In the

# Supreme Court of the United States

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| GENANETT ALEXANDER, ET AL., PETITIONERS, V. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., RESPONDENTS. | ) | No. 77-874 |
| - - - AND - - - - - - - - - - | ) | |
| PATRICIA ROBERTS HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS, V. SADIE E. COLE, ET AL., RESPONDENTS. | ) | No. 77-1463 |

Washington, D. C.
December 5, 1978

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| and PATRICIA ROBERTS HARRIS, Secretary of Housing and Urban Development, et al., Petitioners, v. SADIE E. COLE, et al., Respondents. | No. 77-1463 |

Washington, D. C.,

Tuesday, December 5, 1978.

The above-entitled matters came on for argument at 10:12 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

JOHN VANDERSTAR, ESQ., Covington & Burling, 888 Sixteenth Street, N.W., Washington, D. C. 20006; on behalf of Petitioners in 77-874 and Respondents in 77-1463.

WILLIAM C. BRYSON, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C. 20530; on behalf of Respondents in 77-874 and Petitioners in 77-1463.

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C O N T E N T S



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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in Alexander against the Department of Housing and Urban Development, and the consolidated case.

Mr. Vanderstar, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF JOHN VANDERSTAR, ESQ.,

ON BEHALF OF PETITIONERS IN 77-874 AND

RESPONDENTS IN 77-1463

MR. VANDERSTAR: Thank you, Your Honor. Mr. Chief Justice, may it please the Court:

In the fall of 1974, the Department of Housing and Urban Development evicted nearly 200 families from their homes in two federally subsidized housing projects: one located in Indianapolis and one in the Anacostia section of Washington, D. C.

HUD had acquired those projects after the project sponsors defaulted on their mortgages, which HUD had insured. Both projects were in need of rehabilitation and the Anacostia project, called Sky Tower, was halfway through the rehabilitation process.

HUD analyzed the costs of completing the rehabilitation or performing the rehabilitation, analyzed the expected revenues from the projects and a number of other factors, and in each case made the decision to evict the tenants and then

sell the vacant property to private developers.

Some of the Sky Tower tenants, the Anacostia tenants, received moving allowances of $300 each, some did not. But -- and none of the Indianapolis tenants received moving allowances.

Moreover, HUD did not satisfy itself before evicting these people that there was some place else they could live, some place they could afford. The effect on these people was devastating, especially on the larger families, the elderly, and the poor -- which is what most of these people are.

In the Cole record there are some illustrations. Mrs. Irma Francis, her rent went from $77 a month to $165 a month; she's employed and earns $400 a month and supports three children. Mrs. Sadie Cole, her rent went from $84 a month to $156 a month; she receives $228 a month in public assistance; she has two children.

Mrs. Jean Fisher, her rent went from $84 a month to $189 a month; her monthly income is $243. She also has two children.

Judge Gesell found that the impact of this move on the larger families in the Anacostia project was especially serious because of the shortage of housing, low-cost housing, especially for large families in this city. As he pointed out, the waiting list at public housing projects in Washington, most of them in the four-bedroom and larger categories, exceeds

4,000 families.

Now, it's difficult for most of us in this room to imagine trying to live under those conditions. But Congress knew about those conditions. It informed itself, it studied this problem over a course of many years, and it enacted a statute, the Relocation Act, and in that Act it said: "We don't want this to happen again; that whenever there is a federal dollar being used for a federal project, we don't want to displace people from their homes, unless -- unless -- the agency is satisfied that these people have some place else to live; some place they can afford."

Both sides in this case agree that the critical statutory language in the Relocation Act is the definition, and in particular the so-called "written order" clause in the definition, of "displaced persons".

A displaced person is someone who "moves from real property" either as a result of the acquisition of such real property -- that's the acquisition clause -- or as the result of the written order of the acquiring agency to vacate real property -- that's the "written order" clause.

And in either case, it has to be for a program or project undertaken by a federal agency.

QUESTION: And you are here under the written order clause?

MR. VANDERSTAR: Yes, Your Honor. If I had to put

my case in a nutshell, I would say that the language of the "written order" clause covers the tenants in these two cases, and that that result is perfectly consistent with the congressional purpose in enacting the Relocation Act.

The acquisition clause was relied on below, but it's not relied on here.

QUESTION: Would you say that this is at the core of the purpose that Congress had in mind?

MR. VANDERSTAR: By this displacement, yes.

Certainly the whole focus of Congress's study, going back to 1961 -- nine years before the Act became effective -- was on displacement caused by federal programs or federally assisted programs -- which are not pertinent here.

The written order clause, I think, plains covers these people. They moved, as a result of a written order of the acquiring agency, namely HUD, the agency that had acquired these properties, and the orders were issued pursuant to a federal program or project.

What was that program or project? It's spelled out in about 150 pages of material in the HUD Handbook called the Property Disposition Handbook, which describes the property disposition program that is to be employed by HUD when it acquires properties through mortgage default.

It's perfectly clear, we submit, that there was a program or project that led to the displacement of these

tenants. It's perfectly clear that a written order of the acquiring agency caused their displacement, so the written order clause applies.

