In the

SUPREME COURT OF THE UNITED STATES

No. 24A1132

MARK HASTINGS, MARCIA DUCHARME, AND NANCY NEWBURY,
Plaintiffs,

NANCY NEWBURY,
Plaintiff–Appellant–Petitioner,
v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT;
CHURCH COMMUNITY HOUSING CORPORATION, INC., et al.,
Defendants–Appellees.

On Application for Emergency Stay of First Circuit Denial of Stay Pending Appeal

To The Honorable Ketanji Brown Jackson, Associate Justice
Of the Supreme Court of the United States
And Circuit Justice for the First Circuit

EMERGENCY APPLICATION FOR STAY PENDING APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Now comes Petitioner, pro se, on behalf of herself and 53 elderly residents of West House - an average age of 80 - who reside in 50 efficiency and one-bedroom apartments in a Section 202 housing development long known as a model of dignity, stability, and independent aging. That dignity and stability have been severely compromised - not by an Act of Congress - but by a housing developer, with the acquiescence of the U.S. Department of Housing and Urban Development (**HUD**), who has imposed a sweeping operational change without notice, without rulemaking, and unprecedented in any Section 202 property nationwide.

INTRODUCTION

This Application challenges a precedent-setting and disruptive merger of a federally protected Section 202 property with a newly constructed, market-rate building for a younger non-elderly population aged 55 and older. Under HUD programs like Section 202, **"elderly"** is defined as **age 62 and over**. People **aged 55–61** may be considered "senior" in some housing contexts (e.g., under the Fair Housing Act's Housing for Older Persons Act [HOPA]), but **HUD does not classify them as "elderly" for Section 202 purposes.**

The merger was executed without compliance with HUD's governing regulations, without consultation of the elderly residents affected, and in direct violation of the 1996 Regulatory Agreement (**APPX 9**) that prohibits physical modification of the

Section 202 property without the Secretary's designated written approval. For a regulatory agreement to be amended, all changes must be formalized in writing and subject to approval by the relevant regulatory body. In essence, modifications require a formal agreement, like the original contract, to modify its terms. That didn't happen here. The regulatory agreement was ignored.

BACKGROUND AND PROCEDURAL HISTORY

This appeal arises from the district court's November 14, 2024 dismissal of *Newbury, et al, v. HUD, et al*, Case No. 24-00084 (**APPX. 2**), for lack of standing under Article III of the U.S. Constitution, and its subsequent denial of a motion for reconsideration (**APPX. 3**). The judge found that - notwithstanding acknowledged procedural violations of notice and comment - plaintiffs had suffered no concrete and particularized injury in fact. The magistrate judge had recommended denial of plaintiffs' motion for preliminary injunction because plaintiffs failed to establish "actual" success on the merits. The district judge adopted her recommendations.

A timely Notice of Appeal was filed and Appellant's Brief was submitted to the First Circuit on February 11, 2025. The appeal challenges the court's dismissal of the case and HUD's failure to comply with rulemaking and notice-and-comment requirements, as well as its disregard of governing agency rules in implementing a policy that materially affects elderly tenants in Section 202 housing.

Without explanation, the circuit court denied Appellant's motion to amend the **case caption** to reflect the voluntary withdrawal of plaintiffs Ducharme and Hastings, who withdrew citing a loss of confidence in the district court's regard for low-income elderly and its commitment to pro se litigant fairness and impartiality.

On March 27, 2025, the First Circuit's denied Appellant's motion for expedited proceedings and stay pending appeal (**APPX. 4**) in *Newbury v. HUD*, No. 24-2137. Appellant thereafter filed two related motions: on April 9, 2025, a motion for reconsideration of the Court's March 27 denial (**APPX. 5**), and on May 1, 2025, an emergency motion for stay pending application for emergency relief to the U. S. Supreme Court (**APPX. 6**). Both motions are pending. No mandate has issued.

JURISDICTION

This Court has jurisdiction to issue a stay under 28 U.S.C. § 2101(f), Supreme Court Rule 23, and Article III of the Constitution. Applicant seeks temporary injunctive relief pending resolution of an appeal currently pending before the United States Court of Appeals for the First Circuit in Case No. 24-2137.

This Application does not seek certiorari review at this time, but requests a stay to preserve the integrity of the issues on appeal and to prevent irreparable harm to elderly and disabled residents. In part, Appellant's argument at the circuit court is that the procedural violations alone constitute standing's injury in fact requirement.

RELIEF SOUGHT

Applicant respectfully requests that The Honorable Ketanji Brown Jackson, as Circuit Justice for the United States Court of Appeals for the First Circuit, or the full Court if necessary, enter an emergency stay to preserve the *status quo ante* - specifically, the physical and operational separation of West House (**WH**) and West House II (**WH II**) as distinct residential properties - pending resolution of Applicant's appeal now pending before the First Circuit in Case No. 24-2137.

The stay is sought to prevent irreparable harm to elderly and disabled residents, including the inappropriate integration of younger, non-elderly residents into protected Section 202 senior housing, and the unauthorized use of WH's limited-access front parking lot by tenants and guests of (WH II). Such harm cannot be reversed once full integration is completed and new tenancies are established. This request is grounded in the need to prevent irreparable harm, preserve the effectiveness of appellate review, and maintain stability while the First Circuit adjudicates the underlying issues on a full record.

