

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NATIONAL ALLIANCE TO END *

NATIONAL ALLIANCE TO END *
HOMELESSNESS, et al *
Plaintiffs, *

vs.

UNITED STATE DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT, et al
Defendants.

*DECEMBER 19, 2025

STATE OF WASHINGTON, et al.,
Plaintiffs,

vs.

*25-CV-626-MSM

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT, et al
Defendants.

*VIA VIDEO CONFERENCE

21 BEFORE THE HONORABLE MARY S. McELROY
22 DISTRICT JUDGE
23 (MOTIONS FOR PRELIMINARY INJUNCTIONS)

1 **APPEARANCES:**

2 FOR THE PLAINTIFFS:

3 State of Washington

Zane Muller
Washington State Attorney
General's Office
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

6 National Alliance to
7 End Homelessness

Kristin Bateman, Esq.
Democracy Forward Foundation
PO Box 34553
Washington, DC 20043

9 FOR THE DEFENDANTS:

10 U.S. Department of Housing
11 and Urban Development

JOHN BAILEY,, DOJ-Civ
U.S. Department of Justice,
Civil Division
950 Pennsylvania Avenue NW
Washington, DC 20530

13 Court Reporter:

Denise P. Veitch, RPR
One Exchange Terrace
Providence, RI 02903

14

15

16

17

18

19

20

21

22

23

24

25

1 VIA VIDEO CONFERENCE

2 19 DECEMBER 2025 --

3 THE COURT: Good morning. We are going to go on
4 the record in two civil actions combined, it's civil
5 action 25-525, I'm sorry, 26, and 25-636, the United
6 States -- National Alliance to End Homelessness versus
7 the Department of Housing and Urban Development, and
8 then the other case which we have titled the State of
9 Washington versus the Department of Housing and Urban
10 Development. And I want to make sure I said those
11 numbers correctly because I didn't put my glasses on
12 yet. It is 25-626 and 25-636.

13 So, good morning. We are on the record, so I
14 just remind everybody that the stenographer is taking a
15 transcript and so it's important that you remember that
16 when you're speaking. I find that people tend to speak
17 more quickly when they're on Zoom probably in part
18 because they are reading some of what they're saying;
19 so I would appreciate it and I think you will
20 appreciate it if you slow down. I don't want to have
21 to interrupt you to tell you to slow down; if I do it
22 is not because I'm mad but just because the
23 stenographer will need the time.

24 Okay. So who is appearing for the Plaintiffs at
25 this hearing? Will you identify yourselves for the

1 record, please.

2 MS. BATEMAN: Kristin Bateman for the National
3 Alliance to End Homelessness Plaintiffs.

4 THE COURT: Okay.

5 MR. MULLER: And Zane Muller on behalf of the
6 Plaintiff States.

7 THE COURT: Okay. All right. Good morning.

8 And how about for the Defendants, the Department
9 of Housing and Urban Development.

10 MR. BAILEY: Good morning, your Honor.
11 John Bailey for the United States.

12 THE COURT: Okay. Great. Welcome. And I am
13 going to ask everybody who is not speaking to mute
14 themselves. I don't know, Ms. Bateman or Mr. Muller,
15 if you are prepared to begin, so whenever you're ready
16 we'll hear you on the preliminary injunction motions
17 filed in both cases.

18 MS. BATEMAN: Thank you, your Honor, and good
19 morning. Again, Kristin Bateman for the National
20 Alliances Plaintiffs, and Mr. Muller and I will divide
21 the argument, with the Court's permission. I can start
22 with a brief overview and then address the Plaintiffs'
23 likelihood of success on the merits of their challenges
24 to the rescission of the fiscal year 24-25 NOFO and why
25 that is sufficient for the relief that we're seeking.

1 And then Mr. Muller will address the likelihood of
2 success of the merits of the challenges to the fiscal
3 year 25 NOFO. And then each set of Plaintiffs will
4 address their respective harms.

5 THE COURT: That's great. And I should have
6 asked, Mr. Bailey, we have received an e-mail I believe
7 from you or from somebody in your agency indicating
8 that a new NOFO might go out before this hearing. We
9 checked this morning; I'm assuming nothing has been
10 issued. Is that correct?

11 MR. BAILEY: Yes, your Honor. I spoke with
12 agency counsel this morning, and they told me that
13 their expectation is that the new NOFO will be
14 published by close of business today, at which point we
15 will immediately file a notice with the court with the
16 new NOFO. We've been working diligently to do so. We
17 tried to give the Court as much notice as possible; and
18 that's my understanding, that it will be filed or
19 published by close of business today.

20 THE COURT: Okay. Thank you.

21 And Ms. Bateman, just so that we can, so I can
22 sort of put this in some sort of an organizational
23 format for myself, the issues here are not just the new
24 NOFO which Mr. Muller will speak to, but also the
25 rescission of the previously issued 24-25 NOFO. Is

1 that correct?

2 MS. BATEMAN: That's right, your Honor.

3 THE COURT: Okay. I'll hear you.

4 MS. BATEMAN: Thank you.

5 The Continuum of Care Program is the program
6 Congress created to be the primary federal response to
7 homelessness, and permanent housing is a cornerstone of
8 that program. And of course when you're talking about
9 permanent housing, you're talking about homes that
10 people live in, so, of course, stability and continuity
11 is crucial for that. For that reason, Congress in the
12 statute prioritized renewals of successful projects on
13 a timely basis.

14 On November 13th HUD threw all of that into
15 chaos. It rescinded the two-year fiscal year 24-25
16 NOFO that it had issued before to govern the awards for
17 both fiscal year 24 and fiscal year 25 funds. It did
18 this just weeks before renewal awards for fiscal year
19 25 would have been going out, and it did it just weeks
20 before people's existing grants would begin expiring in
21 January. This very-late rescission guaranteed that
22 there will be funding gaps because, as HUD itself said,
23 the best it could do would be to make awards in May and
24 that's already very aggressive.

25 This is causing serious, serious harm to

1 Plaintiffs and their ability to carry out their
2 missions. They are providing housing to people. Gaps
3 in funding means they can't provide that housing
4 anymore, and that means that individuals, families with
5 children, veterans, victims of domestic violence are
6 going to lose their housing in the middle of winter.
7 We need relief as soon as possible to mitigate this
8 harm. It's already too late to fully prevent the
9 irreparable harm that this very late stage rescission
10 has caused, but we do seek relief that will minimize
11 it.

12 In particular, we're asking for three things:
13 We're asking that the Court stay the rescission of the
14 fiscal year 24-25 NOFO. We are asking that the Court
15 enjoin the Defendants from taking a new agency action
16 that would rescind it or replace it all over again; and
17 third, we are asking that the Court order the
18 Defendants to begin taking the steps necessary to
19 process renewals under the fiscal year 24-25 NOFO,
20 short of obligating the funds, but the purpose of doing
21 that is so that if and when the Court grants us the
22 final judgment we're seeking -- which will be an order
23 requiring the Defendants to award the renewals under
24 the old NOFO -- that there won't then be a further lag
25 while HUD undertakes the administrative processes that

1 it needs to undertake to actually get those grants
2 awards out. So what we're asking now is just for them
3 to begin that process so there isn't a lag at the end
4 of the day if and when we win final judgment.

5 So with that, I can turn to our likelihood of
6 success on the merits of the challenge to the
7 rescission of that old fiscal year 24-25 NOFO. The
8 very late-stage rescission of that NOFO is unlawful and
9 must be set aside under the APA for two independent
10 reasons. First, it is contrary to law and in excess of
11 the agency's statutory authority; and second, it is
12 arbitrary and capricious. And I can through the merits
13 of both of those claims before briefly addressing the
14 Defendants' nonmerits challenges to that.

15 So first there's the statutory problem. Under
16 42 USC 11382, Congress set a deadline. Congress said
17 HUD has to issue a NOFO for awards under the CoC
18 Program within three months of an appropriation. The
19 fiscal year appropriation happened on March 15th, 2025,
20 which means that three-month deadline was June 15th.
21 June 15th came and went; they had not done a new NOFO.
22 There was already obviously this new existing NOFO in
23 place, the fiscal year 24 -25 NOFO, so once the
24 deadline came and passed, they no longer had authority
25 to issue a new NOFO.

1 HUD has two responses to this. First they say
2 that an agency doesn't usually lose authority to do
3 something once its deadline passes. And that is
4 certainly true in many circumstances, but not in the
5 circumstances here. The key difference is that HUD had
6 already taken the required action. So normally if
7 Congress says Hey, agency, you have to take some action
8 and you have to do it by this date, and the agency
9 blows the deadline, it doesn't mean they lose authority
10 to take the action. Congress really wanted them to
11 take the action and so it wouldn't make sense to say
12 Oh, you're off the hook, agency, because you were too
13 slow and missed the deadline.

14 That is not the circumstance we have here
15 because the agency had taken the action. It had issued
16 the NOFO, the fiscal year 24-25 NOFO that covered the
17 fiscal year 25 funds. So once that date, deadline
18 came, that was the deadline. They couldn't then go
19 back on what they had done and keep doing it over and
20 over again after that. If that were the case, the
21 deadline would have no meaning.

22 THE COURT: What they could have done had they
23 wanted to in March when the appropriations bill was
24 being put forth by Congress? What could Congress have
25 done to give the agency either more time or more

1 authority?

2 MS. BATEMAN: Congress could have done any
3 number of things. Congress could have said -- could
4 have changed the deadline. Congress could have said,
5 you know, you don't get to use the old NOFO; you have
6 to do a new NOFO. There's any number of things
7 Congress could have done, of course didn't do those
8 things, and so what we have is a statute that Congress
9 did enact, which are these statutes saying there is a
10 three-month deadline. There's a statute that Congress
11 enacted saying Hey, HUD, you can do a two-year NOFO.
12 HUD did that two-year NOFO. And so that is the sort of
13 scenario we're looking at.