Now, let's see if that makes sense. Let's look at the statute over-all and see if that makes sense. It seems to me that the best place, if it please the Court, to look for the over-all intent of Congress is in the section entitled "Declaration of policy", which is Section 201 of the Act. And it says this:

"The purpose of this subchapter" -- and that's the relocation title of this complex statute -- "is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of federal and federally assisted programs in order that" -- and I'm still quoting -- "in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

So the emphasis is perfectly plain. The emphasis is on persons displaced as a result of federal and federally assisted programs. These tenants were displaced as a result of a federal program.

There's another place we can look in the statute for evidence of congressional intent. It's more statutory language. And that is in Section 206(b). I might point out that this statute covers not only tenants and not only home-

owners, but it also covers businesses and farms. But in Section 206(b), Congress made it quite clear that where people were being displaced from their homes, Congress had a special concern, as you would imagine. And in Section 206(b), Congress used these unequivocal words: "No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with Section 205(c)(3) is available to such person."

Now, Section 205(c)(3) refers to replacement housing that meets a great number of characteristics. And the most important one, I submit, is this one: "at rents or prices within the financial means of the families and individuals displaced". There are others as well.

But it seems to me clear that in 201, the declaration of policy covering the statute as a whole, and in 206(b), that portion of the statute which announces Congress's policy with respect to displacement of people from their home, from their dwelling, that these people were intended to be covered by the Relocation Act.

QUESTION: Is it your contention that the word "person" in 206(b) is more broadly defined than the term "displaced person" in the definitional section?

MR. VANDERSTAR: I think that's a fair reading of the statute, yes, sir. But I'm relying on 206(b) primarily

simply to establish as clearly as I can the over-all purpose Congress had in mind in enacting the statute.

But the answer to your question is yes, I think it is broader.

QUESTION: Mr. Vanderstar, you don't see any connection between the acquisition section and the written order section?

MR. VANDERSTAR: Well, I don't think that there's a connection --

QUESTION: Are they entirely different, in your view?

MR. VANDERSTAR: Yes, sir. I think that are parallel. I think you go through one route or you go through the other, and it doesn't matter, as long as you --

QUESTION: Well, if you're just on the acquisition route, then you don't need a written order or anything?

MR. VANDERSTAR: That's right, and I think that helps to explain --

QUESTION: And therefore if you're on the written order route, you don't need the acquisition?

MR. VANDERSTAR: Exactly. Exactly.

We think there has to be an acquiring agency, because the written order clause talks about a written order of the acquiring agency.

QUESTION: Is that the main point that's before us

right now?

MR. VANDERSTAR: Yes, sir.

QUESTION: That's why you were so willing to drop the acquisition one?

MR. VANDERSTAR: Well, the clause --

QUESTION: Because if you keep that one, you're gone.

MR. VANDERSTAR: Well, it's a weaker argument, I'll concede that, Your Honor.

QUESTION: I see.

MR. VANDERSTAR: But certainly the written order clause is the one we rely on here.

Now, it's been suggested by the government in their briefs that this statute should not be read in the way I have outlined. That the written order clause should not be applied to cover the tenants in these two cases.

Why is that? Well, the government's principal argument, if I can take the liberty of putting words in their mouth, is that the program or project that leads to the eviction has to be the same program or project that led to the acquisition, so that if you have an acquisition for one program or project, and then you have a displacement for another program or project, the government contends, those displaced tenants are not covered.

I find it hard to see where that interpretation comes from. There's certainly nothing in the legislative history,

and there's certainly nothing in the language of the statute that supports that interpretation. Indeed, I think it quite clear,as I have indicated, that Congress was focusing on displacement. This is not an Internal Revenue Code, this is not a statute that is meant to be read restrictively; this is not a statute in which the words are meant to be words of limitation. This is --

QUESTION: Isn't one place it might come from the fact that traditionally under eminent domain cases moving costs were not an allowable element of just compensation, and Congress just decided to add that as an element of just compensation here?

MR. VANDERSTAR: That's one possible interpretation, but I don't think it's a permissible interpretation.

QUESTION: You say it's permissive but not permissible?

MR. VANDERSTAR: No, I say it's one possible interpretation, but I don't think it is a permissible interpretation. I don't think this is an eminent domain statute. I think Section --

QUESTION: Yes, this is not an eminent domain case, because you're not acquiring this, you've already had this.

MR. VANDERSTAR: That's correct. This is not an eminent --

QUESTION: Eminent domain has nothing to do with this

particular case.

MR. VANDERSTAR: No, sir. Nor, I think, does eminent domain define the outer limits of the statute. I think Congress made it clear that it was talking about displacement, not about eminent domain.

Now, it is true -- it is true -- that all the hearings and all the reports and all the discussion, or at least most of it, that led up to the enactment of this statute was talking about eminent domain, that type of acquisition. There's a good reason for that.

There were very few programs then in existence under which HUD could come to acquire a property because of a mortgage default.

Furthermore, there were probably no cases -- but I don't know that, because it's not in the record -- in which HUD not only acquired a property after mortgage default, but then evicted the tenants.

QUESTION: Well, what about a person who simply defaults in their rent, and is given a written notice to move from the property because of default?

