No. 24-6576

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DOUGLAS A. COLLINS, et al.,

Defendants-Appellants

On Appeal from the United States District Court
for the Central District of California

PLAINTIFF-APPELLEES' MOTION TO LIFT COURT'S ORDER STAYING JUDGMENT PENDING APPEAL

MARK D. ROSENBAUM
KATHRYN A. EIDMANN
AMANDA K. PERTUSATI
AMANDA M. SAVAGE
AMELIA PIAZZA
PUBLIC COUNSEL LAW CENTER
610 S. Ardmore Avenue
Los Angeles, California 90005
(213) 385-2977

CARTER G. PHILLIPS
TACY F. FLINT
MARK C. PRIEBE
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Counsel continued to second page

EVE L. HILL
JAMIE STRAWBRIDGE
BROWN GOLDSTEIN & LEVY, LLP
120 E. Baltimore St., Suite 2500
Baltimore, Maryland 21202
(410) 962-1030

T.E. GLENN
AMANDA POWELL
CHARLES KOHORST
INNER CITY LAW CENTER
1309 East Seventh Street
Los Angeles, CA 90021
(213) 891-2880

ROMAN M. SILBERFELD
DAVID MARTINEZ
TOMMY H. DU
ROBINS KAPLAN LLP
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
(310) 552-0130

Counsel for Plaintiffs-Appellees, Deavin Sessom, Douglas Guthrie, Jeffrey Powers, Joseph Fields, Joshua Robert Petitt, Lavon Johnson, Laurieann Wright, and National Veterans Foundations

Pursuant to Federal Rule of Appellate Procedure 27, Plaintiffs, on behalf of themselves and the class of the veterans they represent, respectfully request that the Court lift its Order staying the District Court's judgment pending appeal. Dkt. 43.1.

INTRODUCTION

Since the Department of Veterans Affairs ("VA") requested a stay pending appeal in November 2024, Dkt. 8.1 – which this Court granted shortly thereafter, Dkt. 43.1 – the VA and the Executive broadly (the "Government") have refuted the very reasons that purportedly necessitated a stay in the first place. As this Court knows, on May 9, 2025, President Trump issued an Executive Order entitled "Keeping Promises to Veterans and Establishing a National Center for Warrior Independence" (the "EO"), which instructed the VA, among other things, to construct an additional 6,000 units of housing for veterans on the West Los Angeles Grounds (the "Grounds"). 90 Fed. Reg. 20369 (May 14, 2025). Subsequently, just ten days ago on November 7, 2025, the VA submitted its report to Congress – as mandated by the West Los Angeles Leasing Act ("WLALA") – "evaluating all leases and land-sharing agreements carried out at the [Grounds]" during the 2024 reporting period (the "Report"). Dkt. 116.1 at 3. The Report found, among other things, that the VA's leases with third parties "may well fail to comply with [WLALA] by failing to principally benefit Veterans and their families." *Id.* at 14.

Both the Government's EO and Report completely refute the VA's arguments in its emergency motion to stay the District Court's judgment (the "Motion"). In

particular, the Government's EO and Report directly contradict the VA's arguments in its Motion that purportedly (1) the District Court wrongly ordered the construction of additional housing, (2) the District Court wrongly invalidated the leases, and (3) the Plaintiffs would not suffer harm absent a stay. Accordingly, there is no reason for this Court to maintain its stay: even if the VA had met its burden to justify a stay over one year ago, the Government now makes clear that the VA cannot meet that burden today.

Unfortunately, for the past year, Plaintiffs and other current homeless veterans in Los Angeles – an estimated 3,050 homeless veterans as of the time of this submission, which continues to grow[1] – have suffered while the VA sits idly in response to the District Court's order instructing it to expeditiously build supportive housing. With a second winter approaching,[2] the veterans tragically find themselves in no different of a position than they were last November. This time, however, the Government's own admissions to Congress and to the American public make clear that there is no reason that this Court should stay the VA's obligations under the District Court's order. In the Government's own words, "[t]oo many veterans are homeless in America," and it

[1] Christopher Lee, *LAHSA, VA, MVA Provide Unprecedented Picture of Veterans Homelessness*, Los Angeles Homeless Services Authority, Oct. 22, 2025, *available at* https://www.lahsa.org/news?article=1054-lahsa-va-mva-provide-unprecedented-picture-of-veteran-homelessness.