This Application seeks no ruling on the merits of the appeal now before the First Circuit. It requests only temporary, injunctive relief to preserve the subject matter and ensure meaningful appellate review. Applicant reserves the right to file a petition for a writ of certiorari at a later date, if necessary, and submits this

Application solely for the limited purpose of maintaining conditions as they existed prior to the disputed integration of the two properties.

STATEMENT OF THE CASE

At its core, this case concerns the forced displacement of elderly residents *within* their own homes. **WH** - a Section 202 property - reserved for tenants aged 62 and older and comprised of 50 efficiency and one-bedroom apartments has been physically and operationally merged with **WH II** a newly constructed and separate, market-rate building of 54 one and two-bedroom units for non-elderly tenants aged 55 and above. Six of the 54 WH II apartments are reserved for physically or mentally disabled persons with Section 811 vouchers.

The two buildings are now joined via a connector through shared entrances, and WH II tenants now use WH hallways, elevator, and common rooms, including the kitchen, chapel, computer room, laundry, library, TV room and sunroom. This radical transformation was undertaken without any notice to, or input from, the elderly tenants. No public comment period was held. No rule-making process was followed. No waiver was granted. Instead, elderly residents awoke to a new reality: a number of strangers in their once-secure space, shared facilities redefined by younger, more mobile tenants, and policies and daily encounters inconsistent with needs of an aging, often frail population.

Beginning in January 2025, the new tenants moved in. By March and April, building security failed entirely - for four weeks key/fob systems were inoperable, doors were left propped open overnight, and management was nonresponsive. Notices posted by the West House Resident Council warning neighbors of security risks and to remain alert were removed by staff. No interim security was provided.

The changes go beyond access: elderly tenants now encounter large, unregulated dogs from WH II in common areas, in violation of WH's pet policy. Some residents have pet allergies; others fear injury from the presence of 60+ pound dogs. Just last week, one such dog reportedly attacked a tenant in an elevator. WH's own pet policy limits dogs to under 20 pounds and prohibits animals in common rooms - policies that were never extended to WH II tenants. Despite having access to their own laundry facility with six larger, heavy-duty washers and six dryers, WH II tenants are now routinely using the WH laundry room, which has only three of each and often results in wait times for elderly residents.

Longstanding traditions, such as Friday night "happy hour" gatherings in the sunroom, have been displaced or disrupted due to construction of the building connector, which absorbed almost half of the room's space. These gatherings are a vital source of social connection for isolated seniors. WH tenants are now being told they can't use common rooms for social events unless the younger tenants

from WH II are allowed to participate, despite the fact that WH II has larger and more community spaces of its own. Elderly tenants who once thrived through routine social bonding now remain isolated, sheltering in place rather than aging in place, as Congress intended. They feel marginalized, intruded upon, and forgotten.

This is not what Congress envisioned when it enacted Section 202 to help older Americans age in place and avoid premature moves to costly assisted living facilities or nursing homes. That vision - one that saves the federal government billions annually - has been undermined by local developer Church Community Housing Corporation, Inc. (**CCHC**) and HUD's Asset Management Division.

What Congress envisioned through the Section 202 program was "aging in place"- not social isolation, increased physical risk, or loss of control over one's residential environment. That vision has been cast aside in what appears to be an effort to subsidize or enhance a new market-rate property by appropriating the physical space, amenities, and community life of a federally subsidized elderly building.

WH II tenants reportedly pay rents based on area median income (AMI) - approximately $1,500 to $1,800 per month - while WH Section 202 tenants pay fixed subsidized rents averaging $350/month (30% of income). There is a clear financial incentive to integrate the properties and normalize the shared use of resources that were built, funded, and maintained for the elderly residents.

Indeed, the controlling **1996 Regulatory Agreement (APPX 9)** - submitted by HUD itself as evidence - requires that the West House property be operated exclusively for elderly residents and explicitly prohibits structural "modification" of the building. The connector, removal of the large sunroom windows and about half the room's space to accommodate the connector, and the resulting commingling of vastly different populations, plainly constitute such modification. HUD has produced **no modified regulatory agreement** authorizing these changes. Under the ground lease (**APPX 10**), the elderly were granted "no greater right" to use common facilities than the younger WH II tenants, compounding the violation. Absent formal modification of the Regulatory Agreement, the original covenant remains breached to this day. The district court's Report and Recommendation failed even to mention the 1996 agreement, let alone analyze its binding force.

Legal Commentary Supporting Standing

The lower court found that plaintiffs had no right to a preliminary injunction as they were not third-party benefices. HUD Handbook 4350.1, esp. Chapters 16 & 1, frequently emphasizes that HUD's mission and regulations are for the **protection and benefit of tenants** - which supports third-party beneficiary claims under the controlling 1996 Regulatory Agreement. *Wright v. Roanoke Redevelopment & Housing Auth.*, 479 U.S. 418 (1987) (though dealing with §1983) emphasized the enforceable nature of federal housing benefits for tenants, bolstering arguments for