MR. VANDERSTAR: Well, I don't think the words of the statute cover that person, and certainly the sense of the statute does not. That's a person who has committed a breach of contract. And the ordinary remedies for breach of contract are -- include the one you've suggested. I don't think that

-- that is a person who has moved as a result of a written order of an acquiring agency for a program or a project. That's a --

QUESTION: Well, what's lacking? Certainly the written order is there. The written notice of default.

MR. VANDERSTAR: One thing that's lacking is the program or project. I don't think that what caused that particular tenant to be displaced is a program or project. I don't think that was to set up "or pursuant to a program or project", that was then in process.

QUESTION: Well, the program is simply not to allow tenants to remain in the property who don't pay their rent or who are very destructive or whatever. That's part of the program.

MR. VANDERSTAR: Yes, sir. But I think that -- and certainly the written order evicting a person who did not pay their rent or defaulted on their mortgage is issued pursuant to that. But I don't think that's the kind of program or project Congress had in mind.

QUESTION: But it does come, as my brother Rehnquist suggests, it does seem to come within the literal language of the statute, if your case does.

MR. VANDERSTAR: I think the cases are quite different.

QUESTION: The cases are factually quite different,

but the question is whether or not they fall under that literal language of the statute, as you construe that language.

MR. VANDERSTAR: I don't think so, because I construe the words "program or project" in a different way. I say -- and the tenants contend -- that "program or project" is a decision by the agency, a programmatic decision relating to that property which leads to eviction of the tenants.

QUESTION: Well, --

QUESTION: Then it's --

QUESTION: -- then it precisely describes Mr. Justice Rehnquist's hypothetical case.

MR. VANDERSTAR: I don't think so, Your Honor, with all due respect.

QUESTION: Then it's an eminent domain type of case. If your answer to Justice Stewart's question is no. If it's -- a program that simply says people are going to be evicted from their existing housing who don't pay their rent is not within the thing, then it has to be an eminent domain type of thing, where they are taking over property.

MR. VANDERSTAR: Well, eminent domain -- there was no eminent domain used here. The way HUD got the property was because of the mortgage default and HUD's decision to foreclose on the mortgage; in both cases, mortgages.

HUD did not acquire the property through eminent domain. In a sense, I suppose one could say that by taking

over the leasehold interest of the tenants in these two subsidized housing projects, HUD has acquired their leasehold interest and has evicted them pursuant to that acquisition. That, I think, is a permissible reading of the statute, and it leads you to the same result that we seek on our reading of the written order clause.

I think the main problem with the defaulting tenant or the defaulting mortgagor point is there's nothing in the sense of the statute, in the purpose of the statute, that would suggest that that's what Congress might have had in mind. Congress did not focus on all the people who breach contracts and then suffer the consequences. Congress focused on and had in mind the people who are displaced because of federal programs that caused displacement. And I think that what Congress had in mind was the kind of federal program that we have here: a federal program under which HUD finds itself, as it probably should have expected to find itself in a good many cases, with a property after a mortgage default and after HUD's decision to foreclose on the mortgage.

Now, what's HUD going to do with that property? It goes into its property disposition handbook and develops its property disposition program and it reviews all the costs, and it reviews whatever other factors are in that enormous handbook. And it makes a considered choice among different alternatives.

And the choice it made in these two cases -- and I

suggest that it makes rarely, but it does make them from time to time -- is to shut down the project, sell the property to somebody else, and recover the government's money.

Now, the question here is, if there are going to be costs to the tenants, who is going to bear those costs? Will it be the tenants? Will it be the very families that Congress was focusing on in nearly ten years of study of this relocation problem, will they bear the brunt of that displacement or should we all bear it as taxpayers?

QUESTION: You necessarily treat the government's efforts to collect on its indebtedness as a program in the same sense that building a bridge or a new road, a new highway, is a program; is that so or not?

MR. VANDERSTAR: Yes, Your Honor.

It is a program. It is an act taken by the government, designed for the public as a whole.

I mean, recall please that HUD is not a commercial lending agency, to use Judge Gesell's words. HUD is in this business for a much broader and very different social purpose. HUD was established by the Congress andall these Housing Acts that Congress has been passing for the last 40-odd years have not established HUD as a bank. And so --

QUESTION: But it functions as a bank when it tries to collect on its debts, on its guaranties, does it not?

MR. VANDERSTAR: Well, it functions as a creditor

when it tries to collect its debts.

QUESTION: A creditor. Well, it functions the same way a bank does when a bank forecloses a mortgage.

MR. VANDERSTAR: Not completely, Your Honor. Because a bank has stockholders and it has other interests that it has to be answerable to. HUD --

QUESTION: Well, the mechanics, the mechanics are the same, are they not?

MR. VANDERSTAR: The mechanics may be the same, but the decisional process is very different. HUD is not -- does not and should not sit there the way a bank does and say, "Well, how can we maximize our return on our investment?" HUD's purpose is to maintain and increase the nation's supply of housing, and particularly for low and moderate income families. And --

QUESTION: Well, this program wasn't doing that.

MR. VANDERSTAR: Beg pardon?

QUESTION: This program wasn't doing that. This was disposing of housing they couldn't use.