14 THE COURT: And so when Congress acts but fails
15 to change sort of this part of the analysis, how does
16 the Court look at it. I mean officially didn't change
17 it, or if it was some sort of oversight by Congress?

18 MS. BATEMAN: You certainly would not look at it
19 as if it were an oversight by Congress. You look at,
20 we look at the laws that Congress enacted, and the laws
21 that Congress enacted here are both the deadline of the
22 three-month deadline, and there's also the law that
23 Congress enacted that authorized the two-year NOFO. So
24 given that and given that there was authorization to do
25 a two-year NOFO, which HUD then did do, to give the

1 deadline that Congress enacted effect, the agency had
2 to meet it.

3 THE COURT: Okay. And your argument is whatever
4 the fiscal act that allowed the 24-25 NOFO, about a
5 two-year NOFO, HUD acted under that two-year NOFO and
6 had the HUD decided that we don't want to have that
7 same policy going forward, it was incumbent on them to
8 either go to Congress and get more time or more
9 direction or to change in the guiding principles, for
10 lack of a better word; or for them to issue a NOFO
11 within the deadline that set forth different criteria
12 but that were, that were consistent with the law but
13 also allowed that to change the policy.

14 Is that your argument essentially? That the
15 time to do something about it passed in June, and
16 certainly in March they had an opportunity that they
17 didn't take?

18 MS. BATEMAN: Yes, your Honor, that's right.

19 And one argument the Defendants make in response
20 that I will, that I can address now is they sort of
21 make an argument that Oh, actually there wasn't a
22 fiscal year 24-25 NOFO in place, once the deadline came
23 in June. And they say that's the case because in
24 January they closed the FY24-25 NOFO on Grants.gov.
25 But that is not a rescission. They did not say that

1 was a rescission. No one understood that as a
2 rescission. It is entirely typical for HUD to close a
3 grant opportunity on Grants.gov -- excuse me -- after
4 awards had been made, as they had been; and HUD, again,
5 when it issued the 25 NOFO said this NOFO is rescinding
6 the old NOFO. So it's clear that the rescission had
7 not happened until November.

8 And there's a second reason why the rescission
9 is unlawful, and that is because it is arbitrary and
10 capricious. It came so late that HUD needed to
11 consider the implications of that, the impact of that
12 on the communities, on the providers. It needed to
13 consider that making such a late-in-the-game change
14 would mean that people would experience funding gaps,
15 that that would mean they could not continue supporting
16 housing for people who were formerly homeless; did not
17 consider that that would mean people would be displaced
18 back into homelessness in the middle of winter. It did
19 not consider the impacts that would have on their
20 health and safety progress they had made in substance
21 use treatment, things like that. It didn't consider
22 the reliance interests of the CoCs, of the service
23 providers, and of the people who are in that housing.
24 And sort of less life and death, but didn't consider
25 the administrative burdens that this would place on the

1 CoCs, who would then have to run a new competition,
2 when the whole point or a large part of the point of
3 having a two-year NOFO was so that people wouldn't have
4 to run this competition two years in a row. It's a
5 huge burden on the CoCs.

6 The Defendants essentially say that this is a
7 policy-driven choice and there was a change in
8 administration so of course they should be able to do
9 this. But the fact that there's a change in
10 administration and a change in policy preference is not
11 free rein to make whatever changes you want.

12 THE COURT: So can we just clarify this because
13 I think I've said this approximately a hundred times:
14 It's not about the policy. It's about the methodology.

15 Is that -- I mean I understand you may have
16 disagreements with the policy. That's not the Court's
17 purview. This Administration is entitled to its
18 policies. It's not entitled to its own processes. Is
19 that essentially the argument?

20 MS. BATEMAN: That's right, your Honor. I think
21 I would add sort of an additional point on that which
22 is that in these particular facts and circumstances and
23 given the amount of time that has passed, it is no
24 longer reasonable for them to take an action that would
25 be rescinding this old NOFO.

1 (Overlapping speech)

2 THE COURT: Right, but because the deadline
3 passed, not because somehow the policy is flawed. Is
4 that -- because they didn't do what they needed to do
5 within a time frame that had been set forth by
6 Congress; correct?

7 MS. BATEMAN: That is correct. I think there is
8 an additional reason. Say there were no statutory
9 deadline, say Congress had remained silent on that,
10 which of course is not the case, but just say
11 hypothetically. I think it would still be
12 substantively unreasonable, substantively arbitrary and
13 capricious at this point in time to rescind the old
14 NOFO because of the serious harms that would work on
15 the communities that the Congress passed the statute to
16 protect.

17 It's not to say that they don't have a right to
18 their own policies to the extent that they can
19 effectuate those policies within the confines of the
20 statute. But even if they could do that, which is, you
21 know, a question we may be litigating at some point;
22 but even if they could do that, there's a separate
23 point that at this point for fiscal year 25 funding it
24 is just too late. It is too late to make that shift.

25 THE COURT: And it wasn't too late in March to

1 go to Congress and say we would like to change the
2 policy and here's how we would like to change it, and
3 we'd do X, Y, and Z with the funding appropriation or
4 with the statute that's already in place. But that
5 isn't November or December; it was in March.

6 MS. BATEMAN: Right, your Honor.

7 THE COURT: Thank you. Continue.

8 MS. BATEMAN: Okay. And just briefly on the
9 sort of nonmerits arguments that the Defendants raise,
10 they raise three of them, saying that the Court doesn't
11 even have power to consider the merits challenges to
12 the rescission.

13 First they say that the rescission is a final
14 agency action, and for two reasons they say. They say
15 it's actually not a discrete action because we did
16 these things that sort of foreshadowed or people should
17 have known it was coming. That's ridiculous. And, you
18 know, the agency doesn't get out of review of its
19 actions by sort of drawing it out.

20 They also say that the rescission does not
21 produce legal consequences; but, of course, it does.
22 Under the fiscal year 24-25 NOFO grants would be
23 awarded under certain criteria and conditions, and
24 those are no longer the criteria and conditions under
25 which grants will be awarded. That produces legal

1 consequences and is final agency action.

2 They also say that we don't have standing to
3 challenge the NOFO because the relief that the Court
4 could grant in their view doesn't redress the harms
5 that we're facing in not having the funding. But that
6 is not a standing question. That is a merits question,
7 you know, *Steel Co.* and other cases that we cite in our
8 brief make clear that is a not jurisdictional standing
9 question; it's a merits question.

10 And then the third point they make is that this
11 is committed to agency discretion by law. That is a
12 rare and narrow exception to when judicial review is
13 available. That exception exists only when there are
14 no meaningful standards against which to judge the
15 agency's exercise of discretion, you know, when there
16 is no law to apply.

17 And there is certainly law to apply here.
18 There's, of course, the statutory deadline, but then
19 there's also the CoC statute and everything the CoC
20 statute says about the criteria HUD should be
21 considering when awarding funds, everything the CoC
22 statute says about how renewals are important and how
23 stability is important. So those provide meaningful
24 standards against which the Court can judge HUD's
25 exercise of discretion.

1 On the requested relief, we've asked for three
2 things, as I mentioned: A stay of the rescission, an
3 injunction barring the Defendants from taking a new
4 agency action to rescind the NOFO all over again; and
5 third, an order requiring them to begin processing the
6 renewal so that there isn't further delay if and when
7 we win final judgment.

8 THE COURT: Tell me the third one. Where does
9 the Court have the authority to order them process
10 those renewals?

11 MS. BATEMAN: So you would have both inherent
12 equitable authority, you know, injunctive, to grant
13 that injunctive relief. And the APA also recognizes
14 the Court's equitable authority to do that in 5 USC 703
15 and also in 5 USC 705 which authorizes the Court to
16 issue necessary or appropriate process to preserve
17 status or rights. Of course, the status or rights that
18 we are seeking to preserve here are people's
19 eligibility for funding, for renewal funding under the
20 old fiscal year 24-25 NOFO. If that fiscal year 24-25
21 NOFO were in place, HUD would be processing renewals
22 under that; so that's the sort of status quo ante that
23 we are trying to preserve here is status quo ante in
24 which HUD would be taking those steps. And so that
25 sort of answers the Defendants' objections about the

1 Court not having authority to issue the these types of
2 injunctive relief.

3 I will briefly also mention that they
4 characterize that request for an order requiring them
5 to start processing, they characterize that as a
6 mandatory injunction that the Court can't issue. So
7 there are a couple problems with that: (1) The
8 First Circuit has said that that doesn't actually count
9 as a mandatory injunction because it's just preserving
10 the status quo, for the reasons I was just saying. But
11 also even if it were properly characterized as a
12 mandatory injunction, that doesn't make a difference.
13 As the First Circuit said in *Braintree Labs* the
14 standard is the same, you know, of course the court
15 shouldn't be granting injunction unless the
16 circumstances require it; but the same four-factor test
17 that we look at as for any type of injunction, and
18 here --

19 THE COURT: I'm sorry; go ahead.

20 MS. BATEMAN: I was just going to say that the
21 exigencies of the circumstances certainly demand it.
22 We're facing funding gaps, funding gaps starting in
23 January. People need awards to be able to continue
24 providing housing to people, and the delays are just
25 causing harm.

1 THE COURT: And if the Court were to, say, have
2 the authority to enjoin the rescission of the NOFO and
3 enjoin -- and preclude the agency from issuing a new
4 NOFO, the effect of not being able to order the
5 processing of the current, for the current NOFO, the
6 24-25 NOFO would be that the agency would then be not
7 able to spend the money that Congress had appropriated
8 and directed them to spend for housing. Is that
9 essentially --

10 MS. BATEMAN: I apologize; could you say that
11 one more time.

12 THE COURT: So looking at the three things that
13 you're asking for, you're asking for me to enjoin the
14 rescission of the 24-25 NOFO; and then, if you're
15 successful on that, for the Court to then preclude the
16 agency from issuing a subsequent NOFO. And then if the
17 Court has the authority to do those two things, the
18 argument the Court has the -- no authority to do the
19 third thing then puts the agency in a position where
20 they would be not spending funds that Congress had
21 directed them to spend. Is that essentially sort of
22 the equitable argument, for lack of a better word?

