

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(WESTERN DIVISION - LOS ANGELES)

|                          |   |                               |
|--------------------------|---|-------------------------------|
| JEFFREY POWERS, ET AL,   | ) | CASE NO: 2:22-cv-08357-DOC-KS |
|                          | ) |                               |
| Plaintiffs,              | ) | CIVIL                         |
|                          | ) |                               |
| vs.                      | ) | Los Angeles, California       |
|                          | ) |                               |
| DENIS RICHARD MCDONOUGH, | ) | Wednesday, November 13, 2024  |
| ET AL,                   | ) |                               |
|                          | ) | ( 8:30 a.m. to 9:23 a.m.)     |
| Defendants.              | ) | (11:09 a.m. to 11:11 a.m.)    |

STATUS CONFERENCE ON INJUNCTIVE RELIEF

BEFORE THE HONORABLE DAVID O. CARTER,  
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

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Also present:

TOBIN DALE  
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RAY CARDOZA  
ROBERT MERCHANT  
SKIP MILLER  
JONATHAN SANDLER

1 Los Angeles, CA; Wednesday, November 13, 2024; 8:30 a.m.

2 --oOo--

3 **THE COURT:** First of all, good morning, and be seated  
4 and thank you for your courtesy. And I'm sorry we're playing  
5 courtroom tag right now. We're in different locations, but  
6 this is the Chief Judge's courtroom and she's been kind enough  
7 to let us use it today. The next time we'll be back downstairs  
8 in 1, but we have a ceremony today going on.

9 And are we on the record? All right. This is the  
10 case -- well, first of all, we'll call the case to order. And,  
11 counsel, if you'd just remain seated -- are we on CourtSmart?  
12 Then I need to have you make your appearances again.

13 **MR. SILBERFELD:** From here?

14 **THE COURT:** Just as long as you have a microphone  
15 just because we're on CourtSmart.

16 **MR. SILBERFELD:** Good morning, Your Honor, Roman  
17 Silberfeld for the plaintiffs.

18 **MR. DU:** Good morning, Your Honor, Tommy Du on behalf  
19 of plaintiffs.

20 **MR. ROSENBAUM:** Good morning, Your Honor, Mark  
21 Rosenbaum on behalf of plaintiffs.

22 **THE COURT:** Good morning.

23 **MS. PIAZZA:** Good morning, Your Honor, Amelia Piazza  
24 on behalf of plaintiffs.

25 **THE COURT:** Good morning.

1           **MR. ROSENBERG:** Good morning, Your Honor, Brad  
2 Rosenberg from the Department of Justice on behalf of the  
3 federal defendants.

4           **MR. KNAPP:** And good morning, Your Honor, Cody Knapp  
5 from the Department of Justice as well.

6           **THE COURT:** And if you'd like to identify yourself,  
7 you're more than welcome or you can remain silent.

8           **MR. DALE:** Good morning, Your Honor, Tobin Dale with  
9 the DA's Office of General Counsel.

10          **THE COURT:** All right. Thank you.

11          **MR. MERCHANT:** Good morning, Robert Merchant, VA  
12 Greater Los Angeles.

13          **THE COURT:** All right.

14          **MS. BLACK:** Good morning, Chelsea Black, VA.

15          **THE COURT:** And, Mr. Miller?

16          **MR. MILLER:** Good morning, Your Honor, Skip Miller,  
17 Jonathan Sandler for Brentwood School.

18          **THE COURT:** Good to have you here.

19          **MR. CARDOZA:** Good morning, Your Honor, Ray Cardoza  
20 for the Regents of the University at California.

21          **THE COURT:** All right. I'd like to take Brentwood's  
22 motion to intervene first today and I'd like to hear from  
23 Brentwood or any of the parties who wish to participate in this  
24 discussion.

25          **MR. MILLER:** Briefly, Your Honor --

1           **THE COURT:** And this is Mr. Miller for our record  
2 because we're on CourtSmart.

3           **MR. MILLER:** Yeah, I mean, this is Mr. Sandler's  
4 motion. I mean, the motion is well written, it's well taken,  
5 seems like a no brainer to me quite frankly. We do have an  
6 interest, we are timely and we request -- it's unopposed as far  
7 as I know. So we request it be granted.

8           **THE COURT:** Okay. Any further comments, counsel --

9           **MR. SANDLER:** Thank you, Your Honor.

10          **THE COURT:** -- on behalf of veterans?

11          **MR. SILBERFELD:** Nothing further other than what I  
12 said last week.

