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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE DAVID O. CARTER, JUDGE PRESIDING

JEFFREY POWERS, ET AL.,,)	
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)	
Plaintiffs,)	
)	
)	
)	
Vs.)	No. LACV22-08357-FDOC
)	
)	
DENIS RICHARD MCDONOUGH,)	
)	
)	
)	
Defendants.)	
)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Motion to Dismiss

LOS ANGELES, CALIFORNIA

THURSDAY, DECEMBER 14, 2023

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1 LOS ANGELES, CALIFORNIA; THURSDAY, DECEMBER 14, 2023; 0905

2 ---

3 THE COURT: Thank you. If you would be seated.
4 It's not necessary but very much appreciated. We're in
09:08AM 5 session in the matter of Jeffrey Powers, plaintiff, versus
6 Denis Richard McDonough in his official capacity as the
7 Veterans Affairs secretary, case number 22-08357.

8 Counsel, I certainly know who you are. If you
9 would introduce yourself on behalf of plaintiffs and
09:08AM 10 defendants for just a moment, for my record.

11 MR. ROSENBAUM: Good morning, Your Honor. Mark
12 Rosenbaum from public counsel on behalf of plaintiffs. With
13 me are Roman Silberfeld and Tommy Du. There are also counsel
14 for the amicus.

09:08AM 15 If Your Honor please, there are a number of the
16 veterans who are here today, and I wonder if they could stand
17 and show themselves to you.

18 THE COURT: Certainly. Thank you.

19 MR. ROSENBAUM: Thank you, Your Honor.

09:08AM 20 And could I have counsel for amicus introduce
21 themselves to you, too.

22 MS. DANFORTH-SCOTT: Your Honor, Evelyn
23 Danforth-Scott for the Legal Scholars and the American Civil
24 Liberties Union.

09:09AM 25 THE COURT: I'm sorry. Would you state that again

1 just because when you move away from that microphone, I don't
2 need you to move to the lectern, but -- once again.

3 MS. DANFORTH-SCOTT: Evelyn Danforth-Scott for
4 amici Legal Scholars and the American Civil Liberties Union.

09:09AM 5 THE COURT: All right. Thank you very much.

6 MS. DANFORTH-SCOTT: Thank you.

7 MR. PERKOWSKI: Good morning, Your Honor. Peter
8 Perkowski for amicus Swords to Plowshares.

9 THE COURT: All right. Thank you very much.

09:09AM 10 MR. SILBERFELD: Roman Silberfeld, Your Honor.

11 THE COURT: All right. Thank you. And, counsel,
12 then, please.

13 MR. SMITH: Yes. Good morning, Your Honor. Keith
14 Smith for defendant Douglas Guthrie in his capacity as the
09:09AM 15 president of the Housing Authority of the City of
16 Los Angeles.

17 THE COURT: Thank you, sir.

18 MR. ROSENBERG: Good morning, Your Honor. Brad
19 Rosenberg from the Department of Justice, Civil Division,
09:09AM 20 Federal Programs Branch on behalf of the federal defense.

21 THE COURT: It's a pleasure. I think your
22 colleague was elevated or demoted to the SEC?

23 MR. ROSENBERG: I'd like to think demoted. As a
24 result, I am here.

09:09AM 25 THE COURT: Well, it's good to have you here.

1 Counsel?

2 MR. ROSENBERG: And with me at counsel table is
3 Kristin Grotecloss from the Department of Veterans Affairs.

4 THE COURT: Pleasure. Let me start on a very
09:09AM 5 positive note. I want to thank on the record all counsel in
6 the amicus briefing. You really submitted to the Court some
7 of the best research on both sides, an extraordinary issue,
8 quite frankly.

9 The Court has taken quite a bit of time to look at
09:10AM 10 this issue, and as you know, I changed my position on a
11 couple positions I had at the initial tentative after
12 looking.

13 I'm prepared to make this final but wanted to pay
14 you a final courtesy for whatever record you'd like to make.
09:10AM 15 I'm pretty far down the line on this decision, though. So
16 it's not wasted, but it's a courtesy I wanted to extend. So
17 I would invite the plaintiffs first and then respective
18 defendants.

19 MR. ROSENBAUM: Your Honor, we are pleased to
09:10AM 20 submit on Your Honor's ruling. We express great appreciation
21 for all the time and effort you and your clerks have put into
22 this.

23 THE COURT: All right. Then, counsel, let me turn
24 to the defense. I'm sorry. For the amicus, do you have
09:10AM 25 anything further or the ACLU you'd like to state?

1 MS. DANFORTH-SCOTT: No, Your Honor. Thank you for
2 your attention.

3 MR. PERKOWSKI: No, Your Honor.

4 THE COURT: All right. Thank you. Let me turn to
09:10AM 5 the respective defendants.

6 MR. SMITH: Want to go first?

7 MR. ROSENBERG: Sure.

8 THE COURT: And then there will be a response to
9 whatever arguments.

09:11AM 10 MR. ROSENBERG: Good morning, Your Honor.

11 THE COURT: Good morning, sir.

12 MR. ROSENBERG: Again, Brad Rosenberg from the
13 Department of Justice on behalf of federal defendants. I'd
14 like to start off by echoing what my friends on the
09:11AM 15 plaintiffs' side have said. The government sincerely
16 appreciates the time and effort that the Court has put into
17 this case so far.

18 I'll note that we rather preferred the Court's
19 initial tentative decision in many respects to this one, and
09:11AM 20 we also appreciate that the Court, as just indicated, is
21 fairly far down the line in terms of its analysis.

22 But we would like to point out with the Court's
23 indulgence a few specific areas where we think the Court's
24 analysis is candidly incorrect. Before I do that, I'd like
09:12AM 25 to take a step back. I am in a unique position in this case

1 because, as the Court knows, I'm taking the place of
2 Mr. Avallone.

3 That brings advantages and disadvantages. A
4 disadvantage, of course, is I may be a little bit less
09:12AM 5 familiar with the intricate details than my colleague is
6 because he was enmeshed in this case in ways that I wasn't.
7 But it also allows me to bring a fresh perspective to the
8 case, and I think one area that really jumped out at me when
9 I was preparing for this hearing is what is the ultimate
09:12AM 10 relief the plaintiffs are seeking in this case, and what is
11 the distinction that the parties have been drawing between
12 benefits or accommodations or access to benefits.

13 This is an issue that the Court analyzed in its
14 Rehab Act analysis in both the initial tentative decision and
09:13AM 15 this tentative decision, and it's an issue that I actually
16 would like to thank our amici Swords to Plowshares for,
17 because at the end of the day the access to housing really is
18 all about the HUD-VASH program.

19 That is, of course, a housing program, but it's
09:13AM 20 also a benefits program. In particular I'd like to draw
21 attention to the Swords to Plowshares amicus brief on page 6,
22 note 2, footnote 2. That's where the amici provide their
23 analysis for HUD-VASH, and they say this is really a HUD
24 program, but the Department of Veterans Affairs, they're
09:13AM 25 involved but it's not really a VA program.

1 They cite a statutory provision which is 42 USC
2 1437 Fo 19(d), and they say the VA at the end without
3 providing any citation also provides case management services
4 to the veteran. But generally this is a housing program.

09:14AM 5 So I went and looked at that statutory provision.
6 There have been a lot of statutory provisions that have been
7 cited in this case. But it makes clear that --

8 THE COURT: Counsel, just a minute. Just a little
9 slower. Look over at Miriam occasionally. If she has a
09:14AM 10 scowl on her face, just slow down a little bit.

11 MR. ROSENBERG: I'll do my best.

12 That provision makes clear that an integral part of
13 the HUD-VASH program that is at the core of the housing
14 dispute in this case are the benefits that the Department of
09:14AM 15 Veterans Affairs provides to HUD-VASH recipients.

16 The statute speaks of mandatory term. It says --
17 that provide supportive housing assistance in conjunction
18 with the Department of Veterans Affairs. Such programs shall
19 provide rental assistance on behalf of homeless veterans who
09:15AM 20 have chronic mental illnesses or chronic substance use
21 disorders and shall require agreement of the veteran to
22 continue treatment for such mental illness or substance use
23 disorder as a condition of receipt of such rental assistance
24 and shall ensure such treatment and appropriate case
09:15AM 25 management for each veteran receiving such rental assistance.

1 Those are wrap-around services, Your Honor. Those
2 are VA benefits that are baked into the HUD-VASH program. So
3 from the government's perspective, when we're looking at the
4 VJRA channelling provision and how it relates to plaintiffs'
09:15AM 5 request for accommodations for HUD-VASH benefits, those
6 benefits are -- the HUD-VASH vouchers inherently involve
7 veterans' benefits to the extent that the Department of
8 Veterans Affairs is providing the social work and case work
9 as well as the medical benefits for substance abuse disorders
09:16AM 10 and mental illnesses.

11 So as a result, that's the hook that requires
12 requests for HUD-VASH benefits to go through the VJRA
13 channelling provision. With that, Your Honor, I would like
14 to go through some of the specific points in the Court's
09:16AM 15 tentative decision.

