

No. 24-6576

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JEFFREY POWERS, et al.,

Plaintiffs-Appellees,

v.

DENIS RICHARD McDONOUGH, et al.,

Defendants-Appellants

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

**PLAINTIFFS-APPELLEES' OPPOSITION
TO MOTION TO STAY THE MANDATE**

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INTRODUCTION

In another effort to upend relief that the Department of Veteran Affairs (“VA”) concededly owes to unhoused and disabled veterans in Los Angeles, the Government’s Motion to Stay the Mandate (“Motion”) asks, over two years after the district court ordered such relief, to delay further for a hopeless shot at the Supreme Court if “the Solicitor General elect[s] to seek certiorari.” Mot. at 1–2. But the Motion identifies no substantial question for Supreme Court review and fails to demonstrate irreparable harm as required to issue a stay. Moreover, delay will materially endanger Plaintiffs who will remain homeless and untreated and will continue to confront the horrors of being on the streets as the conscience-shocking delay continues. The stay should be denied.

None of the questions the Government identifies as possible candidates for Supreme Court review are certworthy. They all involve forfeited and/or error-correction issues that are not appropriate for Supreme Court review and are exceedingly unlikely to garner the votes of four members of the Supreme Court to grant certiorari.

Moreover, the Government has utterly failed to demonstrate irreparable harm in allowing the district court’s order to take effect. To address the medical needs of around 3,000 unhoused veterans with serious mental illness (“SMI”) or traumatic brain injuries (“TBI”), many of whom are combat veterans who served in Iraq, Afghanistan, and Vietnam and returned with these disabilities, the district court ordered the VA to build, within six years, 1,800 units of supportive permanent housing on or near the VA’s main medical campus in West Los Angeles (the “Grounds”) by 2030. 1-ER-48, 86, 88, 169–

70. During the pendency of this appeal, the President issued an executive order directing VA to house up to 6,000 veterans by 2028. The district court's injunction requires VA to build *fewer* units than the President's EO. And VA officials testified that stable housing is a predicate to delivery of necessary mental and physical health services to which these veterans are entitled. Yet VA forces Plaintiffs to continue to wait simply because it does not want to carry out its responsibilities ostensibly under the supervision of a district court judge.

VA has a protracted history of failing time and again to provide housing it is obligated to provide even absent a court order. This dismal record and the request for a further stay of this Court's mandate pose a real, and current, threat to homeless veterans in Los Angeles. In addition to the urgent need for more supportive housing to allow unhoused disabled veterans to access essential healthcare, California is facing a state of emergency ahead of an El Niño weather event that is expected to bring record-breaking rain and extreme winter weather conditions. A further stay would result in thousands of homeless veterans remaining unhoused—without access to medical care—during one of the worst weather events on record in California.

Taken together, the history of this appeal and the present danger posed to homeless veterans around the Los Angeles Grounds demonstrate that the mandate in this case should not be stayed.

BACKGROUND

Even before this case arose, the VA—pursuant to its earlier, unenforceable settlement agreement arising out of a related lawsuit—had promised that by 2030 it would build 1,200 supportive housing units on the Grounds, including 220 units by 2022. Dkt. 126 (Panel Opinion, hereafter “Op.”) Op. at 16–17. Yet, as of the time of trial in this case in 2024, only a measly 233 units had been built, Op. at 23, despite Congress clearing the way in 2021 to fund “construction” relating to “temporary or permanent supportive housing for homeless or at-risk veterans and their families.” West Los Angeles VA Campus Improvement Act, Pub. L. No. 117-18 § (2)(a). These few units are already fully occupied and in constant demand. 1-ER-80. Although VA says it intends to increase permanent housing stock on the Grounds, its proposed units will not be finished until 2030 (or later, given VA’s dismal record of on-time completion). 1-ER-133–34 (the current financing model “presents significant delays and uncertainty for the construction of permanent supportive housing”).