direct injury. Plaintiffs, elderly tenants of West House, asserted standing as third-party intended beneficiaries of the Regulatory Agreement governing the property. This agreement - incorporated by reference in tenants' lease agreements - was expressly designed to ensure affordable, elderly-only housing under Section 202, with restrictions on use, occupancy, and physical modifications that protect the unique needs of an aging, vulnerable population. Courts have long recognized that tenants in HUD-assisted housing may enforce such agreements when they are the direct, intended beneficiaries. See *Holbrook v. Pitt*, 643 F.2d 1261, 1270 (7th Cir. 1981) (Section 8 tenants had standing to enforce regulatory provisions "intended for their benefit"); *Hill v. Group Three Hous. Dev. Corp.*, 799 F.2d 385, 391 (8th Cir. 1986); *Dennis v. Watts*, 597 F. Supp. 1351, 1355–56 (E.D. Ky. 1984). These cases underscore that where HUD or a property owner breaches material conditions designed to protect tenants, and tenants suffer concrete harm - such as loss of elderly-only space, increased security risks, or regulatory bypass - they are not mere bystanders but legal beneficiaries entitled to enforce compliance. The unauthorized expansion and commingling of WH and WH II, without the notice and comment required under 24 C.F.R. § 245.410 and HUD Handbook 4350.1, Ch. 16, constitutes precisely the kind of injurious breach actionable by elderly tenants as donee beneficiaries. **HUD Handbook 4350.1**, esp. Chapters 16 & 1, frequently emphasizes that HUD's mission and regulations are for the **protection and benefit**

of tenants - and that "property must be maintained for those intended" - which supports third-party beneficiary claims.

Notably, Attorney Robert Sabel - who signed the 1996 Regulatory Agreement as President of West House Corp., and serves as Vice President of the CCHC non-profit sponsor - was the same individual who later drafted the **ground lease** creating the connector and contested easements, and who had requested the release of HUD security on the WH rear lot for construction of WH II. That request made by Mr. Sabel required two certifications: that notice and comment rules had been complied with; and that the proposed project would not negatively affect the quiet enjoyment of the property by the WH elderly tenants. In his formal request for partial release of security submitted to HUD, Mr. Sabel wrote in the large box provided for confirmation that CCHC had complied with notice and comment rules prior to submitting his request that 'CCHC is **exempt from notice and comment** requirements under 4350.1 (Rev-1), Chapter 16-4(b)(4) (**APPX 7**) because of its PRAC agreements.' The 'quiet enjoyment' certification was to be determined under the agency's rules by HUD's Office of Elderly and Assisted Housing, not by the interested party to the release of security as was CCHC. In the request for partial release of security, CCHC certified to HUD, without consulting tenants, that their West House Expansion Plan would not impair the elderly's 'quiet and peaceful enjoyment of the property.' HUD asset managers in Boston relied upon

Mr. Sabel's certifications, granted the security release, and approved the ground lease, connector, and two easements (that also required the same certifications) that granted common room and front lot parking privileges to WH II tenants. WH tenants were never consulted and do not know who Mr. Sabel is. This absentee governance underscores the several procedural and substantive violations at issue.

CCHC's reliance on Handbook 4350.1, Rev-1, Chapter 16-4(b)(4) (**APPX 7**) to justify bypassing the tenant notice and comment process was **misplaced**, as that exemption pertains solely to *Mandatory Releases* initiated or required by HUD, not to *Negotiated Releases* requested by an owner, such as CCHC's voluntary partial release of security in connection with its PRAC agreements. At no time and in no pleading, has HUD or CCHC denied their mistaken reliance upon "exemption."

The Section 202 Supportive Housing for the Elderly Program was established by the **Housing Act of 1959**, Pub. L. 86–372, Title II, to provide affordable, independent living accommodations for very low-income elderly persons. WH is one such property, subject to HUD rules and oversight, including the requirement of tenant participation under **24 C.F.R. § 245.410** when owners seek HUD approval for certain changes affecting the project's operation or financing.

Although Defendants provided two "voluntary" notices to tenants in **November 2021** and **February 2022**, neither complied with the regulation's requirements:

tenants were not informed of any time or place to inspect relevant documents; no HUD contact name or address was provided for submitting written comments; and crucially, the final request for partial release of HUD-held security was submitted to HUD just **four days** after the last of these two hotly contested meetings - well short of the **30-day minimum notice period** required.

At both meetings, architectural drawings were the only materials presented, and Christian Belden, Executive Director of CCHC, apologized for bringing the wrong set of plans. At the meeting, tenants were told the expansion plan had already been approved by HUD. After the first meeting, the Sr. property manager misleadingly certified to HUD that residents had questions but were 'generally pleased' with the 'West House Expansion Plan.' Following the second, amid vocal opposition, the property manager walked a one-sentence petition door-to-door - *"I am in favor of affordable housing"* - which **28** signed and was submitted to HUD. Days later, **44** tenants (including many who signed the first) signed a second *"strongly opposing"* key access and common rooms or front lot parking privileges for non-residents.

Lacking a proper HUD contact, tenants sent the 44 petitions to the HUD field office and copied CCHC, but CCHC Defendants did not forward them to HUD's Boston Asset Management Division where their request for release of security was directed, relying instead on their own petition to demonstrate tenant support.