16 THE COURT: If you want to refer to the page at any
17 time, I can put that up also.

18 MR. ROSENBERG: I would be happy to do so. Again,
19 it's a rather long decision, but we appreciate the
09:16AM 20 opportunity to review it in advance. I looked through it as
21 quickly as possible, so I can't promise that I'll hit every
22 point with which the government thinks the Court's analysis
23 might be incorrect, but I'll at least try to hit the
24 highlights.

09:16AM 25 I'd like to start on page 18. This actually really

1 just goes to the point that I just made, which is, you know,
2 toward the bottom the Court says: Importantly, permanent
3 supportive housing that plaintiffs seek is not a benefit.
4 But again, the permanent supportive housing that's at issue
09:17AM 5 in this case is HUD-VASH benefits. It doesn't matter whether
6 they're tenant-based vouchers that are applied in the
7 marketplace generally or project-based vouchers that might be
8 provided for use in the west Los Angeles campus.

9 If it's a HUD-VASH voucher, it involves and has to
09:17AM 10 involve some element of veterans' benefits that are of the
11 type that normally gets challenged to the VJRA. So that
12 analysis would apply, you know, across the Court's analysis
13 on pages 18 and 19 of its decision.

14 Moving forward to page 20, there are two points.
09:18AM 15 The paragraph in the middle of the page where first the Court
16 notes that: If the VA has not considered a question during a
17 benefits hearing, it's not brought its expertise to bear.

18 It's important to remember the types of cases that
19 plaintiffs and amici have cited where the VA's expertise has
09:18AM 20 not been brought to bear are structural in nature such that
21 the type of claim doesn't require the VA's expertise to be
22 brought to bear.

23 So, for example, a lot of the cases that have been
24 cited are torts cases. You know, one particular -- just one
09:18AM 25 moment, Your Honor. You know, plaintiffs, for example, have

1 cited I believe the Thomas versus Principi case and the Tunac
2 case, which are both medical malpractice type claims.

09:19AM 3 Torts cases are different because the tort occurs.
4 For example, in the Thomas versus Principi case, I believe a
5 sponge was left inside someone after surgery. That tort
6 occurs. It doesn't have anything to do with the benefits
7 that the veteran receives. So once that tort occurs, you can
8 bring a Federal Torts Claims Act case.

09:19AM 9 But also those cases noted in particularly the
10 Tunac case that just as the VJRA carves out veterans'
11 benefits cases from Court's Article III jurisdiction and
12 channels them through this unique administrative, and then
13 Article I Court review process, ultimately with Article III
14 Court review, if necessary.

09:19AM 15 Congress specifically enacted the Department of
16 Veterans Affairs Healthcare Professional Act of 1991, which
17 in turn carved out torts cases from the VJRA. So you have a
18 carveout of a carveout that makes all of those tort cases
19 completely inapposite.

09:20AM 20 I would be concerned that the Court's analysis on
21 page 20 not be interpreted to mean that a veteran can simply
22 avoid having the VA opine on benefits decisions by not
23 bringing them to the Department of Veterans Affairs in the
24 first instance.

09:20AM 25 That's the administrative exhaustion requirement

1 that we discussed in our briefs, and that exists and it's a
2 fundamental principle of administrative law, and it's a
3 principle that applies in the context of the VJRA.

09:20AM 4 The other point I'd like to respond to on page 20
5 concerns the sentence: Therefore, Article III Courts appear
6 to be better equipped relative to VA and HUD to adjudicate
7 plaintiffs' claims that the VA systematically discriminates
8 against veterans based on their disabilities.

09:21AM 9 Whether or not that's true -- and I'm not going to
10 speculate on whether that's true -- the reality is that
11 Congress under the VJRA has carved out Rehabilitation Act
12 claims among others from Article III jurisdiction. In fact,
13 it did so in the context originally of the Rehabilitation Act
14 itself.

09:21AM 15 So Congress has made that determination, and that
16 determination should stand here. If at any point the Court
17 wants me to stop or has any questions, I would be happy to
18 answer any questions.

09:21AM 19 On page 22 of the Court's opinion, it cites the
20 decision of Camacho versus Nicholson for the proposition that
21 the Veterans Claims Court has explicitly recognized that it
22 doesn't have jurisdiction to hear Rehabilitation Act claims.

09:22AM 23 That case is inapposite and inapplicable for a few
24 different reasons. Number one, that case itself didn't
25 really, as we read it, involve a Rehabilitation Act claim.

1 It instead involved speculation and dicta about whether or
2 not the Rehab Act would apply to discrimination by the
3 plaintiffs' employer, which happened to be the Department of
4 Veterans Affairs. I don't believe that was a benefits case,
09:22AM 5 or at least the Rehab Act analysis was not being applied in
6 the context of benefits. It was being applied in the context
7 of employment discrimination.

8 I believe the individual -- the Department of
9 Veterans Affairs employed the individual as a driver and made
09:22AM 10 a decision that his disability precluded him from being able
11 to drive. That's not a benefits decision, Your Honor.
12 That's just a straight-up Rehab Act claim.

13 What we have here with the HUD-VASH vouchers are
14 benefits that are baked into the vouchers themselves. I
09:23AM 15 would note that we have provided extensive citations in our
16 briefs to the fact that veterans' Courts have in fact applied
17 a Rehab Act analysis.

18 I have a couple of specific citations where -- you
19 know, we cited those cases in our briefs in various places.
09:23AM 20 I won't repeat where we cited them, but, for example, there
21 was a Board of Veterans Appeals decision number 1724432,
22 where the board applied a Rehab Act analysis.

23 There was another case that we cite, Board of
24 Veterans Affairs decision number 0533845 with the cite 2005
09:23AM 25 Westlaw 3924108, again applying a Rehab Act analysis.

1 The third decision, 1998 Westlaw, 35201968 applying
2 the Rehab Act analysis.

3 THE COURT: Each of those were contained in the
4 briefing.

09:24AM 5 MR. ROSENBERG: Okay. They were. And we would
6 argue that regardless of what one brief the Department of
7 Veterans Affairs may have submitted years ago, regardless of
8 what a few decisions may have said about the board's
9 jurisdiction, the reality of the board's and subsequent
09:24AM 10 Court's application of Rehab Act analysis to Rehab act claims
11 brought in the context of benefits shows that in fact they do
12 have jurisdiction and would have jurisdiction here.

13 Also, on page 22 the Court cites the VA handbook
14 for a process or procedure by which individuals can bring
09:25AM 15 Rehab Act claims and says that that process is mutually
16 exclusive. We don't believe that that process set forth in
17 the VA handbook is mutually exclusive.

18 Rehab Act violations can, of course, be brought
19 independently of benefits claims and benefits determinations.
09:25AM 20 So the fact that there exists a separate procedure to pursue
21 those claims doesn't mean that those claims should not be
22 pursued under the channelling provisions, again as reflected
23 in the cases that we cited.

24 Finally, on the issue of relief, equitable relief,
09:25AM 25 other forms of relief under the Rehab Act, the first question

1 the Court needs to answer before it can get to the question
2 of relief is whether or not it has jurisdiction in the first
3 place. For the reasons we've set forth in our briefing, we
4 don't believe that the Court does.

09:25AM 5 That's what I have in the Rehab Act issues that
6 applies to VA, but there are a few other issues that the
7 Court raised regarding HUD, claims against HUD, and, of
8 course, the charitable trusts and --

9 THE COURT: The interplay between HUD and HACLA.

09:26AM 10 MR. ROSENBERG: Yes. I don't know if the Court
11 wants me to address those now or would like --

12 THE COURT: I do, because it will be a response and
13 then a brief rebuttal.

14 MR. ROSENBERG: Okay.

09:26AM 15 So on the HUD, claims against HUD, either the Court
16 for counts 1 and 3 on standing discusses the claims regarding
17 insufficient funding, but I think as we've addressed in our
18 briefing, there are no allegations that any of the individual
19 plaintiffs in this case have been denied access to HUD-VASH
09:26AM 20 vouchers, and we think that that controls.

21 For claim 2 the Court basically adopted the capable
22 of repetition yet evading review analysis. We respectfully
23 think that analysis is flawed. Under the Court's analysis
24 any veteran with a disability would be able to bring a claim
09:27AM 25 regardless of their current housing status because of the

1 possibility that they might find themselves homeless again in
2 the future.

3 Typically incapable of repetition yet evading
4 review claims, the issue that gives rise to that type of
09:27AM 5 claim is usually beyond the control of the individual
6 plaintiffs. But here we would say there's at least an issue
7 as to whether or not if somebody is being provided with the
8 benefit, you know, that they want, if they find themselves no
9 longer in a position to be able to take advantage of that
09:27AM 10 benefit, is that necessarily due to actions of HUD or the
11 federal government generally, or is that possibly due to the
12 actions of the individual?

13 If the individual has control over their own
14 actions in that context, then the government does not believe
09:27AM 15 that the capable of repetition yet evading review analysis
16 applies. We don't have a cite for that specifically,
17 Your Honor, but we think that under logic, that would hold
18 together.