13          **THE COURT:** All right. Is this unopposed?

14          **MR. SILBERFELD:** Yes.

15          **THE COURT:** On behalf of the VA?

16          **MR. ROSENBERG:** This is unopposed by the Government.

17          **THE COURT:** All right. The Court has read and reread  
18 and considered now Brentwood School's motion to intervene and  
19 plaintiffs and federal defendants have previously stated on the  
20 record and have once again stated on the record that they do  
21 not oppose this motion.

22                 The Court previously denied UCLA's motion to  
23 intervene as untimely. That decision was based on the parties'  
24 objections to UCLA's motion and the Court's finding that there  
25 was no change in circumstances to justify UCLA's late

1 intervention.

2 In contrast, Brentwood School is in a different  
3 position than UCLA was when it sought to intervene. Unlike  
4 UCLA, Brentwood has reached a settlement agreement with the  
5 plaintiff veterans. Because the federal defendants have  
6 opposed that settlement and now appeal the issue to the Ninth  
7 Circuit, there is a change of circumstances justifying  
8 Brentwood's intervention at this time.

9 The Court has not given final approval of the  
10 settlement and does not do so at this time. The final fairness  
11 hearing on the settlement remains pending, subject to the Ninth  
12 Circuit's orders, and today the Court simply finds that  
13 Brentwood's motion is timely because it now wants to defend its  
14 negotiated settlement with plaintiff veterans on appeal, which  
15 is a change in circumstances since the start of this  
16 litigation.

17 Further, because the federal defendants and  
18 plaintiffs do not oppose Brentwood's intervention once again  
19 and Brentwood meets the requirements of Federal Rule of Civil  
20 Procedure 24, the Court hereby grants the motion to intervene.

21 The parties shall submit a proposed order signed by  
22 all parties that explains why there's a change in circumstances  
23 that would justify Brentwood School's intervention. And that  
24 could be brief.

25 **MR. MILLER:** Okay.

1           **THE COURT:** So, counsel, thank you very much.

2           **MR. MILLER:** Thank you, Your Honor.

3           **THE COURT:** Please.

4           All right. Then, counsel, I think the next issue  
5 would be on the emergency stay and arguments.

6           **MR. KNAPP:** Good morning, Your Honor.

7           **THE COURT:** Good morning.

8           **MR. KNAPP:** Cody Knapp from the Government.

9           I want to start today just to clarify something.  
10 VA's appeal and its motion for a stay does not mean that the VA  
11 is leaving veterans to die on the streets. We are seeking a  
12 stay and appealing on legal issues in this case, but the VA's  
13 mission is to serve veterans. And VA is re-doubling its  
14 efforts. We've made great progress here in Los Angeles, as was  
15 shown at trial, and those efforts are being redoubled.

16           Your Honor has engaged with the individuals involved  
17 in that effort. Mr. Kuhn, Ms. Hemet, those are not people who  
18 rest while veterans are in need.

19           On the merits of the motion, I'm not going to rehash  
20 arguments that Your Honor is extremely well familiar with over  
21 the course of this case and having heard from many of the  
22 witnesses over the last several months.

23           I just want to address three high level issues.  
24 First is the standard that this Court should apply in  
25 evaluating the merits of our motion. The standard is whether

1 we present a substantial case for relief on the merits on  
2 appeal. That doesn't mean that we have to be more likely to  
3 succeed in our appeal on the Court's judgment, it doesn't mean  
4 that the Court has to reverse any of the findings that it made  
5 at trial.

6 It simply means that the Court has to ask whether  
7 these are serious arguments that the Ninth Circuit is likely to  
8 take seriously and weigh heavily and potentially rule in the  
9 Government's favor.

10 I think that that standard is met here. It's clearly  
11 met because in Valentini the Government prevailed on his  
12 Rehabilitation Act jurisdictional arguments. Your Honor was  
13 tentatively inclined to adopt those at an earlier stage in this  
14 case, I think that clearly meets the standard for a substantial  
15 case for relief on the merits.

16 The same is true as to the land use claims. Your  
17 Honor has found that the Leasing Act was a change in  
18 circumstance from Valentini but frankly we disagree and we  
19 think our arguments on that are strong and that Valentini was  
20 correct that there was no enforceable fiduciary duty.