23 MS. BATEMAN: That is not quite the equitable
24 argument we're making. The argument we're making is
25 that the irreparable harm that we're facing is not

1 being able to get these funds and not being able to get
2 these funds in time to keep people in the housing that
3 they're relying on. And so it's really a timing
4 problem, and the reason we're asking for the order
5 requiring them to start the process of making those
6 renewals is to ensure that if and when we get final
7 judgment, say final judgment is in February, that
8 people then can get their awards in February, as
9 opposed to two months later as they engage and HUD has
10 to go through all the steps it needs to actually make
11 the awards.

12 And with that, unless the Court has further
13 questions for me, I will turn it over to Mr. Muller to
14 address the challenges to the 25 NOFO.

15 THE COURT: Did we sufficiently address
16 mootness? The government is arguing it's moot because
17 they withdrew the NOFO.

18 MS. BATEMAN: I will address that briefly before
19 turning over to Mr. Muller. The mootness argument I
20 think does not apply to our claims challenging the
21 fiscal year -- challenging the rescission of the fiscal
22 year 24-25 NOFO.

23 THE COURT: I see.

24 MS. BATEMAN: I don't think there is any dispute
25 that that has still been rescinded. The rescission is

1 still in place. HUD is standing by that rescission, so
2 that is still very straightforwardly a live
3 controversy; and I think Mr. Muller will also address
4 why the challenges to not withdrawn 24-25 NOFO are not
5 moot.

6 THE COURT: Okay. Thank you.

7 MR. MULLER: Thank you, your Honor. Zane Muller
8 with the Washington State Attorney General's Office on
9 behalf of the Plaintiff States. I want to touch briefly
10 on a timing argument that's in our brief and then turn
11 to mootness.

12 Defendants argue that the June 15th deadline is
13 a mere technicality, but that reading is not compatible
14 with any coherent reading of the McKinney-Vento Act,
15 and that's because the timing provision of the statute
16 has to be read together with the renewal provision of
17 the statute, and that's basic of canon of harmonious
18 construction. Under 42 USC 11382(b), HUD is required
19 that it shall release a NOFO for grants not later than
20 three months after the enactment of the Act making the
21 relevant appropriation.

22 Reading that in conjunction with the renewal
23 provision of the statute, which is 11386(c), Congress
24 directed that HUD make -- that the funds shall be
25 available for renewal contracts in successive one-year

1 terms. So that language is mandatory, shall be
2 available in successive one-year terms.

3 The idea that HUD can sort of indefinitely delay
4 renewals to whenever it gets around to publishing a
5 NOFO that it likes, to read the word "successive" out
6 of the statute, that the statute doesn't permit those
7 funding gaps; and in the 20 years that this program has
8 been operative, you know, HUD points to one or two, you
9 know, delays when the NOFO may have (indecipherable).
10 They don't point to any situations where their extent
11 is funding gaps; and that's the problem here, your
12 Honor. That's the harm that's really affecting the
13 Plaintiff States.

14 I want to turn to mootness. And your Honor is
15 correct that, you know, elections have consequences. A
16 new Administration is entitled to enact policy
17 priorities, but they have to do so within that
18 guardrails that are set by Congress, and that's the
19 problem in addition to the timing piece that we're
20 challenging with the 2025 NOFO, why we're asking the
21 Court to enjoin that NOFO, not just its rescission, the
22 24-25 NOFO, but also the substantive conditions that
23 are within them.

24 HUD's comment here is sort of a classic case of
25 voluntary cessation. You know, rather than defend the

1 substance of the 2025 NOFO, Defendants withdrew it one
2 hour before the hearing on its contents. Defendants
3 have more or less admitted that they intend to rehash
4 the conditions in that NOFO in their forthcoming NOFO.
5 If you look to Footnote 3 in Defendants' opposition
6 brief, Defendants do not maintain that the forthcoming
7 NOFO will not include any of the same or similar
8 conditions that appeared in the withdrawn 2025 NOFO.
9 In the meantime, CoCs across the country have to pause
10 their intake of homeless people because they don't know
11 if they have funding next year, they don't know what
12 those conditions are going to be; and it's the
13 uncertainty leading to these funding gaps that is the
14 critical harm that the Plaintiff States are facing in
15 this case.

16 This is precisely the situation that the
17 voluntary cessation doctrine exists. There's already
18 been enough waste of judicial and administrative and
19 state resources with this sort of, you know, withdrawn
20 NOFO, forthcoming NOFO, all well outside the statutory
21 time frame.

22 In a recent case in this court, your Honor,
23 Judge Smith faced similar conduct from FEMA. This is
24 the *Illinois v. FEMA* case. He found that FEMA had not
25 met its formidable burden of showing that the conduct

1 was not reasonably expected to recur. The conduct
2 there, very similar to what we're seeing here, FEMA
3 announced grant funding conditions tied to immigration
4 enforcement -- so unrelated to the statute -- tried to
5 walk them back after Plaintiff States challenged those
6 conditions, and Judge Smith found that those conditions
7 were not mooted by the withdrawal.

8 *New York v. Trump*, a similar case, Chief
9 Judge McConnell of this court, similar gamesmanship by
10 the Office of Management and Budget where you're having
11 the White House coming out and saying, well, we
12 withdrew the memorandum but not policy, following a
13 challenge by the plaintiff states. And it's this
14 haphazard approach, your Honor, that's really the
15 reason that we think mootness is not something that the
16 government should be entitled to, and it's why we're
17 asking your Honor to enjoin not just the rescission of
18 the 24 NOFO, but also the substance of the 25 NOFO.

19 Unless your Honor has any questions about the
20 sort of arguments that we made about the substance of
21 the NOFO, we would note that the Court is entitled to
22 treat those arguments as conceded. There's no response
23 to them in the Defendants' opposition brief. Unless
24 your Honor has questions, I'm happy to move on to
25 irreparable harm.

1 THE COURT: No, I think they weren't addressed
2 in the reply brief, so I'm assuming the government is
3 conceding those arguments.

4 MR. MULLER: Thank you. So turning to
5 irreparable harm, your Honor, I think it's just
6 important, again, to sort of reframe the stakes in the
7 case. We're talking about families with children,
8 veterans, people with disabilities, survivors of
9 domestic violence; and for whoever at HUD is sort of
10 making these decisions to, you know, indefinitely delay
11 the ability of providers and states to serve these
12 people, the fact that, you know, we're looking at
13 evictions in wintertime in CoCs across the country is,
14 frankly, breathtaking.

15 So there's the immediate harm, the
16 administrative harms that we've talked about, your
17 Honor, and that's the sort of confusion and chaos
18 imposed by an overnight change from decades of
19 practice. Very similar to the *New York v. DOJ* case in
20 front of your Honor, the uncertainty isn't just a
21 matter of, you know, additional paperwork. It's
22 causing real harm. It's derailing the operation of the
23 CoCs, providers. You know, many of these providers,
24 they rely on various sources of funding, and the fact
25 that they're not able to have even the assurance of

1 funding the way they have previously under the sort of
2 normal practice of HUD, the sort of renewal structure
3 that Congress dictated, means they're not able to get
4 other sources of funding. Many CoCs, as we pointed out
5 in the Byron Declaration from the state of
6 Massachusetts CoC Office, there are people sleeping
7 outside today who would not otherwise be sleeping
8 outside, because CoCs are having to pause intake
9 because they don't know whether they're going to have
10 the shelter beds that they thought they were going to,
11 that they relied on in the CoC Program.

12 As my colleague pointed out, grants are starting
13 to expire as early as January, and we're going to see
14 mass evictions on a rolling basis, and each month of
15 delay is going to be more harms. You know, in
16 California 43,000 people are housed as a result of CoC
17 funding. In New York City, as many as 10,000 people.
18 We have declarations that we put in to supplement, your
19 Honor, this is the Leone (phonetic) Declaration from
20 New York that shows that each month of delay without
21 certainty and without funding, there are hundreds of
22 units of expiring housing, and hundreds of individuals,
23 hundreds of families are being thrown out into the cold
24 in wintertime because HUD cannot get its act together.

25 With respect to state-specific harms to the

1 state agencies, we've touched on those briefly, your
2 Honor, with the sort of the administrative gap and the
3 harm. But I want to point out also the burden to state
4 emergency health care education systems that would
5 result if HUD is, you know, this policy is not to
6 proceed. In Maryland, this is Meister Declaration,
7 those costs are estimated at \$230 million sort of
8 burdens additional to other state services. You know,
9 there's a lot of evidence that housing first and sort
10 of getting folks in housing, keeping them housed
11 reduces state expenditures on urgent emergency care and
12 is sort of consensus in the field.

13 You know, HUD's conduct is jeopardizing state
14 loans to providers who have gotten CoC funds and state
15 funds and now may not be able to, you know, continue
16 their operations, and it risks capital investment the
17 states have made in housing projects. This is talked
18 about as something Illinois is facing in particular.

19 So with that, I know there are other harms.
20 Unless your Honor has any further questions on these
21 points, I'd like to turn it back to colleague,
22 Ms. Bateman.

23 THE COURT: Okay.

24 MR. MULLER: Thank you.

25 MS. BATEMAN: Yes, your Honor. The harms to the

1 National Alliance Plaintiffs are very similar and
2 they're, again, facing funding gaps that means they're
3 not going to be able to keep people in housing. The
4 Department of Justice -- excuse me. The Department of
5 Housing and Urban Development does not do much to
6 dispute those harms. What it does is Oh, you're
7 focusing so much on the harms to the people who are
8 going to be displaced into homelessness, that's not a
9 harm to you. But actually, that's not true.