19 Then on the merits for the claims against HUD, we
09:28AM 20 would cite back to our VJRA arguments generally and the
21 arguments that we've made in our brief.

22 Finally, regarding charitable trust claims, you
23 know, the Court has adopted the position or seems to have
24 adopted the position at least tentatively that the provisions
09:28AM 25 in the West Los Angeles Leasing Act of 2016 generally mirror

1 trust obligations.

2 I may be summarizing a bit, but I think that's
3 generally what the gist of what the Court is getting at in
4 its analysis. Respectfully, we think that to impose trust
09:28AM 5 obligations on the United States, that requires quite a bit
6 more than that. As we've noted in our briefing, the leasing
7 act does not mention the 1888 deed, does not accept any
8 fiduciary duties arising from that deed, does not identify
9 any beneficiaries who may sue to enforce.

09:29AM 10 It draws a distinction between the actions of the
11 VA secretary, which it restricts, and the United States,
12 which it does not. So that -- to the extent that there's a
13 trust obligation, trust obligations I believe would run
14 against the United States and not against a particular
09:29AM 15 agency.

16 The act does not identify a private right of
17 action, and there's no waiver of sovereign immunity. So in
18 our prior briefing we made the argument that to the extent
19 that these trust claims exist, they kind of collapse into
09:29AM 20 plaintiffs' APA claims, and the APA contains the waiver of
21 sovereign immunity against the United States.

22 Now, to be clear, we don't think the APA claims
23 have merit, but that's, you know, a separate issue with which
24 the Court appears to disagree. But there's no waiver of
09:30AM 25 sovereign immunity for the trust claims generally. So to the

1 extent that those claims overlap with the APA claims, if
2 anything, they should just be brought pursuant to the APA
3 because waivers of sovereign immunity are narrowly construed
4 against the United States. And we don't think that there's
09:30AM 5 any showing that such a waiver exists here.

6 Then finally, I don't want to the Court to think
7 that we believe there are valid claims that have been raised
8 under the APA. We've addressed that in our briefing. Unless
9 the Court wants to hear from us on that, you know, we stand
09:30AM 10 by our prior briefing on the APA claims. We think that they
11 should be dismissed as well.

12 With that, unless the Court has any questions,
13 again, we appreciate the Court's time and effort in this. We
14 understand that these are complicated and tricky issues, but
09:30AM 15 we do think that the tentative decision that the Court has
16 graciously allowed us to review does make some legal
17 mistakes.

18 THE COURT: Counsel, thank you very much.

19 Counsel, let me turn to you now.

09:31AM 20 MR. SMITH: Good morning again, Your Honor.

21 THE COURT: Good morning.

22 MR. SMITH: Keith Smith for defendant HACLA.

23 I read through the tentative ruling, of course,
24 Your Honor. And starting at page 38 of Your Honor's detailed
09:31AM 25 ruling, it gets to the issue involving my client, which I

1 submit -- I know in the initial tentative ruling that we had
2 following the initial motion to dismiss, it did not address
3 the issues that involved my client, but the current tentative
4 ruling does.

09:31AM 5 In reading Your Honor's tentative ruling, it denies
6 all of the arguments that we asserted on behalf of HACLA and
7 ultimately reaches the conclusion that plaintiffs have stated
8 viable claims against HACLA.

09:32AM 9 I certainly appreciate the analysis and work the
10 Court did, but I very much disagree with that conclusion. I
11 started out in our initial motion to dismiss and I think I've
12 reiterated at every opportunity I've had to address the Court
13 that HACLA simply doesn't belong in this case.

09:32AM 14 The overarching allegations and the gravamen of the
15 complaint -- Your Honor, I have a copy of the complaint in
16 front of me here.

17 THE COURT: Counsel, I think I almost have it
18 memorized.

09:32AM 19 MR. SMITH: It's a couple hundred pages and lots of
20 paragraphs.

09:32AM 21 THE COURT: By the way, when I was working with you
22 on the first tentative, I refer back to the original
23 complaint because I had originally stated or read that
24 original complaint. So some of the paragraphs were incorrect
09:32AM 25 on the record. You already had the first amended complaint,

1 but I had started reading the original. So I apologize to
2 both of you if those paragraphs were off.

3 MR. SMITH: Sure.

4 I would just submit, Your Honor, if you scour that
09:33AM 5 complaint much like I have, and you have probably more than I
6 have, there's very little information that pertains to my
7 client HACLA. There's even less factual allegations against
8 my client HACLA. I've tried repeatedly to distinguish how
9 plaintiffs' attempt to lump in HACLA with the federal
09:33AM 10 defendants.

11 If you look, Your Honor, at the very beginning of
12 plaintiffs' complaint in this case, the operative first
13 amended complaint, paragraph one with the introduction of
14 their case, the last sentence of the very first paragraph of
09:33AM 15 the complaint reads as follows: "The VA must do more and now
16 to comply with its obligations under the law and to fulfill
17 the promise we all make to those who serve in our military."

18 The remainder of the complaint continues down that
19 theme where the premise of plaintiffs' complaint is that the
09:34AM 20 federal government via the VA and via HUD is not doing enough
21 for veterans. Then they make a couple of passing paragraphs
22 referencing HACLA and then lump in HACLA with, quote,
23 defendants throughout the remainder of the complaint.

24 What is glaringly absent from the complaint are
09:34AM 25 factual allegations as to each individual plaintiff and how

1 they had any interaction with HACLA, number one. And two,
2 and most important for the three Rehab Act claims that are
3 asserted against HACLA, how HACLA somehow discriminated
4 against them solely because of their disability. The Court
09:35AM 5 correctly identifies the Duval case setting forth that
6 standard.

7 I submit to Your Honor that plaintiffs' allegations
8 in the first amended complaint do not come anywhere clear
9 near what Duval requires because they've not alleged any
09:35AM 10 involvement with HACLA.

11 If you look, Your Honor, starting at page 19,
12 paragraph 40, in the complaint from that page forward for
13 multiple pages, the plaintiffs set forth the specific factual
14 circumstances that pertain to each of the named individual
09:35AM 15 plaintiffs.

16 What you will not find in those paragraphs is
17 interactions that they allege they had with HACLA. What you
18 will also not find is allegations in those paragraphs dealing
19 with these specific plaintiffs are allegations that somehow
09:35AM 20 HACLA denied them benefits and discriminated against them
21 because of their disability.

22 Many of the plaintiffs don't even talk about
23 seeking HUD-VASH vouchers, let alone seeking HUD-VASH
24 vouchers through HACLA. If we look at the named complainant,
09:36AM 25 Your Honor, the named plaintiff Mr. Powers, starting at page

1 19, paragraph 40, and running through paragraph 49, he never
2 even mentions HACLA once. He never mentions seeking HUD-VASH
3 vouchers through HACLA, and he never mentions any allegations
4 of how somehow HACLA discriminated against him.

09:36AM 5 What he talks about was that he first received
6 benefits in Arizona. Then he moved to Palm Springs. Then he
7 moved to Los Angeles. What he says in paragraph 49 of the
8 complaint is, quote: Mr. Powers has now been approved for
9 housing on the WLA grounds in one of the buildings that
09:37AM 10 opened in May 2023.

11 I submit to Your Honor that if you dig through the
12 actual facts that are pled, and even if Your Honor treats
13 them as true for purposes of this motion, they're inadequate
14 and they're insufficient. They're conclusory. They don't
09:37AM 15 meet Twombly. They don't meet Iqbal.

16 What you have, after having paragraphs and
17 paragraphs of allegations, then in the actual charging
18 allegations they put the bare bones skeletal elements and say
19 defendants did this and defendants did that.

09:37AM 20 For example, paragraph 313, paragraph 314, and
21 paragraph 318 that the Court cites in the tentative ruling as
22 being some type of factual basis for liability, I submit to
23 Your Honor if you read those paragraphs, it's just bare bones
24 pleading, lumping all defendants together.

09:38AM 25 For example, if you look at paragraph 309, it says

1 defendants administer the benefits offered by VAGLAHS and
2 HUD-VASH in a manner that denies veterans the benefits of
3 VAGLAHS services, programs, or activities in the most
4 integrated setting appropriate to their needs.

09:38AM 5 Well, HACLA doesn't offer or provide benefits for
6 the VAGLAHS. Then in paragraph 313 the plaintiffs allege:
7 Defendants' denial of appropriate integrated services to
8 plaintiffs is solely because of their disabilities, and
9 plaintiffs are institutionalized or placed at risk of
09:39AM 10 institutionalization because of defendants' discrimination.

11 I submit to Your Honor, where are the allegations
12 that HACLA did something to each of these individual
13 plaintiffs to discriminate against them solely because of
14 their disability? I would submit, Your Honor, none of that
09:39AM 15 is in this complaint, and none of it can pass this motion to
16 dismiss submitted by HACLA because of that.