21 The standard on irreparable harm is whether the harms  
22 are irreparable to VA. Plaintiffs have rehashed their  
23 arguments about the reasonableness of the expenditures that  
24 would be made in order to effectuate the Court's judgment. But  
25 the fact is, that once that process unfolds, once VA is



1 executing contracts, taking on new responsibilities,  
2 reallocating resources, upending its master plan for the campus  
3 to implement a new master plan, once those steps start to  
4 unfold, they can't be undone. Those harms will not be reversed  
5 even if we prevail on appeal.

6 We meet the standard for irreparable harm, whether or  
7 not on the merits of their Rehabilitation Act claims those  
8 expenditures might be reasonable in the Court's view.

9 Finally as to the balance of the equities, the harms  
10 that VA officials have represented to this Court are real.  
11 They are certain to occur as a result of the Court's judgment.

12 On the other side of the balance, plaintiffs say that  
13 there are individuals in need who would be served by the  
14 Court's judgment. Plaintiffs have not identified those  
15 individuals. The plaintiffs themselves are sheltered or  
16 housed, most of them are in permanent housing. VA represents  
17 that it has vacancies on the campus, it has vacancies  
18 throughout the catchment area to serve individuals who may be  
19 in need and those individuals will be served when they are  
20 identified. So the identified harms here are to VA, not to any  
21 of the plaintiffs.

22 And if the Court has any other questions, I'm happy  
23 to address them.

24 **THE COURT:** No, it'd be two hours, so after the  
25 argument by the opposition then. Any further comments, Brad,

1 do you have anything you want to add?

2 **MR. ROSENBAUM:** No, Your Honor.

3 **THE COURT:** All right. Then, Cody, we'll come back  
4 to you in just a moment. Counsel --

5 **MR. KNAPP:** Thank you, Your Honor.

6 **THE COURT:** -- on behalf of the veteran plaintiffs.

7 **MR. ROSENBAUM:** May I just one moment to consult?

8 **THE COURT:** Certainly.

9 **(Pause)**

10 **MR. ROSENBAUM:** Good morning again, Your Honor, Mark  
11 Rosenbaum on behalf of plaintiffs.

12 I'll be brief, but I want to make some very important  
13 points. The reality is, and this was a fact that the Court  
14 found, not disputed, there are 3,000 unhoused veterans on the  
15 streets of Los Angeles. And if a stay is granted, some of  
16 those veterans are going to die.

17 And if a stay is granted every one of those veterans  
18 will have their mental and physical health conditions  
19 deteriorate. Those are undisputed facts. Those are facts that  
20 came from Dr. Sharon, Dr. Henwood, from the veterans who  
21 testified, but perhaps most significantly from the VA witnesses  
22 themselves, who acknowledged the harm of being on the streets.

23 Now there's a difference, tragically, between the  
24 veterans who are on the streets and others who are the streets,  
25 although every one of them, as a matter of decency, and as a

1 matter of humanity, has no business on those streets.

2 And the difference is, that the reason that these  
3 veterans are on the streets, and this was proven at trial, is  
4 because they served this country. They're not there because of  
5 the other conditions that cause individuals to end up in the  
6 worst sort of circumstances many of us could imagine.

7 They're there because they served this country.  
8 Mr. Merchant this past week was in the VA hospital with one of  
9 our plaintiffs who had his leg amputated above the knee,  
10 Mr. Sessom. That should never have happened. That should  
11 never have happened.

12 That happened because Mr. Sessom spent years and  
13 years on the meanest streets of this community. And because  
14 quite frankly Mr. Sessom is not the man that he was before that  
15 took place.

16 I appreciate it and I want to tell you, Mr. Merchant,  
17 thank you for being there, but it should never have happened.  
18 And what the Government says is progress, what the Government  
19 says is progress means nothing to those 3,000 individuals.

20 Those individuals are the starkest evidence, the most  
21 tragic evidence that for them there has been no progress. And  
22 as the Government seeks today to stay this Court's judgment, is  
23 to say to them there will be no progress for you, you will  
24 remain on the streets.

25 The Government's first sentence in its brief was the

1 first sentence Mr. Knapp stated today. And it was the first  
2 sentence when the Government came into this courtroom. And  
3 that is, that it was committed to ending veteran homelessness.  
4 But ending veteran homelessness is not a process, it is  
5 something, as this Court recognized, after nearly a month of  
6 testimony that as emergency, is there any greater emergency in  
7 America today than those individuals who are on the streets?

8 And you cannot state that you are committed to ending  
9 veteran homelessness and put a halt to Your Honor's orders that  
10 would move people off the streets now into housing.