MR. VANDERSTAR: Well, it wasn't housing they couldn't use, it was housing they didn't feel like paying to rehabilitate. In that sense it was a banker's type decision.

QUESTION: In any event, this particular program decreased the total amount of housing available to the people they were intending to serve.

MR. VANDERSTAR: Indeed it did.

QUESTION: If they had, instead of foreclosing -- instead of evicting themselves just after they foreclosed -- sold the property to some private entity and let the private party do the eviction and destruction and so forth, the rehabilitation, then I gather there would be no claim, because it would not be the acquiring agency that did the evicting?

MR. VANDERSTAR: That would be a much tougher case.

QUESTION: Can you tell me -- you mentioned the ten years of study of this problem by Congress -- how much of that study included discussion of problems associated with foreclosure of mortgages and the eviction of people from projects like these?

MR. VANDERSTAR: None that we can find, Your Honor. And I think the principal reason is that those programs, most of them didn't exist in those days -- the 236 program, for example, that the Sky Tower project was subsidized under, that didn't come into existence under August 1968. And it takes time to get houses built, it takes time for them to go into default, and then it takes time for HUD to get their hands on them. And it's very likely -- very likely -- that HUD simply did not have to face this problem before the Relocation Act was passed.

I'd like to reserve the balance of my time, if I may.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Vanderstar. Mr. Bryson.

ORAL ARGUMENT OF WILLIAM C. BRYSON, ESQ.,
ON BEHALF OF RESPONDENTS IN 77-874 AND
PETITIONERS IN 77-1463

MR. BRYSON: Mr. Chief Justice, and may it please the Court:

In our view, the Uniform Relocation Act applies when the government acquires property for a public purpose and people are displaced as a result.

It does not apply when the government already owns property and it orders tenants to move in order that it can put some other use -- make some other use of that property.

In other words, we see this Act as, in Mr. Vanderstar's words, an eminent domain statute primarily. In other words, this statute applies to cases in which the government is acting in its capacity as taker of property, whether that be by purchase or by condemnation.

The plaintiffs view the Act as applicable in cases where --

QUESTION: Well, it could be by lease, you could just be taking possession, couldn't you?

MR. BRYSON: It could be acquiring a property interest os that sort.

QUESTION: Yes.

MR. BRYSON: That would certainly be a possible interest --

QUESTION: It need not be a fee, in your submission?

MR. BRYSON: That is correct.

But, in any event, it would be acquiring the property, or at least acquiring an interest in the property.

The plaintiffs view this case more broadly, as they said, as including cases in which the government is acting basically in its capacity as landlord.

Now, to underscore the difference between the positions that the parties have taken in this case, let's take an example: Suppose HUD had acquired this property 20 or 30 years ago?

In that case the plaintiffs would say that if these people had been -- and others -- had been living on the property ever since that time and HUD decided, at some point, that they needed to make some other use of the property, perhaps the property was deteriorating or something, as was the case in these cases, in any event they decided to make some other use of the property, then, in the plaintiffs' view, once they were ordered to leave the property, they would be entitled to relocation benefits.

We say that isn't the case, because the key element, the key factor that triggers this Act would be missing, which would be that the displacement would not have been caused by the acquisition.

Now, we find support for our interpretation of the Act in the language of the statute, in the context and structure of the statute, and in the legislative history of the statute.

Before I go into the language of the statute, I would like to underscore one point about its context, which is that the Uniform Relocation Act is actually part of a much broader statute. It's Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

In other words, this Act deals with the problems of real property acquisition by the federal government and by State government. The Act was passed in order to remedy some of the problems, some of the inadequacies that were perceived in eminent domain law. Eminent domain law does not provide benefits to take care of incidental and consequential expenses that are suffered by people who are forced to move as a result of acquisitions of property.

Congress tried to deal with this problem, and a number of other problems in eminent domain law, with this statute. Title III addresses a number of these problems. Title II addresses what Congress perceived as the most serious problem, which was the problem of relocation of people who were displaced by acquisitions of property.

Now, going to the precise language that the plaintiffs rely on, they rely on the definition of displaced persons in the Act, and particularly on the written order clause, indeed

exclusively on the written order clause.

Now, the two clauses -- we've been over the acquisition clause -- the second clause, the written order clause, says that a person is entitled -- well, a "person" is defined as a displaced person; if he moves as a result of the written order of an acquiring agency. Now, the plaintiffs say that this includes them because HUD had acquired the property.

We interpret the words "acquiring agency" to mean an agency that is acquiring, an agency that is engaged in an acquisition. In other words, as we read just these words, without going any further, we say "acquiring agency" has to be an agency that is more or less contemporaneously engaged in an acquisition.

QUESTION: You think it's a present participle, not an adjective?

MR. BRYSON: Exactly. Exactly.

I think if we look further into the statute we find further support for this interpretation of the language. Particularly important, I think, it is to look at the operative sections of the Act. The sections that grant the actual benefits. When we look to them, we find that those sections actually talk in terms of acquisition. They don't contemplate people in the position of the plaintiffs. And that's the best key, I think, to what this written order clause really means.

For example, Section 202 of the Act, which is 4622,

I believe, in the U. S. Code. Section 202 applies to moving expenses.