WH tenants had no opportunity to review the actual documents that governed HUD's decision-making. Had such access been provided, they could have discovered that CCHC had mistakenly - or knowingly - claimed exemption from the notice-and-comment process in its **request for partial release of security**, citing an inapplicable exemption from **HUD Handbook 4350.1 Rev-1, Chapter 16**, which governs *mandatory* releases (see Ch. 16-3 2b), not the *negotiated* release that was sought. At no time in these proceedings, have CCHC or HUD denied their mistaken reliance upon "exemption." Tenants also would have discovered had they had adequate notice, the role of HUD's Asset Management Division who were unidentified and inaccessible until over a year later when plaintiffs had to make a **FOIA** request to view HUD documents.

Between **2022 and 2024**, tenants sent repeated, unanswered letters to HUD's field, regional, and national offices expressing concern about the connector, key access, and policy departure. CCHC was on copy to those letters and responded to none. The magistrate judge nonetheless concluded that Plaintiffs had ample opportunity to comment - citing only the volume of their unanswered complaint letters.

Comment by tenants under notice-and-comment rules must not be chilled, punished, or converted into a basis for character attack.

Tenants' attempts to raise reasonable objections to the expansion plan - through letters to HUD's field, regional, and headquarters offices - were met not with an

effort to engage in good-faith dialogue, but with a defamatory response by CCHC Executive Director Christian Belden. In a February 1, 2023 cover letter sent to his associates at HUD's Boston office, Belden informed HUD that plaintiffs may, **in fact**, be attempting, to "get a payoff" and stated, *"If we were to offer them money, their complaint would go away."* Mr. Belden told HUD that complainant Newbury has a history of threatening lawsuits to the Phoenix property management firm for her personal gain. HUD adopted Belden's response as "acceptable" and, based on his unverified assertions, declared the matter closed. HUD's republication of these defamatory claims across multiple offices, and its failure to investigate their truthfulness, caused emotional and reputational harm to the three plaintiffs and discouraged further protected participation. Petitioners respectfully reserve their right, if this case is remanded, to sever any potential defamation claims for jury trial under applicable state or federal law. While distinct from the APA claims presented here, the defamatory remarks made by the housing provider's director and accepted without inquiry by HUD significantly chilled protected tenant speech.

ARGUMENT

Plaintiffs filed suit in February 2024, along with a motion for a preliminary injunction to halt construction of the connector - which at that time wasn't much more than a hole in the ground awaiting cement (**APPX 1**). Plaintiffs waited 4 months for the magistrate to hold a hearing on the motion (a "non-testimonial"

hearing scheduled by Text Order on May 31, 2024), and a total of 6 months for her Report and Recommendations, dated August 20, 2024. The R&R recommended denial of the preliminary injunction for plaintiffs' failure to prove "actual" success on the merits, more than the standard 'substantial likelihood of success.' The magistrate noted in her R&R that the connector was too far along to be halted.

The case remained in **pro se screening limbo for nine months**, without meaningful judicial engagement, until it was dismissed on November 14, 2024 - and by then, the contested connector was complete with roof, windows and doors (**APPX 1**), the harm largely inflicted, and the pro se Plaintiffs' motion rendered effectively moot, as was the requested relief.

Although the district judge stated that he had reviewed all relevant material before issuing his dismissal he did not order a transcript (**APPX 8**) of the June 27, 2024 motion hearing, during which the court recessed before allowing Plaintiffs to respond to HUD's 12(b)(6) motion to dismiss, or to correct the record with witness testimony on HUD's mistaken reliance on a statutory exemption for notice and comment. Nowhere in the magistrate's R&R or district judge's dismissal is found any mention of the defendants' mistake in claiming exemption from notice and comment rule. The court avoided the defendant's exemption claim and found that a "voluntary" meeting was notice and comment enough for the elderly tenants.

1) Required Notice and Opportunity to Comment Analogy

Suppose if you will a neighbor builds a three-story apartment above their garage without applying for the proper permits, never posts notice, and never gives abutters a chance to object. The town arrives months later, after the structure is built, and says, *"It's too late. People have already moved in."* No court would uphold that process. Yet that is what happened here. HUD and the owners changed the legal nature and use of Section 202 housing by attaching a younger, market-rate population with shared access to parking, entries, and amenities - all without notice to the elderly residents, all without comment, and all while claiming no changes occurred and no notice was required. This Court should not allow federal agencies to sidestep the very procedures designed to protect the most vulnerable from precisely such encroachment. If low-income elderly cannot enforce their right to prior notice and peaceful enjoyment under binding federal regulations, then that right becomes as illusory as the building permit never sought.

This Petition is not about property lines. It is about the lawful treatment of a uniquely vulnerable population - elderly, low-income residents, the majority of them women - whose homes and safety have been disrupted without due process, without compliance with federal regulations, and without recognizing their dignity.

Although this case remains on appeal, management has proceeded to accelerate the contested integration by informing WH II tenants that the two buildings are 'one and the same,' while promoting shared activities such as book clubs, bingo, exercise classes, birthday parties, and newsletter contributions - some funded by WH's operating budget, and all advertised for 'sign up' on the WH II bulletin board. This coordinated push toward full comingling, if not stayed, risks rendering the appeal effectively moot and imposes disruption and distress on the elderly.