10 As this court, the District of Rhode Island has
11 recognized and other courts have recognized, harms to
12 an organization's mission is harm, irreparable harm to
13 the organization, and when people who they are
14 serving -- to help them get out of homelessness -- have
15 to be forced back into homelessness, that is a harm to
16 their mission. And as my colleague was discussing, the
17 chaos and confusion is also harm to them.

18 THE COURT: Is there anything else you wish to
19 add?

20 MS. BATEMAN: Nothing further from me, your
21 Honor, unless you have further questions, or Mr. Muller
22 has anything.

23 THE COURT: No, I don't.

24 Mr. Muller, did you want to add anything?

25 MR. MULLER: Nothing further for Plaintiff

1 States, your Honor. Thank you.

2 THE COURT: Thank you.

3 Mr. Bailey.

4 MR. BAILEY: Good morning, your Honor.

5 THE COURT: Good morning.

6 MR. BAILEY: The heart of the claims currently
7 before the Court concern the 2024 NOFO rescission and
8 the appropriate remedy for that rescission if the Court
9 finds the rescission violated the APA. I'm happy to go
10 through any particular questions the Court has now, by
11 my plan was to start with the merits of the contrary to
12 law and arbitrary and capricious claims with respect to
13 the 2024 rescission.

14 THE COURT: Well, I'd take to talk about -- and
15 maybe you can do it within the contrary to law and
16 arbitrary and capricious. The timing of this seems
17 that the agency is basically changing HUD's
18 longstanding HUD policy or is that what they're seeking
19 to do, changing longstanding HUD policy of housing
20 first, which I think has been a policy of HUD's for
21 about 20 years.

22 That is a policy decision that the agency may
23 seek to change. The question is how are they seeking
24 to change it, and did they go to Congress in March and
25 say we would like you to change this statute or we'd

1 like you to change the appropriations statute. Or is
2 this something that sort of somebody thought of in, you
3 know, the summer or whatever and then went ahead in
4 this sort of chaotic manner and tried to do it after
5 the fact. It feels like the time to do this is maybe
6 in the next appropriations bill, in the next
7 congressional session, which I think is still the same
8 congressional session, the two-year session.

9 But the concern I have is that we keep getting
10 this agency action that is happening after an
11 opportunity to go to Congress and have the agency
12 action, the law changed consistent with what the agency
13 would like to do, but the agency's failure to seek the
14 proper mechanism. So I don't know if you can address
15 that or if you're going to address that in the contrary
16 to law part; but it's concerning to the Court that we
17 sort of keep having these cases where the agency issues
18 these, you know, orders or memos or changes in policy,
19 but they haven't done the work to get that policy
20 through; and so it sort of begs the question are they
21 really intending to change the policy, or is the chaos
22 the point.

23 MR. BAILEY: Yes, your Honor, I'm happy to
24 address that as I go into the contrary to law section.
25 The first thing that I'd like to say is the way that

1 HUD is able to change the way the program works is
2 through changing the NOFOs. It can change the
3 requirements. It can --

4 THE COURT: Within the confines of what Congress
5 has -- this is where I think that we're talking past
6 each other, Mr. Bailey. And I don't want to interrupt
7 you, I'm going to let you make your argument, but I
8 think that you need to address the fact that Congress
9 has set forth parameters within the statutes, within
10 the funding appropriations bill that was just passed
11 during this Administration in March; and those things
12 the Administration either didn't seek to change or
13 decided that that was too difficult and they wanted to
14 do it in this other way that appears to be contrary to
15 the statutes. So, respectfully, that's not the only
16 mechanism. HUD can't decide tomorrow that they don't
17 want to house homeless people, that they've decided
18 they're going to house, you know, homeless animals
19 instead; I know that's flip, and I don't mean to be
20 flip.

21 So there are parameters set forth by Congress.
22 That's sort of how our system works and you have to
23 follow them, just like I do.

24 MR. BAILEY: I apologize if I misunderstood,
25 your Honor. I absolutely agree that there are

1 parameters set by Congress that bind (indecipherable).

2 I'm talking from the process perspective my
3 understanding is that, you know, the Continuum of Care
4 Program is not the exact same year after year. It's
5 not the exact same program. I mean there are going to
6 be at least changes on the margins, response to
7 evolving circumstances. And so at least to an extent.
8 The Continuum of Care Program can be changed by the
9 Secretary through the NOFO, understanding that there
10 were substantive guardrails in the statute, too.

11 But process-wise I don't think it's the case
12 that HUD has to go to Congress whenever it wants to
13 make any kind of change. And so when we look at
14 timing, there's a -- all agree there's a statutory in
15 the organic act, a three-year deadline for -- I'm
16 sorry.

17 THE COURT: Three months; right?

18 MR. BAILEY: Thank you, your Honor.

19 THE COURT: No, no; that's okay.

20 MR. BAILEY: Three months after appropriations
21 are enacted.

22 So I heard my friend on the other side said that
23 we pointed out one or two times that the NOFO was late,
24 and I think this is very important context and not just
25 context but would show that Plaintiffs' argument just

1 can't be right.

2 The NOFO that Plaintiffs ask this Court to
3 restore, it was issued past the three-month deadline.
4 It was issued four months and three weeks after. The
5 fiscal year 2023 NOFO, that was a full six months
6 after. 2022, four months and two weeks. 2021, seven
7 months and three weeks.

8 THE COURT: And what happened in the meantime?

9 MR. BAILEY: Well --

10 THE COURT: Because now we're six months past
11 the deadline, a little more than six months past the
12 deadline. Even when you issued, it was five months
13 past deadline. So those examples that you're giving us
14 going back to 20 -- I forget what you just said, 2017?

15 -- the NOFOs, what happened to the existing NOFOs at
16 the time that those NOFOs were delayed?

17 MR. BAILEY: Yes, your Honor. So my
18 understanding is that at least in the past decade the
19 NOFOs have all been yearly and only authorized to
20 operate for one year. So in the ordinary course there
21 is an annual NOFO that sets the Continuum of Care
22 essentially program requirements for the following
23 fiscal year. So each year the Secretary issues a NOFO
24 and that is at least to some degree a macedon
25 (phonetic) to change how a program operates whether you

1 have, you know, priorities, new applicants, projects.

2 So my point of this context is that I don't
3 think it's the case that when the agency misses its
4 deadline they just totally lose the ability to change
5 the program because every year the NOFO I would assume
6 at least on the margin changes something. It's a
7 \$3.7 billion program this year. I would expect that
8 there's something to change.

9 So that said, this is why -- before I get to why
10 I don't think Plaintiffs' rule would work in practice,
11 I'd just like to start with the basic tenets, and I
12 think at least the National Alliance Plaintiffs agree
13 the presumption administrative law is that if the
14 statute doesn't specify a consequence for
15 non-compliance with the deadline, the federal courts
16 are not going to impose a coercive sanction unless,
17 unless that's in the statute. And the idea being that
18 when Congress puts the guideline in the statute, unless
19 it says the agency is going to be divested of its
20 power, it would rather it be late than never; and
21 there's no consequence specified here.

22 So I'll also back up and say this is a question
23 of statutory interpretation because a three-month
24 deadline is inorganic that which 18 USC 11382(c), I
25 believe. So it's a question of statutory construction,

1 does that deadline essentially -- is it essentially
2 jurisdictional such that it's going to divest the
3 agency of authority.

4 And going back to my point about how these NOFOs
5 are primarily, they only operate for one year. They
6 don't contemplate projecting into a second year. So
7 let's take -- let's go back to 2015 where the NOFO was
8 nine months after appropriations. If that had been
9 challenged and then it was found that, you know, it was
10 unlawfully delayed, it missed a deadline, the agency
11 just has no power to enact one, it would essentially,
12 it would essentially mean that the agency couldn't
13 operate the Continuum of Care programming.

14 THE COURT: Let me ask you a question. So that
15 was nine months after the deadline, so it was a full
16 year after the appropriations though. Is that what
17 you're saying?

18 MR. BAILEY: No, your Honor. Nine months after
19 the enactment of appropriations.

20 THE COURT: So six months after the deadline.

21 MR. BAILEY: Yes, your Honor.

22 THE COURT: In 2015 was it so late with the
23 appropriations by Congress that we were facing, that
24 the agencies were facing and the states were facing a
25 funding gap or was funding continued? That's the part

1 that nobody -- that you can't seem to answer, is what
2 happened at that point. Did people just not get
3 funding? Did they continue the same funding? Was the
4 appropriations bill passed like in October when or
5 September when we expect it to be passed? And were we
6 talking about being, you know, 18 months before or
7 15 months before funding was going to lapse?

8 MR. BAILEY: Your Honor, I think the key here,
9 and this is why I backed up to talk about being a
10 matter of statutory construction, is that this isn't a
11 fact and circumstances balancing test where a court
12 says, well, in this situation should the agency lose
13 the ability to do the thing that Congress asked it to
14 do. But the question is does the statute make that
15 deadline and fact jurisdictional.

16 THE COURT: Okay. We can get to my questions
17 when we get to the APA, arbitrary and capricious and
18 then, of course, irreparable harm.

19 But if you don't know the answer you can just
20 say I don't know.

21 MR. BAILEY: Your Honor, I don't have additional
22 context, so that's why (indecipherable).

23 THE COURT: For any of the other years you
24 cited?

25 MR. BAILEY: Except that they were past the

1 three-month deadline and there was no suggestion that
2 the agency just couldn't administer the program that
3 year. Again, it wouldn't have been another one from
4 the year before to just spring back into life. The
5 Plaintiffs' argument, it could only be plausible
6 because there's this 2024 NOFO that contemplated going
7 in 2025 and so they --

8 THE COURT: It's a two-year NOFO. Was there
9 anything in the statute that prevented HUD from issuing
10 the two-year NOFO?