Now, Section 202 provides for moving expenses for people who -- in which the acquisition will result in a displacement. It doesn't contemplate people for whom the acquisition occurred long ago and who are being displaced by written order. It turns on the existence of an acquisition.

Now, the plaintiffs say that this is just sloppy language and that it doesn't cover our interpretation of the written order clause either.

Now, our interpretation of the written order clause is just this: we say that the written order clause was designed to take care of the case in which there was a notice to move in anticipation of an acquisition, but in fact the acquisition never took place.

Now, there's a very good reason that that written order clause is in in the statute, which is, to take an example, suppose Mr. Jones got an order from the Department of Transportation: "Jones, we're going to be taking your property in two months, it's going to be acquired; be out by June 15th." And Jones, in reliance on this, logically enough, reasonably enough, decided he'd better move; and he moved.

Now, if the statute had only the acquisition clause, and it turned out that the Department of Transportation decided, after Jones had moved, that they weren't going to take the

property after all, Jones would be out of luck. That's why the written order clause is in this statute, to make sure that if the Department of Transportation gives Jones a notice, "Get out by June 15th", and Jones moves in reliance on that, it doesn't matter if there is an acquisition. And that keys right in to the benefit section of the Act, because Section 202, the moving expenses section, provides that benefits are available when the acquisition will result in displacement. And in Mr. Jones's case, it is certainly the case that the acquisition will result in his displacement, even though in fact, as things turned out, no acquisition took place.

The same thing applies to the Relocation Assistance Advisory Services that are discussed in Section 205 of the Act, which is 4625.

Now, again, it uses language that the benefits are available when the acquisition will result in the displacement. This wouldn't apply to the parties, to the plaintiffs in this case. That this clearly indicates that acquisition is the key here, and that, of course, as we say, our interpretation of the written order clause is consistent with this again.

Similarly, the third operative section applies the same way, it's in somewhat different language, but again it points to the key factor of acquisition as being the heart of this statute. And that is Section 204, which is 4624, which provides benefits to persons who are living in their dwellings

at least ninety days before the initiation of negotiations for the acquisition.

Now, if HUD had acquired this property 20 years ago, that statute wouldn't make any sense, if applied in the sense that the plaintiffs are trying to make it apply. Because this clearly contemplates that the acquisition is the core notion of what triggers the Act. In other words, the reason for the 90-day gap, the 90-day period here that's specified in the statute is that the Act wants to avoid people coming in two days before the acquisition, after they've heard that the acquisition was coming, and getting the relocation benefits. But it turns basically, again, on acquisition.

Now, looking to the legislative history of this Act, we see the same point underscored again. This legislative history is quite extensive, and we've gone through it in some detail in our brief, and I'd like to touch on just a few points here.

First, the beginning of the consideration of this problem came essentially in about 1961, when the House Public Works Committee set up a Select Subcommittee on Real Property Acquisition. Now, again note -- and I harp on this theme again and again, but it's the core of the case -- that this Subcommittee was devoted to the problem of real property acquisition.

The Subcommittee came up with a proposal, a proposed

statute, which it entitled the Fair Compensation Act.

Now, as I've mentioned, this Fair Compensation Act was part of the effort to try to make amendments, make some kind of improvements on bare constitutional eminent domain law, to try to solve some of the harshness that eminent domain law produced in various respects, by paying only for the fair market value of property that was taken.

One of the purposes, one of the aspects that this Act addressed was the problem of relocation. And interestingly, it included a section on relocation, which is very similar in structure to the sections on relocation that appear in the Uniform Relocation Act. And, in fact, although the Relocation Act has provided in some respects more extensive benefits, but the basic core was here, and what is particularly important is that the core definitional section was similar.

What the definitional section said was that benefits are available to persons who move as the result of an acquisition or the imminence of acquisition.

Now, the interesting thing about this is that this is the grandfather of the written order clause. We find again and again the definition of "displaced persons" coming up as "a person who is displaced as the result of an acquisition" or -- and then slightly changed language as we go through the development of the Act, through its numerous drafts; but it started with "or imminence of acquisition". In other words, they were

dealing with precisely the kind of problem we are trying to identify here, which is our friend Jones who leaves in reliance on an acquisition coming down the road and the acquisition never actually takes place; imminence of acquisition.

Well, that phrase was thought to be too broad. It's just too vague. What is "imminence of acquisition"? Does somebody get benefits if he has a feeling what, "Well, I have a feeling that they're going to be taking my property"? No, he gets benefits only if there's some -- there's got to be some better way to figure when the acquisition is in fact imminent.

So that, although "imminence of acquisition" was the statutory language that was introduced in the first bill, following this Fair Compensation Act, that was proposed, it was changed fairly quickly to "reasonable expectation of acquisition".

So the Act read, "A person is displaced if he is displaced by the" -- the bill at that time -- "if he is displaced as a result of an acquisition or reasonable expectation of acquisition." Now, that went through several drafts of the bill basically unchanged, until we got down to 1969, in which the bill finally made its way into law.

There was a difference, interestingly, between the Senate bill that was first introduced and the House bill that was introduced first in this last round of drafts of the Relocation Act.