17 In Your Honor's tentative ruling, it indicates that
18 plaintiffs have standing to sue and indicates that the bar of
19 standing is not high, citing the Maya versus Centex Corp.
09:39AM 20 case which I'm familiar with because I was counsel in that
21 case representing home builders.

22 The plaintiffs in that case alleged a
23 particularized injury that their home values dropped because
24 of the practices of home builders selling to uncreditworthy
09:40AM 25 buyers, and they alleged that each of these builders sold

1 homes and did that. The Ninth Circuit found that sufficient
2 to constitute standing.

3 Here we have a far cry from that in the allegations
4 in front of Your Honor because there's nothing here that
09:40AM 5 alleges anything that HACLA did. What is actually at play
6 here is plaintiffs' challenge to the federal regulations
7 involving HUD-VASH.

8 HACLA does not set the standards for HUD-VASH.
9 HACLA has to follow those standards and follow federal law.
09:40AM 10 As much as plaintiffs don't like those standards and don't
11 like those regulations and want to challenge them, the
12 vehicle to challenge them is not through HACLA. HACLA is a
13 local PHA who has a mandatory obligation to follow those
14 regulations.

09:40AM 15 In contrast to discriminating against these
16 veterans, what the record in front of Your Honor demonstrates
17 is that actually HACLA had been championing the benefits for
18 these veterans, and HACLA had been seeking to obtain the most
19 amount possible, asking for exceptions to these regulations
09:41AM 20 to try and get more benefits for the veterans, even though
21 HACLA has no standard and certainly no mandatory duty imposed
22 on a public entity to do that.

23 HACLA's obligations are to follow these
24 regulations, which they have done. Plaintiffs just don't
09:41AM 25 like the regulations because of the impact of them.

1 I think Your Honor's footnote in footnote 18 is
2 directly on point on this issue about how perverse some of
3 these regulations impact one person who has a disability
4 rating and someone who doesn't. But if the factual assertion
09:41AM 5 that Your Honor sets forth in footnote 18 applies, how is
6 that fairly traceable to any conduct by HACLA?

7 HACLA would just implement that policy based on the
8 regulations that plaintiffs challenge, but that does not mean
9 and can never mean that HACLA somehow discriminated against
09:42AM 10 that veteran who had a disability rating. That's what's at
11 issue in this case.

12 That's why I submit to Your Honor that I would
13 concur with the arguments we made previously on standing. I
14 would concur with the federal government's arguments
09:42AM 15 regarding the application of the VJRA.

16 I would also submit, Your Honor, as we put in our
17 briefing, the cases of Lee versus Modlin and the case Smart
18 versus Department of V.A. Those were both federal cases
19 involving HUD-VASH benefits, the exact benefits we're dealing
09:42AM 20 with in this case, and in both of those cases the federal
21 Court determined they lacked jurisdiction to deal with
22 HUD-VASH benefits.

23 In the Lee versus Modlin case, the plaintiff
24 challenged being discharged from the HUD-VASH program. And
09:43AM 25 in Smart, the plaintiff challenged the determination of

1 whether he met the definition of, quote, homeless, under
2 HUD-VASH. In both of those cases the Court determined it
3 lacked jurisdiction because of section 511 and the VJRA.

09:43AM 4 So I would echo the federal government's arguments
5 on that issue. But I think in this case and how I've
6 asserted this morning and repeatedly, HACLA is in a different
7 position than the federal government is here. There is no
8 claim. The plaintiffs lack standing. They can't allege
9 anything that is fairly traceable to any conduct of HACLA.

09:43AM 10 The last point I want to make, Your Honor, in
11 supporting that is by looking at the relief. The relief that
12 the plaintiffs seek in this case, Your Honor, is not relief
13 directed at HACLA. The relief being sought in this case is
14 directed at the federal defendants.

09:44AM 15 They want in paragraph 351(b) to declare the
16 federal government's acceptance of the land transferred under
17 the deed of trust. They want to declare that the defendants
18 breached and continue to breach their fiduciary duties as
19 trustees of the charitable trust.

09:44AM 20 They want to enjoin the defendants from failing to
21 provide plaintiffs and veterans with SMI and TBI appropriate
22 permanent supportive housing. That has wrap-around services,
23 the mental care, the mental health care. HACLA doesn't
24 provide any of that information.

09:44AM 25 So even if the Court were to find that it has

1 jurisdiction, even if the Court was to find somehow there is
2 standing, and even if the Court was to find somehow
3 plaintiffs have stated a claim, they can't seek the relief
4 they're looking for from HACLA anyways.

09:45AM 5 So, Your Honor, I appreciate the time and I would
6 just respectfully urge the Court to reconsider its ruling as
7 it pertains to HACLA because I strongly believe based on the
8 facts, based on the information that has been submitted,
9 HACLA does not belong in this case.

09:45AM 10 We've submitted a declaration from representatives
11 of HACLA indicating they had no involvement with multiple of
12 these plaintiffs. That's never been challenged by the
13 plaintiffs here. Their complaints don't challenge that.

09:45AM 14 If someone has never interacted with a party, how
15 can they possibly allege they were discriminated against
16 solely based on their disability?

17 Thank you for your time, Your Honor.

18 THE COURT: Counsel, thank you very much.

09:46AM 19 Counsel, your response, please. Go to the lectern
20 just so I'm certain we can hear you, because there's a
21 distance between the microphone.

22 And, counsel, I certainly know who each of you are,
23 but just for the record would you reidentify yourself by name
24 and who you represent.

09:46AM 25 MR. PERKOWSKI: Thank you, Your Honor. Peter

1 Perkowski for amicus Swords to Plowshares.

2 THE COURT: Pleasure.

3 MR. PERKOWSKI: I'd like to respond to some of the
4 comments about the Rehab Act only, which is what we addressed
09:46AM 5 in our brief. The first point that counsel made had to do
6 with the statute that regulates and governs HUD-VASH.

7 The involvement of VA in this program does not turn
8 it into a VA benefit. Your Honor quoted the regulations that
9 defined both the claim and a benefit. Neither apply to this
09:46AM 10 program because it's not administered by the VA. It's not in
11 Title 38. It's in Title 42.

12 The VA's sole role in that is to determine
13 eligibility. In essence, a homeless veteran shows up and
14 seeks to qualify for benefits, and the VA determines whether
09:47AM 15 they are entitled or not. And if a veteran is experiencing
16 houselessness, the VA will send them to HUD for the HUD-VASH
17 program. So, not administered by the VA.

18 Yes, I understand there are wrap-around services,
19 and those services are administered by VA, but they're not --
09:47AM 20 those services aren't being sought in this case. Those have
21 already been adjudicated.

22 The second point that counsel made had to do with
23 precedent. Both defendants referenced cases in the brief,
24 and I just want to give Your Honor a suggestion about how
09:47AM 25 these cases split up in a way that makes sense for both this

1 statute and this case. And the -- it's helpful to think
2 about whether these cases or claims are individualized or
3 systemic or systemwide, and whether they are adjudicatory or
4 non-adjudicatory. And by adjudicatory, I mean the process
09:48AM 5 and determination of a benefit.

6 So that gives us four types of cases. The first is
7 individualized adjudicatory claims, and those types of claims
8 are the cases that defendants cite in page 8 of the federal
9 defendants' supplemental brief where the Board of Veterans
09:48AM 10 Appeals did consider Rehab Act claims, but it was when the
11 plaintiff was saying your VA's denial of a benefit violated
12 the Rehab Act claim. That's completely different from the
13 claims in this case.

14 In fact, when those same veterans, same types of
09:49AM 15 veterans go to federal court and say VA's denial of my claim
16 for a benefit violated the Rehab Act, they were tossed out,
17 appropriately. That's in footnote 2 of the federal
18 defendants' brief. So individualized adjudicatory belong in
19 the VA benefits claim system.

09:49AM 20 Individualized non-adjudicatory, an example would
21 be physical access to a building. Right. Those claims do
22 not belong in the VA claims adjudicatory system. There's a
23 separate system that is set out in the VA handbook. Anyone
24 can use it and say: I can't access. This violates the Rehab
09:49AM 25 Act, and the VA can respond under that handbook.

1 I would submit that this case is similar to that
2 process because -- although the barrier here is not a
3 physical barrier. It's the lack of accommodation that's the
4 barrier, and those types of claims, individualized
09:50AM 5 non-adjudicatory, belong in federal courts.

6 Systemic adjudicatory claims are similar to VCS
7 which the parties cite here repeatedly. Then you have
8 systemwide non-adjudicatory policies and practices, and
9 that's this case because the plaintiffs here are not seeking
09:50AM 10 HUD vouchers.

11 HUD vouchers are not geographically targeted to VA
12 campuses. They're about the general rental market, and the
13 plaintiffs here are not saying that we need those vouchers so
14 we can go get housing. They're saying that they need housing
09:50AM 15 near their healthcare providers. Right.

16 That's a distinct issue from eligibility for the
17 voucher at all. The Court may ultimately decide that
18 plaintiffs are not entitled to that relief or that
19 accommodation, but that's a merits question, not a reason to
09:51AM 20 dismiss the claims.