[2] Los Angeles is also experiencing record-setting rain and the wettest November in 40 years. Rebecca Ellis, *Wettest November on Record for Downtown L.A. as More Rain Moves In*, L.A. Times, Nov. 17, 2025, *available at* https://www.latimes.com/california/story/2025-11-17/wettest-november-on-record-for-downtown-la-as-more-rain-moves-in.

is time that the VA end its "shameful[]" treatment of these veterans on the Grounds. EO § 1.

BACKGROUND

On November 2022, Plaintiffs filed this class action lawsuit against the VA, in part alleging that the VA (1) violated Section 504 of the Rehabilitation Act for failing to provide supportive housing on the Grounds to veterans, and (2) breached its fiduciary duties under a charitable trust by entering into unlawful leases with third parties on the Grounds. *Powers v. McDonough*, 748 F. Supp. 3d 842, 854-55 (C.D. Cal. 2024), *as amended* (Oct. 11, 2024). After a 16-day trial, on September 6, 2024, the District Court granted relief in full to Plaintiffs and ordered the VA to build 750 units of temporary housing within 12-18 months and to develop a plan within six months to build 1,800 permanent units. *Id.* at 926-27. It expressly found that the VA "has for decades strayed from its mission to care for . . . veterans [on the Grounds]," and "[w]hat was once a home for disabled soldiers must fully reopen its gates and become a robust community for veterans once again." *Id.* at 893.

On October 28 and November 8, 2024, the VA initiated this appeal and filed its Motion, respectively. *See* Dkt. 8.1. The VA argued that (1) "the Rehabilitation Act does not require VA to construct the housing ordered" by the District Court, *id.* at 11-17 (cleaned up), (2) the District Court wrongly invalidated the leases with respect to Plaintiffs' charitable-trust (or "land-use") claim, *id.* at 17-21, and (3) "a stay would not harm plaintiffs," including because there are purportedly vacant units of housing on the

Grounds waiting to be filled, *id.* at 24. On November 25, 2024, this Court's motions panel granted the VA's Motion, but it did not explain the reasoning for the stay. Dkt. 43.1 (granting the motion and simply citing *Nken v. Holder*, 556 U.S. 418, 434 (2009), which "defin[es] [the] standard for stay pending appeal").[3]

In addition, in its November 25, 2024 order, the motions panel ordered to expedite the VA's appeal. *Id.* On January 17, 2025, the VA submitted its opening brief on the merits. Dkt. 58.1 On February 18, 2025, Plaintiff filed their opposition. Dkt. 68.1. And on April 8, 2025, this Court heard oral argument.

Only one month after oral argument, on May 9, 2025, President Trump signed the EO, which directly relates to the VA's provision of housing on the Grounds. 90 Fed. Reg. 20369 (May 14, 2025). The EO instructed the VA Secretary to, among other things:

1. Establish a "National Center for Warrior Independence" on the Grounds for homeless veterans to "seek and receive the care, benefits, and services to which they are entitled," EO § 2(a);

[3] Separately, in its related appeals, UCLA – one of the third-party leaseholders on the Grounds – filed a motion to stay the District Court's judgment. Dkt. 19.1, Case Nos. 24-6338 & 24-6603. It then filed in this action a partial joinder to the VA's Motion. Dkt. 37.1. The Court in UCLA's separately-filed appeals did not directly rule on UCLA's motion to stay. *See* Dkt. 43.1 ("the motion to stay filed in [UCLA's separately-initiated appeals] is referred to the panel that will be assigned to decide the merits of these appeals"). On June 26, 2025, UCLA requested the Court to confirm that the Court's stay in this action applied to UCLA. Dkt. 70.1. The Court held that it did. Dkt. 71.1.

2. Within 120 days of the date of the EO, present a plan to the President to "restore the capacity [of the Grounds] to house up to 6,000 homeless veterans . . . by January 1, 2028," *id.* § 2(e); and

3. Establish "any guidance, requirements, or services needed" for "homeless veterans [to] access housing, receive substance abuse or addiction treatment, and return to productive work and community engagement," *id.* § 2(d).

On May 15, the Court directed both parties to provide supplemental briefing to address the impact of the EO on the appeal. Dkt. 100.1. In its supplemental brief, the VA claimed that the EO had "no effect whatsoever" on the appeal, Dkt. 101.1, while Plaintiffs made clear that – for many reasons – the EO plainly supported the conclusion that this Court should affirm the District Court's judgment, Dkt. 103.1.