11 The standard, as Mr. Knapp said, has been well set  
12 out. It is not precisely what he states. Under cases like Al  
13 Otro Lado, the Supreme Court's decision in Nakin (ph), there  
14 are four prongs. And with respect to the likelihood of  
15 success, the first standard is only met if the Government can  
16 make a strong showing.

17 The Government cannot do that with respect to its  
18 legal claims here. The Government's arguments that it -- that  
19 there should be no jurisdiction is a fatuous argument under the  
20 Ninth Circuit's rulings in the VCS case, relying upon the D.C.  
21 decision, the D.C. Court's decision in the Brodie (ph) case. A  
22 case which they notably and these are good lawyers,  
23 intentionally left out of their brief.

24 That Court and the VCS court rejected the same claims  
25 that they are making here and that is, that anything that has

1 anything to do, no matter how many iterations down the road,  
2 that deals with benefits, doesn't belong in this courtroom.  
3 That argument has been rejected.

4 The VCS case as Your Honor well knows, in fact,  
5 litigated -- adjudicated the issue on the merits with respect  
6 to the claims about due process involving holding back  
7 information as to the extent of harm and individuals who  
8 suffered from Agent -- and the delays that that, in fact, took  
9 place. That is not a strong argument, Your Honor.

10 Their rule would mean that cases like this one could  
11 never be brought anywhere. Your Honor has two amicus briefs  
12 that further substantiate that point.

13 As to the Rehabilitation Act claims, their argument  
14 is a joke. Their argument is that there is no reasonable  
15 accommodation available for individuals in order to access  
16 healthcare. Their own Housing First policy reflects an  
17 understanding that that is required. Their argument could just  
18 as easily apply if the result were there's no wheelchair ramp  
19 to get into the hospitals that are at the medical center.

20 Their argument essentially says, that the Government,  
21 that the VA gets immunity from the Rehabilitation Act. As for  
22 the fiduciary duty argument, Mr. Knapp is correct. Although he  
23 doesn't talk about the importance of the question, but  
24 circumstances have changed with the passage of the West LA  
25 Leasing Act of 2016.

1 I was in front of Judge Otero and I can tell you  
2 obviously in 2012 that was not the argument that was made. But  
3 I want the record very clear as to what the implications are of  
4 that argument.

5 That in 1888 when the predecessor entity to the VA  
6 accepted more than 388 acres for the purposes of being a  
7 soldier's home, the argument particularly in light of the 2016  
8 Act which says over and over again, that any leases on that  
9 land must be for the benefit of veterans and their families,  
10 primarily. The implication is that they just ripped off the  
11 veterans on some of the most prime real estate and that they  
12 can do that with impunity. That is not a strong argument.

13 The Government argues that they want to stay all of  
14 the order -- judgments, all of your orders. I'm going to turn  
15 to the housing in just a moment. But I want to say what that  
16 means.

17 With respect to Your Honor's orders concerning hiring  
18 more outreach workers, their arguments stop that, stay that.  
19 The record is clear, that for the five counties covered by the  
20 LA catchment area, 22,000 miles, the size of Costa Rica, the  
21 Government has 13 outreach workers, only 6 of whom are peer  
22 specialists. That issue was litigated. The Government says  
23 stop that. Stop that, no more hirings.

24 With respect to the referrals that Dr. Harris said  
25 were not appropriate, not enough referrals were made. The

1 Government is saying, stop that. What is the harm to the  
2 Government in hiring outreach workers? Frankly Your Honor  
3 didn't order enough of them. What is the harm to the  
4 Government? What is the irreparable injury to the Government  
5 of having outreach workers in appropriate numbers including  
6 peer specialists identifying unhoused veterans on the streets.  
7 There's one across the street, one tent across the street from  
8 this courthouse today.

9           What is the harm to the Government? What is the harm  
10 to the Government in making referrals in its broken down system  
11 that has historically not come close to even its too low set  
12 standards?

13           And the Government's order, the Government's request  
14 for a stay, since it's across the board, would also cover this  
15 Court's rulings with respect to AMI. AMI is a scandal. There  
16 are veterans, the most disabled veterans who were turned away  
17 from permanent supportive housing that the Government  
18 acknowledges is necessary, that were turned away and worse,  
19 that are now being turned away. Because as was the undisputed  
20 testimony in this case, there are buildings on that campus that  
21 belong to those veterans that the most disabled veterans cannot  
22 get into because of those requirements.