The Senate bill retained this language that one is displaced if one is required to move as a result of an acquisition or reasonable expectation of acquisition. Whereas the House bill that was initially introduced was somewhat more restrictive. It said that one is displaced if one is forced to move as a result of an acquisition or reasonable expectation of acquisition "when the property is subsequently acquired".

So, again, under the House bill Mr. Jones would be out of luck again.

Well, it was clear that there was a good deal of difference between these two positions, and they were compromised. They were compromised in what became the written order clause, and that is that -- what happened was just this: that the written order clause was drafted to say, all right, it will -- the requirement that there be a reasonable expectation of acquisition is too broad, standing by itself, there ought to be some index of probability of acquisition, so we will say that there has to be a written order to move.

But the requirement in the House bill that the acquisition actually take place is too restrictive, so we will simply eliminate that.

And so what they came up with was, as I say, just this written order clause requiring that there be some kind of written order to move but not requiring that the property subsequently be taken.

Now, we have pointed out our interpretation of the written order clause as being a good deal narrower than the position that the plaintiffs have taken with respect to this. I would like to point out that HUD's position is and has been and continues to be consistent with the recent Act that the plaintiffs have brought to the attention of the Court that we attempt to limit displacements of people as much as possible. It's clear that these kinds of displacements cause terrible hardship, and there's no question about that, in the hardships that Mr. Vanderstar recited at the beginning of the hour, we certainly acknowledge this is a serious social problem. And one which HUD has tried to address by restricting displacements as much as possible.

But the problem is that many of these housing projects were built 30 or 40 years ago, they are in deteriorating condition, and some of them are beyond rehabilitation in any practical sense, so that occasionally these properties do have to be basically torn down. Rehabilitation really would amount to simply rebuilding from the ground up. So there are people that do get displaced.

And our contention is simply that this Act, which is intended to address the problem of acquisitions of property does not cover cases in which people are displaced from property that is already owned by federal agencies.

Thank you.

QUESTION: Mr. Bryson, before you sit down, I think there were, as I remember the facts, some of the people from Sky Tower who did receive $300 as some kind of relocation assistance.

MR. BRYSON: That's correct.

QUESTION: Pursuant to what statutory authority was that money paid?

MR. BRYSON: Well, I believe, Mr. Justice Stevens, that that was under the general authority of the Housing Act. That has been a problem throughout for HUD, has been to try to figure out where, under what statute, to find authority for these kinds of payments. It was not under the Relocation Act. There are provisions under the Housing Act, in which basically certain funds can be expended on an emergency basis, and this, as I understand it, was deemed to be one of those cases.

But --

QUESTION: Well, go ahead, if you're --

MR. BRYSON: Well, I was simply going to point out that that money was given to those people who were current in their rents and it was an attempt at an accommodation that we may find through further legislation, we may find some kind of more explicit statutory authority for, but right now the authority is rather vague.

QUESTION: And there's also been a -- there was a

motion to dismiss the writ as improvidently granted, I believe, filed by your opponent, and I believe they called our attention to the fact there is pending some new regulations being prepared dealing with this whole subject matter. I don't recall, I didn't look at it, but was that pursuant to some new statutory authority or is that pursuant to -- what is the statutory authority for what's being done now?

MR. BRYSON: No, there's several different points on this score, Mr. Justice Stevens.

The first is as to the statute, the new statute. There is a statute which has instructed that HUD will try to reduce displacements as much as possible, and that there will be a report which the Secretary will issue in January which will indicate what the Secretary is doing about the problem of displacements.

QUESTION: And that statute was enacted this year?

MR. BRYSON: Yes. That was enacted in --

QUESTION: A few weeks or months ago.

MR. BRYSON: It was signed October 31st.

QUESTION: Right.

MR. BRYSON: Right. But that essentially is just a restatement of HUD policy. HUD policy clearly is to limit the displacements as much as possible. It doesn't provide new statutory authority for these kinds of payments.

QUESTION: Is this kind of a directory, to tell how

to --

MR. BRYSON: Yes.

QUESTION: -- minimize the number of evications?

MR. BRYSON: Exactly.

QUESTION: And then requiring HUD to report.

MR. BRYSON: Exactly.

QUESTION: As to the success of such minimization.

MR. BRYSON: Exactly.

And we believe that it doesn't -- that that statute does not in any way moot this case or render it less important, for several reasons.

First of all, there are, as I said, cases in which HUD has to displace people. Those cases we simply don't change by virtue of directive to HUD to limit the number of displacements as much as possible; where they have to be made, they are going to be made.

On the other hand, there's a much broader issue here, which is that this statute applies not just to HUD but to all federal agencies, and it applies, in addition, to all State agencies that are obtaining assistance by federally financed programs or projects.

So we're not just talking about something that affects HUD, we're talking about something that affects every State agency that is acquiring property or, by the plaintiffs' interpretation, that owns property and that it decides to

dispose of in some other way. And when that decision to dispose of the property results in people being displaced.

Thank you, if there are no further questions.

QUESTION: Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Bryson.

Mr. Vanderstar, do you have anything further?

REBUTTAL ARGUMENT OF JOHN VANDERSTAR, ESQ.,
ON BEHALF OF PETITIONERS IN 77-874 AND
RESPONDENTS IN 77-1463

MR. VANDERSTAR: Yes, Your Honor, thank you.

