United States Court of Appeals
For the First Circuit

No. 26-1922

STATE OF WASHINGTON; STATE OF NEW YORK; STATE OF RHODE ISLAND; STATE OF ARIZONA; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF ILLINOIS; OFFICE OF THE GOVERNOR, ex rel. ANDY BESHEAR, in the official capacity as Governor of the Commonwealth of Kentucky; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF OREGON; GOVERNOR JOSH SHAPIRO, in the capacity as Governor of the Commonwealth of Pennsylvania; STATE OF VERMONT; COMMONWEALTH OF VIRGINIA; STATE OF WISCONSIN,

Plaintiffs, Appellees,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ERIC SCOTT TURNER, in the official capacity as Secretary of the United States Department of Housing and Urban Development,

Defendants, Appellants.

No. 26-1923

NATIONAL ALLIANCE TO END HOMELESSNESS; NATIONAL LOW INCOME HOUSING COALITION; CROSSROADS RHODE ISLAND; YOUTH PRIDE, INC.; CITY OF BOSTON; CITY OF CAMBRIDGE; MARTIN LUTHER KING, JR. COUNTY; METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY; COUNTY OF SANTA CLARA; CITY OF TUCSON,

Plaintiffs, Appellees,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SCOTT TURNER, in the official capacity as Secretary of the United States Department of Housing and Urban Development; OFFICE OF MANAGEMENT AND BUDGET; RUSSELL VOUGHT, in the official capacity as Director of United States Office of Management and Budget,

Defendants, Appellants.

Before

Montecalvo, Aframe, and Dunlap,
Circuit Judges.

ORDER OF COURT
Entered: September 16, 2026

Defendants-Appellants U.S. Department of Housing and Urban Development, et al. ("HUD"), seek a stay pending appeal of an order granting summary judgment to Plaintiffs-Appellees (a collection of States and other interested parties) on their claim that HUD wrongfully failed to engage in notice and comment procedures prior to issuing a Notice of Funding Opportunity ("NOFO") that set aside $1.3 billion to be awarded for transitional housing and "supportive service only" projects under the Continuum of Care program. In reviewing the motion for stay pending appeal, we apply the familiar standard set forth in Nken v. Holder, 556 U.S. 418, 426 (2009).

After careful review of the parties' briefs and supplemental submissions, we conclude that HUD has met its burden to show its entitlement to a stay pending appeal. HUD has made a strong showing that it is likely to succeed on the merits of its challenge to the district court's holding that the set-aside in the NOFO was subject to notice and comment requirements pursuant to 42 U.S.C. § 11386b(d). That holding turned on the district court's determination that the set-aside constitutes a "bonus or other incentive[]" under that provision. We conclude that HUD is likely to succeed on the argument that the set-aside is not a "bonus or other incentive[]" as that term is used in § 11386b(d). We further conclude that HUD would suffer irreparable injury absent a stay, given that HUD only has until December 1, 2026 to make awards to applicants for Continuum of Care funds. See Consolidated Appropriations Act, Pub. L. No. 119-75, 140 Stat. 173, 400 (2026). Although HUD is likely to succeed on the merits, it would be unable to implement the NOFO in a timely manner -- thereby creating funding gaps -- unless a stay enters.

Accordingly, the motion for stay pending appeal is granted.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Hon. Mary S. McElroy, Hanorah Tyer-Witek, Clerk, United States District Court for the District of Rhode Island, Andrew R.W. Hughes, Cristina Sepe, Zane Muller, Aliana Claire Knoepfler, Rabia Muqaddam, Victoria Ochoa, Judith N. Vale, Kathryn M. Sabatini, Jordan G. Mickman, Leonard Giarrano IV, Hayleigh S. Crawford, Michael Louis Newman, Brian Jeffrey Bilford, Joel Marrero, Jarrell Mitchell, Lauren Greenawalt, David Moskowitz, Andrew M.

Ammirati, Vanessa L. Kassab, Ian R. Liston, Caroline S. Van Zile, Sarah A. Hunger, Laura Crittenden Tipton, Steven Travis Mayo, Katherine Thompson, James C. Luh, Katherine B. Dirks, Nita Kumaraswami Klunder, Michelle R. Pascucci, Neil Giovanatti, Brian S. Carter, Daniel P. Resler, Anjana Samant, Robert A. Koch, Scott P. Kennedy, Michael J. Fischer, Samuel B. Stratton, Jonathan T. Rose, Tillman J. Breckenridge, Megan C. Keenan, Faye B. Hipsman, Lauren S. Zurier, Kevin M. Bolan, Sarah Clark Griffin, Lynette J. Labinger, Madeline H. Gitomer, Amy Retsinas Romero, Juan Esteban Bedoya, Kevin Love Hubbard, Kristin Bateman, Robin F. Thurston, Carrie Y. Flaxman, Christine L. Coogle, Toby Merrill, Cassandra Crawford, Kayla Max Svihovec, Christopher Michael Sanders, Cristy Craig, Mika Rothman, John Whitaker