11 MR. BAILEY: No, your Honor. That's not the
12 point. I'm just saying that the Plaintiffs' argument
13 can only work because there is a two-year NOFO. If
14 there was a five-year NOFO it would be that the agency
15 just like couldn't (indecipherable) the Continuum of
16 Care Program.

17 THE COURT: Right. But that's not where we are.
18 We're with the two-year NOFO.

19 MR. BAILEY: I understand that, your Honor. And
20 I used that hypothetical because I think it informs the
21 statutory construction. But I think I understand the
22 Court's position, so I'm happy to move on.

23 I guess -- unless you have more granular
24 questions I would like to at least address the
25 statutory renewal point that the State Plaintiffs

1 raised.

2 THE COURT: You need to slow down; I'm sorry, I
3 just got a message that you're speaking too quickly for
4 the stenographer. I apologize. Just slow down a
5 little bit; and as I said it's not a criticism, it's
6 just we tend to do that when we're on Zoom, everybody
7 does it, so --.

8 MR. BAILEY: Thank you, your Honor. Please just
9 let me know if I'm going too quick.

10 THE COURT: I will try.

11 MR. BAILEY: So I would just like to briefly
12 address the statutory renewal argument, and this is
13 based on, again, the organic act; they claim that
14 renewals are essentially mandated when conditions are
15 met. And I don't think that the Court actually needs
16 to decide that. Whether or not the statute requires
17 renewal of certain awards, I don't think that means the
18 deadline's fatal to HUD that they would issue a NOFO.
19 And this, again, goes back to my prior argument. If we
20 looked at this deadline as jurisdictional, the
21 consequences would just be (indecipherable).

22 And the last point on this, I think the closest
23 case the national -- the closest case that I recall
24 seeing in the reply briefs as to why such a drastic
25 sanction would be appropriate is the First Circuit's

1 decision in *Castañeda v. Souza* in 2015, and that
2 concerned a provision of the I.A. that barred the A.G.
3 from releasing criminal aliens on bond after they had
4 been placed in immigration custody, and the court found
5 that essentially this was one of the exceptional
6 circumstances and that as a matter of statutory
7 construction that they found the deadline to
8 essentially be jurisdictional.

9 And I'd just like to point out the important
10 differences here. That timing deadline, it appeared --
11 and I'm quoting: Appeared within an express exception
12 to a grant of authority.

13 The court went on, again I'm quoting: Itself
14 makes clear what consequence would follow if such time
15 limit is not met.

16 And the final thing that I think is key here is
17 the court noted that the A.G. still retained the broad
18 discretion to decide whether to assume and maintain
19 *Castañeda*.

20 And for all the reasons I just said, that would
21 be the exact opposite result here if this deadline was
22 treated as a fatal possibility to issue a NOFO.

23 So at this point, your Honor, I'd like to move
24 on to the arbitrary and capricious claim.

25 THE COURT: Please.

1 MR. BAILEY: So your Honor, our basic position
2 here is that the decision to rescind the NOFO was
3 reasonable because the government acts reasonably when
4 it rescinds something that relies on several
5 since-rescinded legal directives. And what I'm talking
6 about here is that the 2024-2025 NOFO, it was based off
7 of -- I shouldn't say based off of. It's requirements
8 were informed by several Executive Orders, you know,
9 for instance, one relating to environmental justice,
10 other --

11 THE COURT: Which ones, and issued by whom and
12 when?

13 MR. BAILEY: Your Honor, my understanding is
14 that these were issued in the Biden Administration, but
15 I would not -- I would have to check exactly. But
16 these were at the time that the 2024 NOFO was
17 promulgated, these Executive Orders were on the books.
18 They were legal directives to agencies. They informed
19 how the NOFO requirements came out. We discussed in
20 our briefing that requirement that agency focus on
21 environmental justice. There was a very similar
22 provision in the NOFO.

23 And so now this Administration, President Trump
24 has rescinded at least three Executive Orders that
25 informed that 2024 NOFO.

1 THE COURT: Which one? Which ones?

2 MR. BAILEY: Your Honor, I know Executive
3 Order 12,898 -- I'd have to look back at my briefing to
4 give you the exact Executive Orders. But we identify,
5 we identify three there that have been rescinded and
6 that those directives directly inform the requirements
7 of the NOFO; we cite the 2024 NOFO.

8 And I understand that this is, this might be a
9 difficult position, but the government is basic that
10 when you have these rescinded legal directives, the
11 government is acting reasonably when it comes out with
12 a new policy.

13 THE COURT: You're calling them legal
14 directives, and let's just say what they're. They're
15 policy directives.

16 MR. BAILEY: Yes, your Honor.

17 THE COURT: Okay. So they're not legal; a
18 lawyer didn't issue them. The Presidents issue them --
19 some of the Presidents have been lawyers, but not all
20 of them, and they're not necessarily legal directives.

21 So what I think the concern here is, is that you
22 can't just -- agencies have different rules that they
23 have to follow, and this is something that we seem to
24 be coming up against quite a bit. And as you noted,
25 Judge Smith had a case -- or maybe the Plaintiffs

1 noted that there were cases I've had, there were cases
2 that Judge McConnell had, Chief Judge McConnell had;
3 and they're all sort of coming up against the fact that
4 just because you say you have this policy doesn't mean
5 that policy is automatically enacted. There are things
6 that have to happen. And we have an Administrative
7 Procedures Act. Now, you may not like it, I may not
8 like it having had to deal with it; but the fact of the
9 matter is Congress set forth a mechanism for putting
10 policy into action, which is what Congress is supposed
11 to do; right? So it's not about Executive Orders and
12 legal directives. That's -- if there were legal
13 directives the Court could review the Executive Order.
14 They're not legal directives. What they are is policy
15 directives; correct?

16 MR. BAILEY: Well, your Honor, I don't think
17 those things are mutually exclusive. I think that
18 Executive Orders can function as legal directives to
19 agencies in certain circumstances depending on the
20 phrasing.

21 I think what's important here is -- I don't
22 believe there's any dispute that the rescission of the
23 Executive Orders is not an APA problem; there's --
24 we're not talking about that; right? So whatever
25 process problem might there be with that, we're not

1 looking at that, so --

2 THE COURT: Correct. But they can issue
3 whatever Executive Orders they want. I mean Presidents
4 have issued I think, I had read something the other day
5 that FDR has the record or at least the modern record.
6 So you can issue Executive Orders.

7 What we're talking about is the legal framework
8 within which those policies can be effectuated, and I
9 think that conflating those two and calling Executive
10 Orders legal directives, it is misleading to the public
11 who doesn't understand necessarily the law surrounding
12 how these things are effectuated.

13 Do you know what I'm saying?

14 MR. BAILEY: Your Honor, I appreciate your
15 position. The government has a different view that
16 Executive Orders certainly are legal directives. I
17 mean there are certainly, as you're well familiar, many
18 challenges to these Executive Orders. If they were not
19 functioning in legal directives to agencies, I'm not
20 even sure any of those challenges could get off the
21 ground.

22 THE COURT: They're policy directives to
23 agencies, and what's challenged is the agency action
24 before the Court; isn't that right? I mean Executive
25 Orders themselves are not -- nobody is challenging the

1 President's right to issue Executive Orders. The
2 question is how the policy set forth in those orders
3 are effectuated by the agencies. Am I wrong about
4 that? If I'm wrong, tell me.

5 MR. BAILEY: Your Honor, I've personally
6 litigated cases where the relief is asking to enjoin
7 Executive Orders, so I can't say that --

8 THE COURT: Okay.

9 MR. BAILEY: But I (indecipherable) that. The
10 processing analysis is at the agency level as assigned
11 by the APA.

12 THE COURT: Go ahead. I didn't mean to take you
13 off track, so take a minute to get back where you were.
14 I apologize.

15 MR. BAILEY: I appreciate the Court's questions.
16 I just, I want to wrap up on this part of the arbitrary
17 and capricious point before I move on to reliance, at
18 the risk of repeating myself. And I think that it is a
19 unique situation when you have rescinded Executive
20 Orders that no one doubts that action was fine. And so
21 when the legal framework and the policy framework,
22 again, not mutually exclusive; but when both of those
23 things change I think it is reasonable for the
24 government to issue a new policy, and I submit that it
25 would be arbitrary and capricious if the government

1 didn't because it stuck with the program that was based
2 off of laws or Executive Orders, policy directives that
3 weren't --

4 THE COURT: Different, different laws versus
5 policy directives. Those are two different things.
6 That's where you're like, I think that's where we're
7 conflating things and that's where the public
8 misperception is. The policy directives are separate
9 from the law that Congress has enacted.

10 MR. BAILEY: I understand, your Honor. At this
11 point I think I'd like to talk about reliance,
12 unnecessary you had more questions.

13 THE COURT: No. That would be good. Great.

14 MR. BAILEY: So Plaintiffs assert reliance
15 interests on the 2024 N0F0 do not render its rescission
16 arbitrary and capricious. I think importantly it
17 didn't make any promises to Plaintiffs regarding the
18 issuance of awards at any point in time. It certainly
19 didn't make any promises to them about issuance of the
20 2025 awards on a particular timeline. And the 2024
21 N0F0, it carved out, it says HUD reserves the right to,
22 you know, re-award to 2025. It wasn't some sort of
23 entitlement. And importantly, it put all CoC
24 participants on notice that HUD may issue a
25 supplementary N0F0 to accommodate a new Continuum of

1 Care Program or any the priority. And so I don't think
2 they can have very persuasive or provide full reliance
3 interest when you're put on notice that this is subject
4 to change. These are sophisticated actors, a lot of
5 money is involved here, and in that situation I don't
6 think that the reliance interests are enough to tip the
7 scales.

8 Again, in July Plaintiffs were put on notice
9 that HUD was very clear in its e-mail that the status
10 quo was unacceptable, it was going to be changing
11 priorities and that they should expect a new
12 application process and new NOFO. So again, as of July
13 it just confirmed what was already flagged back in July
14 of 2024, that there's going to be a new process and,
15 again, any reliance on what was there before is just
16 not reasonable. So for those reasons, I'd like to move
17 into remedy, which I think also involves on reliance
18 interest.