Since breaking ground for WH II in late 2023, management has not only accelerated the contested integration but also unilaterally disrupted essential services for elderly tenants. For example, the Saturday-only RIPTA bus - a critical lifeline for carless tenants to access groceries and medications - was rerouted without notice from the WH front entrance to a remote, unprotected drop-off point below WH II, forcing frail elderly residents to navigate uphill terrain, multiple outdoor steps, and exposure to weather and wildlife, with no shelter or seating and no safe way to transport heavy items home. Previously, the bus stopped at the front door of West House, allowing elderly tenants to wait indoors and return directly into the building; now, without ramps, or even a connecting walkway between WH II and WH, tenants are effectively stranded or physically endangered - an avoidable harm caused by management's rush to operationalize the integration plan before judicial review is complete.

Petitioners respectfully urge the Honorable Associate Justice to confront what the courts below failed to see or chose to overlook: that real and irreparable harm is occurring now; that pro se plaintiffs, especially elderly ones, face structural disadvantages that compound that harm; and that interim relief is urgently needed to prevent further erosion of the Section 202 program's integrity and protect the WH elderly tenants from ongoing destabilization, intrusion, and risk.

Before the June 27 motion hearing, Plaintiffs inquired at the court clerk's office about the scheduled "non-testimonial" hearing, and were told it would be limited to oral argument. Despite the gravity of the alleged harm, the pro se Plaintiffs were afforded no discovery or an evidentiary hearing where they could present facts or cross-examine witnesses, including Mr. Sabel, who was present in the courtroom.

2) Substantial Likelihood of Success on the Merits

No fair court could reasonably expect a pro se plaintiff to demonstrate a "substantial likelihood of success on the merits" on a record that was structurally rigged from the start. Plaintiffs were denied every conventional avenue to build a factual record - discovery, an evidentiary hearing, cross-examination of key witnesses, or any opportunity to test HUD's factual assertions. Although the magistrate judge held a motion hearing on June 27, 2024, the transcript shows it was not evidentiary in nature; When asked by the magistrate if she had any

objection to the photo of the connector being admitted for demonstration purposes, the HUD counsel expressly stated, *"No, but we would argue this is not an evidentiary hearing"* (Tr. 17). Despite this, the district judge, in dismissing the case, erroneously characterized that proceeding as an "evidentiary hearing," without ever reviewing the transcript, which Plaintiffs themselves had to order for the appellate court. The court had recessed before Plaintiffs could rebut HUD's claims or correct their reliance on a plainly inapplicable statutory exemption. HUD's declarants were never cross-examined, and several key documents were withheld until two months after the complaint was filed - yet the court relied on those very materials in dismissing the case. Appellant specifically argued during the June 27, 2023 hearing that CCHC's reliance on Handbook 4350.1 Rev-1, Chapter 16-4(b)(4) was misplaced, as that exemption applies only to *Mandatory Releases* initiated by HUD, not *Negotiated Releases* initiated by owners such as CCHC. Yet neither the Magistrate Judge's Report nor the District Court's dismissal order addressed this critical distinction, effectively ignoring a properly preserved and material argument going to the legality of Defendants' actions under 24 C.F.R. § 245.410. The process denied Plaintiffs any meaningful opportunity to be heard and made it practically impossible to demonstrate any likelihood of success. Every element of the record favored HUD by design. Plaintiffs' single demonstrative exhibit - color photo of the connector and the two buildings attached

to it - was the only new evidence introduced at the hearing, and even that was admitted only for illustrative purposes. Other documents cited by Plaintiffs were official non-disputed HUD records already in the docket. Plaintiffs had moved the court to take judicial notice of them. To demand "likelihood of success" in these circumstances is to demand the impossible from pro se litigants screened out before factual development. It creates a structural due process flaw in the application of the traditional four-part stay test and disproportionately harms vulnerable populations - particularly indigent, elderly, or disabled plaintiffs who came to court expecting fairness, but were met with judicial partiality before a premature procedural dismissal.

...**to demand the impossible** transforms the preliminary injunction standard from a protective equitable tool into a nearly insurmountable hurdle for vulnerable pro se litigants, particularly elderly residents invoking rights conferred by federal housing regulations. When courts insist that plaintiffs demonstrate a substantial likelihood of success *without access to the factual mechanisms required to prove their case*, they do not merely misapply the law - they deny due process. The very structure of the proceedings in this case created a one-sided record, in which only the Defendants had access to investigatory tools, witness declarations, and the support of administrative agencies, while Plaintiffs were denied even the modest opportunity to present or challenge facts.

This distortion is all the more troubling because the fundamental issue - whether HUD and CCHC were required to comply with the mandatory notice and comment procedures under 24 C.F.R. § 245.410 and HUD Handbook 4350.1, Rev-1, Chapter 16 - is a **purely legal question**, not one of administrative discretion. Courts must enforce these procedural safeguards not as suggestions or voluntary, but as binding regulations designed to protect tenants from exactly this kind of disenfranchisement. Notably, HUD has never squarely denied that it relied on an inapplicable exemption from notice-and-comment requirements. Nor has it produced evidence that the tenants were provided any meaningful opportunity to inspect relevant documents, submit comments to HUD Asset Management, or understand the true nature of the planned integration and release of security. If anything, the record demonstrates a studied effort to suppress tenant opposition: from misleading certifications to HUD, to the use of a vague and context less petition, to the defamatory discrediting of objectors in official communications. These tactics go to the heart of why public participation requirements exist in the first place - to ensure transparency, accountability, and procedural fairness, especially where vulnerable housing populations are concerned.