During the four-week trial, VA officials repeatedly acknowledged that housing is inseparable from healthcare. Dr. Keith Harris, Senior Executive Homelessness Agent for VA Greater Los Angeles Healthcare System, agreed that “the longer you are in the state of homelessness, the more negative consequences,” and that providing housing is “part of the healthcare program.” 17-ER-4357, 4362. Likewise, John Kuhn, Deputy Medical Center Director for the VA Greater Los Angeles Healthcare Systems, testified that “the most dangerous place for a veteran is on the street,” 11-ER-2457, and that

permanent supportive housing is designed to provide “access to those healthcare and mental healthcare needs,” 11-ER-2488. And Dr. Steven Braverman, Network Director for the VA Integrated Service Network and former Director of the VA Greater Los Angeles Healthcare System, also testified that untreated mental illness “has an adverse effect on [a veteran’s] day-to-day . . . capability to carry on the activities of daily living,” 12-ER-2788–89, and that “the bulk of the specialty care” that VA provides is available only on the Grounds, 13-ER-2974. The district court made extensive factual findings in accord with this testimony confirming that “veterans with disabilities such as SMI and TBI” need “[s]upportive housing” to “access their medical benefits.” 1-ER-123–29.

After the trial, the district court ordered the VA to build, within six years, 1,800 units of permanent supportive housing on or near the Grounds. 1-ER-88, 170. The housing would serve a class of around 3,000 unhoused veterans with SMI or TBI, largely incurred in combat, who rely almost exclusively on the Grounds for VA-administered healthcare. 1-ER-48, 86. Reflecting the dire reality faced by class members, the district court also ordered the immediate construction of 750 units of temporary housing. 1-ER-88, 169–70.

That class-wide relief was premised on claims under the Rehabilitation Act, 29 U.S.C. § 794(a), amply supported by the evidentiary record and later affirmed by the panel: (1) the VA’s continued failure to provide supportive housing denies class members “meaningful access” to their VA-administered healthcare, and (2) that same failure

places class members at serious risk of “institutionalization” in temporary housing, emergency departments, psychiatric institutions, and jails just to receive the healthcare that they need (and to which they are entitled). *See* Op. at 37–43 (citing *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999)).

Shortly after appealing the district court’s order, the Government filed an emergency motion for a stay of the district court’s injunction on November 8, 2024. *See* Dkt. 8.1. On November 25, 2024, this Court’s motions panel granted VA’s Motion. Dkt. 43.1.

The case proceeded to merits briefing, and the Government did not contest any of the district court’s extensive factual findings. This Court heard oral argument on April 8, 2025. Dkt. 58.1; 68.1. On May 9, 2025, the President issued Executive Order 14296, Keeping Promises to Veterans and Establishing a National Center for Warrior Independence (May 9, 2025), 90 Fed. Reg. 20,369 (May 14, 2025) (“EO”). The EO reprimands the VA for “fail[ing] veterans when they needed help most,” and cites the West LA Grounds as “indicative of this failure.” EO § 1. The EO instructed VA to: (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,” *id.* § 2(a); (2) in 120 days, present a plan to restore capacity of the grounds to house up to 6,000 homeless veterans by January 1, 2028, *id.* § 2(e); and (3) establish requirements for homeless veterans to “access housing, receive substance abuse or addiction treatment, and return to productive work and community engagement,” *id.*

§ 2(d). In supplemental briefing ordered by the Court, however, the VA claimed that the EO had “no effect whatsoever” on the appeal. Dkt. 101.1 at 2.

Following the EO, on November 17, 2025, Plaintiffs moved to vacate the stay because, as acknowledged by the EO and by a report the VA submitted to Congress on November 7, 2025, the district court had jurisdiction over the Rehabilitation Act claims and Plaintiffs’ claims under the statute had merit. *See* Dkt. 116.1; 119.1 at 7–8. Additionally, Plaintiffs argued that both the report and EO blatantly refuted VA’s arguments that a stay would not harm Plaintiffs, by instead admitting that veterans were being harmed on a daily basis while the stay was in effect. Dkt. 119.1 at 12.¹

The Panel issued a unanimous opinion on December 23, 2025, affirming the district court’s grant of class certification, the judgment in favor of Plaintiffs all Rehabilitation Act claims, and the equitable relief for those claims. *See* Op. at 37–45. The Panel upheld the judgment on Plaintiffs’ Administrative Procedure Act claim, but vacated the equitable relief ordered on that claim. The Panel reversed the district court’s decision regarding liability of the Department of Housing and Urban Development and regarding Plaintiffs’ charitable trust claim.