I don't know whether it's relevant that some of these properties are 30 or 40 years old, the fact is that Riverhouse was built in 1969, and HUD has held the mortgage since December 1970, and if there's been any deterioration, I don't know why the fingers are being pointed, but perhaps that's the place to point the finger.

I do want to talk for a moment about Mr. Jones, though. Because the government's position is that the language of the written order clause applies to a proposed but unconsummated acquisition and to a displacement that results from a written notice of intent to acquire. But the statute doesn't say written notice, it says written order.

Furthermore, the government relies very heavily on the word "acquisition" in the sections of the statute other than the definition, the sections that provide the specific

benefits and services.

Now, I might point out that we concede there was an acquisition in this case, and we concede that one is required. So we don't have a difference between us on that issue.

But the question is, if the acquisition resulted in the displacement, then the acquisition clause applies. The question before the Court is: What happens if something else resulted in the displacement, if it was a written order, not the acquisition but a written order?

And we suggest that's exactly why Congress put the written order clause in the definitional section, because if you had to wait for an acquisition to cause the displacement, you wouldn't need the written order clause.

QUESTION: But, Mr. Vanderstar, would it not be possible that there would be a written order before the acquisition was consummated and there --

MR. VANDERSTAR: I don't think you'd call that a written order, and HUD does not. In HUD's regulation, they talk about three ways people can qualify in general under this definition, and they talk about a written notice of intent to acquire, they talk about an acquisition, and they talk about a written order to vacate.

We agree with HUD, and we agree with the HUD regulation, that there are three different situations covered by the statutory language: the acquisition; a written notice

of intent to acquire, even when the acquisition doesn't take place, we agree that that is covered.

QUESTION: How would that be covered if you didn't have the written order clause in?

MR. VANDERSTAR: I think it could be covered under either clause. The Lathan case in the Ninth Circuit --

QUESTION: How could it be covered if there were written notice of intent to acquire but no acquisition, and a written order to vacate? It seems to me you need the written order clause to --

MR. VANDERSTAR: Well, it wouldn't be a written order to vacate, if it please the Court, it would be a written notice of intent to vacate. That's the way HUD describes it, and that's the way the statutory history describes it.

QUESTION: Well, the statute, just looking at it, at a first or second or third, even third glance, seems to provide two, only two alternatives.

MR. VANDERSTAR: Well, there are two alternative clauses, but there may be lots of cases that are covered by --

QUESTION: As a result of acquisition or as a result of a written order. There's nothing in there about a written notice to acquire.

MR. VANDERSTAR: I understand that, and it's rather curious that the government does not want the Court to apply the statute the way we think it was written, but concedes that

it does apply in a case that the language doesn't cover. There is nothing in the words of the statute --

QUESTION: Now, what -- I don't quite understand that, what do you say the government concedes?

MR. VANDERSTAR: The government concedes, indeed asserts, that a written notice of intent to acquire, even when there's no acquisition, is covered by the statute.

QUESTION: I didn't so understand the government. I may have misunderstood.

MR. VANDERSTAR: That's the Mr. Jones example that Mr. Bryson talked about.

QUESTION: Well, but that was a written order.

MR. VANDERSTAR: That was a written notice of intent to acquire.

QUESTION: Sent to Mr. Jones.

MR. VANDERSTAR: That's right. And the government says that's covered --

QUESTION: And therefore, Mr. Jones, you have to get out. And why isn't that a written order?

MR. VANDERSTAR: Not have to get out, but you'd be smart to get out because we're going to acquire this property a year from now. I think that's the case the government is putting.

QUESTION: I see.

MR. VANDERSTAR: "We're going to acquire this property

a year from now, we're giving you notice of our intent to do so." So Mr. Jones leaves.

Obviously it would be quite unfair to Mr. Jones to deny him benefits and services if the government later changed its mind. We concede that.

But the curious thing is that the words of the statute simply don't carry that meaning. The obvious purpose of the statute does, and that's what we think the Court should have in mind when it reads the written order clause as it applies to this case.

QUESTION: The written order clause does require that the written order come from the "acquiring agency", doesn't it?

MR. VANDERSTAR: Yes, sir.

QUESTION: So don't you think that that must contemplate an acquisition as well as the first clause?

MR. VANDERSTAR: Yes, and there was an acquisition in both of these cases.

QUESTION: So the written order isn't separate and apart from an acquisition?

MR. VANDERSTAR: Oh, it's separate and apart from, or else there wouldn't be a need for two different clauses.

QUESTION: But there must a proposed acquisition, at least, in both cases?

MR. VANDERSTAR: Yes, that's right.

QUESTION: Well, no, your point is that the acquisition can't have occurred in the past.

MR. VANDERSTAR: Oh, yes, yes. There has to be an --

QUESTION: Therefore it's not a proposed acquisition, it's an acquisition that occurred historically, --

MR. VANDERSTAR: Well, proposed, not actual --

QUESTION: -- and therefore the acquiring agency has ownership or occupancy of the premises, and now gives a written order.

MR. VANDERSTAR: That's right.

QUESTION: That's your position.

MR. VANDERSTAR: That's exactly right.