23           And there are veterans who cannot get into the  
24 housing in the community off that campus because of those  
25 discriminatory requirements. And the Government is saying to

1 Your Honor, stay that ruling. There are on the streets of this  
2 community severely disabled veterans who did not qualify and do  
3 not qualify and will not qualify if they have their way.

4 The testimony in this case was that the Government's  
5 argument that they had to use that system of financing was  
6 nonsense. Nonsense. And then to make matters worse, they are  
7 applying those standards, they are continuing to apply those  
8 standards and what they are saying to this Court is, we need to  
9 stay your ruling. What is the harm to the Government if the  
10 most severely disabled veterans have access to supportive  
11 housing both on those grounds and throughout the community?  
12 There is no answer in the Government's papers for any of those  
13 matters.

14 Now, I want to turn to the housing. And as we  
15 pointed out in the -- in our briefs, both of our briefs, every  
16 argument that the Government has made, you can track them.  
17 Every one of those arguments have previously been put forward  
18 to this Court. And the Government had ample opportunity to  
19 make those cases.

20 We had a number of witnesses who testified, they and  
21 more, and the Court entered factual findings. And that's what  
22 they have to contend with. The difference now, as opposed as  
23 to when this case started, is that what happened is what  
24 happens in courtrooms in this nation under our Constitution,  
25 and that is the facts were heard and a federal judge had an



1 opportunity to evaluate those facts and issued factual  
2 findings.

3           If they want to rehash their arguments, they can  
4 rehash their arguments, but they have another burden now. And  
5 that they have to show deference to those findings. And that  
6 those findings cannot be supported as reasonable, based on the  
7 evidence. And they haven't made that case. They haven't  
8 argued that case. They haven't discussed that case.

9           Now, the Government's argument is that somehow this  
10 is -- the Court's order is a departure from the way it usually  
11 does business. But that argument doesn't stand up for a minute  
12 based on its stated commitment to end homelessness, veteran  
13 homelessness, based on its Housing First policy.

14           The difference between Your Honor's court orders here  
15 and their position is a matter of urgency. It is not a matter  
16 qualitatively of what is supposed to be taking place.

17           The Government says we're going to put more units on  
18 those grounds. The difference is that Your Honor says now. By  
19 the end of February, 100 units, for starters. Is the  
20 Government's argument seriously that there are not 100 unhoused  
21 veterans who need to be on this land? And need to be on it  
22 now?

23           I have a lot of respect for Mr. Knapp. But when he  
24 starts by saying that there are not veterans who will die, that  
25 is wrong. When he says that there are not veterans who will

1 just deteriorate that is wrong and that is supported by Your  
2 Honor's findings and the Government has nothing to put in  
3 response.

4 So what are the Government's arguments? We don't  
5 have the money. Now under Al Otro Lado at page 1008, that is  
6 an argument that when it comes to irreparable injury doesn't  
7 stand up. But I want to talk about the full implications of  
8 that argument.

9 The Government's argument that with a budget of \$407  
10 billion there's not \$15 million by our count, \$30 million by  
11 their count, that is fatuous too.

12 What are the implications of that besides this case?  
13 The Government is saying that in its coffers, there is not  
14 money to remedy violations of the Rehabilitation Act? Too bad  
15 for the disabled individuals whom a Court finds have been  
16 violated? We just don't have the money to correct the  
17 Rehabilitation Act, because that's the implications of that  
18 argument. \$15 million, you can find that in government  
19 couches. And their argument is we don't have it.

20 Then they say there's no demand. Give me a break.  
21 The Government's by name list lists the names and locations of  
22 how many?

23 **MR. SILBERFELD:** Over 2,000.

24 **MR. ROSENBAUM:** Over 2,000 veterans. It's right  
25 there in their by name list. The Government doesn't know where

1 they are? There's a list that they've compiled that says where  
2 they are.

3 The Government says -- and what would be the impact  
4 on those grounds that belong to these veterans? Five acres.  
5 Five acres. There were 388 acres that were abused for  
6 baseball, for a private school, for oil drilling, but they  
7 don't have five acres for homeless veterans?

8 There is testimony, testimony that they leave out of  
9 their papers that the Government wants to do this, that the  
10 Government can find the money. They don't talk about that in  
11 their papers. And the Government now says, we don't know where  
12 those homeless veterans are. Maybe even putting aside the by  
13 name list, which tells you where 2,000 are, the 2,000 plus,  
14 maybe if they had more than 13 outreach workers they would know  
15 or if they took a stroll a few blocks from here, they would  
16 know.

