021, the U.S. Department of Transportation awarded \$52.3 million to the Port of Long Beach to expand on-dock rail facilities.<sup>15</sup> Federal projects like these, which trigger NEPA and increase pollution at the Port Complex, will persist as port operations continue to expand.

Port-adjacent communities have the right to federal environmental review processes that comply with NEPA's clear intent.

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<sup>13</sup> See [Port Master Plan](#), THE PORT OF LOS ANGELES 6 (Sept. 2018).

<sup>14</sup> Application to Re-Issue Permit Berths 226-236 [Everport] Container Terminal Improvements Project, No. SPL-2013-00756-TS 3 (Mar. 8, 2021) (original EIS issued October 2017).

<sup>15</sup> [Port Receives \\$52.3 Million Grant for Rail Project](#), Port of Long Beach (December 22, 2021); Draft Environmental Impact Statement, Docket No. MARAD-2019-0109, U.S. Dep't of Transp. (June 2020).

As federal projects surrounding the Port Complex increase in scope and frequency, cumulative impacts analysis becomes increasingly meaningful. Nearby communities—including San Pedro, West Long Beach, and Wilmington—already suffer from some of the most significant pollution burdens in California.<sup>16</sup> As a result, they face some of the region’s highest risks of cancer, cardiovascular disease, asthma, and reproductive disease.<sup>17</sup> Much like San Bernardino, these port-adjacent communities exist within a heavily polluted corridor and, like

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<sup>16</sup> The areas near the Port Complex are consistently in the top 20 percent of pollution-burdened census tracts in California. CAL. OFF. OF ENV’T HEALTH HAZARD ENF’T, [CALENVIROSCREEN](#) (enter zip code 90731 into the search bar, select nearby and adjacent census tracts on the map to view pollution burden) (CalEnviroScreen assigns a relative pollution burden value to each census tract, based on environmental and socioeconomic factors); S. Coast Air Quality Mgmt. Dist., [Multiple Air Toxics Exposure Study in the South Coast Air Basin V \(“MATES-V”\)](#). 4-28 (for example, Wilmington hosts “78 facilities in the U.S. EPA Title V program, 54 facilities in the AB 2588 Air Toxics Hot Spots program, 43 miles of freeways, 9 rail yards, and 2 major marine ports”).

<sup>17</sup> MATES-V, *supra* note 16, at ES-12, ES-17, 1-4, 2-32, 4-6, 4-13, 4-28 (2021) (describing various pollutants and disease risks associated with proximity to the Port Complex, including diesel particulate matter and formaldehyde, and noting that the area near the Port Complex has the highest cancer risk in the region).

the areas near the Amazon terminal, are “not-so-coincidentally” poor communities of color.<sup>18</sup>

As established above, port activities play a major role in perpetuating health disparities in nearby communities. Despite significant progress in implementing clean technology in recent years, trucks, seafaring vessels, trains, and drayage equipment spew carbon monoxide, volatile organic compounds, ozone precursors, and diesel particulate matter into the lungs of nearby residents.<sup>19</sup> Further, landside runoff, direct discharges, and other mediums carry pollutants from the Port Complex into harbor waters.<sup>20</sup> Light and noise pollution from port operations further disrupt ecosystems and daily quality of life in nearby communities, with studies linking light and noise pollution to hearing impairment, high blood pressure, and sleep deprivation.<sup>21</sup>

Numerous other sources of contamination compound the extensive pollution burden that residents experience near the Port Complex.

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<sup>18</sup> Op. 46 (Rawlinson, J., dissenting).

<sup>19</sup> U.S. Env’t Prot. Agency, [Port Primer: Air Emissions](#) (last visited Dec. 5, 2022).

<sup>20</sup> Port of L.A. & Port of Long Beach, [Water Resources Action Plan](#) 8-9 (2009).

<sup>21</sup> U.S. Env’t Prot. Agency, [Port Primer: Potential Community Interests](#) (last visited Dec. 5, 2022).

Toxic emissions from oil refineries, industrial facilities, and nearby freeways regularly cloak harbor neighborhoods.<sup>22</sup> Many of these pollution sources are the direct consequence of decades of racist land use decisions such as redlining, racial covenants, and fast-tracked permit approvals.<sup>23</sup> In tandem with pollution from the Port Complex, these cumulative sources of pollution have rendered nearby neighborhoods particularly vulnerable to new or expanded port operations. According to CBE intern Wendy Miranda, “[g]rowing up [in Wilmington,] my friends and I thought... it was just normal to be surrounded by so much industry... but as we’ve gotten older, we realize it’s not.”<sup>24</sup>

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<sup>22</sup> Bettina Boxall & Joe Mozingo, [\*After 10 years, neighbors of a Wilmington oil drilling operation still of health, environmental issues\*](#), L.A. Times (Feb 20, 2016).

<sup>23</sup> See generally Kathiann M. Kowalski, [\*How Energy Issues and Civil Rights Issues Intersect\*](#), Energy News (June 30, 2020) (describing how income divides and past patterns of segregation contribute to closer proximity to oil and gas operations, refining plants, and coal fired power plants in Black neighborhoods); Bev Wilson, [\*Urban Heat Management and the Legacy of Redlining\*](#), 86 J. Am. Planning Ass’n 443 (2020) (explaining connection between Urban Heat Island Effect and exclusionary zoning practices).

<sup>24</sup> Nicole Greenfield, [\*Will Los Angeles Finally Put an End to Oil Drilling in Neighborhoods?\*](#), NRDC Dispatch (Nov. 12, 2021).

Thus, the Panel’s new burden of proof, which suggests that NEPA petitioners must identify “specific cumulative impacts that the agency did not address and support[] the existence of those impacts with record evidence” is potentially devastating to portside communities.<sup>25</sup> As Petitioners point out, the Panel’s novel articulation of NEPA’s burden of proof ignores NEPA’s requirement that agencies must account for increased operations resulting from their projects.<sup>26</sup> This burden falls on the lead agency, not on petitioners. As recognized by the dissent, the Panel’s ruling contradicts this established tenet of NEPA by ignoring more than 80 nearby projects and failing to “disclose specific, quantifiable data about the cumulative effects of related projects.”<sup>27</sup>

The Panel’s failure to state the correct standard of review, alongside the FAA’s defective environmental analysis, is cause for concern for communities near the Port Complex. The decision’s language threatens to unsettle well-established case law and cast a

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<sup>25</sup> Op. at 23-24.

<sup>26</sup> *Ocean Advocs. v. Army Corps of Eng’rs*, 402 F.3d 846, 870 (9th Cir. 2005) (finding that NEPA required agency to gather evidence on impacts of increased potential berthing capacity at port for purposes of unloading crude oil).

<sup>27</sup> Op. 55 (Rawlinson, J., dissenting).



chilling effect on federal agencies' willingness to perform robust environmental review pursuant to NEPA. This decision would speed the creep of industry into portside communities, creating confusion around NEPA's review requirements and placing burdensome litigation costs on communities seeking to vindicate their right to adequate environmental review.

## **II. The Panel's New Heightened Standard of Review Will Prevent Low-Income Black and Latinx Residents from Participating in the Environmental Review of Freeway Expansion Projects.**

The Panel's split decision will also have irreversible impacts on communities threatened by massive freeway expansion projects in this Circuit.<sup>28</sup> Freeway widening, extension, and other freeway construction projects undergo federal approval by the Federal Highway Administration and are therefore subject to NEPA requirements.<sup>29</sup> These procedural rights are critical for the hundreds of thousands of residents who face the direct consequences of freeway expansion

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<sup>28</sup> Since 2007, California's transportation agency Caltrans has assumed NEPA responsibilities for highway projects in California funded by the Federal Highway Administration. See Caltrans, [NEPA Assignment](#), (Jan. 7, 2022).