The district court's refusal to engage these issues, its reliance on a misconstrued and unsupported characterization of the hearing as "evidentiary," and its failure to address the improper exemption claimed by CCHC, all amount to a prejudicial

abdication of judicial responsibility. Without correction by this Court, these errors not only moot the appeal by enabling irreversible construction, but they also invite future violations by signaling that agencies and housing providers may sidestep procedural rules so long as they do so quickly and under the cloak of ambiguity.

The First Circuit should recognize that where discovery and evidentiary hearing were never allowed, a presumption of prejudice or a modified showing should apply to the likelihood prong, in line with basic due process principles. The Supreme Court has long held that "[t]he fundamental requisite of due process of law is the opportunity to be heard" at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Courts may not dismiss claims reliant on disputed facts without first affording plaintiffs opportunity to develop the record. See *Barron v. Reich*, 13 F.3d 1370, 1375 (1st Cir. 1994) ("[W]hen a complaint is dismissed before any discovery has been conducted, a court must be particularly cautious in assuming the truth of the defendant's allegations over the plaintiff's."). In *Andrews-Clarke v. Lucent Techs., Inc.*, 157 F. Supp. 2d 93, 101 (D. Mass. 2001), the court warned of "injustice" where procedural shortcuts prevent parties from having their day in court.

These principles apply with even greater force to pro se plaintiffs, whose pleadings must be liberally construed and who depend on judicial access to prove their

claims. The dismissal here - premised on untested declarations, undisclosed documents, and a mischaracterized hearing - contravenes these basic precepts. Without the essential fact-finding mechanisms of adversarial process, any judicial evaluation of "likelihood of success" is speculative at best and suspect at worst.

3) Balance of Equities and Public Interest

The balance of equities and the public interest both overwhelmingly support a stay. Without relief, elderly residents of WH will continue to endure ongoing and destabilizing harm: diminished security, the erosion of quiet enjoyment, and the loss of access to social spaces long central to their well-being. These injuries stem directly from Respondents' failure to comply with HUD's mandatory notice-and-comment procedures under 24 C.F.R. § 245.410 and HUD Handbook 4350.1 (Rev-1), Chapter 16, before physically and operationally merging the Section 202 housing property with a younger, non-elderly market-rate development.

The balance of equities weighs heavily in favor of Appellant. Without a stay, elderly residents of WH - over 90% of whom are women in their 80s and a third of them very frail - will continue to suffer daily harm from the unauthorized integration of their Section 202 housing with WH II, a younger, market-rate development. These residents face immediate security concerns, loss of autonomy over their protected spaces, and threats to their quiet enjoyment and well-being -

all stemming from failure to follow proper notice-and-comment procedures under 24 C.F.R. § 245.410 and HUD's 4350.1 (Rev-1), Chap. 16.

There is no need for the 55-year old WH II population to use any of the WH common rooms: they have more and superior common rooms than the WH building. Any WH II tenant wishing to visit a friend in WH or meet with staff (who has a separate office in WH II) would be buzzed in as any other non-resident.

The equities are not neutral here. This harm is not theoretical or speculative. It is ongoing, and it was precipitated by Defendants' failure to follow federal procedures before implementing major operational changes to WH. The public has a strong interest in ensuring that agencies comply with their own rules, and vulnerable tenants aren't stripped of protections without lawful process.

The requested relief would simply preserve the status quo ante, and stop all integration and comingling of the building not dismantle any lawful entitlement. Moreover, "[e]quity ministers to the vigilant, not to those who sleep upon their rights." *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 326 (D.C. Cir. 1987). Here, it was Respondents' own disregard for federal process that created the conflict they now seek to finalize. The public's interest is compelling in ensuring that federal agencies follow their own rules and elderly tenants are not subjected to irreversible changes while an appeal raising serious legal questions is pending.

The public interest strongly favors temporary return to the pre-integration status quo to prevent irreversible harm to a federally protected elderly community. The elderly WH tenants are entitled to the protections of the Section 202 program. Allowing the effects of a contested, procedurally deficient integration to become permanent would undermine public trust in HUD's enforcement and oversight responsibilities, particularly as they relate to aging-in-place and peaceful and safe housing for the elderly. HUD's regulations exist to protect vulnerable elderly from unilateral operational changes that undermine intent of the Section 202 program.

The Courts have long recognized that "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). On the contrary, "the public interest is served by compliance with the law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Here, the public has a strong interest in ensuring that HUD complies with its own regulations designed to protect low-income elderly tenants from abrupt operational changes made without notice or participation - precisely the harm this appeal seeks to redress. Moreover, where vulnerable populations are at risk, the public interest "is always served when [they] are protected from likely irreparable harm." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

This principle applies with full force to the isolated and aging tenants of WH, who have no adequate remedy if the connector is allowed to remain open and their protected living environment permanently altered before the appeals court rules.

4) Balance of Equities and Practical Considerations

Equity supports prompt, minimal corrective steps to mitigate ongoing harm from the unauthorized integration of WH and WH II. At a bare minimum, management should be required to issue new key-fobs to WH tenants for controlled access to the sunroom and front and rear WH doors. A single WH II exterior rear door - currently the only path to the dumpsters and recycling area for WH tenants - should remain accessible. Installing a locking mechanism in the sunroom's outer door, which is already propped open and pre-cut to receive a lock, would allow WH tenants to exit to the dumpsters without disruption to WH II's front or rear access points, stairs, wheelchair elevator, lounge, or patio. A fob reader for WH-coded fobs could be installed beside the existing door, which opens into a vestibule that already contains a secondary locked entry to WH, which lock no longer would be needed. The only additional step would be relocating the guest intercom from inside the vestibule to the wall outside the now propped open outer door. WH II tenants lose nothing under this plan. Respondents would incur only nominal expenses: the cost of a new set of key-fobs for WH tenants and installation of a locking mechanism in a door already placed and designed to receive one.