17 The Court has issued emergency orders. The  
18 Government has not challenged those emergency orders in its  
19 papers. Emergency means one thing, emergency, now. The  
20 Government said, well, we have a transportation system. What a  
21 joke.

22 Is there any evidence in this record that that is a  
23 substitute for housing? And whoever heard of the system? The  
24 Government says we don't know where the veterans are, but we  
25 have this transportation system. That's quite a contradiction.

1 That's quite a contradiction.

2 Is the Government's new solution to homelessness  
3 Uber, Lyft? That'll get it done. And part of that progress  
4 that the Government talks about, in addition to what I've  
5 described, are that these individuals, these veterans whom they  
6 say that they've put in housing, they're in Pomona. They're in  
7 Lancaster. They may be in housing, but they're not in  
8 supportive housing. They're not in a community. They're not  
9 integrated. And the undisputed testimony, you heard Dr. Harris  
10 say he was troubled by that. Those individuals don't have  
11 access to healthcare.

12 The Government isn't doing anything with respect to  
13 making sure that happens. That's progress in that that they're  
14 not on the streets, but it's not progress in terms of access to  
15 the healthcare, which is not a gift. It's an entitlement.

16 If there are vacancies and the truth is, the  
17 undisputed evidence is that there are 379 vacancies in all of  
18 any sort of reasonable radius in terms of the catchment areas  
19 here. Far less than 3,000.

20 There's vacancies because they don't have the  
21 staffing. That was the testimony from Mr. Reynolds. That's  
22 part of Your Honor's findings. If there are vacancies, shame  
23 on them, because there certainly are veterans on the streets  
24 who have not been reached and they don't have the staffing to  
25 give the healthcare that those individuals desperately require.

1 My final point is this, Your Honor, in all the  
2 balancing that the Government makes here, all the statements in  
3 terms of what the cost to the Government is, the cost of the  
4 Government of giving unhoused veterans housing, just saying  
5 that, the cost to the Government of saying to veterans of  
6 actually taking responsibility and getting those veterans off  
7 the street, is that a cost to the Government?

8 Is that a serious cost to the Government, getting  
9 veterans out of the street? What case supports that? What  
10 rule of common sense supports that? What principle of human  
11 dignity supports that as a cost to the Government. But in all  
12 the analysis, in all the thinking about this, we asked over and  
13 over in this trial how many veterans died on the streets and  
14 nobody from the Government knew. Nobody from the Government  
15 had ever inquired.

16 And we asked repeatedly how many deteriorated and no  
17 Government witness could tell you, although they did  
18 acknowledge that homelessness destroys the body and does  
19 everything it can to destroy the soul.

20 Is that a departure from the mission of the  
21 Government to address that? And what number, if we're going to  
22 talk numbers, what number is the Government going to put on the  
23 value of human life left to struggle on the streets?

24 I come back to Mr. Sessom. Is that what the  
25 Government is going to say to him as he wonders how he's going

1 to get on without his leg. We're making progress. We're  
2 making progress.

3 Since 2016 there's what, 300 permanent supportive  
4 housing units on those grounds. Divide 307 by 8, we'll be  
5 generous, 40 a year. That's progress? Would any of that have  
6 happened without this Court and without litigation? And the  
7 Government says what we want to do here is up-end their master  
8 plan. No. No.

9 As Your Honor found, we want to make it robust. We  
10 want to be able to say that those veterans don't wait till 2030  
11 before you have a chance, even if you're even still here, of  
12 getting in. That is not a qualitative change.

13 Every one of the defenses the Government has made has  
14 been evaluated by the Court, there have been factual findings,  
15 they should not be overturned and it is time, it is well past  
16 time for the Government say there is space on your land for 100  
17 units in the next three months to get some of those individuals  
18 off the streets.

19 I'm asking Your Honor to go through those factual  
20 findings, to trace them with respect to those arguments and to  
21 say, time is up. And those veterans should not have to stay an  
22 additional moment. If they want to perfect their appeal,  
23 perfect your appeal. But don't let any veterans die or any  
24 veterans get worse that could be put in those 100 units and  
25 those other units that the Court has ordered while waiting for

1 that to take place. We would not do that for our brothers, our  
2 sisters, our parents. And we should not be doing that for  
3 those individuals who served all of us, going places too dark  
4 for any of us to imagine. I have nothing further, Your Honor.

5 **THE COURT:** Government's response.

6 **MR. KNAPP:** I just have a few responses, Your Honor.  
7 First on the outreach point which Mr. Rosenbaum has focused  
8 quite a lot of time on today. I believe the unrebutted  
9 testimony at trial was that VA uses a one team approach to  
10 supplement its own direct outreach efforts.