<sup>29</sup> See 23 C.F.R. § 771.

projects, including worsening air pollution, higher rates of asthma and other respiratory problems, and the loss of community and pain caused by displacement.<sup>30</sup>

In the past 30 years, freeway projects have displaced more than 200,000 people nationwide with nearly two-thirds displaced residents from predominately Black and Latinx neighborhoods.<sup>31</sup> Experts considered this “the largest urban displacement project in American history” inflicting dislocation and disruption on largely Black and Latinx communities.<sup>32</sup> This is yet another example of what the dissent accurately identified and what communities of color have known all along: “Environmental racism is real.”<sup>33</sup>

Specifically, in Los Angeles, *amici* CBE has relied on NEPA to prevent the widening of Interstate 710 (“I-710”). Approximately 50,000 diesel-fueled trucks and 165,000 vehicles travel every day on the I-710

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<sup>30</sup> See Liam Dillon & Ben Poston, [\*Freeways Force Out Residents in Communities of Color – Again\*](#), L.A. Times (Nov. 11, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Op. 47 (Rawlinson, J., dissenting).

between the San Pedro Bay Port Complex to warehouses and distribution centers across Southern California.<sup>34</sup>

Known as both “cancer alley” and “Diesel Death Zone,” the I-710 corridor divides Southeast Los Angeles communities, home to 77 percent Black and Latinx residents already overburdened by pollution from heavy chemical processing, metal recycling, and four rail yards.<sup>35</sup> Notably, residents along the I-710 in Maywood, Boyle Heights, and Commerce face increased risk of cancer, breathing diseases, and neurological problems resulting from decades of lead and arsenic contamination caused by the former Exide Technologies battery processing facility.<sup>36</sup> These health impacts are exacerbated by higher rates of asthma, cardiovascular disease, impaired lung development in

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<sup>34</sup> See Liam Dillon, [\*710 Freeway is a Key Link in the U.S. Economy, But Pollution and Evictions Doom Its Expansion\*](#), L.A. Times (May 22, 2021).

<sup>35</sup> See Margot Roosevelt, [\*We Call This Cancer Alley\*](#), L.A. Times (Sept. 24, 2009); Laura J. Nelson, [\*710 Freeway is a 'Diesel Death Zone' to Neighbors – Can Vital Commerce Route Be Fixed?\*](#), L.A. Times (Mar. 1, 2018); Colin Caprara, [\*Community Health in the I-710 Corridor\*](#), Univ. S. Cal. Neighborhood Data for a Social Change (last visited Dec. 5, 2022).

<sup>36</sup> Tony Barboza, [\*Court Allows Exide to Abandon a Toxic Site in Vernon. Taxpayers Will Fund the Cleanup\*](#), L.A. Times (Oct. 16, 2020); County of L.A. Public Health, [\*Background of Exide Contamination\*](#) (last visited Dec. 5, 2022).

children, and approximately 2,000 premature deaths every year in the South Coast Air Basin resulting from vehicle emissions.<sup>37</sup>

To accommodate future population growth and nearly triple the traffic projected by 2035 at the San Pedro Bay Port Complex, the Los Angeles Metropolitan Transportation Authority (“Metro”) proposed widening the I-710 highway in 2003.<sup>38</sup> Since first proposing the project, Metro has produced two EIS documents to analyze the project’s potential impacts, including an ongoing failure to meet federal air quality standards, displacing up to 945 residents depending on the design option, creating more noise, and inducing more traffic in the region.<sup>39</sup>

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<sup>37</sup> See U.S. Env’t Prot. Agency, EPA-420-F-14-044, NEAR ROADWAY AIR POLLUTION AND HEALTH: FREQUENTLY ASKED QUESTIONS (2014); U.S. Env’t Prot. Agency, [Los Angeles Area Environmental Enforcement Collaborative](#) (last visited Dec. 5, 2022).

<sup>38</sup> See Liam Dillon, [710 Freeway is a Key Link in the U.S. Economy, But Pollution and Evictions Doom Its Expansion](#), L.A. Times (May 22, 2021).

<sup>39</sup> See CAL. DEPT’ OF TRANSPORTATION & L.A. COUNTY METROPOLITAN TRANSP. AUTHORITY & L.A. CNTY. METRO. TRANSP. AUTH., I-710 CORRIDOR PROJECT DRAFT ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT AND SECTION 4(F) EVALUATION: EXECUTIVE SUMMARY (2012).

As a result of required NEPA and Clean Air Act analyses, the Environmental Protection Agency (“EPA”) requested that Metro halt the project in May 2020.<sup>40</sup> Metro’s comprehensive and accurate truck trip estimate showed that, despite efforts to increase the number of zero-emission trucks, the project would still attract approximately 7,000 more diesel trucks making it less likely for the region to attain federal air quality standards.<sup>41</sup> Metro, unlike community members, was well-positioned to provide the public and expert agencies with detailed data needed for an informed decision-making process. Placing the burden of proof on the public, as the Panel majority panel proposes to do now, would have forced *amici* CBE and other community groups to either spend significant financial resources and technical expertise to uncover the project’s significant impacts or fall prey to this freeway expansion project without sufficient environmental review.

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<sup>40</sup> U.S. Env’t Prot. Agency, [\*Technical Response for Project-Level Transportation Conformity Status- Interstate 710 South\*](#), (Mar. 25, 2021).

<sup>41</sup> *Id.*

NEPA's intent and purpose is to promote transparency and informed decision-making.<sup>42</sup> A future where the Panel's order is allowed to stand will erode the public's trust in the environmental review process and further eschew our moral and legal duty to confront the legacy of environmental racism inherent in freeway construction projects.

### **III. The Panel's Novel Interpretation of NEPA Threatens to Expedite the Expansion of Warehouse Projects in Environmental Justice Communities.**

In addition, the divided Panel decision threatens to expedite the spread of warehouses sited on federal land or developed with federal funds subject to NEPA review. Federally-approved projects are common precursors for warehouse expansions and redevelopment.<sup>43</sup> These warehouses consume large tracts of land, intensify extreme heat levels, and attract diesel-powered trucks that pollute the air, and clog neighborhoods streets with traffic and cargo.<sup>44</sup>

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<sup>42</sup> *Baltimore Gas & Electric Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983).

<sup>43</sup> Ivette Torres Test., add. A6 (Jan. 10, 2022).

<sup>44</sup> See Daniel Flaming and Patrick Burns, [Too Big to Govern](#), Economic Roundtable (Nov. 26, 2019); Anna M. Philips, [How hot is it inside Southern California's warehouses? Ask the workers at Rite Aid](#), L.A. Times (Oct. 12, 2021).

This split decision would set a dangerous precedent, permitting agencies to perform cursory environmental review and fast track approval of federalized warehouse projects, which would only further saturate disadvantaged communities with pollution.<sup>45</sup> If upheld, this decision would run the risk of turning NEPA into an expensive procedure only accessible to wealthy and well-resourced petitioners.

Warehouses are generally sited in areas zoned for “industrial use... where land is cheap.”<sup>46</sup> A national “legacy of discriminatory land use policies at all levels of government means that many people living nearby [industrial uses] are Black or Hispanic.”<sup>47</sup> Exclusionary zoning policies have also left communities of color with limited access to healthy affordable housing and living in isolation from nature and community-serving spaces. Meanwhile, customers that order and purchase most of the goods that warehouses store are “concentrated in affluent coastal and hillside neighborhoods, [leaving] warehouses and workers... concentrated 60 to 70 miles away in struggling working-class

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<sup>45</sup> Justine Calma, [\*Black Friday is Causing Toxic Traffic Jams at U.S. Ports and Warehouses\*](#), The Verge (Nov. 24, 2021).