The Saturday-only RIPTA bus needs to be rerouted back to the front entrance of WH. The younger WH II tenants can access the bus by walking just a few steps through the WH enclosed side yard. Crucially, this access and public transportation disruption **was caused by Defendants' own actions** - proceeding with construction and integration *before resolving HUD regulatory objections and public comments*. Equity does not favor parties who engineer the harm and then claim undue burden in correcting it.

Meanwhile, Respondents would suffer no irreparable harm from a temporary stay. The connector between the buildings can remain secured, and any logistical issues - such as dumpster or bus access - can be addressed through minor adjustments. It was Appellees' own disregard of procedural safeguards that created the current conflict. "[E]quity ministers to the vigilant, not to those who sleep upon their rights." *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 326 (D.C. Cir. 1987).

The public interest is likewise best served by halting a potentially unlawful and precedent-setting alteration of federally protected housing. "There is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). To the contrary, "the public interest is served by compliance with the law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Allowing the results of this disputed

integration to become entrenched before judicial review undermines HUD's own regulatory framework, weakens protections for elderly tenants, and encourages similar shortcuts in other federally subsidized facilities. Moreover, the public has a particular interest in protecting vulnerable populations. "The public interest is always served when [they] are protected from likely irreparable harm." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). That principle applies in full here, where Petitioner seeks only to preserve a living environment established by Congress for low-income elderly, pending the outcome of her appeal.

Standing Under The APA

Petitioners have standing because HUD's final agency action - its approval of the partial release of security and associated easements - was made without required tenant notice and comment, in violation of 24 C.F.R. § 245.410. This procedural harm, combined with direct disruption to the enjoyment and security of their homes, constitutes a concrete and particularized injury in fact under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

CONCLUSION

Petitioner respectfully requests that this Court issue an emergency stay pending appeal, and remand with instructions to ensure compliance with HUD's own regulations and with basic due process. This Application is a call to honor the

dignity and voice of elderly Americans who have spent their lives contributing to their communities and now seek only the right to age safely and peacefully in their homes. These residents were not consulted before a transformative policy was imposed on them - contrary to statutory and regulatory safeguards designed to ensure their input and protection. The merger of West House with a younger, market-rate population is no mere construction project; it is a fundamental change in the character of a protected housing program that was supposed to shield these residents from precisely this kind of disruption. The rule of law must not depend on the race, income, or age of the litigant. Nor should it depend on how fast a housing developer can complete construction. Petitioner asks this Court to enforce the rights promised by regulation and law - and to affirm that elderly pro se litigants, like any other, are entitled to be heard before harm becomes irreversible.

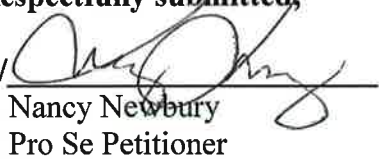
This case is not merely about technical regulatory compliance - it is about preserving the integrity of the Section 202 Supportive Housing Program for elderly, low-income tenants across the country. If HUD can waive required tenant participation based on an owner's unsupported claim of "exemption," and if courts defer to such assertions without examining the record, then statutory protections for this vulnerable class will be rendered hollow.

The procedural and physical harms at West House are real, ongoing, and irreparable. A stay is necessary to prevent further erosion of lawful tenant rights and to preserve this Court's jurisdiction over a matter of national importance.

Finally, this Application also highlights a broader concern: the systemic judicial bias that too often disadvantages low-income pro se litigants in the federal courts. This case was dismissed without discovery, without hearings, and on a cold record that ignored the daily realities and lived injuries of a vulnerable population. The pro se label should not operate as a presumption against credibility or standing. Petitioner urges this Court to send a clear signal that judicial fairness and meaningful access to justice are not luxuries to be rationed, but constitutional guarantees that must extend to all especially the elderly, the poor, and those who appear in court without counsel.

The undersigned Petitioner respectfully asks this Honorable Court to safeguard the status quo until the First Circuit has a chance to fully consider these serious and precedent-setting claims.

Respectfully submitted,

/s/ 

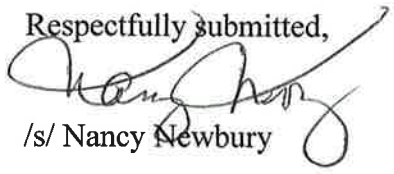
Nancy Newbury
Pro Se Petitioner
May 15, 2025

CERTIFICATE OF SERVICE

I, Nancy Newbury, declare under penalty of perjury that I served a true and correct copy of the foregoing Emergency Application to the United States Supreme Court via first-class U.S. Mail, postage prepaid, on May 15, 2025 to the following:

- Special Assistant United States Attorney Shampagne L. Robinson (HUD)
- Attorney Thomas W. Lyons, (Church Community Housing Corporation, Inc. and CCHC Executive Director Christian Belden)
- Attorney Sean T. O'Leary (Phoenix Senior Property Manager John Byrne).
- In addition, courtesy copies were sent to all above attorneys via email on May 15, 2025, and a curtesy copy was mailed on May 15, 2025 to the First Circuit Court panel hearing this case. Copies to the three attorneys and the three-judge circuit court panel do not include any appendixes that originated from their files, already received, or access available in the court or Pacer systems.