Six months later on November 7, 2025, the VA submitted the Report to Congress. Dkt. 116.1. As explained in Plaintiffs' Rule 28(j) letter filed on November 11, 2025 (Dkt. 117.1), the VA admitted in the Report that "the leases invalidated by the U.S. District Court in [this case] *may well fail* to comply with [WLALA] by failing to principally benefit Veterans and their families or, in UCLA's case, by failing to provide services to Veterans as the predominant focus of the UCLA's overall activities on Campus." Dkt. 116.1 at 14 (emphasis added). The VA also admitted that (1) with respect to its leases, "[it] is not deriving fair market value from the [Brentwood], UCLA, and SafetyPark leaseholds," and (2) with respect to its housing, the construction of additional "[housing] properties . . . may be necessary to provide sufficient supportive housing for [veterans]." *Id.*

ARGUMENT

It is the VA's "burden of showing that the circumstances justify [a stay pending appeal]." *Nken*, 556 U.S. at 434 (explaining the standard for issuance of a stay). If circumstances no longer warrant the issuance of a stay pending appeal, then this Court has the discretion to lift that stay. *See, e.g.*, *Mi Familia Vota v. Fontes*, 111 F.4th 976, 980 (9th Cir. 2024) (lifting stay pending appeal previously issued by a motions panel); *Large Audience Display Sys., LLC v. Tennman Prods., LLC*, 2015 WL 12684720, at *1 (C.D. Cal. June 16, 2015) (reiterating the general principle that "[w]hen circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate, the court may lift the stay"). Here, the Government's EO and Report completely refute the Government's own arguments that it made in support of its Motion. And therefore this Court should exercise its direction to lift the Order granting the VA's Motion.

I. The Government Refuted Its Own Argument that the District Court Wrongly Ordered the Construction of Additional Housing.

In its Motion, the VA argued that a stay is warranted because "the Rehabilitation Act does not require VA to construct the housing ordered" by the District Court. Dkt. 8.1 at 11. On the merits, the VA claimed that the District Court wrongly ordered additional housing because it lacked jurisdiction under the Veterans Judicial Review Act ("VJRA"). *Id.* at 11-12. And even if it had jurisdiction, the District Court wrongly concluded that the lack of housing "places unhoused veterans at risk of

institutionalization" and "deprives plaintiffs of meaningful access to their healthcare." *Id.* at 13-14 (internal quotation marks omitted). On the equities, the VA claimed that, even if Plaintiffs had succeeded on the merits, the VA is unable to "expend [the] significant funds" necessary to build housing, and it would need "to divert funds it would otherwise have spent on other improvements for Veterans," which Congress has not authorized.[4] *Id.* at 21-22.

On the merits, the Government's EO refutes each of its prior arguments. First, as already explained in Plaintiffs' supplemental brief (Dkt. 103.1), the EO demonstrates that the District Court did, in fact, have jurisdiction over the Rehabilitation Act claims. The EO recognizes that Plaintiffs are entitled to benefits and services (e.g., healthcare) and that housing is a necessary vehicle to access those benefits and services. *See, e.g.*, EO § 2(a) ("desiginat[ing]" housing for "homeless veterans . . . [so veterans] *can seek and receive the care, benefits, and services to which they are entitled*") (emphasis added). In other words, housing is not a pre-adjudicated benefit from the VA; it is a *means to access* certain other benefits and services that the VA already provides. As a result, the District Court had jurisdiction under the VJRA. *See Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1030 n.21 (9th Cir. 2012) (a district court's jurisdiction is proper over claims that do not require it to reevaluate the VA's benefits determinations).

[4] The VA made similar points on the merits with respect to its "fundamental alteration" defense. Dkt. 8.1 at 13-16.

Second, as previously explained, the EO supports the fact that Plaintiffs' claims under the Rehabilitation Act have merit. The EO expressly requires the VA to build additional housing so that veterans can "receive [i.e., access] substance abuse or addiction treatment" and other medical "services." EO § 2(d). The EO also contemplates that housing is necessary for veterans to "return to productive work and community engagement," thereby avoiding the institutional cycle resulting from homelessness. *Id.* These admissions in the EO directly support Plaintiffs' claims under the Rehabilitation Act. *See, e.g.*, *Bonner v. Lewis*, 857 F.2d 559, 561 (9th Cir. 1988) ("Section 504 [of the Rehabilitation Act] guarantees [individuals with disabilities] 'meaningful access' to [the government's] programs," such as healthcare); *M.R. v. Dreyfus*, 697 F.3d 706, 734, 734-36 (9th Cir. 2012) (explaining the circumstances under which a challenged state action "creates a serious risk of institutionalization").