QUESTION: You mean that if HUD acquired property in 1957, that would qualify it as an acquiring agency, and then if it gives notice to vacate in 1977, it comes under the written order clause?

QUESTION: Yes.

MR. VANDERSTAR: Yes, sir. Congress said so.

QUESTION: That's exactly his submission.

MR. VANDERSTAR: Congress said so in Section 219, which is not codified, it's the so-called Murray Hill section; that was designed at the urging of then Representative now Mayor Koch of New York, to cover a situation in which it was expected that people would be displaced before the Act became effective, and clearly they would not be covered.

QUESTION: Was that relied on by the lower court? That section.

MR. VANDERSTAR: I believe it was referred to, yes.

QUESTION: Was it relied on?

MR. VANDERSTAR: Yes, I think so, but I'm not positive of that. The two lower courts came out in opposite directions.

QUESTION: But the Court of Appeals for the District of Columbia Circuit did?

MR. VANDERSTAR: I can't be certain of that.

QUESTION: Can I ask you again, I thought originally you told me that the acquisition clause and the written notice clause were separate animals?

QUESTION: Yes.

MR. VANDERSTAR: Yes, they are.

QUESTION: But now you're saying they are the same.

MR. VANDERSTAR: No, sir. No, sir. I'm saying --

QUESTION: You said that if the property was acquired in 1950, that was acquired, that's enough to apply to a 1977 notice.

MR. VANDERSTAR: If there's a written order to vacate in 1977 that otherwise meets the statutory language, the fact that the acquisition occurred 20 years earlier is irrelevant.

QUESTION: Well, it'd be awfully hard to get any eminent domain 20 years later, isn't it? Wouldn't it be?

MR. VANDERSTAR: That's right. That's right. That's why I say this is not an eminent domain statute, this is a statute that focuses on displacement.

QUESTION: Well, what is it if it's not eminent domain?

MR. VANDERSTAR: It's a displacement statute. It's a statute that --

QUESTION: A displacement at any time?

MR. VANDERSTAR: Yes, sir.

QUESTION: So you don't need the acquisition in there at all.

MR. VANDERSTAR: Well, you need to have had an acquisition at some point in the past --

QUESTION: No, I mean if you're talking about federal property, it would have had to be acquired. So why have they got acquisition in there at all, under your theory?

MR. VANDERSTAR: I don't think the acquisition is very important, but it is in the statute and I think we meet it in the facts of this case.

QUESTION: Well, the whole statute was based on that, the whole statute was based on acquisition.

QUESTION: The order has to come from the agency that acquired the property -- doesn't it? Under the clear terms of the statute.

MR. VANDERSTAR: Yes. Yes, that's right.

QUESTION: From the acquiring agency.

MR. VANDERSTAR: Yes, that's right.

QUESTION: So if an agency -- so acquisition is key and crucial in that sense.

MR. VANDERSTAR: Acquisition at some time in the past --

QUESTION: Yes.

MR. VANDERSTAR: -- is important; yes. An acquisition did occur in this case.

QUESTION: Yes.

QUESTION: Well, every owner is an acquiring agency within the meaning that you give it.

MR. VANDERSTAR: That's right.

QUESTION: Because it had to acquire it at some point.

MR. VANDERSTAR: That's right. That's simply meant to identify --

QUESTION: So the word "acquiring" really just adds nothing to the statute.

MR. VANDERSTAR: Except that it identifies which agency issues --

QUESTION: Well, you could say "owner", the "owning agency" in that.

MR. VANDERSTAR: It could have said "owning agency", but it said "acquiring agency". I don't think that that's --

QUESTION: And I suppose the United States itself

would qualify under your view?

MR. VANDERSTAR: Well, normally it's a particular agency that --

QUESTION: I know, but what if it were the United States?

MR. VANDERSTAR: I suppose so.

QUESTION: So anybody who is displaced from any property that the United States or any of its agencies owns is covered by this statute?

MR. VANDERSTAR: If it's for a program or project, yes, sir.

QUESTION: So the way for the acquiring agency to get out of this, if you're correct, is to convey it to a private person, and then have him issue the notice?

MR. VANDERSTAR: That might be a way out.

QUESTION: One other way is not to acquire.

[Laughter.]

MR. VANDERSTAR: Or not to displace the area.

QUESTION: Could I ask you one more question? Do you understand the United States position here to be similar or close to the positions taken by the courts that have held contrary to the District of Columbia?

MR. VANDERSTAR: The United States position -- the Seventh Circuit opinion is a little bit unclear. The United States, the government's position here --

QUESTION: How about in the Second Circuit? Has the United States always taken the same position in these various courts?

MR. VANDERSTAR: Yes, I think it has. But the Second Circuit case is really a different problem, that's the acquisition clause not the written order clause.

QUESTION: But any of the courts that have held against your position have in the main agreed with the United States present position?

MR. VANDERSTAR: That's only one court, the Seventh Circuit in this case.

QUESTION: Well, aren't there some district courts that have?

MR. VANDERSTAR: I don't believe so, Your Honor. Not on the written order clause.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

[Whereupon, at 11:05 o'clock, a.m., the case in the above-entitled matters was submitted.]

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