21 I think I've made my point.

22 Thank you, Your Honor.

23 THE COURT: Counsel, thank you.

24 MR. ROSENBAUM: Your Honor, Mark Rosenbaum on
09:51AM 25 behalf of plaintiffs. I just want to underscore those last

1 points. If anything, the government's argument reinforces
2 Your Honor's ruling, particularly at pages 18 and 19.

3 THE COURT: Would you move just a little closer to
4 the microphone.

09:51AM 5 MR. ROSENBAUM: Of course.

6 THE COURT: Thank you. I'm sorry.

7 MR. ROSENBAUM: It reinforces Your Honor's decision
8 particularly at pages 18 and 19 of the ruling. That's not
9 the relief that's involved. It reinforces the fact that this
09:51AM 10 is not a VA decision making. That is the essence of what the
11 jurisdiction stripping statute is about.

12 As the ACLU brief pointed out,
13 jurisdiction-stripping statutes are serious business.
14 Presumptions are against them going all the way back to 1803
09:52AM 15 and Marbury. This is serious business when an Article III
16 Court and an Article I Court cannot pass on the decision
17 making and the policies of the executive branch and the
18 legislative branch.

19 Nothing here upsets the arguments that we made,
09:52AM 20 that the amicus made, and that Your Honor presented there.
21 No benefits decision administered by the VA regarding these
22 plaintiffs is involved in this case. That is precisely what
23 the VCS case at 1034 talked about. It's what the Browdy case
24 talked about. It's what the FTCA cases talked about.
09:52AM 25 Nothing here even dents that decision.

1 We are pleased to submit on Your Honor's ruling.

2 THE COURT: All right. Then briefly, counsel.

3 Brief rebuttal, a couple minutes from either side.

4 MR. ROSENBERG: Once again, Your Honor, Brad

09:53AM 5 Rosenberg from the justice department on behalf of federal
6 defendants.

7 I will be brief. It is critical to recognize that

8 the HUD-VASH vouchers do have elements of VA healthcare

9 benefits within them. My friend from Swords to Plowshares

09:53AM 10 tried to draw a distinction and say, well, that voucher

11 program is under the United States Code Section for HUD and

12 not for VA.

13 That's an artificial distinction, Your Honor,

14 because it is still VA that under United States law is

09:53AM 15 required to provide benefits. The test that they propose is

16 artificially narrow. It's not just -- the VJRA

17 jurisdictional provisions do not just involve benefits, but

18 as the D.C. Circuit noted in the Blue Water decision -- and I

19 know this was discussed at great length by my colleague at

09:54AM 20 the last hearing -- it's not just decisions about benefits

21 themselves but also -- and I'm going to quote -- questions

22 about whether VA's decisions -- let me quote this exactly.

23 Excuse me, Your Honor. The VJRA, quote, extends not only to

24 cases where adjudicating veterans' benefits requires the

09:54AM 25 District Court to determine whether the VA -- I knew I was

1 too fast. I'll start over.

2 The VJRA, quote, extends not only to cases where
3 adjudicating veterans' claims requires the District Court to
4 determine whether the VA acted properly in handling a
09:54AM 5 veteran's request for benefits but also to those decisions
6 that may affect such cases.

7 This whole lawsuit is about homeless veterans who
8 have disabilities. They want access to care from VA, and the
9 root of that access, the HUD-VASH program, provides some of
09:55AM 10 those very VA benefits that plaintiffs seek.

11 It provides mental health care. It provides social
12 services. It provides substance-abuse care. Those are VA
13 benefits. Regardless of what section of the United States
14 Code they fall under, those are VA benefits.

09:55AM 15 This is where the Court got it right in its initial
16 tentative decision, noting that allowing these claims to
17 proceed will embroil District Courts in analyzing how do
18 those supportive services through the HUD-VASH program relate
19 to the other benefits that the veterans are receiving.

09:56AM 20 They're all tied together and they're tangled together, and
21 it's very difficult to untangle them.

22 So one other case that I wanted to discuss which I
23 think hasn't been discussed very much, I believe, at the last
24 hearing, but my colleague from HACLA reminded me about the
09:56AM 25 significance of this case in the context of HUD-VASH. That's

1 that the Bluestein versus HUD case out of the District of New
2 Hampshire. The cite is 2013 Westlaw, 6627 --

3 THE COURT: I'm familiar with it, counsel.

4 MR. ROSENBERG: -- 965. Yep. And as the Court is
09:56AM 5 aware, in that case the Court dismissed claims brought
6 against HUD challenging the denial of HUD-VASH benefits due
7 to lack of jurisdiction under the VJRA.

8 That case I believe cited another case, as I
9 recall. It might be out of Texas. I can't recall for sure.

09:56AM 10 But once again we have provided cases that really have not
11 been addressed by plaintiffs' counsel or the amici, in any
12 meaningful way at least, that discuss how the VJRA
13 channelling provisions include HUD-VASH benefits, the
14 benefits that the VA provides, because they're all integrated
09:57AM 15 together.

16 With that, unless the Court has any further
17 questions, you know, we would urge the Court to reconsider
18 its tentative decision. We do think that all claims in this
19 case should be dismissed either for lack of jurisdiction or
09:57AM 20 for failure to state a claim.

21 THE COURT: Counsel on behalf of HACLA, briefly,
22 please.

23 MR. SMITH: Yes, Your Honor. Thank you.

24 Your Honor, Keith Smith on behalf of defendant
09:57AM 25 HACLA again. Thank you for the opportunity.

1 I would say in summarizing our position and setting
2 forth why I think some of the Court's analysis in the
3 tentative ruling is correct is looking at page 25 of the
4 tentative ruling.

09:58AM 5 In page 25 of Your Honor's tentative ruling,
6 Your Honor indicates that it agrees with HUD that Mr. Sessom
7 lacks standing. The Court goes on to say the Court agrees
8 Mr. Sessom is eligible for a HUD-VASH voucher, but he, quote,
9 has not been able to find a landlord who is both willing to
09:58AM 10 accept a VASH voucher and close enough, end quote, to walk to
11 the WLA grounds.

12 The Court goes on to indicate that Mr. Sessom's
13 injury is traceable to private landlords, not HUD. It also
14 indicates that Mr. Sessom was denied housing on the WLA
09:58AM 15 grounds because his income was too high.

16 I would submit, Your Honor, the exact same analysis
17 applies to HACLA for not only Mr. Sessom but every single
18 plaintiff in this case. Their primary argument is they're
19 not getting enough money to live somewhere near the West L.A.
09:59AM 20 grounds to receive the wrap-around care. But that is not
21 determinative at all by HACLA.

22 HACLA does not determine the funding amount for
23 each of these veterans. HACLA does not determine whether you
24 can find a landlord who is willing to accept a VASH voucher
09:59AM 25 close enough to the West L.A. grounds. That applies -- the

1 analysis the Court applied to Mr. Sessom in its tentative
2 ruling I would submit, Your Honor, applies to every single
3 one of the plaintiffs in this case as it applies to HACLA
4 because none of their claims are fairly traceable to any
5 conduct by HACLA.

6 I would submit on that, Your Honor. Thank you.

7 THE COURT: Counsel, thank you.

8 Counsel?

9 MR. ROSENBAUM: No, Your Honor.

10 THE COURT: All right. If you cited a case that
11 you did not include in your briefing in the argument today, I
12 don't recall such a case. Every case that has been cited by
13 the parties has been read and considered by the Court.

14 I'm not going to belabor this. I want to thank all
15 of you, especially with your patience with the Court because
16 the Court took about an extra three weeks in the analysis of
17 this to be certain that this is the right decision. And for
18 the purposes of the motion to dismiss, this is the correct
19 decision.

20 Karlen, do you have a pen?

21 And with a little bit of humbleness, I have
22 forgotten the date, counsel. The days are blurring together
23 for me. What's the date? The 14th. My apologies. Thank
24 you. All right.

25 This is the final order of the Court denying

1 defendants' motions to dismiss this matter. This will be
2 docketed immediately. I prepared extra copies, of course,
3 for each of you, I think 14 or 15 copies, which can be
4 distributed now.

10:01AM 5 Instead of taking a recess and coming back, I'm not
6 quite certain what to expect in the future from each of you.
7 There's been reference to you bringing the Court injunctive
8 relief in an affirmative nature. There's been reference to
9 the interplay between HACLA and HUD. And frankly, each of
10:02AM 10 you in a sense have pointed the finger at HUD and HACLA back
11 and forth to each other. It has to be an uncomfortable
12 position.

13 Also, after this opinion was rendered, we received
14 notification -- could you help me with that letter that came
10:02AM 15 in from a congressman?

16 Apparently Congress is starting to take note.
17 Could you put it up on the screen. I want to represent to
18 you and put on the record that when the Court had made its
19 decision, it actually -- I actually made the decision about
10:03AM 20 three weeks ago when I put out notice to you and scheduled a
21 hearing today, because I wanted, if I didn't change my mind,
22 for you each to perfect your record as a courtesy.