19 So even if the Court were to determine that the
20 rescission violated the APA, either as contrary to law
21 or arbitrary and capricious, the government's position
22 is that the proper remedy is at most to stay or vacate
23 the rescission. An injunction barring HUD from
24 rescinding or replacing the 2024 NOFO is just not the
25 proper remedy under this part of the APA. And I

1 understand if we think about the three requests the
2 National Alliance Plaintiffs made, they requested the
3 Court enjoin HUD from issuing a new NOFO, as the second
4 request, and the third request that the Court require
5 HUD to begin processing applications consistent with
6 the 2024. Those are functionally the same. If the
7 Court was -- an injunction barring HUD from issuing a
8 new NOFO would be the same as, functionally the same as
9 requiring it to operate under --

10 (Overlapping speech)

11 THE COURT: Can we agree the government has
12 waived its objections and agreed or conceded by not --
13 that the substance of the now-rescinded 2025 NOFO that
14 the Plaintiffs have said are unlawful, the government
15 didn't engage with that in briefing or in argument, and
16 so is that conceded? I would assume it is. That's
17 what the law says, that I can assume that the
18 government has conceded that; correct?

19 MR. BAILEY: Your Honor, we did raise threshold
20 mootness arguments, which would take care of that
21 claims. No, we certainly did not concede that.

22 THE COURT: I think you did though because you
23 didn't argue in the alternative Hey, if you don't find
24 this to be moot, judge, here's why these parameters or
25 things that are set forth are not contrary to law. So

1 I think you did waive it.

2 MR. BAILEY: Your Honor, I think the question of
3 whether we conceded something or whether we waived
4 something is different and maybe we're just talking
5 colloquially, --

6 THE COURT: Maybe.

7 MR. BAILEY: -- talking over each other, so I
8 apologize. I just want to be careful with the
9 representation I didn't hear that. We did not
10 concede --

11 (Overlapping speech)

12 THE COURT: I gotcha.

13 MR. BAILEY: -- but your Honor is absolutely
14 correct, we did not in our briefing take on the merits
15 that challenged the 2025 conditions. We instead
16 extended this argument.

17 THE COURT: Right. You didn't concede it, and I
18 shouldn't -- and that's my fault for using the improper
19 term. It's waived, not conceded. So, but the Court is
20 entitled to consider those arguments waived; correct?

21 MR. BAILEY: Your Honor, we did not address it
22 on the merits, and so I'm not going to push back on
23 that anymore.

24 THE COURT: Okay. Thank you.

25 MR. BAILEY: So as I said, the government's

1 position is that the proper remedy under the APA
2 Section 7062 is either stay or vacatur. It is not to
3 predetermine the agency's conduct on remand.

4 And so what we're asking for here if the Court
5 were to determine that the rescission is unlawful, the
6 agency be given a chance to do what the agency does on
7 remand and come up with a plan that addresses the
8 concerns that were raised by Plaintiffs.

9 Another way that I found helpful of looking at
10 this is stopping HUD from even issuing a revised NOFO,
11 that's the same as this Court holding that any revised
12 NOFO, no matter what it requires or how it's justified
13 would be unlawful. And I just, I don't think that's
14 the proper frame of analysis under the APA. I think
15 the agency is entitled to a chance on remand to fix its
16 own errors if there are any. Again, here, it's
17 possible that 2025 NOFO will have a contingency plan
18 with respect to funding, alleged funding gaps, or
19 alternatively a, you know, a sufficiently fulsome
20 record to show that they considered those.

21 And so again, your Honor, if this Court were to
22 conclude that the 2024 rescission was unlawful, we're
23 just asking this Court follow ordinary remand rules and
24 give the agency another chance, which it has been
25 working diligently to address Plaintiffs' concerns.

1 THE COURT: Okay. And if the Court were to take
2 up what you are offering, and you're saying that a new
3 NOFO could be issued as soon as, you know, today, can
4 you maintain the status quo while you're doing that?

5 And my other question is since you have waived
6 the argument about the substance, I'm assuming that
7 notwithstanding your footnote, the new NOFO won't have
8 the challenged conditions.

9 MR. BAILEY: Your Honor, I can't, I can't speak
10 to what the new conditions are of the NOFO. I don't
11 know that yet. What I will say is I was told by agency
12 counsel that the expectation is that it is today, by
13 close of business today. I'm not making promises for
14 the federal government.

15 THE COURT: No, absolutely. Believe me, I get
16 it.

17 MR. BAILEY: But --

18 THE COURT: But it cannot -- if the Court says,
19 if the Court were to take your invitation and said you
20 know what, the rescission is enjoined, but I'm not
21 going to do these other things; I'm going to let agency
22 do its job. I have two questions: (1) status quo, and
23 (2) does the agency understand that they've waived the
24 argument about the lawfulness of the conditions that
25 are in the now-rescinded 2025 NOFO?

1 MR. BAILEY: Well, your Honor, I don't -- I
2 think if this Court were to include that the arguments
3 were waived for purposes of this PI, I don't think that
4 that mean the government then estops in a different PI
5 from addressing that, and that would be a different
6 proceeding over the new NOFO. So I would respectfully
7 push back strongly on the idea that the government is
8 somehow estopped from addressing those arguments on the
9 merits.

10 THE COURT: Okay.

11 MR. BAILEY: And certainly if we thought that
12 that were the case we would have briefed the arguments,
13 and we would certainly appreciate the opportunity to do
14 so if the Court is inclined to find that way.

15 THE COURT: Understood. That makes sense.

16 But what the status quo?

17 MR. BAILEY: Your Honor, I apologize. What do
18 you mean by the status quo?

19 THE COURT: So we're in a funding lapse, and I
20 know that other people have been beyond the three
21 months; you're arguing that it's not jurisdictional and
22 so the HUD can issue these things late. But you
23 haven't pointed to any case where they issued them late
24 and there was a potential funding gap and told us what
25 the agency did. So can the agency, can the Court order

1 the agency or will the agency maintain the status quo,
2 continue the programs as they're funded now until a
3 future NOFO is issued, the proper amount of time is
4 allowed for applications and consideration and then,
5 you know, funding is reissued pursuant to that NOFO.

6 Is the agency going to continue -- because the
7 problem that we have here is the late in the day kind
8 of thing; right? Had we done this in March or April,
9 May, even June or July, we would have time for the
10 agency to issue an appropriate NOFO; to have states and
11 agencies go through the process, get the funding
12 pursuant to whatever policy that lawfully is part of
13 that NOFO; and then, you know, for the agencies that
14 were going to continue to receive funding, they would
15 continue to receive that funding.

16 But what you, what you appear to be doing now is
17 saying Hey, when there's no funding there's no funding,
18 you know, people will now be homeless, because of this
19 sort of lack of diligence in moving these things
20 forward. Does that make sense?

21 MR. BAILEY: I think I understand, your Honor.
22 I can't make any representations sitting here today
23 about what the agency is or is not willing to do. But
24 I understand the status quo. Even if the Court were
25 to, again, set aside the rescission, the 2024 NOFO, as

1 I started with, it didn't require the agency to renew
2 awards. It didn't require the agency to award a
3 particular grant and any particular person, especially
4 any particular timeline.

5 THE COURT: But it did allow the agencies and
6 states and whoever are applicants to not apply for
7 continued funding and have that funding just continue;
8 and I guess that's what I'm asking about.

9 MR. BAILEY: I'm sorry, could say it one more
10 time.

11 THE COURT: Maybe. I'm not sure if -- that was
12 unclear even to me. I apologize.

13 The 24-25 NOFO had a provision, as I understood
14 it and, you know, I'm a generalist, not a specialist as
15 you folks are in these areas of the law -- but had a
16 provision that permitted the agency, HUD, to
17 continue funding a second year without the need for new
18 applications. Is that accurate?

19 MR. BAILEY: Yeah, absolutely, at least as to
20 some participants and programs it allowed the agency to
21 renew without a new application, absolutely.

22 THE COURT: But not just to renew, to continue;
23 right? Like no new application, no new changes, no
24 whatever. They could just say, you know, you're
25 getting X number of dollars this year and you're going

1 to get the same amount next year, or we're increasing
2 it by whatever, you know, cost of living has gone up in
3 the last year, or reducing it, or whatever it is.

4 But is the agency willing to continue that until
5 a new NOFO is lawfully in place?

6 MR. BAILEY: Obviously, your Honor, I can't make
7 any representations about what my clients are willing
8 to and I think it's -- we might be talking past each
9 other or perhaps sort of getting back into the merits
10 of what the NOFO requires, but -- and my clients' view
11 is not that the 2024 NOFO while it was in place
12 required it to actually continue these programs to a
13 second year; it gave --

14 THE COURT: It gave them the option, but with
15 the 2024 NOFO in place and no 2020 -- with the 24-25
16 NOFO in place and no new NOFO, my question is what does
17 the agency plan to do with that provision in the
18 two-year NOFO? Because if it's reinstated, then it's
19 at the agency discretion to continue it; but it can't
20 be arbitrary and capricious, has to follow the rules,
21 it has to do all these things; correct?

22 MR. BAILEY: Absolutely has to follow the APA,
23 your Honor. I think perhaps where we're missing each
24 other is -- I expect the new 2025 NOFO to be issued
25 today and then that would govern the next fiscal year's

1 appropriation. So I don't -- I can't make a
2 representation. I don't think my clients would be
3 willing to say that they're going to operate under the
4 2024 NOFO because, again, the intention here as of this
5 afternoon we have a new 2025 NOFO. And Plaintiffs, if
6 it does not address Plaintiffs' concerns they're free
7 to challenge that, and we will work in good faith with
8 our briefing schedule and address it.