<sup>46</sup> Kaveh Waddell, [\*When Amazon Expands, These Communities Pay the Price\*](#), Consumer Reports (Dec. 9, 2021).

<sup>47</sup> *Id.*

communities.”<sup>48</sup> To make matters worse, frequent “[t]ruck routes from ports to warehouses traverse low-income communities of color, adversely affecting air quality and health in those communities.”<sup>49</sup> Warehouses and the diesel-fueled truck emissions they attract are not distributed equally in the U.S. “Communities are being sacrificed in the name of economic development.”<sup>50</sup>

The City of Carson and neighborhood of Wilmington (“Carson/Wilmington”), where many CBE members reside, holds the seventh highest number of warehouses in the South Coast Air Basin.<sup>51</sup> According to CalEnviroScreen4.0, a state index that measures pollution burden and vulnerability, the Carson/Wilmington area is 90 percent Hispanic and carries a pollution burden score of over 90 percent, meaning it has a higher pollution burden than 90 percent of the census tracts in California.<sup>52</sup> Accordingly, residents and their children in the

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<sup>48</sup> Daniel Flaming and Patrick Burns, *Too Big to Govern*, Economic Roundtable (Nov. 26, 2019).

<sup>49</sup> *Id.*

<sup>50</sup> Kaveh Waddell, *When Amazon Expands, These Communities Pay the Price*, Consumer Reports (Dec. 9, 2021).

<sup>51</sup> Ivette Torres et al., *Warehouses, Pollution, and Social Disparities* at 6 (Apr. 2021).

<sup>52</sup> *Id.*



Carson/Wilmington region live with high rates of cancer, miscarriages, frequent nosebleeds, headaches, rashes, and respiratory issues, especially asthma.<sup>53</sup> The harms faced by residents in Carson/Wilmington are representative of the harms experienced by other minority communities across the country.<sup>54</sup>

The logistics industry has taken its toll on frontline residents who feel “strangled by constant environmental impacts... freeways with countless daily commuters, invasive odors from water treatment centers, overwhelming trucking... warehousing, and now perpetual noise and other polluting factors from Amazon’s cargo planes.”<sup>55</sup>

## CONCLUSION

Community-based organizations like CBE and PCEJ are poised to further investigate and expose the devastating impacts that overburdened seaports, airports, and federalized warehouse expansions cause within the context of extreme environmental pollution in low-income BIPOC communities. The amended opinion will jeopardize

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<sup>53</sup> Amy Mall & Sujatha Bergen, [Life Alongside Oil Infrastructure in Wilmington, CA](#), NRDC Expert Blog (Oct. 25, 2021).

<sup>54</sup> See generally Op. 47 (Rawlinson, J., dissenting) (arguing that non-Whites and below-poverty individuals are more likely to reside near polluted sites).

<sup>55</sup> Amy Vasquez Test., add. A3 (Jan. 6, 2022).

frontline residents' ongoing struggle for environmental justice and environmental self-determination. Defending future NEPA petitioners' procedural rights is critical to ensure access to clean air, water, and soil for all regardless of zip codes. Accordingly, CBE and PCEJ support Petitioners' request that the Court grant the petition for rehearing en banc.

December 5, 2022

Respectfully submitted,

/s/ Alison M. Hahm

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## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the type-volume limitation of Circuit Rule 29-2(c)(2) because this brief contains 4,086 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016, Century Schoolbook 14 point.

/s/ Alison M. Hahm

Alison M. Hahm

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 5, 2022.

I certify that all participants in the case are registered as CM/ECF users and will receive service by the appellate CM/ECF system.

/s/ Alison M. Hahm

Alison M. Hahm

## **ADDENDUM**

## **Testimony of Amy Vasquez**

To whom it may concern,

My name is Amy Vasquez and I do not technically reside in San Bernardino, I have been fortunate to live in two places at once as I am within a street of the Colton/San Bernardino boarder. When I learned that an airport was being proposed to operate in San Bernardino I knew that the project would negatively impact my family and all of the families within the Inland Empire. I wanted to be well informed of the project so I could fully understand how we would be impacted, I joined as many of the discussions and informative meetings as I was able to. After attending those meetings it was clear that the community's health and sustainable and gainful employment opportunities for residents were not a priority. I voiced my concern to local elected officials with no success in shaking their excitement for the project. At a certain point I knew I would have to rely on agencies such as the FAA, CEQA and laws like NEPA to protect our health. Then when the CEQA review, FAA's calculations, and the NEPA analysis came available to the public it was disheartening to see that not only do our elected officials hold a careless and reckless regard for public health within their decision making, so

do the agencies that were created to protect us. Living in the Inland Empire we are strangled by constant environmental impacts, impacts such as unregulated and regulated gas plants, active and inactive dump sites, freeways with countless daily commuters, invasive odors from water treatment centers, overwhelming trucking and warehousing, and now perpetual noise and other polluting factors from Amazon's cargo planes. This dishonest reporting is nothing new to communities made up of predominantly black and brown people, reports such as these are blatant displays of the consistent disregard that the Inland Empire has always been subjected to. If NEPA is not interested in protecting us, we have nowhere left to turn. We need a stronger, realistic, and honest analysis from NEPA. If they can't provide that, what is the purpose of their existence?

Signed January 6, 2022

With optimistic gratitude,  
/s/ Amy Vasquez  
Amy Vasquez  
Concerned Resident of Colton, California and  
Member of Unite for Colton

### **Testimony of Ivette Torres**

My name is Ivette Torres, and I am a long time community member of the Inland Empire (“I.E.”) and currently a community researcher at the People’s Collective for Environmental Justice (“PCEJ”), Applied Research Fellow at Pitzer College, and Project Specialist at the Center for Environmental Research and Technology at UC Riverside.

I have personally seen the logistics industry expand in my community over the course of the past 10 years. The course of this expansion has not happened overnight, although many of us feel it has been expedited based on a timeline planned by our local elected officials.

I will use my community of Moreno Valley, CA as an example. Moreno Valley has always had a logistics presence specifically in warehousing, but not to the amount it currently stands where millions of square feet of warehousing cover more than a third of the city. The logistics industry in the Inland Empire has a hold in land use planning, transportation at all levels from rail, trucks, to air, and ports, to being the industry that holds most of the work sector. When an industry has



that large of a hold, we would hope as a community that our local and federal government would protect our public health but that is not the case. Instead, we continue to have expansion of rail, trucking, air freight, and warehousing in our communities.

One example in Moreno Valley that required 5 different changes in its Environmental Impact Report, and multiple settlements to be approved, is the World Logistics Center. A logistics project the size of 32 Disneyland parks, that will account for 10,000 added truck trips to the city and region, including expansion of transportation sectors Interstate Corridors 10/ California Highway 60. Due to this expansion the California Transportation agency went through a NEPA process. The NEPA process was extremely helpful for this corridor expansion process as it allowed for community input and the community was able to get an animal corridor crossing into the expansion to protect endangered biodiversity.

The way the community has been able to use NEPA is through the federal projects that come with logistics expansions, such as intermodal facilities, air cargo, and seen more often highway expansions. Oftentimes we get the highway expansions and rail expansions before

the warehouses, it is of utmost importance that a full assessment in the NEPA in those projects also look at the cumulative impact of what will come from those expansions, which is more than likely warehouses.

This is a pattern we have seen often in the Inland Empire. Community and public health impact statements are crucial to ensure full environmental reviews, especially in communities like the IE where we have the highest percentile in ozone and particulate matter pollution which correlates to respiratory and health diseases. American Lung Association, <https://www.lung.org/research/sota/city-rankings/states/california/san-bernardino> (Jan. 12, 2022).