In early 2026, the Government filed a petition for rehearing en banc, Dkt. 127.1, thus preventing the district court injunction from taking effect. The petition was denied on September 11, 2026. Dkt. 140.1. Yet again, through the present motion to stay the

¹ Plaintiffs’ motion to lift the stay of proceedings was ultimately denied as moot when the panel ruled largely in Plaintiffs’ favor. Op. at 64 n.20.

mandate, the Government attempts to evade an injunction put in place by the district court, and affirmed by this Court—which orders relief acknowledged in the President’s EO to be necessary. Dkt. 141.1 at 1.

ARGUMENT

A party seeking a stay pending a petition for a writ of certiorari “must show that the petition would present a substantial question and that there is good cause for a stay.” Fed. R. App. P. 41(d)(1). This Court and the Supreme Court have indicated that to demonstrate “a substantial question” a party must show “a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari” and “a significant possibility of reversal of the lower court’s decision.” *In Re Google Play Store Antitrust Litig.*, 152 F.4th 1078, 1081 (9th Cir. 2025) (quoting *White v. Florida*, 458 U.S. 1301, 1302 (1982)). Likewise, to demonstrate “good cause” a party must show “a likelihood that irreparable harm will result if that decision is not stayed.” *Id.* (quoting *White*, 458 U.S. at 1302). The Government has failed to meet its burden because it fails to identify any substantial question for Supreme Court review or resulting irreparable harm from failure to issue the stay.

I. The Panel’s Decision Does Not Raise Any Questions Warranting Supreme Court Review.

A. The Government’s Belated Contention That the Rehabilitation Act Offers No Private Right of Action Is Inappropriate for Supreme Court Review and Poses No Substantial Question.

As a threshold matter, the Supreme Court is “a court of review, not of first view” *Hunter v. United States*, 608 U.S. 713, 729–30 (2026) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). It will not “generally entertain arguments that were not raised below.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 721 (2014). Where a party intentionally relinquishes or abandons a known right, that right is waived and not subject to review. *United States v. Olano*, 507 U.S. 725, 733 (1993); *United States v. Perez*, 116 F.3d 840, 845 (9th Cir. 1997). These well-established principles spell doom for the Government’s argument that there is no private right of action under the Rehabilitation Act.

The Government had many opportunities to raise the private right of action question, both at the district court and on appeal. Yet, the Government intentionally, knowingly, and expressly forfeited that issue. In its briefing to the Panel, the Government did not develop any argument that the injunction should be reversed on this ground, but instead stated the Panel should address any private-right argument “in an appropriate case”—i.e., not this one. *See* Dkt. 58.1 at 30 n.2. And, in its petition for rehearing en banc, the Government flatly admitted that this argument was not “presented here,” but was merely a “suggest[ion].” Dkt. 127.1 at 10. Because the Government waited until its petition for rehearing en banc to raise this issue, it was not

addressed by the panel and is addressed only in Judge Bumatay's dissent from denial of rehearing en banc. *See* Dkt. 140.1 at 33–45. Therefore, this case is not a proper vehicle for the Supreme Court to examine this issue. *See Ret. Plans Comm. of IBM v. Jander*, 589 U.S. 49, 52 (2020) (declining to review arguments not addressed by court of appeals).

Even if the Government had not expressly waived its private right of action argument (and it has), no substantial question is present. Some thirty years ago, the Supreme Court noted that the government did not question a private litigant's ability to obtain injunctive relief under the Rehabilitation Act. *Lane v. Pena*, 518 U.S. 187, 196-97 (1996). The sky has not fallen since then, and the question is thus hardly in such urgent need of Supreme Court review that the Court would likely address the issue in a case where it was not presented below. All the more so because the issue has not been given sufficient time to percolate. The Government identifies at most three circuits that have reached a different conclusion than this Circuit. Mot. at 5. But each of those cases addressed suits against agencies acting in their regulatory capacity—for which a right to judicial review already arises from the Administrative Procedure Act—rather than administering a program, like the veterans' housing at issue here. *See Cousins v. Sec'y of the U.S. Dep't of Transp.*, 880 F.2d 603, 604–05 (1st Cir. 1989) (rejecting suit challenging licensing requirements for deaf truck driver); *Clark v. Skinner*, 937 F.2d 123, 124–25 (4th Cir. 1991) (rejecting suit challenging regulations governing disabled drivers operating commercial vehicles); *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020) (rejecting suit challenging testing requirements for naturalization process). And