23 This came into my possession I think two days ago.
24 It is a Congressperson's efforts in this very area that I'm
10:03AM 25 literally going to attach not as a part of this ruling but as

1 a separate document. Once again I represent to you this had
2 no bearing on the Court's decision. I represent to you that
3 three weeks ago I made the decision. I think we finished off
4 the 12th or 13th draft last night sometime. So if there's a
5 knit, it's entirely my responsibility because -- I don't
6 think there are.

7 Help me. We're going to scroll down. You know
8 that the secretary of Veterans Affairs is not required, only
9 requested. So if you bring affirmative relief, the next
10 issue is for me to decide what that looks like.

11 A large part of that would depend upon when we set
12 the trial date. So therefore, in this opinion I ordered a
13 meet and confer by January 4th. Certainly if our troops are
14 on the front line, we can work a little bit through the
15 holidays, just as they are.

16 There's another route open to you, and that's in
17 terms of settlement. When you first came into my court, you
18 had said: Judge, we made a good-faith mistake. We had this
19 settled for X number of units. There was no follow-through
20 or little follow-through by the government.

21 That had the implication of if there would have
22 been a consent decree or some judicial muscle in a sense
23 behind this, there might have been satisfaction. From your
24 perspective, I tried to note that the VA has picked up their
25 pace recently.

1 Also, the machinations of going through the EPA and
2 those different agencies I tried to be gentle by passing. I
3 could have used finger pointing. I didn't know what to say,
4 but the interplay between the government agencies causes some
10:05AM 5 concern from all of our standpoint. It makes all of us
6 uncomfortable.

7 "Dear Mr. Secretary: I write to urge you to
8 address the issue of veteran disability compensation being
9 considered as income for the purposes of Department of
10:06AM 10 Housing and Urban Development, HUD, and the Department of the
11 Treasury housing and financing programs of the upcoming
12 United States Interagency Council on Homelessness council
13 meeting scheduled for March 13, 2023.

14 "I applaud the efforts of you and the Department of
10:06AM 15 Veterans Affairs, the VA, have made to address the veterans'
16 homelessness, and I believe addressing the disability
17 compensation issue will assist these ongoing efforts.

18 "The development of HUD-VASH project-based
19 permanent supportive housing, PSH, is critical to VA's
10:06AM 20 progress to end and prevent veteran homelessness. PSH
21 capital funding opportunities often reward applications that
22 earmark units for extremely low or low-income tenants.

23 "While this practice benefits people who are
24 homeless and generating no or limited income who might apply
10:07AM 25 to these units, it serves to limit access to quality,

1 subsidized housing for high-needs, service-connected
2 veterans.

3 "Veterans who are homeless are often on the street
4 and not as a result of extremely limited income but severe
10:07AM 5 trauma directly related to their military service. It is the
6 resulting disabilities that qualify veterans for service
7 connection and veteran disability compensation.

8 "These homeless service-connected veterans are the
9 very people for whom HUD-VASH project-based permanent
10:07AM 10 supportive housing is built -- so that these veterans with
11 acute needs have their care integrated directly in and with
12 their housing.

13 "A unique aspect of the project-based voucher
14 program under HUD-VASH is the ability to project-based
10:08AM 15 HUD-VASH units on the grounds of a medical facility, which is
16 prohibited under the traditional project-based voucher
17 program but allows VA and HUD to co-locate housing and
18 services for veterans.

19 "PHAs may partner with their local VA medical
10:08AM 20 center to utilize the VA Enhanced-Use Lease Program, EUL,
21 program to out-lease underutilized real estate under its
22 jurisdiction or control to the private sector for the purpose
23 of developing supportive housing for homeless veterans and
24 their families, including HUD-VASH participants.

10:09AM 25 "Through this program veterans are provided with an

1 expanded range of services that would not otherwise be
2 available on medical center campuses. However, given the
3 structure of the capital funding, this target population is
4 often rendered ineligible. Funders of projects award funds
5 to developers to build PSH, and they often set income caps as
6 a condition of the award frequently between 30 percent to
7 60 percent of the area median income, AMI.

8 "HUD sets the definition of AMI and those sources
9 of income that are used to calculate AMI, which currently
10 includes veteran disability compensation, with the exception
11 of deferred VA disability benefits and aid and attendance."

12 Now, let me stop. This is my own interjection. It
13 took me quite a while digging into this record, and that's
14 why I used the simple example, or tried to, in a footnote
15 after writing a page and a half in this area.

16 "The annual income derived from VA disability
17 benefits for a single veteran with no dependents and a
18 hundred percent service connection rating is \$43,463.40."

19 And, of course, lesser if you're 40 percent
20 disabled, 50 percent, et cetera.

21 "We have heard accounts of disabled veterans
22 seeking housing in the newly constructed buildings on the
23 West Los Angeles VA Medical Center campus being turned away
24 due to ineligibility because their income puts them over the
25 AMI caps for a unit. Extremely low income or 30 percent of

1 the AMI for a one-person family in the Los Angeles metro area
2 is \$25,050. Very low income or 50 percent of the AMI is
3 \$41,700. Unfortunately the issue of VA disability
4 compensation exceeding AMI limits is not limited to
5 Los Angeles.

6 "My staff frequently hears from other communities
7 that homeless veterans are being rendered ineligible for
8 permanent supportive housing on and off VA campuses due to
9 their disability benefits. In its recent rule making for the
10 Housing Opportunity Through Modernization Act of 2016" -- and
11 I'll skip the acronym for a moment -- "HUD solicited comments
12 from the public as to whether exclusion of veteran disability
13 compensation from AMI eligibility calculations was advisable.

14 "In the final rule HUD elected not to exclude
15 veteran disability compensation from AMI calculations. While
16 I am disappointed in HUD's decisions, I also understand that
17 this issue is not limited to HUD. Treasury's Low-Income
18 Housing Tax Credit program also uses HUD income definitions
19 for prospective tenants in buildings financed with LIHTC even
20 though Treasury's own Internal Revenue Service does not treat
21 veteran disability benefit payments as income.

22 "My understanding is that both HUD and Treasury
23 have been aware of this issue for years, but neither agency
24 has taken the necessary steps to rectify their definitions of
25 income to exclude veteran disability compensation. I

1 encourage you to convene a discussion between the VA, HUD,
2 and Treasury to finally address this critical issue at the
3 upcoming USICH council meeting and to develop a solution to
4 ensure that homeless veterans for whom permanent supportive
10:12AM 5 housing is built can access it.

6 "Mark Takano, Ranking Member of the House."

7 I think I received this two years ago. I received
8 your amicus. So the public is welcome to comment.

9 Wherever you're going with this, with affirmative
10:13AM 10 injunctive relief as to the Court in the future, or setting a
11 trial date depending upon what my decision is, or settlement
12 discussions, somehow I would encourage you to get Congress
13 involved, because whatever decision this Court makes will
14 perhaps be beneficial, but eventually Congress is going to
10:13AM 15 have to really take a look at this area. And here apparently
16 we have a congressional representative who is taking a
17 leadership position.

18 The second thing is it points out what I gently
19 tried to point out, which is the contradictory positions in
10:13AM 20 my court right now between HUD and HACLA in a sense of
21 responsibility. But we have these contradictory positions
22 also within government, if you will.

23 I noted in the briefing, for instance, that part of
24 the delay was caused just by the EPA qualifications that
10:13AM 25 these programs didn't get off the ground. I neglected and

1 want to put in the record also that as you've come to the
2 forefront now and tried to push this process as quickly as
3 possible, from your perspective the EPA, the government in a
4 sense, another agency, was holding back for a number of years
10:14AM 5 that put you in a detrimental position.

6 When the plaintiffs argue you've only been able to
7 complete X amount, your response should be it took us two
8 years just to get the permits to get through this. Okay? So
9 there's a lot of finger pointing that can take place, but,
10:14AM 10 you know, better together somehow.

11 So I'm just encouraging you to start reaching out.
12 That's why I extended the humble invitation to the secretary
13 of VA, because he's got to lead this. He's got to call this
14 to the administration.

10:14AM 15 And the Court can make rulings, et cetera, which
16 will be in a litigation posture, but you also have an
17 opportunity here, I think, to use maybe this lawsuit between
18 the two of you to reach some resolution here especially in
19 this VASH-HUD, because your most severely disabled veterans
10:14AM 20 are in fact being excluded.

21 A second issue is this whole facility, this 4,000
22 units out of West Los Angeles -- could you put up the picture
23 of the chapel for just a moment. You know that I was
24 involved before your lawsuit came to my court in terms of
10:15AM 25 homelessness, and you know that we were down on Skid Row. I

1 represent to you that I invited Steve Peck to come down.
2 He's one of your veterans developers out there. I've known
3 him in the Marine Corps a long time since.

4 Frankly I'd state to you if you had him involved,
10:15AM 5 I'd trust whatever input he is giving you in this matter.

6 Could you put that up for a moment. Okay. This is
7 the chapel. When you drive in, if you drive down Wilshire --
8 remember, I'm a UCLA Bruin historically. That's why we pray
9 for miracles in football. Just kidding you.