9 THE COURT: But -- okay. But if -- okay. I
10 think you've answered it; never mind.

11 I think that the issue for the Court is that you
12 keep doing this forever and never push out any money
13 from the agency and then that sort of contravenes
14 Congress's intent when they issued the appropriations
15 statute back in March, the budget bill, and when the
16 law was originally enacted. But I understand what
17 you're saying; and I didn't mean to make you the
18 spokesperson for the entire HUD just relative to this
19 case.

20 It's very difficult at this point because we
21 don't know what this new NOFO is going to say, so we
22 have to act I think as if it's not coming today. So I
23 want -- if you're done I would like to, I have a
24 question for the Plaintiffs.

25 MR. BAILEY: Your Honor, could I please just

1 readdress the --

2 (Overlapping speech)

3 MR. BAILEY: -- mootness issue.

4 THE COURT: Sure.

5 MR. BAILEY: So we would just like to clarify
6 here, I'm not going to push back and say we do not
7 concede anything and we do not waive anything, there
8 was no intentional giving up a right, so that is our
9 position. I understand the Court's view on our
10 arguments.

11 But as to the mootness argument itself, I think
12 that all agree that the rescinded 2025 NOFO conditions
13 are moot unless an exception applies, and the voluntary
14 cessation exception does not apply here because what
15 that's trying to get it is when an agency is trying to
16 evade a court's jurisdiction; and respectfully, your
17 Honor, respectfully, I understand -- I bring it up
18 intentionally because we would not (indecipherable)
19 standards on one day and put the Court on notice of
20 what's going on if we were trying to evade this Court's
21 jurisdiction.

22 THE COURT: But if they have one that's going to
23 be ready by the close of business today, they have one
24 that could have been ready by the close of business
25 yesterday, so it does -- and the constant sort of

1 churning and the chaos, as I said at the beginning,
2 seems to be the point. And I'm not putting that on
3 you, Mr. Bailey; you've done a very good job of
4 answering the questions that I've had and briefing and
5 all of that. But I think that saying, well, we didn't
6 waive anything and we might issue the exact same NOFO
7 again, it is evading the Court's jurisdiction,
8 notwithstanding what your position might be, or is an
9 attempt to evade it, I should say. So I understand
10 what you're saying. I realize that -- it's not
11 directed at you; it is sort of the chaos that's created
12 by these quick rescissions and issuing of things
13 without them being properly vetted through lawyers,
14 maybe, who know what the APA says and requires, know
15 what the statute says and requires. So that's the
16 concern I have. And I realize that's not for you to
17 answer, but it does appear to be an intentional evasion
18 of the Court's jurisdiction by the agency.

19 MR. BAILEY: Well, I can tell you, your Honor,
20 it's my understanding and impression that working
21 diligently to revise the NOFO and get it right; so I
22 don't, respectfully, think it's quite fair to say they
23 could have just had it ready in time if you want to get
24 it right and hope to avoid further litigation over the
25 revised NOFO that I understand will have material

1 changes designed to address Plaintiffs' concerns.

2 So the last thing that I'll say on this, I
3 promise this will be very quick.

4 THE COURT: Sure.

5 MR. BAILEY: Even the Alliance, National
6 Alliance (indecipherable) don't actually need that, we
7 don't actually need preliminary relief on the rescinded
8 conditions, and I think that's in a footnote in the
9 brief. And so I think they even acknowledge they're
10 not being irreparably harmed by conditions that have
11 been rescinded that might not come back. And so there
12 is no irreparable harm here for just because these
13 conditions -- even if this Court concludes the
14 conditions could be reimposed.

15 The funding gap that the State Plaintiffs
16 pointed to, that's not -- that has nothing to do with
17 the challenged conditions. That's what the 2024
18 renewal rescission (indecipherable).

19 So this will really be the last thing that I
20 say. I think as a matter of judicial economy it would
21 make sense to wait for the, to my understanding revised
22 NOFO to then address those provisions.

23 THE COURT: Wouldn't it just for judicial
24 economy -- and by the way, I think that ship has
25 sailed. But wouldn't it have made sense to issue it

1 yesterday? That's what I'm asking you, because we're
2 going through this whole thing; I've been working on it
3 and I have a law clerk who's working on it exclusively
4 for, you know, weeks on these things. And the question
5 becomes like, you know, why today by the close of
6 business? And I'm not -- that's not to you,
7 Mr. Bailey. That's to the agency lawyers who are
8 drafting these things. They know what is and is not
9 lawful, they know what is and is not arbitrary and
10 capricious, and the timing seems to be strategic.
11 That's all I'll say on that.

12 But I am going to ask -- I'm think the
13 Plaintiffs need to address something -- but I don't
14 want to cut you off. You don't need to rush through
15 your argument if there's more that you want to say,
16 Mr. Bailey.

17 MR. BAILEY: I had one point that we didn't have
18 the information available at the time of our briefing,
19 so I think this helps contextualize why it would be
20 improper to order that the agency start using the 2024
21 NOFO even if the Court sets aside the rescission.

22 So the 2024 NOFO, as we discussed, it
23 contemplated applications -- I'm sorry -- it
24 contemplated those participants in 2024 also being
25 funded in 2025 using those same applications. But it

1 also stated that there would be, there could be new
2 applications in certain circumstances, and that new
3 application deadline was I believe August 30th, 2025.
4 And because the agency wound down the 25-4 NOFO
5 (verbatim) starting in June of -- January of this year
6 when they removed it from the website, then in July
7 where they sent out e-mails saying there's going to be
8 a new one. And then -- I confirmed this with agency
9 counsel -- they shut down the portal that could be used
10 to submit new applications, and it did not accept new
11 applications; the idea being is that this is a
12 competitive process. You can't have two NOFOs in the
13 system at once; right? So all CoC participants were
14 going, were going to be judged under the forthcoming
15 2025 NOFO.

16 So if this Court were to restore the 2024 NOFO
17 and say that the agency has to start immediately acting
18 under it, that would certainly help these Plaintiffs,
19 but it would foreclose any new applicants from
20 participating in the process.

21 THE COURT: But is that because of the court's
22 action or because of the agency's lack of diligence in
23 acting quickly and within the timeframe set forth by
24 Congress?

25 MR. BAILEY: Your Honor --

1 THE COURT: That's rhetorical; I shouldn't make
2 you answer that. I can tell you it's because of the
3 Agency, not because of the Court.

4 So I understand your argument. It's a good
5 argument. I think the problem is that, you know, we're
6 talking about equity, and the agency can't say, well,
7 it's not fair, but they shut down the process, they
8 didn't accept applications, they didn't do anything to
9 make the process happen; they just sort of broke it and
10 said we'll fix it later and haven't yet done that.
11 That's how it looks from here. And I realize it's a
12 very unsophisticated way of putting it, but that I
13 think is the core of the issue with those arguments.

14 So I understand what you're saying. I take that
15 and note what you're saying, that isn't fair to other
16 states, other agencies who didn't have an opportunity,
17 but that unfairness is created by the Agency, not by
18 the Court or the Plaintiffs in this case, these cases.

19 If you're through I do want to ask the
20 Plaintiffs' attorney to address a couple of issues.

21 MR. BAILEY: Yes, your Honor. Thanks for the
22 time.

23 THE COURT: Thank you.

24 Ms. Bateman or Mr. Muller, the government makes
25 the argument that you're arguing that that three months

1 is jurisdictional and that in the past other
2 administrations, other budgets, other whatever, other
3 HUD agencies have gone past that deadline, well past
4 that deadline, six months in 2015 according to
5 Mr. Bailey.

6 So why should it be strictly applied here? It
7 doesn't appear to be jurisdictional.

8 MS. BATEMAN: So I disagree, your Honor. This
9 goes back to the distinction I was talking about
10 earlier, which is when there is a deadline, when
11 Congress tells an agency you have to do something and
12 you have to do it by this date. If the agency blows
13 the deadline, they don't get off the hook from doing
14 the thing that Congress required it to do. The idea is
15 basically it's better late than never.

16 But that same logic does not apply where the
17 agency has done the required thing already. So here,
18 the agency fulfilled its requirement to issue a NOFO.
19 It did that in 2024 when it issued the two-year
20 24-25 NOFO. It satisfied its obligation to issue a
21 NOFO for 2025 at that point. So at that point the
22 deadline is sort of mandatory, and if the deadline
23 passes the agency does not have authority to just keep
24 doing it again and again, or else the deadline would
25 have no effect.

1 MR. MULLER: If I may, your Honor, just one
2 thing I would add is the way this program has worked
3 since its inception is that, you know, approximately
4 90 percent of funds that have been dispersed by HUD
5 have been disbursed on a renewal basis. So there was
6 no mystery about sort of whether a project could count
7 on its funding for following year.

8 And here, you know, in the 2025 NOFO, HUD
9 arbitrarily said we're going to cut two-thirds of those
10 renewal funds. And so the idea that this is sort of,
11 you know, just the same, normal practice, we always
12 sort of miss this deadline is really I think misplaced,
13 your Honor.

14 THE COURT: So what you're saying is that
15 because there's a two-year NOFO that was issued, and
16 the agency didn't act within the time frame and tried
17 to act well after the time frame in such a manner as to
18 sort of undermine what has been done in previous years,
19 that -- it puts sort of more meat into the deadline?
20 Is that essentially what you're saying? Maybe I'm not
21 understanding. I know I'm not articulating it, so
22 maybe I can ask you to say that again.

23 MR. MULLER: Again, your Honor, it's about
24 reading the statute coherently and reading the statute
25 against the past practice that HUD has always followed;

1 and it also gets to the irreparable harm piece because
2 the fact that, you know, funds are not going to be
3 disbursed in a timely manner, that, you know, projects
4 that have consistently relied on this funding are not
5 going to have it is why, why the timing piece is a
6 problem this year when it has not been in years past.