any purported split is not “entrenched by the Court’s choice not to reconsider” the issue in this case, Mot. at 5, where the Government has affirmatively waived it. *See United States v. Hernandez-Estrada*, 749 F.3d 1154, 1159 (9th Cir. 2014) (en banc) (Ninth Circuit “generally decline[s]” to address issues raised for the first time in a petition for rehearing). Given the Supreme Court’s treatment of the issue in *Lane* and the at-most shallow, unentrenched circuit split, it is unlikely that there would be a “reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for a grant of certiorari.” *In Re Google Play*, 152 F.4th at 1081.

Nor would there be “a significant possibility of reversal of the lower court’s decision.” *Id.* Section 504(a) creates a substantive right: no otherwise qualified individual with a disability “shall . . . be subjected to discrimination” under “any program or activity conducted by any Executive agency.” 29 U.S.C. § 794(a). This construction mirrors the “‘rights-creating’ language” the Supreme Court has found sufficient to imply a private right of action under other statutes. *See Alexander v. Sandoval*, 532 U.S. 275, 288–89 (2001).

B. The Government’s Challenge to the Panel’s Section 504 Holdings Does Not Present a Substantial Question.

The Government contends that a petition for writ of certiorari could challenge the “extraordinary theory of liability” the Panel accepted and the “extraordinary relief it affirmed” under the Section 504 claims. Mot. at 5. Neither was extraordinary. The Panel routinely applied *Alexander v. Choate*, 469 U.S. 287 (1985) and *Olmstead v. L.C. ex*

rel. Zimring, 527 U.S. 581 (1999), to the record developed at trial. The Government did not contest any of the district court’s extensive factual findings on appeal and cannot do so now in a petition for certiorari.

As to *Choate*, the Panel recounted, “the district court found that Plaintiffs—disabled veterans with SMI or TBI—require access to on-site healthcare at the Campus; yet without permanent supportive housing on or near the Campus, Plaintiffs are unable to access such treatment,” and thus lack “‘meaningful access’ to their healthcare.” *Op.* at 40. The Panel concluded that “[t]he evidence in the record supports the district court’s findings.” *Id.* at 40–41 (summarizing evidence); *see also, e.g.*, 17-ER-4362 (testimony of Keith Harris, Senior Executive Homelessness Agent for the VA Greater Los Angeles Healthcare System, confirming that housing is “part of the healthcare program”: “[h]ousing is health; health is housing”).

As to *Olmstead*, the Panel applied settled law that “‘a plaintiff need only show that the challenged [agency] action creates a serious risk of institutionalization.’” *Op.* at 42 (quoting *M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012)). Plaintiffs made that showing here: “[T]he district court properly held that the VA violated the Rehabilitation Act by not providing class members their disability healthcare benefits ‘in the most integrated setting appropriate to their needs,’ placing ‘unhoused veterans at risk of institutionalization.’” *Id.* In particular, “the VA’s failure to provide supportive housing puts veterans in a never-ending cycle of jail and hospitalization,” and “veterans are forced to either

accept institutionalization or go without services.” *Id.* (citing *Olmstead*, 527 U.S. at 597); *see also* 10-ER-2144 (testimony of Dr. Ben Henwood describing “institutional circuit”).

The Panel also applied *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003), in concluding that the order to build additional permanent supportive housing did not “fundamentally change” VA’s program; the order “simply expands—not alters—the program.” Op. at 58. In doing so, the Panel weighed the VA’s financial and logistical limitations, as *Townsend* requires, and concluded that the Government had not carried its burden on its fundamental-alteration defense. *Id.* at 59; *Townsend*, 328 F.3d at 519. Judge Collins’s proposed distinction between the VA’s medical program and its housing efforts, *see* Dkt. 140.1 at 6–7, ignores the district court’s finding that the VA “already provide[s] . . . Permanent Supportive Housing” for class members. 1-ER-84. Much like its private right of action claim, the Government also never pressed that distinction before the Panel, and therefore the issue would be inappropriate for Supreme Court review. *See supra* at 8–9.