10:15AM 10 But I've been familiar with this campus since the
11 1960s. We all know that it had 4,000 veterans there. It
12 dissipated down to almost zero for whatever reason. I wrote
13 about the -- with no denigration to the West Los Angeles
14 Homeowners Association being opposed to veterans being here.
10:16AM 15 It's hard to explain how a facility goes from 4,000 to zero.
16 Nobody could justify that.

17 I know that there is a push on the plaintiffs'
18 part, hey, look, Judge, if we bring injunctive relief, we've
19 got disabled veterans that we certainly want to get into this
10:16AM 20 housing as quickly as possible. We also want housing
21 generally for homeless veterans regardless because eventually
22 they're going to need services. And why not this campus? I
23 know -- and I don't think it was facetiously, but you also
24 asked me to find fiduciary duty for you. Remember?

10:16AM 25 Well, I really didn't want to do that, but I might

1 say, you know, quit leasing land of this type and, you know,
2 without going any further.

3 MR. ROSENBERG: That was in our briefing,
4 Your Honor.

10:16AM 5 THE COURT: Yeah, it was in your briefing, and I
6 started to get facetious. You know, we know what not to do
7 in my briefing, and I tried to lay that out as gently as
8 possible.

9 What's happening here? Look at this picture. Now,
10:17AM 10 we've got the West Los Angeles homeowners apparently upset
11 with Vietnam veterans back in the 1970s and 1980s. Then it
12 falls into disuse and disrepair.

13 If you want to contain your veterans -- veterans
14 talk to each other, by the way. They talk about their combat
10:17AM 15 experiences. They don't go out to the outside world.
16 They've got a network out there that's both therapeutic and
17 healthy.

18 If you want to keep them out of your neighborhood,
19 folks, why don't you get this chapel up and running in an
10:17AM 20 interdenominational sense. Otherwise your veterans should be
21 going out to different churches, because veterans believe in
22 something when they're in combat. Trust me. Now, they may
23 go back on their word, but veterans will buy off more in
24 terms of God or something when they're in combat. And they
10:17AM 25 need this.

1 So not getting religion involved, look at this
2 chapel. For God's sake, it's historic. Why isn't -- I bet
3 you if we drove out there right now, because you've got some
4 units open, we could find ten veterans who would paint this
10:18AM 5 in no time, if they had the paint, and get it up and
6 operating. Yet I know the government will come back and say
7 we've got EPA problems, you know. We've got X structural.

8 Come on. We can get this up and running while your
9 lawsuit is pending and do some very positive things just in
10:18AM 10 terms of worship on the ground so they don't go out in the
11 community. This is something that the VA could take a
12 leadership position.

13 No. No. I'm on a roll now. Give me a chance. I
14 was polite with you, okay? These are just suggestions
10:18AM 15 because --

16 MR. ROSENBAUM: Your Honor, I've been in that
17 chapel, and --

18 THE COURT: No. No. Thank you very much, counsel.
19 Done. I don't care what you do. I'm tossing things out
10:18AM 20 without comment. Now, I've been polite. I've listened to
21 you. Now you're listening to me. You're done, okay?

22 So you can go the litigation route, but if you do,
23 I want this case set quickly -- June at the latest. Well,
24 maybe July or August at the latest, depending upon your
10:18AM 25 schedule. This case is not going to languish anymore.

1 Now, we've got summary judgment motions coming up,
2 another chance to review all of this again. This is a motion
3 to dismiss.

4 Two, you can get involved in settlement
10:19AM 5 discussions. But if you do, that doesn't delay litigation.
6 What I won't hear again is the five times you two were
7 discussing settlement and it turned out that you were just
8 talking to each other.

9 Number three, I don't care if McDonough or whoever
10:19AM 10 appears here, but I do care that this is at the highest
11 levels of government, for goodness sake, because you as
12 litigants cannot drive this ship. You can only, you know,
13 call to attention the different acts and what they stand for.

14 Congress needs to get involved and resolve this,
10:19AM 15 because somehow from your standpoint you're counting the most
16 disabled having the greatest detriment. So if you're a
17 hundred percent disabled or 50 percent disabled, we count
18 that against you, and therefore you're not going to get
19 housing. You're not going to get services. It's absolutely
10:19AM 20 backwards, at least for the reasoning that has been
21 purported.

22 This isn't my focus. You drive through that campus
23 and I see the buildings, and I know you're building.
24 Compliments. Have you seen the number of abandoned buildings
10:20AM 25 out there? Have you really? Have you, counsel?

1 MR. SMITH: I have not, Your Honor.

2 THE COURT: I almost held a hearing out there but
3 didn't want to take away, you know, from the formality now.
4 But if you drove out there, you would be astounded at the
10:20AM 5 number of buildings, and yet we're building new buildings
6 instead of rehabbing them. Maybe that's development. I
7 don't know, but we have got vacant space out there that is
8 absolutely incredible.

9 So it goes to your point. Hey, get your disabled
10:20AM 10 veterans in first, you know, who need services immediately.
11 But what about the other veterans? Why isn't this a home, a
12 campus again for up to 4,000 or 3,000 people? Now, I know
13 the community is going to push back.

14 My compliments. First of all, thank him. I thank
10:20AM 15 him for coming out. But if he came out to dedicate 53 units,
16 maybe he ought to be out here involved in the settlement
17 discussions if you get that far when we're talking about
18 4,000 units. I'm looking for that leadership coming from the
19 veterans of the secretary or from this administration,
10:21AM 20 because I don't think you as counsel can resolve that other
21 than litigating and clashing heads. Okay?

22 I think that this is subject to settlement, quite
23 frankly. I'm not going to order a mandatory settlement. I'm
24 going to see what your position is when you talk informally.
10:21AM 25 I'd like to try to go that route. It's quicker. But this

1 time you do need a consent decree. You do need
2 accountability. You do need something behind you to make
3 certain that this takes place.

4 Now, a couple other things. You may be building at
10:21AM 5 the fastest pace you can right now. Let's just say we had
6 4,000 veterans in the Los Angeles area -- about 3,000.
7 You've tripled since 2015. You've gone up 600 just since the
8 lawsuit was filed.

9 I know you offered 200 additional spaces, but I put
10:22AM 10 in that's only 25 per year for six or seven more years. It's
11 inadequate. You need flexibility involved in this. You need
12 some process for dispute resolution, which we're going to
13 have in another case a little while later on where the Court
14 is going to work with you and you can work with the Court in
10:22AM 15 terms of some flexibility for the benefit of the veterans.

16 So what I'm afraid of is the adversarial process
17 will bring a solution now in June or July or August, but it
18 won't give you the long-term flexibility unless the Court
19 fashions, you know, injunctive relief now or remedial relief
10:22AM 20 later on. That's all on the table. I haven't gone down that
21 road.

22 There's so much else I'd like to say to you, but
23 better together than apart on this. I genuinely think all of
24 us want the same thing, and we want it as quickly as
10:22AM 25 possible. So if you're going to bring me injunctive relief,

1 I'm going to give you a tip. How do we order 4,000 units
2 right now when we're competing with limiting space for UCLA
3 students trying to get on Mayfair and some of these other
4 locations, this limited space, without driving up the rent?

10:23AM 5 Number two, how do we know that we can find 4,000
6 veterans who want to go in? A lot of the veterans aren't
7 going in. They're used to living under the stars. But a lot
8 of them are, and they're being excluded right now.

9 So I think that, number one, you can get your
10 disabled in right now who is willing to go and who need
11 services, I mean, right now. Number two, we can certainly
12 work on hopefully getting additional housing for veterans who
13 may not have, you know, acute problems from IEDs.

14 If we do that and we work together, I think then
10:23AM 15 that we can segue this out in a way that is, let's say, the
16 new and refreshing speed without this potential injunctive
17 relief coming in on top of you where the Court just imagined
18 4,000. What do you do with that?

19 If we work together, I think we can accomplish
10:24AM 20 this. I'm afraid of the adversarial process, and I'm telling
21 you that.

22 A couple more random thoughts, and then I'm done.
23 Does he have the attention of this administration? How do I
24 pronounce his name? McDonough? Does he have the attention
10:24AM 25 of this administration? Can he get HUD together in the same

1 room with EPA and stop this nonsense?

2 I'm just throwing that out to you. It's going to
3 take some leadership. If it doesn't come from the head of
4 the VA, then it's going to have to come from Congress or
10:24AM 5 somebody. That means that this Court is involved in this
6 litigation process that may or may not drive that process.

7 So he's invited but not required. But if he can
8 get here for 53 units, he ought to get here for 4,000. And I
9 want it at his level. My attorneys in past lawsuits are
10:25AM 10 mouthpieces, and I don't mean that facetiously. You do the
11 bidding of whoever is giving you directions. You're not
12 problem solvers. So this has to take place with somebody at
13 this level, you know, with your guidance and wisdom being
14 imparted.