7 THE COURT: And so I guess that's sort of what I
8 was asking Mr. Bailey, and maybe I should have asked
9 the States.

10 But in the past when that deadline has passed,
11 funding continued. There were no gaps in funding, is
12 that correct, for the programs that were approved under
13 the previous NOFO?

14 MS. BATEMAN: In the past there were no gaps
15 like this. Awards went out typically in January, which
16 is when the awards would begin expiring. There are a
17 few years in which awards went out as late as March,
18 never later than that, first of all. But second of
19 all, that was against the context that Mr. Muller was
20 talking about where the agency had said Hey, we're
21 going to -- CoC, you can designate 90 percent of your
22 projects as Tier 1, and they're essentially guaranteed
23 so long as there isn't some big problem. And so there
24 was certainty and people could plan against that
25 background of uncertainty and borrow from whatever

1 funds and that kind of thing.

2 This is truly unprecedented.

3 THE COURT: Okay.

4 Mr. Bailey, is there anything else you wanted to
5 add?

6 MR. BAILEY: Nothing further, your Honor. Thank
7 you.

8 THE COURT: Okay. Anybody else? Anything?

9 (Pause)

10 THE COURT: We're going to take a five-minute
11 recess.

12 MR. MULLER: Sorry, your Honor, just briefly.
13 I want to speak to the relief piece that the States are
14 seeking because, as Mr. Bailey pointed out, there is --
15 Plaintiff States are seeking to enjoin the conditions
16 of the challenged 2025 NOFO, and there are important
17 reasons for that, your Honor.

18 You know, as Mr. Bailey has represented, there
19 are new conditions coming out perhaps later today.
20 Many of them may be the same, may be different from,
21 you know, conditions that we're challenging. So for
22 reasons we described in the mootness section of our
23 brief, we think an order would be beneficial.

24 We also think, your Honor, that, you know, for
25 the benefit, you know, in the event that there's an

1 order and the government decides to appeal it, we think
2 that having the benefit of a ruling on the merits of
3 those issues is important because, again, the
4 uncertainty of sort of, you know, what the final
5 outcome is going to be here, and the uncertainty around
6 that is a big piece of the harm and so we think it's
7 better to sort of flesh all these issues out as quickly
8 as possible and to provide that clarity.

9 The final piece too, your Honor, you spoke
10 about, you know, the sort of status quo issue. You
11 know, the problem is that the government can't fix the
12 timing piece, right, regardless of what the new NOFO
13 says. And, you know, there is widespread newspaper
14 reporting, your Honor, that when HUD prepared the
15 original NOFOs, that people who were preparing it were
16 actually forbidden from speaking with any HUD lawyers;
17 and so the idea that they sort of need just another
18 chance, a little more time, and that that delay should
19 fall on the feet of, you know, homeless individuals and
20 families is just a little bit hard to countenance. So
21 that's all.

22 Thank you.

23 THE COURT: We're going to take a five-minute
24 recess and we'll be back. I'm not sure whether I'm
25 going to issue a ruling now or whether I am going to

1 issue -- I mean I am definitely going to issue a
2 written ruling. The question is whether I'm going to
3 give you a verbal ruling first. And the problem here
4 is the anticipated NOFO because if that NOFO wasn't,
5 you know, was something we knew about what was
6 coming -- and Mr. Bailey, this has nothing to do with
7 you. Please know that I don't think that you're
8 somehow, you know, withholding this. But I think it's
9 intentionally being withheld until after this hearing
10 because, you know, I criticized the agency for
11 withdrawing the last one right before the last hearing
12 maybe, but also I think in order to sort of, you know,
13 evade court jurisdiction.

14 So we're going to take a five-minute recess, and
15 I will be back.

16 (Recess)

17 THE CLERK: All set, Judge.

18 THE COURT: Okay. Thank you.

19 Okay. This is not one of, you know, it's not an
20 easy case and it is made a little more speculative by
21 not knowing what the agency intends to do today.

22 Mr. Bailey, to be clear, that's not on you at all.

23 So the matter is before the Court on the motions
24 for temporary restraining orders and preliminary
25 injunctions in State of Washington versus HUD, and the

1 National Alliance to End Homelessness versus HUD, and
2 the motions were converted into preliminary injunction
3 motions; they were TR0s.

4 So a request for a preliminary injunction is a
5 request for extraordinary relief. Everybody, every
6 court to address it says it. To secure a preliminary
7 injunction, a plaintiff has to show a substantial
8 likelihood of success on the merits, a significant risk
9 of irreparable harm if the injunction is withheld, a
10 favorable balance of the hardship, and that the
11 injunction is in the public interest. Here, as in
12 these cases with the government, where the government
13 is the opposing party, the last two issues merge.

14 So preliminarily I reject the Defendants'
15 contention that these cases are moot based on its
16 rescission of the fiscal year 2025 NOFO. This is sort
17 of a classic voluntary cessation scenario, and the
18 Defendants have a heavy burden of showing that the
19 challenged conduct cannot reasonably be expected to
20 reoccur. And they have not only not met that burden,
21 but, to the contrary, they expressly reserve the right
22 to re-issue the same or similar conditions, and so I
23 find that concession defeats mootness and effective
24 relief remains available at least for the issues that
25 are live.

1 So the Plaintiffs in both actions have
2 demonstrated a likelihood of success on the merits, and
3 at this stage the record plausibly shows that HUD's
4 rescission of the two-year NOFO and issuance of the
5 2025 NOFO conflicts with the statutory mandates of the
6 McKinney Vento Act, including Congress's prioritization
7 of permanent housing and renewal stability and the
8 formula-based allocations scheme, as well as the
9 statutory deadline for issuance of a NOFO.

10 The Plaintiffs have shown serious questions
11 under the APA both substantively and procedurally,
12 including unexplained departures from longstanding
13 policy, failure to consider reliance interests, and
14 adoption of sweeping new grant conditions without
15 required notice and comment.

16 The Plaintiffs have further established
17 irreparable harm. The withdrawal of the operative NOFO
18 and the delayed and conditional replacement guarantee
19 funding gaps, and these are concrete, imminent harms
20 that cannot be remedied by money damages; so the
21 rescission sort of exacerbates rather than alleviates
22 those harms. And I think it's noted that we don't know
23 what the agency intends to do, although we know they
24 intend to do it today.

25 The balance of the equities and the public

1 interest strongly favor temporary relief, and the
2 Plaintiffs seek to preserve the status quo Congress
3 authorized and on which states, local governments, and
4 service providers have relied.

5 So they haven't, the Defendants haven't
6 identified a comparable framework from maintaining -- a
7 hardship for the government for maintaining that
8 framework for the short period while the Court
9 adjudicates the merits, or, the agency lawfully issues
10 a NOFO that complies with the statutes, the law, and
11 this Court's orders. Ensuring lawful agency action,
12 continuity of housing, and stability for vulnerable
13 populations is clearly in the public interest.

14 So the motions for preliminary injunction in
15 25-626 and 25-636 are granted. The Defendants are
16 enjoined from implementing or enforcing the fiscal year
17 2025 NOFO and its conditions. And I realize that it's
18 been withdrawn, but it's important to note that the
19 government has not engaged with or challenged or
20 supported the legality of those conditions and the
21 prior fiscal -- the important thing is the Court is
22 enjoining the rescission of the 2024-25 NOFO, and that
23 will remain in effect pending agency action consistent
24 with the law and this Court's rulings.

25 And so I'm going to follow this with a written

1 order but -- and I'm asking the Plaintiffs to provided
2 the Court and opposing counsel with proposed language
3 specifically stating the terms of the preliminary
4 injunction.

5 So the 2024 rescission is enjoined. It is --
6 the agency is ordered to maintain status quo unless and
7 until a lawful order, a lawful NOFO consistent with law
8 and this Court's order is substituted.

9 Okay. So we'll get something in writing out to
10 you early next week. As soon as there's a new NOFO, I
11 would like the parties to consult with each other to
12 determine whether or not that ends this case; and if it
13 is agreed that it does, then let the Court know. And
14 if it doesn't, provide a copy of the new NOFO to the
15 Court as soon as it issues, okay?

16 MR. MULLER: Yes, your Honor.

17 THE COURT: Okay. Is there anything further for
18 this hearing?

19 MR. BAILEY: Not from the government, no.

20 THE COURT: Okay. And we will issue a written
21 order, but it may become not necessary depending on
22 what the new NOFO that we're expecting today does, so
23 we'll have to address that. But if everybody just gets
24 me the language they want, then we can at least look at
25 it over the weekend and determine whether or not that's

1 necessary, okay?

2 MR. BAILEY: Yes, your Honor.

3 THE COURT: Okay.

4 (Overlapping speech)

5 THE COURT: I'm sorry?

6 MR. BAILEY: I apologize. Did you want the
7 government to propose language as well?

8 THE COURT: You're welcome to propose language
9 if you'd like to, yes, but you could also engage with
10 the Plaintiffs' proposal language and figure it out. I
11 realize that you don't speak for the agency, you're
12 their lawyer, so, you're their litigation counsel, so
13 that might not be possible, but, sure, propose the
14 language you think is appropriate, okay?

15 All right. Everybody have a good day, a good
16 weekend, Merry Christmas, Happy Hanukkah, Happy New
17 Year. And but get me that stuff as soon as possible,
18 and if we need to issue a written order if it doesn't
19 moot out the case, we'll do that hopefully early next
20 week, okay?

21 MS. BATEMAN: Thank you, your Honor.

22 THE COURT: Okay. Thank you.

23 (Adjourned)

24

25

1 C E R T I F I C A T I O N
2
3
4
5

6 I, Denise P. Veitch, RPR, do hereby certify
7 that the foregoing pages are a true and accurate
8 transcription of my stenographic notes in the
9 above-entitled case.

10
11
12
13 /s/ Denise P. Veitch
14 Denise P. Veitch, RPR
15 Federal Official Court Reporter
16
17 December 27, 2025
18 Date
19
20
21
22
23
24
25