The Government’s argument that Plaintiffs cannot satisfy Section 504’s “solely by reason of” requirement fares no better. Mot. at 6. Again, the argument appears nowhere in the Government’s panel briefing and surfaced for the first time on rehearing, making it inappropriate for Supreme Court review. *See* Dkt. 58.1 at 41–44; Dkt. 135.1 at 10; *supra* at 8–9. It also ignores the finding that, without housing, class members are drawn into an “institutional circuit” of hospitals, psychiatric institutions, and jails because of their disabilities. 1-ER-129. And it contradicts the Government’s own

concession that Plaintiff Laurieann Wright “could be understood to lack meaningful access to on-Campus services.” Dkt. 58.1 at 42.

The relief is not extraordinary either. The Government concedes that it intends “to provide Campus housing well beyond what the district court ordered.” Mot. at 1. The President has called for a plan to house up to 6,000 homeless veterans on the Campus by 2028. EO § 2. Yet VA’s commitments keep shrinking. Months after testifying in federal court that it would install up to 800 temporary units by Fall 2026, the VA solicited bids for as few as 220, with final delivery pushed to 2027.² That shortfall is a reason to enforce the judgment, not delay it.

Finally, the Government identifies no intra-circuit conflict on any of these issues. Their contention that the Panel misapplied settled law to a particular record is precisely the kind of petition that “is rarely granted.” S. Ct. R. 10.

C. The Government’s Challenge to Class Certification Does Not Present a Substantial Question.

Finally, the Government contends that “a petition for writ of certiorari could present the question whether the certification of the plaintiff class contravened the Supreme Court’s ruling in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).” Mot. at 6. The Government is straightforwardly asking for error correction in a discretionary, fact-

² Press Release, U.S. Dep’t of Veterans Affs., *VA Issues RFP to Build Housing for 220 Veterans at West L.A. Campus* (May 28, 2026), <https://news.va.gov/press-room/va-is-sues-rfp-to-build-housing-for-220-veterans-at-west-l-a-campus/>.

based ruling without identifying any circuit split. In those circumstances, certiorari “is rarely granted.” S. Ct. R. 10.

In any event, the Government’s and Judges Collins’s and Bumatay’s challenges to commonality do not take into account the full evidentiary record. The Panel correctly recognized that Rule 23’s commonality requirement is satisfied when class members’ claims “depend upon a common contention . . . of such a nature that it is capable of classwide resolution.” *Wal-Mart*, 564 U.S. at 350. What matters is “the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Id.* (citation omitted). Here, the class is unhoused veterans with SMI or TBI in LA County. 1-ER-205. Plaintiffs’ claims rest on the VA’s failure to provide supportive housing, which systemically discriminates against and denies them meaningful access to their benefits, creating a serious risk of institutionalization. *Op.* at 38–39. The evidence the district court considered to generate the “common answers” contemplated by Rule 23 included the VA’s policies, the structure of services offered, and expert and fact testimony about the interrelationship of disability, homelessness, and access. *See* 1-ER-122–30.

This is not among the category of cases rejected by *Wal-Mart*, which involved decentralized and discretionary decisions requiring individualized proof of why particular supervisors acted the way they did. 564 U.S. at 352–56. Plaintiffs here challenge a systemwide failure—by VA itself, not its individual officials—to provide a particular accommodation for a defined class of disabled veterans. *Op.* at 38–39. Any attempt to

draw distinctions between class members based on type of disability or current living arrangements, *see, e.g.*, Dkt. 140.1, at 25–26, reflects a disagreement with the merits of Plaintiffs’ meaningful access and *Olmstead* claims and disregards that the Government’s failure was systemwide and without regard to type of disability. Indeed, any objection to class certification is undercut by the Government’s own representations that it will provide housing to the entire class.