Respectfully submitted,



/s/ Nancy Newbury
Petitioner, Pro se
May 15, 2025

ISSUES PRESENTED

1. Whether the denial of a preliminary injunction by the District Court, affirmed without discovery or hearing, should be stayed pending appeal where elderly residents of a HUD Section 202 property allege violations of federal regulatory protections, including 24 C.F.R. § 245.410 and HUD Handbook 4350.1 Rev-1, Ch. 16, due to the construction of an unapproved physical connector and merger with a younger-age, market-rate development.
2. Whether Petitioners, mostly low-income women in their 80s, have shown a colorable claim of due process violations where they received no formal notice or opportunity to comment on changes affecting the character, use, and security of their housing, as required by HUD's own tenant participation regulations.
3. Whether a stay should issue to preserve the **status quo ante**—specifically, the physical and legal separation between West House (HUD-subsidized elderly housing, 62+) and West House II (age 55+ market-rate housing)—pending resolution of Petitioners' appeal in the First Circuit.
4. Whether the increasing occupancy of West House II, combined with shared unsecured access, a broken fob system, and rerouted transportation that bypasses the elderly residents' main entrance, constitutes irreparable harm warranting emergency relief.

Whether pro se litigants in urgent housing matters are entitled to fair appellate review before irreversible changes take effect, where substantial issues of statutory interpretation, procedural fairness, and agency overreach.

RELIEF SOUGHT

Petitioners respectfully request that the Court enter a **temporary administrative stay** and a **stay pending appeal** under Supreme Court Rule 23 and 28 U.S.C. § 1651, enjoining further physical or operational merger between West House and West House II during the pendency of Petitioners' appeal in the First Circuit (No. 24-2137), or until further order of this Court. Specifically, Petitioners request that the following actions be stayed, reversed, or remediated:

- Locking of interior doors that previously allowed access between the West House lobby and sunroom without the new WH II electronic key;
- Full restoration of separate and secure access points for West House residents, pending resolution of the appeal;
- Rerouting of the Saturday-only weekly bus service to stop at the **West House front entrance** rather than at West House II;
- No further intermixing or administrative consolidation of West House and West House II residents, staff, or services;
- No additional leasing, promotional activity, or occupancy of West House II premised on promised access to West House common areas or amenities;

Petitioners further request that the Court direct Respondents and HUD to **take no action** that would prejudice the First Circuit's ability to review the case on a full factual and administrative record, including preservation of relevant evidence and maintenance of pre-merger status quo.

Listing of Parties

Case Number 24-2137

U.S. First Circuit Court

Nancy Newbury v. U.S. Dept. of Housing and Urban Development (HUD), et, al.

Plaintiffs

MARCIA DUCHARME, MARK HASTINGS, NANCY NEWBURY

Appellant

NANCY NEWBURY

Defendants-Appellees

PETER ASER, in their official capacity as Director, HUD Providence Field Office, U.S. Dept. of HUD; WILLIAM MORALES, in their official capacity as Senior Account Executive, Asset Management Division, HUD Boston Regional Office; SCOTT TURNER, in their official capacity as Secretary, U.S. Dept. of HUD, Headquarters; CHURCH COMMUNITY HOUSING CORPORATION, INC; Board of Directors; CHRISTIAN BELDEN, Executive Director, CCHC; and JOHN BYRNE, Senior Housing Manager, Phoenix Property Management.

Appendixes

(APPX 1) Color photos of 'connector' between West House **(WH)** and West House II **(WH II)** taken by Petitioner for June 27, 2024 District Court motion hearing and admitted without objection for 'demonstration' purposes **(Tr. at 17)** and appended for same purpose in this Application.

(APPX 2) District Court's dismissal Order of Case No. 24-00084-PAS/WES, dated November 14, 2024.

(APPX 3) District Court's denial of Plaintiffs' motion for reconsideration or set aside, dated January 22, 2024.

(APPX 4) First Circuit Appellate Court's denial of Appellant's motion for expedited proceedings and stay pending appeal, dated March 27, 2025.

(APPX 5) Appellant's motion for reconsideration of Court's March 27, 2025 denial of motion for reconsideration, dated April 9, 2025. Pending decision.

(APPX 6) Appellant's emergency motion for stay pending application for emergency relief to Supreme Court, dated May 1, 2025. Pending decision.

(APPX 7) HUD Asset Management Handbook 4350.1 (Rev-1) Chapter 16 inclusive supplied by Defendants and entered into evidence in District Court.

(APPX 8) District Court Transcript of June 27, 2024 Motions Hearing (pp, 1-120).

(APPX 9) Regulatory Agreement entered into on June 4, 1996 by HUD and the West House Corp.; signed by West House Corp. President Robert Sabel.

(APPX 10) Ground Lease dated August 24, 2023 between **WH** Corp. (Landlord) and **WH II** Realty LP (Tenant); sent to HUD for approval on August 22, 2023.

Additional material from this filing is available in the Clerk's Office.