On the equities, the Report also refutes each of VA's arguments regarding its purported inability to expend "significant funds" or "divert" funds away from other programs. Dkt. 8.1 at 22-23. The Report states that the VA has *already* expended hundreds of thousands of dollars to build "a temporary housing facility for Veterans." Dkt. 116.1 at 10. The Report further states that, as mandated by the EO, the VA has already prepared a plan for "increas[ing] the availability of supportive housing" on the Grounds, which includes constructing 2,000 units and an additional 4,000 units thereafter. *Id.* at 14. So while the VA claimed that there are "not sufficient funds" to finance the construction of any additional housing or that it cannot "divert" funds away

from other programs, the Report contemplates just the opposite: the VA does have the funds to build housing, and in fact is prepared to finance over 3,000 *additional* units over what the District Court ordered. *Compare* EO § 2(e) (requiring 6,000 housing units be built) *with Powers*, 748 F. Supp. 3d at 926-27 (requiring construction of 750 temporary units and 1,800 permanent units).

II. The Government Refuted Its Own Argument that the District Court Wrongly Invalidated the Leases.

In its Motion, the VA claimed that the District Court wrongly invalidated the leases with respect to Plaintiffs' charitable-trust (or "land-use") claim. Dkt. 8.1 at 17-21. On the merits, the VA argued that it is not subject to any enforceable fiduciary duties under the trust. *Id.* at 17-19. Those duties are informed by WLALA, which the VA claims did not impose any enforceable "obligation" on the VA.[5] *Id.* at 18-19. On the equities, the VA claimed, among other things, that the District Court's "bar on renegotiation [of the VA's leases] would prevent VA from obtaining funds that some counterparties have offered." *Id.* at 23. And therefore, according to the VA, this Court must undo the District Court's order and leave the VA "free to renegotiate" its leases.[6] *Id.* at 20.

[5] The VA also briefly claimed that no charitable trust exists at all. Dkt. 8.1 at 18.

[6] The VA made a similar argument on the merits. Dkt. 8.1 at 20-21.

Both the Government's EO and Report undermine the VA's prior arguments on the merits. The Government squarely admitted that the VA's leases violated WLALA:

> At a minimum, VA's ongoing comprehensive review and reassessment has disclosed that the leases invalidated by the U.S. District Court in *Powers* *may well fail to comply with the WLA Act* by failing to principally benefit Veterans and their families or, in UCLA's case, by failing to provide services to Veterans as the predominant focus of UCLA's overall activities on Campus during the lease.

Dkt 116.1 at 14 (emphasis added). The Government also admitted that the VA violated WLALA to the extent that it wholly failed to "deriv[e] fair market value from the [Brentwood], UCLA, and SafetyPark leaseholds." *Id.* The EO recognizes the same, finding that the VA's leases are often at "significantly below-market prices" and therefore violate WLALA. EO § 1. Accordingly, while the VA claimed that it is not subject to any enforceable duties under WLALA, the Government admitted that it did not "comply" with its "obligations" under that very statute.

The Report similarly refutes the VA's arguments on the equities. The Government admitted in the Report that the VA has failed to collect any meaningful funds from its leases with third parties. In particular, the VA found that the "combined total of [its] fair market value rents" with Brentwood, UCLA, and Safety Park is "$48,461,000." Dkt. 116.1 at 14. However, "as of September 2024, [the] VA received a combined total of [only] $1,719,360.84 in annual rents from the lessees"—or only *3.5% of the market value*. *Id.* In fact, the LA Times reported that UCLA failed to make

any payments to the VA after the Court stayed the District Court's judgment, even though it continued to use the baseball facility (though Plaintiffs' counsel understands from UCLA's corporate representative that it has since made a payment following public reporting).[7] So while the VA claimed that the Court must issue a stay in order for the VA to "obtain[] funds" from leaseholders, the unfortunate reality is that – after this Court issued the stay – the VA collected next to nothing under its leases with third parties. Accordingly, the VA's prior argument proved entirely without merit.