II. The Government Cannot Show Good Cause to Stay the Mandate.

The Government fails to identify any irreparable harm from allowing the mandate to issue. *In re Google Play*, 152 F.4th at 1081. There appears to be no dispute now that the relief ordered is appropriate, within the means of VA, and urgently needed.

In its previous motion to stay the injunction, the Government argued that the injunction would “undermine VA’s ability to serve the plaintiff class and other Veterans” and “VA’s interest in maintaining health and safety on Campus” because it would “require VA to expend significant funds during this appeal that it could not recoup” and Congress would not appropriate the funds needed for these expenses. Dkt. 8.1 at 2, 10, 16, 20–22. These arguments have been abandoned in apparent recognition that VA feasibly can (and should) comply with the district court’s order.

VA also argued in the same stay motion that, in the absence of the injunction, homeless veterans would suffer no harm. *Id.* at 23. The Government seems to agree that that is not and was not true as they now explicitly acknowledge the need for additional veteran housing on the Grounds, just as the injunction requires. Mot. at 7.

The Government therefore concedes it can and should build additional housing and even that it is “in the process of” of complying with the EO to “provide Campus housing well beyond what the district court ordered.” *Id.* And VA promises “[t]hese efforts will continue regardless of this litigation.” *Id.* at 8. VA cannot credibly claim irreparable harm from complying with the injunction requiring 1,800 units by 2030, while simultaneously representing that it is complying with the EO mandating construction of 6,000 units by 2028.

But VA asks that the mandate be stayed purely to avoid the district court’s alleged “micromanagement.” The Motion cherry-picks the district judge’s musings on how VA could meet its obligations from a single hearing. But these musings have nothing to do with the court’s order, and the Government fails to identify any actual interference. The Government cannot explain how the district court’s supervision of actions the VA pledges it will take anyway will cause irreparable injury. The scope of relief ordered by the district court is fully supported by factual findings. *Op.* at 40–41 (summarizing evidence).

At base, the Government’s only argument is that it would prefer to build the necessary housing in a voluntary fashion rather than by the injunction. That is not irreparable harm or good cause, particularly where the Executive Branch has independently directed the VA to pursue the same goal. *Cf. Am. Fed’n of Gov’t Emps. v. Trump*, 139 F.4th 1020, 1030 (9th Cir. 2025) (“We do not find that federal agencies suffer significant, let alone irreparable, injury when they simply follow what has already been

prescribed by the legislature.”). In fact, history has shown that VA will not build the necessary housing on its own promised timelines. Eight years after prior litigation, VA had built only 233 units out of a promised 1,200. And as the example above shows, five months after promising up to 800 new units of temporary housing on the Grounds by Fall 2026, the VA issued a solicitation in May 2026 for construction of only 220 units of temporary supportive housing. *See supra* at 13. The actual number built may be far fewer.

The Government’s limited progress shows that, in fact, *Plaintiffs* will suffer irreparable harm from further stay of the injunction. As the district court found, “[l]ack of supportive housing on or near the WLA Grounds has devastating consequences for veterans with disabilities, including exacerbation of existing disabilities and health conditions and exposure to violence and other victimization.” 1-ER-135. And, on September 21, 2026, California Governor Gavin Newsom declared a state of emergency for California ahead of an El Niño weather event that is expected to bring record-breaking rain and extreme winter weather conditions.³ The Government’s desired stay until at least December 10 would put the already-vulnerable homeless veteran population at even greater risk as potentially severe winter weather approaches. Plaintiffs’ injuries can only be mitigated at all if the Government begins to satisfy the district court’s mandate

³ Press Release, Office of Governor Gavin Newsom, Governor Newsom proclaims state of emergency to bolster statewide El Nino preparedness, protect California, (Sept. 21, 2026), <https://www.gov.ca.gov/2026/09/21/governor-newsom-proclaims-state-of-emergency-to-bolster-statewide-el-nino-preparedness-protect-california/>.

that new housing be constructed as soon as reasonably possible. A further stay will only increase the risk of additional injuries to Plaintiffs.

CONCLUSION

The Government's motion to stay the mandate should be denied.

Dated: September 28, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this response 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 Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,467 words, according to Microsoft Word.

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