The expansion of road, rail, and air cargo is expansion of diesel fueled transportation at those levels and trucking, when you think about it, its thousands of trucks coming together and creating what we know as diesel death zones. Community is constantly advocating for zero-emissions technology because many suffer from asthma, cancer, respiratory illness, and health diseases that can be linked to diesel particulates.

Signed January 10, 2022

/s/ Ivette Torres  
Ivette Torres

Community Researcher at the Peoples  
Collective for Environmental Justice

Applied Research Fellow at Pitzer College

Project Specialist at the Center for  
Environmental Research and Technology  
at University of California, Riverside

# Freeways force out residents in communities of color — again



Modesti Cooper, 35, looks out from the fourth-story balcony of her house next to Interstate 10 near downtown Houston.

November 11, 2021

Story by [Liam Dillon](#) and [Ben Poston](#)

Graphics by [SzuYu Chen](#), [Aida Ylanan](#) and [Rahul Mukherjee](#)

Photography by [Allen J. Schaben](#)

[Leer en español](#)

—

HOUSTON — Modesti Cooper first spotted the patch of land from 8,000 miles away.

The tree-studded lot with a “For sale” sign zoomed into focus on Google Earth seven years ago as Cooper sat at a computer inside her U.S. Air Force office in Afghanistan.

After six overseas deployments, the civilian IT worker was finally ready to settle down and had been scouring for properties in her hometown of Houston. She bought the land and built a four-story home with a pool, the letter “M” engraved in the tile.

Today, the house is slated for destruction to make way for a planned widening of Interstate 10.

Fifty years ago, Cooper’s predominantly Black neighborhood in Houston’s Fifth Ward was devastated to build the freeway. Now, another cycle of dislocation looms.

“Everything I put into the house is me,” said Cooper, 35, who is Black. “I lived all my 20s out of a suitcase. I wanted a dream home.”

Cooper’s story echoes across generations. The U.S. Interstate Highway System — built from the 1950s to the early 1990s — is one of the country’s greatest public works achievements, but it came at an enormous social cost. More than 1 million people were forced from their homes, with many Black neighborhoods bulldozed and replaced with ribbons of asphalt and concrete.

Some negative effects of the freeway building boom, including examples of intentional racism, are widely acknowledged today. The country’s appetite for new urban interstates has waned, and many transportation officials have taken steps to limit the harm.

But a Los Angeles Times investigation has found that widenings, extensions and other freeway construction continue to take a significant toll on communities even now.

More than 200,000 people have lost their homes nationwide to federal road projects over the last three decades, according to a Times analysis of federal transportation data. The actual total is higher because many states fail to report how many homes are taken annually.

And a review of records detailing some of the country’s largest highway projects shows that expansions of existing freeways through cities have inflicted a second round of dislocation and disruption on largely Black and now Latino communities as well.



An aerial view of Link Road in the Independence Heights neighborhood of Houston. Independence Heights is one of the oldest Black communities in Texas, and 165 more homes could be taken in planned interstate expansions.

In Houston, Cooper and 1,000 other families in mostly Black and Latino neighborhoods may be forced from their homes for freeway expansions so colossal they would result in 34 lanes crisscrossing near downtown. A half-century ago, the initial construction of the highways removed tens of thousands of people from the same areas and wiped out Black business districts.

In Tampa, Fla., some 750 families, largely in communities of color, have been displaced in recent decades to widen Interstates 4 and 275 through downtown. Before that, the original freeway construction tore through a historic Cuban community, divided the city's Black population and forced out thousands of people.

In a Black neighborhood in Gulfport, Miss., founded by formerly enslaved people, highway planners bulldozed 111 homes for a proposed roadway linking the city's port to Interstate 10. More than a decade later, the road has not been built.

In Los Angeles and Orange counties, construction crews are putting the finishing touches on the last of three Interstate 5 expansions that moved 850 families from mostly Latino neighborhoods.

Some threatened by today's freeway projects wonder why their families have been targeted once again.

When the 101 Freeway was built through Boyle Heights in Los Angeles in the 1950s, Alexandria Contreras' great-grandparents were left with six roaring lanes a block away. Now, Contreras' father fears the family's two-bedroom stucco house in Downey could be at risk because of another planned widening of Interstate 5 in southeast L.A. County.

"When the first freeways were built in Boyle Heights, it was seen as an era of progress, but at what expense and at whose expense?" said Contreras, 27, who is of Mexican descent. "I've had too many generations suffer."



Alex Contreras, left, and his daughter, Alexandria, hold photos of him at his childhood home adjacent to the freeway in Boyle Heights. Alexandria, 27, is an activist against highway expansion in Los Angeles.

The Times analysis is the first of its kind to measure the extent and effects of displacements that have occurred in road projects over the last 30 years.

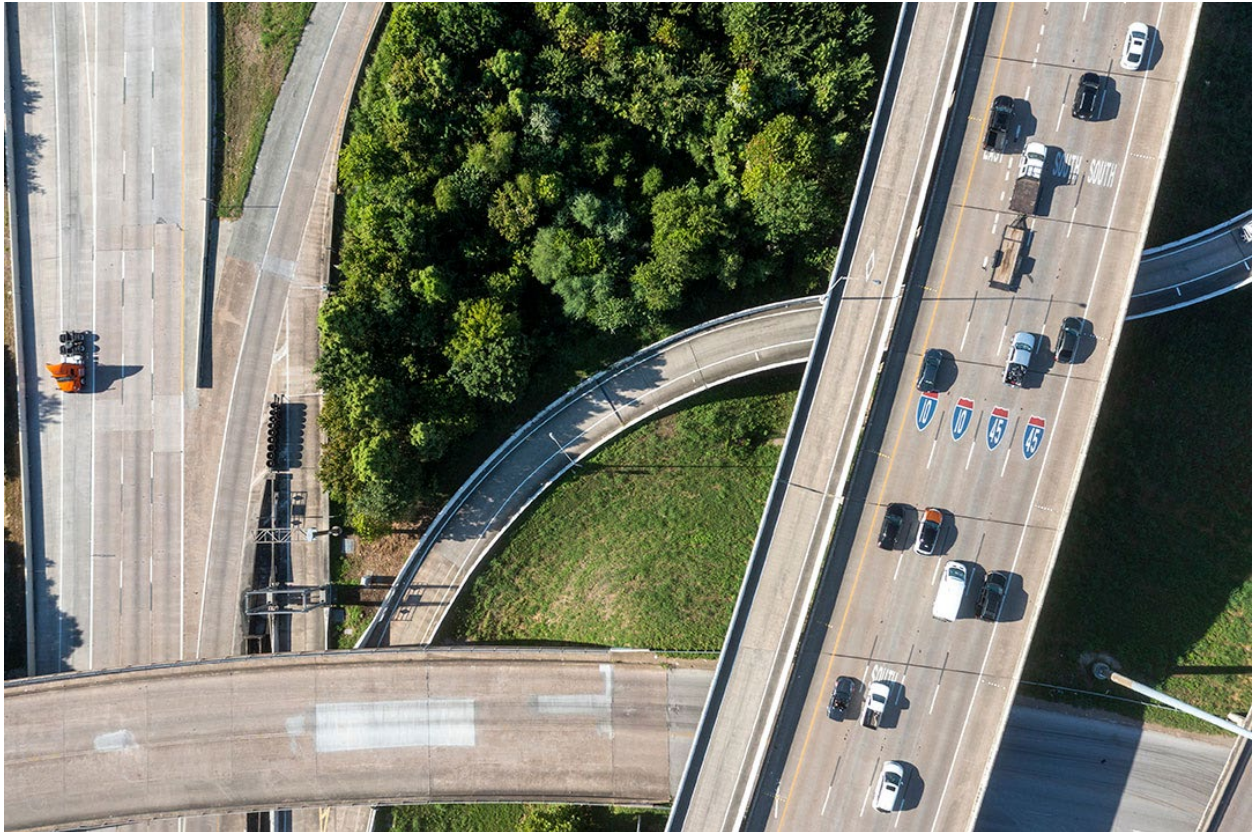
No national statistics exist detailing demographic information about the people forced from their homes. So The Times requested data, maps and environmental and relocation information on the largest projects from the five states that displaced the most families since 1991: California, North Carolina, Texas, Florida and Mississippi.