11 Your Honor is familiar that throughout this community  
12 there are immense resources poured into homeless services and  
13 VA leverages those community partnerships in order to contact  
14 and identify veterans in need.

15 In fact, the by name list that was referenced, every  
16 vet -- the testimony at trial was that every veteran on there  
17 is connected with a service provider. Those are people that VA  
18 have identified and knows are receiving services.

19 Mr. Rosenbaum spoke briefly about the AMI issue.  
20 Your Honor, there's going to be no change there, as you well  
21 know. HUD has changed its policy. There's -- that problem  
22 effectively became moot before the Court entered judgment and  
23 we had extensive conversations between counsel and with the  
24 Court as to whether or not that meant it should be excluded  
25 from the judgment. But Your Honor should not be concerned that

1 if you grant a stay, that somehow that issue snaps back to  
2 where it was prior to the trial.

3 Mr. Rosenbaum points to, you know, cases for the  
4 proposition that monetary harms are not irreparable. The  
5 question is whether they're irreparable not whether they're  
6 monetary. And in most cases, the reason that monetary harms  
7 are not considered irreparable is because there is some other  
8 way to provide relief. You can sue for damages, you can get  
9 refunds, you can obtain relief in some other way. And that's  
10 not going to be the case here. They acknowledge these units  
11 that would be constructed would effectively be permanent.  
12 Those units that VA doesn't see a demand for on the campus and  
13 that it would not have a use for if they were not being used  
14 for housing. They would effectively become sort of legacy  
15 buildings on the campus without a clear purpose.

16 Your Honor, I -- and I want to say I appreciate it,  
17 Mr. Rosenbaum's passion and I have great respect for him. He  
18 questioned whether my position today was that there are not 100  
19 veterans who are in need of housing. That's not my position.

20 The VA has other ways of serving them. It is not the  
21 case that the only way to serve those individuals is through  
22 the construction of new housing on the campus. VA has opened  
23 beds to serve those individuals throughout the community,  
24 including open beds on the campus.

25 On the merits, I'll just briefly address a couple of



1 points. I don't think it's -- it was fatuous for Judge Ortero  
2 to conclude that the Government's jurisdictional arguments  
3 under the Rehabilitation Act were in fact correct and precluded  
4 jurisdiction in the district court. The result of that was not  
5 that Rehabilitation Act claims could never be brought against  
6 VA, that the type of requests for housing and provision of  
7 housing from VA could never be raised. They just had to be  
8 channeled through the VJRA system, as Congress contemplated.

9           And I think that's all that I have for a reply, Your  
10 Honor. We would ask that Your Honor grant our motion for a  
11 stay, but in any event, we would urge the Court to rule at its  
12 earliest convenience. Thank you.

13           **THE COURT:** Response?

14           **MR. ROSENBAUM:** I just have four quick points. As to  
15 the outreach, Mr. Kim testified, one of your findings, that he  
16 was concerned about the amount of outreach. The one team  
17 system that they talked about, that's because they don't have  
18 enough outreach workers.

19           All the Court said was, put more, it's not a  
20 substitute for peer specialists for individuals. I asked how  
21 many individuals in that one team approach are peer  
22 specialists. The answer was nobody knew. The testimony is  
23 clear from Mr. Kim that more is needed.

24           As for the AMI mootness argument, that's not true.  
25 It's true that as a result of this lawsuit, that HUD changed

1 its policy. The problem is it has no impact on the state and  
2 local entities that give out the tax credits. And so those  
3 requirements are still in place. Those requirements are still  
4 in place. And the Government is sanctioning that. The  
5 Government is saying that those requirements, both on the  
6 ground and off the ground, can still be implemented.

7 The fact that finally HUD takes a different position  
8 doesn't mean that the VA is not countenancing the use of those  
9 limitations. And they are still in place. And that's why Your  
10 Honor is so important, so that they be erased altogether.

11 The terms of the numbers, one of the critical  
12 components of Your Honor's ruling is that the number of units  
13 to be put on are to be graduated with respect to what the  
14 actual need is, not the fact that the Government chooses not to  
15 see these individuals.

16 Mr. Knapp acknowledged that the Government has these  
17 relationships with individuals but they're not on the grounds,  
18 they're still homeless. They still require housing. And one  
19 of the genius of Your Honor's order is that there won't be  
20 surplus housing because it will be graduated with respect to  
21 what the actual need is. If, in fact, the Government does its  
22 job and identifies and says, make certain all individuals have  
23 access.