10:25AM 15 And since you're now involved, period --

16 MR. SMITH: Yes, I am.

17 THE COURT: Maybe the chairman of the board?

18 MR. SMITH: Yes, Your Honor. The president of
19 HACLA is who I'm working with and representing.

10:25AM 20 THE COURT: And where do you get your funding?

21 MR. SMITH: Through HUD.

22 THE COURT: And how is the board involved?

23 MR. SMITH: Well, the funding comes through HUD.

24 THE COURT: Good, yeah. And the chairman of the
10:25AM 25 board?

1 MR. SMITH: Uh-huh.

2 THE COURT: Always requested, never ordered. All
3 right.

4 Now, do you have any questions of me? I haven't
10:25AM 5 given you direction. I've given you absolute transparent
6 thoughts. But unless you move with injunctive relief or
7 settlement, I'm now moving very quickly with trial. So
8 expect six months, about. When you come back to me on
9 January 4th, scheduling conference and, say, trial is going
10:26AM 10 six months? June, July at the latest. Okay?

11 MR. ROSENBAUM: We're good with that, Your Honor.

12 THE COURT: Okay. Any questions of me?

13 MR. SILBERFELD: Your Honor, Roman Silberfeld. In
14 the spirit of better together, I was going to offer to
10:26AM 15 prepare a joint report after we have a chance to meet and
16 confer, and file that on the 28th. Is that -- that's a week
17 before --

18 THE COURT: Listen, I'm taking no time off. I'm
19 going to be around, you know. So absolutely, but January 4th
10:26AM 20 is the --

21 MR. SILBERFELD: Right. And we'll be happy to meet
22 with counsel and --

23 THE COURT: Absolutely.

24 MR. SILBERFELD: -- right after this.

10:26AM 25 THE COURT: Let's see if we can move together.

1 On behalf of the amicus?

2 MR. PERKOWSKI: No. Thank you, Your Honor.

3 THE COURT: Would you thank all of the folks. I
4 actually took the liberty of naming the amicus briefing. It
10:26AM 5 was just excellent. Thank them.

6 MR. PERKOWSKI: We appreciate that.

7 Schwartz is here in the audience.

8 THE COURT: ACLU? You okay?

9 MS. DANFORTH-SCOTT: Thank you, Your Honor.

10:26AM 10 THE COURT: Counsel?

11 MR. ROSENBAUM: Nothing further, Your Honor.

12 THE COURT: Okay. Then back to HACLA.

13 MR. SMITH: I was just going to say, Your Honor, on
14 that January 4th date, I believe you proposed 9:00 a.m. Is
10:27AM 15 there any way we can push that back an hour or two? I looked
16 at my calendar, and I have an appearance that morning that I
17 can call in and get over here with.

18 THE COURT: We can make it 10:00 o'clock. Change
19 it to 10, okay?

10:27AM 20 So 10:00 o'clock, January 4th.

21 MR. SMITH: Thank you, Your Honor.

22 THE COURT: We can accommodate that.

23 Counsel?

24 MR. ROSENBERG: Thank you, Your Honor. Brad

10:27AM 25 Rosenberg from DOJ. Just two housekeeping matters. I was

1 going to ask about a status report. Is it now due on the
2 28th, or do we have a little bit more flexibility regarding
3 that?

4 THE COURT: If you two -- listen, I'm working all
10:27AM 5 the time. You just tell me when you have that status report
6 to me, and I don't care if it's that weekend.

7 MR. ROSENBERG: Okay. We can -- we agree it makes
8 sense to file a status report. It may not be on the 28th.

9 THE COURT: Why don't I put it for the 28th now.
10:27AM 10 You two get together and say another date. I just need a
11 couple days to read it. Fair enough?

12 I want to humbly thank you --

13 MR. ROSENBERG: One more housekeeping matter.
14 Apologies. One of the deadlines that's triggered by a denial
10:28AM 15 of a motion to dismiss is the answer to a complaint. This
16 complaint is not insignificant in its length.

17 We are actually already working on that answer and
18 are prepared to appear on January 4th and to serve -- and to
19 file a status report.

10:28AM 20 THE COURT: Okay.

21 MR. ROSENBERG: Could we at least stay the deadline
22 for the defendants to answer the complaint and include that
23 as part of our schedule in the status report?

24 THE COURT: Yes, as long as that doesn't affect my
10:28AM 25 kindly thought about you going to trial sometime in June or

1 July. In other words, as long as it doesn't delay that, I
2 don't care if the answer is delayed a week or so or whatever
3 you need. But I'm pretty adamant about this case now moving
4 rapidly. It's been through Judge Otero, Judge Walter, this
10:28AM 5 Court, et cetera. This case is going to move either by
6 settlement, by injunctive relief, or by litigation.

7 MR. ROSENBERG: To be clear, Your Honor, what we
8 would -- suspending at least temporarily the answer deadline
9 would allow us to put that on a separate track and move
10:29AM 10 forward expeditiously, as the Court anticipates.

11 THE COURT: As long as you know that when you come
12 back on January 4th, I'm setting trial dates, and you know
13 it's going to be June or July. So if your answer got delayed
14 a couple weeks, I don't care.

10:29AM 15 MR. ROSENBERG: Okay.

16 THE COURT: But if you come back to me and say,
17 Judge, we filed an answer two or three weeks later and now we
18 want two or three weeks or a month, no. No.

19 Counsel?

10:29AM 20 MR. SILBERFELD: Your Honor, Roman Silberfeld. We
21 don't have any objection to extra time on the answer --

22 THE COURT: You can work that out. Just tell me.

23 MR. SILBERFELD: -- provided we're allowed to begin
24 discovery as well.

10:29AM 25 THE COURT: Oh, absolutely. This case is now in a

1 discoverable phase. Let's move. Let's get going. And that
2 will put pressure on all of us to either come up with a
3 resolution, come up with injunctive relief, or come up with
4 litigation in this matter. I would just encourage us in the
10:29AM 5 long run, I think working together we can achieve a lot more
6 than the litigation process can.

7 At least I heard you when you first came in say
8 something to me that really struck, and that is: Judge, we
9 had a settlement. If we would have had timelines, they might
10:30AM 10 have been a little bit off, but we could have worked
11 together. We just needed a consent decree or some kind of
12 enforcement or accountability, and we could have worked
13 together on that. Maybe we could have applied pressure to
14 EPA at the time. Okay?

10:30AM 15 Counsel, you may have the right numbers; you may
16 not. I just don't know yet. But we've gone up now
17 threefold, and we've gone up 600 just since the complaint has
18 been filed. We're the homeless veteran capital of the world
19 right now. So I don't want to hear excuses about we can't
10:30AM 20 afford it. It's the opposite. We can't afford what's
21 happening right now, folks. That's what we can't afford.

22 So I would like to take a look at this VASH-HUD. I
23 just don't see how our veterans have any benefit coming from
24 being punished because they have a disability compensation
10:30AM 25 for their combat experience.

1 Lastly, I'll toss out to you this. Your veterans
2 today are different. They're different in this regard.
3 World War II, some of these wounds would have killed them.
4 In Korea the Medivac got better. The statistics went up, but
10:31AM 5 the maiming of our soldiers and marines, sailors, and Air
6 Force went up.

7 We've gone from 8 million, 10 million men and women
8 coming back from World War II to an all-professional army.
9 Going to an all-professional army, it's allowed the
10:31AM 10 United States to avoid a draft.

11 Now, I might have different thoughts about that in
12 terms of universal service, but it's allowed that luxury.
13 Our veterans have now changed because these are all volunteer
14 people who have literally signed a blank check and say I'm
10:31AM 15 going to volunteer to defend this country.

16 That's the way we're filling the Marine Corps
17 quotas and the Army quotas. We're not in a draft. I ask you
18 this, and I don't know: Do we owe a greater duty or not? By
19 avoiding the draft, does that change the contractual
10:31AM 20 relationship in terms of a fiduciary duty? Ask yourself that
21 question.

22 Next, Vietnam comes along. Unless you move, you're
23 going to lose a whole generation of Vietnam veterans. If we
24 stall this out, there's a whole generation of people in their
10:32AM 25 70's and 80's who will just pass away without this issue

1 being decided. Now along comes Iraq and Afghanistan with
2 IEDs. Our survival rate is much higher, but our
3 dismemberment, the limbs, the traumatic injury from these
4 bomb blasts, are causing a greater need of service in a sense
10:32AM 5 because the World War II veterans died of this kind of
6 contact. Now your Medivac services are so good that you've
7 got people living but with severe physical disabilities and
8 from these IEDs. It's changing, and we've got to change with
9 it. Okay?

10:32AM 10 So I wish you the best. I hope we can resolve it.
11 If not, I'm adamant about the litigation, okay? All of you
12 have a good day. We're in recess.

13 MR. ROSENBAUM: Thank you, Your Honor.

14 (Proceedings concluded at 10:32 a.m.)

15 CERTIFICATE

16 I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
17 TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN
18 THE ABOVE MATTER.
19 FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
20 REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
21 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

22
23 /s/ Miriam V. Baird

12/15/2023

24 MIRIAM V. BAIRD
25 OFFICIAL REPORTER

DATE