III. The Government Refuted Its Own Argument that Plaintiffs Would Not Suffer Harm Absent a Stay.

Finally, in its Motion, the VA argued that, on the equities, "a stay would not harm plaintiffs" because there are vacant units of housing on the Grounds purportedly waiting to be filled. Dkt. 8.1 at 24 (arguing that "[t]here is no near-term need for additional temporary housing because current supply exceeds demand"). In fact, the VA claimed that "[n]o veteran is turned away from temporary housing due to a lack of a capacity." *Id.* (internal citations omitted) And a stay would not "jeopardize plaintiffs' access to . . . housing" at all. *Id.*

[7] Doug Smith, *Leases for VA land are millions of dollars under market value, Trump administration says*, L.A. Times, Nov. 11, 2025, *available at* https://www.latimes.com/california/story/2025-11-11/leases-for-va-land-are-millions-of-dollars-under-market-value-trump-administration-says ("UCLA has made no rental payments on the baseball stadium since the district court ruled its lease invalid in September 2024, but it resumed using the facility after the 9th Circuit stayed the district court judgment.").

Both the Report and EO blatantly refute the VA's arguments. In the Report, the VA admitted that the construction of additional "[housing] properties . . . may be *necessary to provide sufficient supportive housing* for [veterans]"). Dkt 116.1 at 14 (emphasis added). In addition, the entire purpose of the EO is to "construct, establish, and maintain" 6,000 additional units of housing for veterans because, according to the Government, the VA has "fail[ed]" veterans on the Grounds "when they needed help most." EO §§ 1-2. In fact, the EO states – accurately – that there are "approximately 3,000 homeless veterans in Los Angeles" who presently "live in squalor." *Id.* at § 1. Accordingly, far from the VA's argument that "supply exceeds demand" with respect to on-Grounds housing, the Government admitted that there are thousands of veterans who presently and desperately need housing from the VA. So the VA's argument here, too, proved meritless.

CONCLUSION

For the reasons stated above, since this Court granted the VA's Motion, the Government has refuted many of the VA's arguments that purportedly warranted a stay. Accordingly, there is no reason for this Court to maintain its stay. Plaintiffs therefore respectfully request that the Court lift its Order staying the District Court's judgment pending appeal. Dkt. 43.1.

Dated: November 17, 2025

Respectfully submitted,

/s/ Mark D. Rosenbaum
Mark D. Rosenbaum
Kathryn A. Eidmann
Amanda K. Pertusati
Amanda M. Savage
Amelia Piazza
PUBLIC COUNSEL LAW CENTER
610 S. Ardmore Avenue
Los Angeles, California 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089
mrosenbaum@publiccounsel.org
apertusati@publiccounsel.org
asavage@publiccounsel.org
apiazza@publiccounsel.org

/s/ Tacy F. Flint
Carter G. Phillips
Tacy F. Flint
Mark C. Priebe
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
cphillips@sidley.com
tflint@sidley.com
mpriebe@sidley.com

/s/ Eve L. Hill
Eve L. Hill
Jamie Strawbridge
BROWN GOLDSTEIN & LEVY, LLP
120 E. Baltimore St., Suite 2500
Baltimore, Maryland 21202
Telephone: (410) 962-1030
Facsimile: (401) 385-0869
ehill@browngold.com
jstrawbridge@browngold.com

/s/ T.E. Glenn
T.E. Glenn
Amanda Powell
Charles Kohorst
INNER CITY LAW CENTER
1309 East Seventh Street
Los Angeles, CA 90021
Telephone: (213) 891-2880
tglenn@innercitylaw.org

/s/ Roman M. Siberfeld
Roman M. Silberfeld
David Martinez
Tommy H. Du
ROBINS KAPLAN LLP
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
Telephone: (310) 552-0130
Facsimile: (310) 229-5800
rsilberfeld@robinskaplan.com
dmartinez@robinskaplan.com
tdu@robinskaplan.com

apowell@innercitylaw.org

Counsel for Plaintiffs-Appellees, Deavin Sessom, Douglas Guthrie, Jeffrey Powers, Joseph Fields, Joshua Robert Petitt, Lavon Johnson, Laurieann Wright, and National Veterans Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify this motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Circuit Rule 27-1(1)(d) because it contains 3,142 words, according to Microsoft Word.

/s/ Tacy F. Flint
Tacy F. Flint