The Times examined 22 projects that claimed more than 6,300 households in those states — or 16,000 people. Reporters reviewed thousands of pages of records, identifying projects that disproportionately displaced residents in Black and Latino neighborhoods. Nearly two-thirds of displacements occurred in projects unevenly affecting those communities.

Driving the racial inequities in recent decades, The Times found, were highway planners' decisions to widen freeways in densely populated urban areas.

By contrast, when planners instead built projects through suburban and rural areas, they took comparatively fewer homes without the same racial disparities. An Interstate 10 expansion in suburban Houston in 2008 — creating one of the nation's widest freeways, with 26 lanes — displaced 168 families in mostly white neighborhoods.





An aerial view of Interstate 45 where it intersects with Interstate 10 near downtown Houston.

Highway planners contend that road expansion is necessary to relieve congestion and accommodate growing populations. They maintain they've learned lessons from the past.

Today, displaced families receive substantial financial assistance to find new housing, a marked contrast with the earlier era of highway construction when they often got little in return for their loss.

“We are providing as much as we can to those who have to sacrifice for the greater good and move for society to continue to grow,” Kyle Madsen, the Texas Department of Transportation’s top official handling relocations, said in an interview.

Still, some forced from their homes say that nothing can replace a lifetime of memories.

“It was a devastating thing for us,” said Wilifido Gonzales, 75, whose Norwalk house was taken in 2012 and bulldozed to make room for an Interstate 5

widening. He still can't display photos of the home where he and his wife raised their two children. His wife, Rosalind, gets too upset.

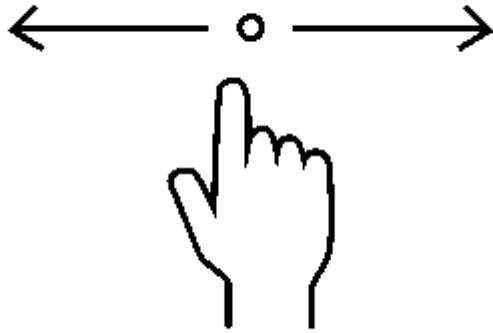
"To lose our place where we raised our kids," Gonzales said, "it just hurts her to talk about it."

## How hundreds in L.A. County lost homes to a freeway widening



Downtown  
L.A.  
605  
5  
710  
105  
Downey  
Long Beach

**Detailed**





5  
5  
5

The wisdom of ever-expanding freeways is being questioned more and more. Reams of [academic research](#) show that freeway widenings reduce traffic only temporarily and can actually [increase congestion long-term](#) by encouraging more driving. And beyond displacement, bigger freeways can [contribute to climate change](#) and leave those who remain nearby with worse air pollution and at [higher risk of asthma](#) and other respiratory problems.

In a sign of changing attitudes, road projects nationwide have taken homes at a much slower pace in the last decade compared with the 1990s, The Times analysis found. Citing [racial inequities](#) caused by highway building, the Biden administration has encouraged states to curtail construction, and in an unprecedented move has even advocated [tearing some freeways down](#). The U.S. Department of Transportation also [has paused](#) the Houston multi-interstate expansion to investigate claims that the project violates the civil rights of Black and Latino residents.

Here in California, where road projects have displaced more than 10,000 families over the last 30 years, transportation officials [recently halted](#) a proposed widening of Interstate 710 through Los Angeles County in part because hundreds would lose their homes in Latino neighborhoods.

#### Advertisement

“We want to make widening highways no longer the default option,” said Toks Omishakin, director of the California Department of Transportation. “It should be the absolute final option.”

Still, the modern era of freeway expansion has hardly ended. The [recently passed](#) \$1-trillion bipartisan infrastructure bill championed by President Biden includes \$350 billion for roads, much of which could be used to further expand the highway network. In addition to Houston and Los Angeles, plans already on the books in [El Paso](#), [Austin](#), [Shreveport, La.](#), [North Charleston, S.C.](#), and elsewhere could push out thousands more people.

Nothing better reflects Americans' insatiable appetite for driving than the U.S. Interstate Highway System. Freeways have defined the country's landscape ever since President Eisenhower created the road network in 1956, forming the foundation for mass suburbanization and an economy centered on the automobile.

Highway construction devoured entire neighborhoods, especially in cities. LaDale Winling, an associate professor of history at Virginia Tech and an expert on the freeway network, called the effort "the largest urban displacement project in American history."

Racism was embedded into the road system as highway planners sometimes intentionally designed routes to destroy Black neighborhoods. Some city leaders in the mid-1950s saw the interstates as a good opportunity to get rid of the local "n—town," a former top transportation lobbyist later recalled in [an interview for an academic publication](#).



The racist past of America's interstate highway boom

In Miami, for instance, local leaders [paved over the heart of the city's Black community](#) rather than route the freeways through a nearby abandoned railway. The neighborhood lost as much as three-quarters of its population —

roughly 30,000 residents — through the completion of Interstate 95 and four levels of downtown interchanges in 1968.

Highway builders often defended cutting swaths through Black neighborhoods by arguing it was the cheapest land available.

*“The damage is tremendous.”*

Robert D. Bullard, urban planning professor at Texas Southern University

All told, highways in cities nationwide

— [Atlanta](#), [Baltimore](#), [Birmingham](#), [Detroit](#), [Nashville](#), [New Orleans](#) and [Tulsa](#) among them — caused astonishing harm, said Robert D. Bullard, an urban planning professor at Texas Southern University.

“If you look at Black and Latino neighborhoods, in terms of homeownership, the loss of equity, the business corridors that were destroyed and the loss of community that highways have caused, the damage is tremendous,” said Bullard, one of the founders of the environmental justice movement.

And it was often more politically powerful white enclaves that were able to stop or reroute highways away from them, including [a decades-long effort in South Pasadena](#) to prevent Interstate 710 from coming through their community.

One of the nation’s last new urban freeways was Interstate 105, which bisected Watts and other Black L.A. neighborhoods on its 17-mile east-west path to Los Angeles International Airport.

When it opened in 1993, after nearly four decades of planning, lawsuits and construction, the interstate was supposed to be among the last of its kind. More than 21,000 people had lost their homes, with some overwhelmed by the pain of being forced out, [suffering heart attacks](#) or [dying by suicide](#). Exhausted [highway engineers conceded](#) that the cost of building interstates through cities was too great.

The first time Willie Dixon lost a home to a highway was during the freeway construction boom in the early 1960s.

The delivery driver was living in a one-story wooden home in Tampa where he and his wife would host card games for family and friends, cooking feasts of blue crabs.

But the property was right in the path of what was to become Interstate 275.

Dixon's home and thousands of others were bulldozed to make way for that freeway and Interstate 4, cutting through the Black and Cuban neighborhoods of Ybor City, West Tampa and downtown.