24 As to the open beds, there was a lot of testimony on  
25 that including the most recent declarations from Mr. Reynolds

1 and Dr. Sharon, those open beds are a scandal. First of all,  
2 they're not permanent supportive housing. They're not  
3 temporary supportive housing. They're transitional, they have  
4 limitations to them. They're for treatment. But they're not  
5 housing.

6 And as I said, and Mr. Knapp did not dispute this,  
7 the reason that there are some open beds is because the  
8 Government doesn't have the staff. The evidence was that, in  
9 fact, according to the most recent report by the inspector  
10 general the Government is suffering severe -- the VA here is  
11 suffering severe staffing shortages that would mean that that  
12 openings shouldn't go.

13 And finally, with respect to the VJRA, here's what  
14 the Government hasn't said. If we pick up this case tomorrow  
15 and move it into that system, that that system can accommodate  
16 that. That's a joke. That system doesn't take class actions.  
17 The Rehabilitation Act claims that they cite like the Raines  
18 case, that was about benefits. And individual claims I didn't  
19 get the benefits that I required.

20 And one of the most powerful facts of this trial was  
21 that nobody asked Your Honor, certainly plaintiffs didn't ask,  
22 for any redetermination of benefits or determination of  
23 benefits. That was just an acknowledged fact. That's the guts  
24 of the VJRA. That federal district courts like this one should  
25 not be burdened with doing the day to day work of determining

1 who's entitled to benefits and who's not entitled to benefits.  
2 That's what VCS is about, that's what Brodie is about. That's  
3 what Hamlin is about. That's what the law was about.

4 But in a month of testimony there wasn't a single bit  
5 of testimony that somebody's benefits had to be calculated, had  
6 to be determined. There wasn't any questioning of any  
7 Secretary's decision about those benefits. The Government  
8 didn't ask, didn't challenge that these individuals didn't have  
9 benefits or that they needed to have benefit determinations.  
10 That was a given with the class that was certified and there  
11 wasn't a single stitch of testimony about that.

12 No one is asking the Secretary to make any  
13 determinations. This is a case about accessing benefits, not  
14 about determining benefits. The VJRA says nothing about this.

15 The Government has never said in its papers that this  
16 case, with all its plaintiffs, including the organizational  
17 plaintiffs which are not even part of that other system could  
18 be lifted up and moved into that courtroom. That's not what  
19 those bodies are about. They are about making benefits  
20 determinations and appeals of benefit determinations, that is  
21 precisely what this case was not about.

22 **THE COURT:** Okay. Will you give me till 10:30? Go  
23 down to the cafeteria, go relax. I can't promise you that I'll  
24 have an opinion, but I may have by that time. We've been  
25 working very hard since your respective filings, in fact, my

1 law clerks were working till the early morning hours last night  
2 waiting for the supplemental.

3 If you'd rejoin us at 10:30, no promises, but I may  
4 have an opinion for you at that time.

5 **(Recessed at 9:23 a.m.; reconvened at 11:09 a.m.)**

6 **THE COURT:** Okay. All right. Thank you. We're back  
7 in session, counsel. Thank you for your courtesy.

8 All right. Because of the emergency and the request  
9 that the Court render a decision as quickly as possible, of  
10 course, we've been working on this for -- through the weekend  
11 and quite a while. And I appreciate the briefing by both  
12 parties and the attention you've paid to.

13 So as not to prolong the circuit's examination, and  
14 subject to any minor nits, there's one page that we noticed  
15 didn't have a number on it, but I'm representing that with the  
16 exception of a few nits that may be corrected in the future,  
17 that nothing concerning the content is going to change.

18 The federal defendant's motion for stay pending  
19 appeal is denied for the reasons stated in the docketed  
20 opinion. And Karlen is docketing that now, but that could take  
21 a little time. So I'm going to suggest that you take the  
22 undocketed portion at the present time, so that there's no  
23 delay.

24 There will be no site visit today in light of the  
25 circuit stay. I think it would be inappropriate. And all of

1 the matters will remain pending in the court. I'm going to  
2 sign the original copy now and I've made or we're making ten  
3 copies for you or any interested parties.

4 All right. So thank you very much, counsel, we're in  
5 recess.

6 **(Proceedings concluded at 11:11 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



November 14, 2024

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Signed

Dated

*TONI HUDSON, TRANSCRIBER*