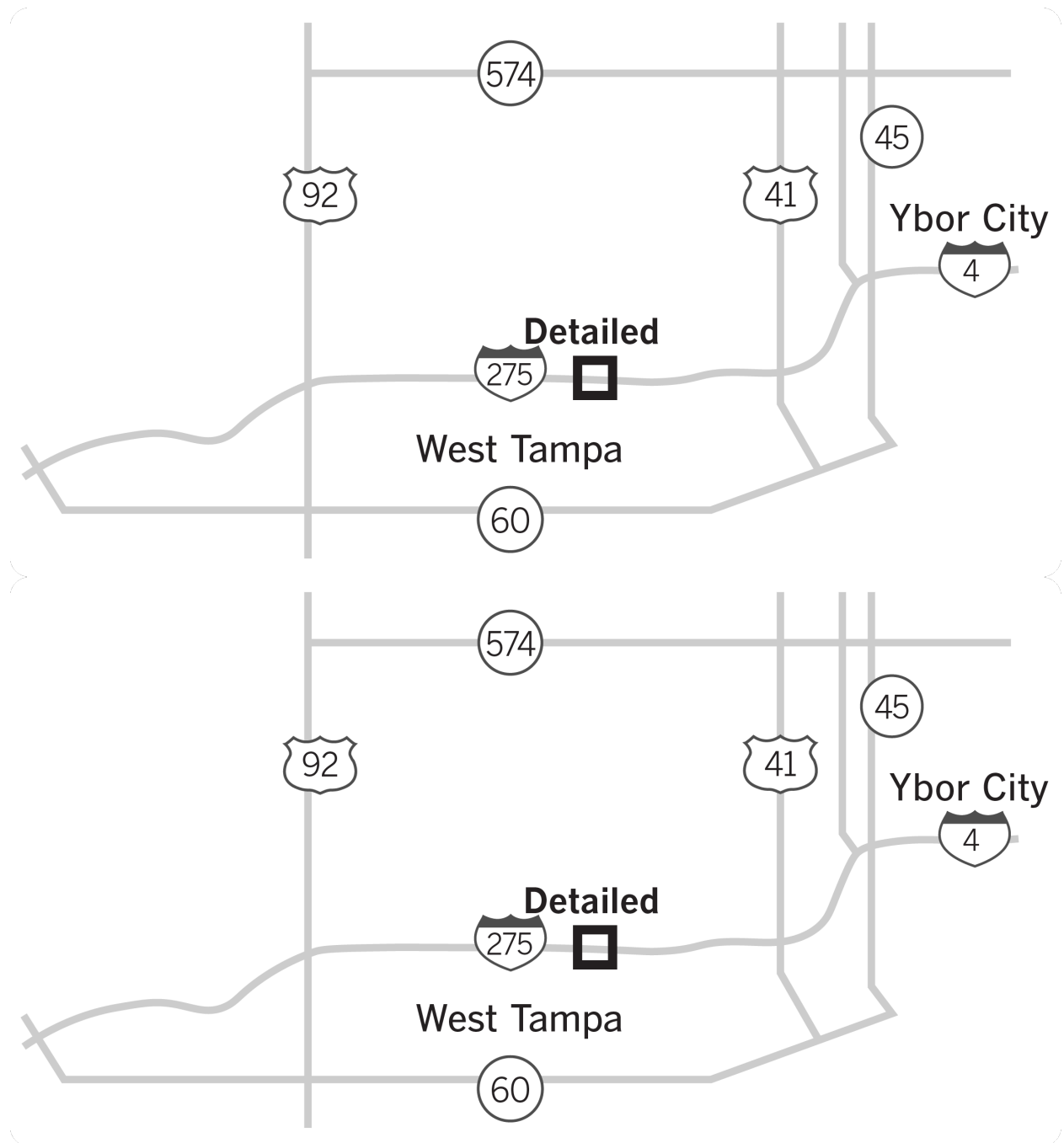
Dixon and his wife moved three miles away, built a one-story concrete block house and started a new life.

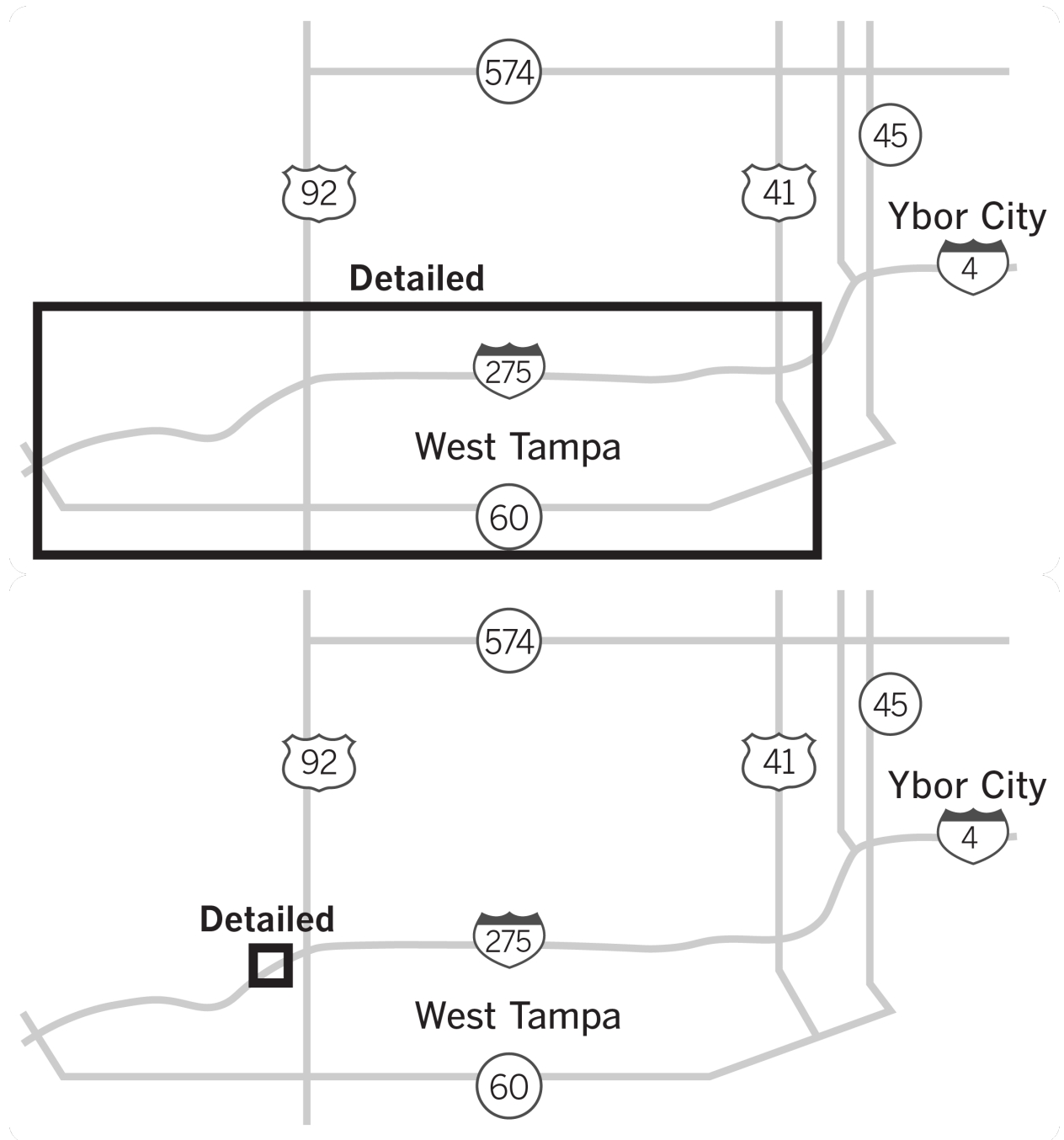
From his yard, Dixon could watch the neighborhood kids play on West Arch Street and he liked to pick pink roses from his garden to adorn the dining room.

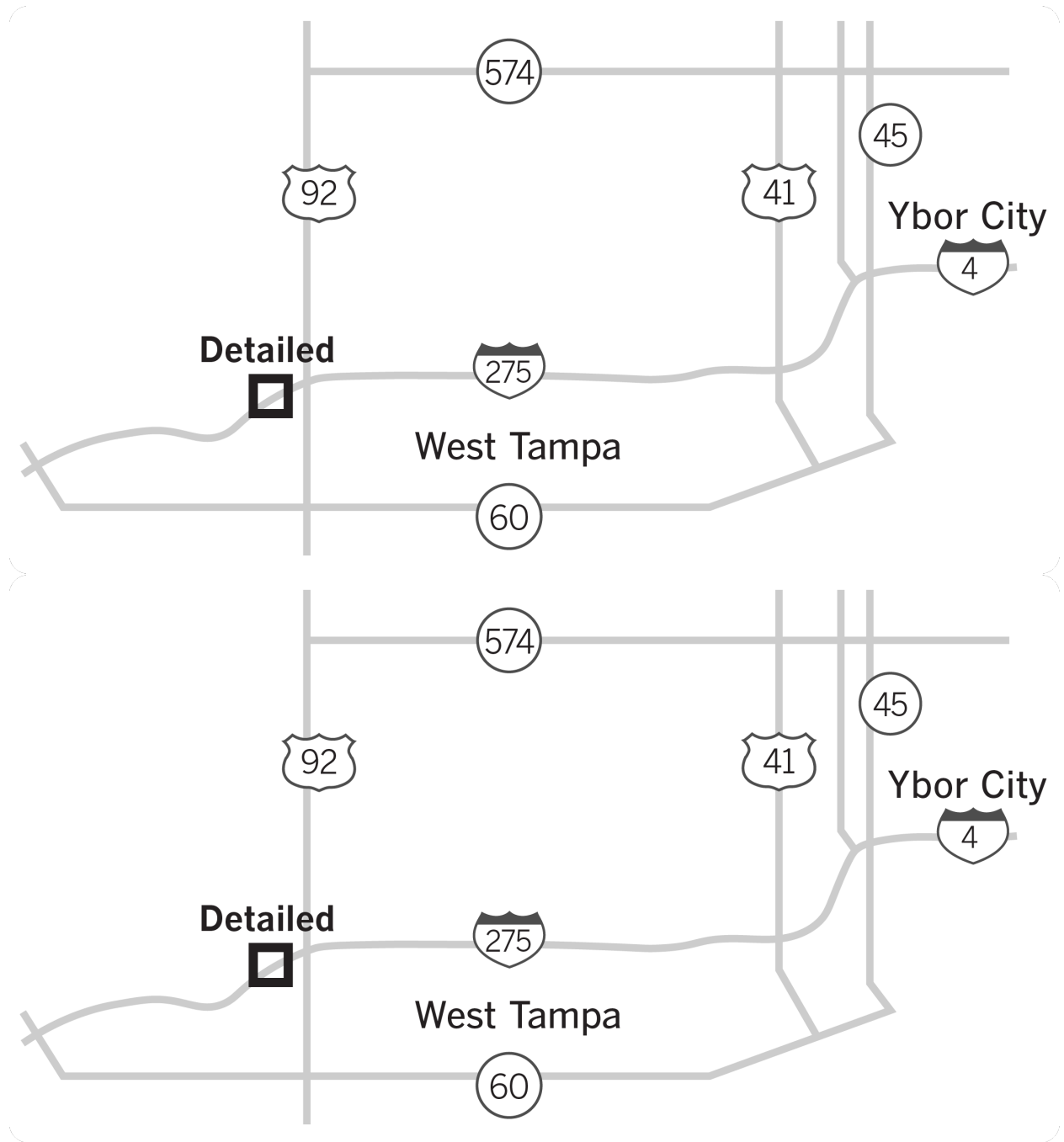
But Dixon's new house was too close to the freeway. By the 1990s, the I-4 and I-275 interchange, swollen with traffic from Tampa's population growth, had been dubbed "Malfunction Junction."



In 2004, Dixon was forced to leave his home, which was bulldozed to make way for new I-275 on- and off-ramps.









The Florida Department of Transportation’s decision to expand Interstates 4 and 275 has also forced the demolition of a 140-unit public housing complex and hundreds of other residences, with more still planned.

By the time Dixon lost his second home, he was 90. He died less than a year later.

“He had to go and start learning new neighbors at that age,” said his son, Willie Dixon Jr. “That’s the tragedy of moving.”



Left: Willie Dixon Jr., 90, rakes the leaves at his home in Tampa. Dixon's father had two homes in Tampa taken for freeway construction 40 years apart. Right: Dixon shows historical photos of Central Avenue, Tampa's old Black business and entertainment district, which was destroyed when interstates were built in the 1960s.

Highway planners insist that freeway expansions are not intended to harm communities of color. Building upon existing road corridors is less harmful — to people and to the environment — than creating brand new ones, they said.

“The only way to eliminate displacements for the interstate projects in Tampa would be to do nothing and continue to utilize the 1960s interstate system,” Florida Department of Transportation spokeswoman Alecia Collins said in a written statement to The Times. “At the rate that Florida is growing, that simply isn't a safe and/or viable option.”

Transportation planners in Florida and Texas argued that the small number of projects analyzed by The Times were not representative of racial displacement trends over a three-decade period.

Florida officials pointed out that data going back 20 years show that whites made up the largest demographic among people displaced by transportation projects in the state.

But a Times review of the state's data also found that Black households were forced out at higher rates than their share of the state's population. When considering just Florida's largest highway projects, Black households were displaced at twice their share of the state's population.

#### How we reported the story on highway displacements

Though not like the early days, freeways are still growing at a rapid pace.

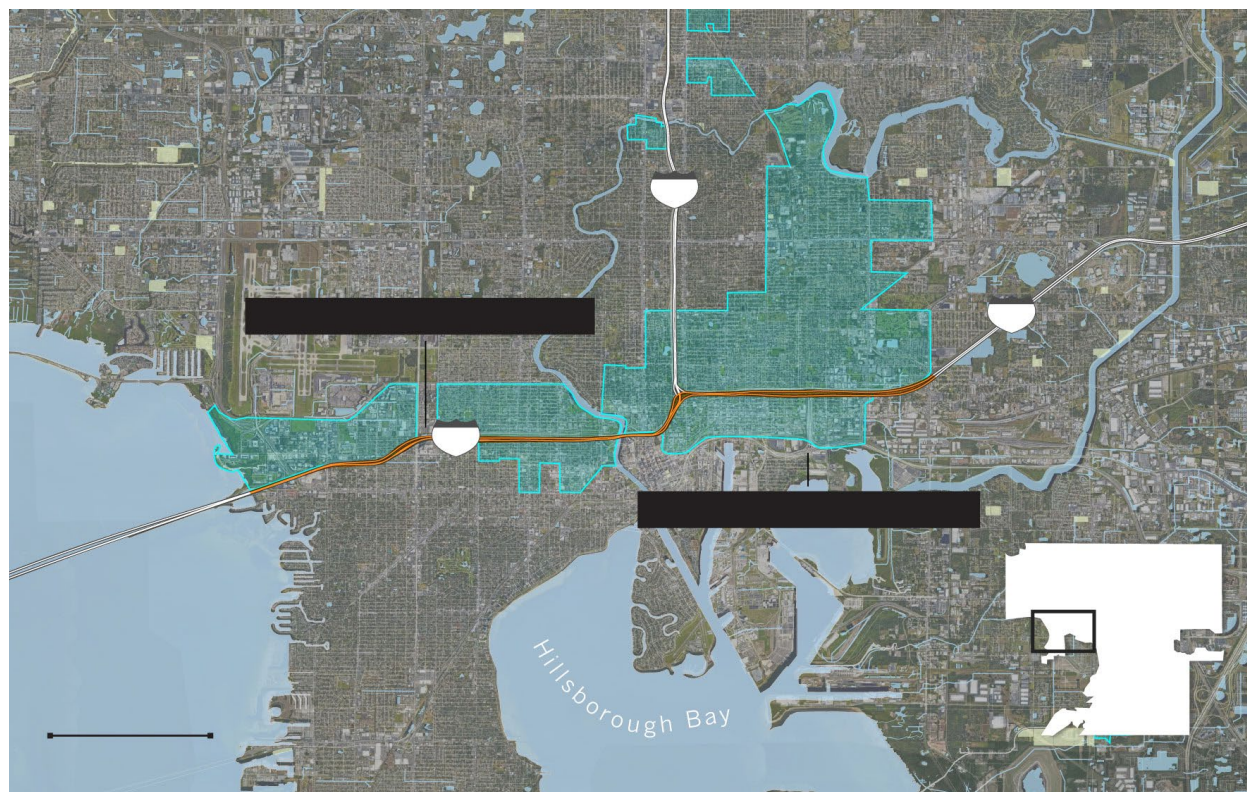
In the country's 100 largest urban areas, highway planners added 30,000 miles of freeway lanes between 1993 and 2017, [according to Transportation for America](#), a nonprofit advocacy group. That expansion rate outpaced the growth in population, the group says.

Yet evidence indicates the new road building isn't easing congestion problems. Experts have found that widening freeways can actually increase traffic, because it leads to housing development and encourages more vehicle trips.

Within five years after Texas transportation officials turned Interstate 10 in suburban Houston into one of the nation's widest, traffic speeds during daily commutes were [back to where they were before](#). An Interstate 405 widening through L.A.'s Sepulveda Pass a decade ago, which required a multiday closure dubbed "Carmageddon," left rush-hour traffic [just as tied up within a year of completion](#).

Back in Tampa, the freeways' footprints have continued to expand. The family of Tedd Scott, one of Dixon's neighbors on West Arch Street, held on for 12 years after Dixon was forced out. Florida transportation officials came calling five years ago. Scott's mother's house was one of the last taken on the block.

## Tampa's interstate expansions further divide Black, Latino areas



**Detailed**

2 MILES  
2000 U.S. Census

Scott, a 78-year-old retired college financial administrator, still misses his old neighbors.

“We were all good friends, knowing each other for 40, 50 or 60 years, and all of that was broken up with the highway,” Scott said.

Neighborhoods near the freeway expansions are littered with reminders of the past. Some dilapidated homes are plastered with “No trespassing” signs. Others are spray-painted: “FL DOT Property.” On some streets in Ybor City, the original brick roads run smack into freeway sound walls. On one block, a concrete stairway stands in the middle of a weed-choked field. Nearby, a sidewalk stops at the freeway, leading nowhere.

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Highway planners, sensitive to the racist policies of the past, now take varied approaches to ease the burden of dislocations, especially in Black and Latino areas. Many efforts involve benefits for those displaced and improvement projects for surrounding neighborhoods.

However, arriving at proper compensation is tricky and sometimes impossible when it involves deep community roots, family history and personal struggle.

Across the country, transportation agencies have built new parks and bicycle trails and preserved historic properties. Florida officials rehabilitated and relocated nearly three dozen historic Ybor City homes from the path of



Tampa's expanded freeways, reserving nearly all of them for first-time homebuyers.



Eli Kinder, 4, plays basketball in front of his uncle's house next to Interstate 4 at the dead end on 16th Street in Tampa's Ybor City neighborhood.

Rather than widening interstates through cities, planners in North Carolina have constructed beltways encircling Raleigh and other metropolitan areas because they would have lesser effects, including in communities of color, state officials said. None of the five large highway projects in the state examined by The Times disproportionately affected Black or Latino neighborhoods.

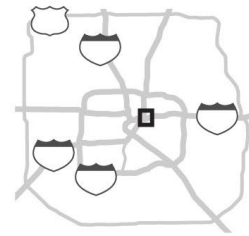
Displaced renters receive money for replacement housing. Over the last 30 years, more than 9,600 families who were tenants used their relocation payments to become homeowners, The Times' analysis of federal statistics found.

Homeowners also get compensated, occasionally even more than what their property is worth.

Nevertheless, the disruption caused by freeway projects can be massive. Houston's proposed expansion would cover about 450 acres through the center of the city, adding new lanes and redoing interchanges across four interstates at a cost of \$9 billion.

Nearly half of the 1,000 families set to lose their homes now live in low-income apartment buildings, including the Clayton Homes and Kelly Village public housing complexes. The demolition toll also involves five churches, three homeless service providers, two schools and a shelter for refugee children.

In the areas affected, more than three-quarters of the population is Black or Latino. Letters from the Biden administration to Texas transportation officials say the project raises "[serious](#)" civil rights concerns.



8  
45

## Freeway expansion in Houston would demolish many properties

10

Detailed

69  
610

A30

Still, Texas highway planners hope to resolve the civil rights complaints and advance the project by the end of the year. They point to their work in Independence Heights, the first all-Black city founded in Texas during the Jim Crow era, as an example.

North of downtown Houston, [Independence Heights](#) languished for decades without bus service and even lacked sidewalks in front of its small bungalows.

The construction of Interstate 610 in the 1960s tore through the community. Its design resulted in floodwaters from nearby areas pooling into Independence Heights. The current freeway expansion plans would displace an additional 165 families there.

This time, however, highway planners are dangling many incentives, including replacement housing, new flood protections, and murals and signs detailing the history of Independence Heights.

Tanya Debose, a longtime community leader whose great-grandfather was given little when he was forced from his Independence Heights home during the initial interstate construction, is wary of the freeway expansion. It targets a neighborhood that has suffered enough in the past, she said.

“Why does it always have to be us?” she asked.

But Debose acknowledges that the project’s promise to invest millions in the neighborhood is far different from the way government officials handled the original freeway construction decades ago.

“We’re not going to lose like my great-grandfather did,” she said.

Seven miles from Independence Heights, in Houston’s Fifth Ward neighborhood, some residents — like Cooper — aren’t giving up their homes without a fight.

In February, she filed a civil rights complaint with the U.S. Department of Transportation alleging the project is racially discriminatory, one of the claims the agency is now investigating.

The Texas Department of Transportation took notice.

Soon after, the relocation firm hired by the department began sending Cooper postcards with images of communist revolutionary Che Guevara and Mexican artist Frida Kahlo. The postcards said the firm knew Cooper had contacted the feds.

“Please understand our role comes about because of civil rights and environmental justice,” a handwritten note reads.

Modesti Cooper stands in front of her four-story house next to Interstate 10 near downtown Houston.

Cooper piled the postcards in a drawer. “Creepy,” she said.

In the four years since she’s moved in, her home has turned into a playhouse for her three godchildren. They lounge on bunkbeds, splash around the pool and play video games on her 55-inch television. On holidays, she serves her extended family hamburgers and mac and cheese from a recipe she’s continued to perfect since her time in culinary school. Last July 4, everyone gathered on her fourth-floor balcony to watch the fireworks over the downtown skyline.

Nothing the government offers her to widen the freeway, she said, would replace the home she’s built.