

No. 26-2084

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

MASSACHUSETTS FAIR HOUSING CENTER; NATIONAL FAIR HOUSING ALLIANCE,
ON BEHALF OF THEMSELVES AND ALL THOSE SIMILARLY SITUATED,

Plaintiffs-Appellees,

v.

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT;

SCOTT TURNER, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Massachusetts,
No. 3:26-cv-30117, Before the Honorable Judge Myong J. Joun

**BRIEF OF TWENTY-ONE UNITED STATES SENATORS
AS *AMICI CURIAE* IN SUPPORT OF APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29, no *amicus curiae* is a nongovernmental corporation.

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INTEREST OF *AMICI CURIAE*¹

Amici, listed in Appendix A, are United States Senators. They include the Vice Chair of the Committee on Appropriations (Senator Patty Murray), the Ranking Member of its Subcommittee on Transportation, Housing and Urban Development, and Related Agencies (Senator Kirsten Gillibrand), and the Ranking Member of the Committee on Banking, Housing, and Urban Affairs (Senator Elizabeth Warren), and other members of these committees, which fund and oversee the Department of Housing and Urban Development (“HUD”). *Amici* have unique insight and fundamental interests regarding the Executive Branch’s adherence to Congress’s enactments and appropriations. *Amici* also have a strong interest in the congressionally supported infrastructure of private fair housing enforcement, which HUD threatens through its lawless mismanagement of the Fair Housing Initiatives Program (“FHIP”).

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress intended FHIP to foster a nationwide network of private organizations, like Plaintiffs, that can aid the federal government in uncovering and eliminating housing discrimination. *See* 42 U.S.C. §3616a. Since Congress piloted

¹ No party counsel in this appeal authored this brief, in whole or in part, nor has any party or its counsel funded its preparation or submission. “Dkt. No. ___” refers to entries on the district court’s docket.

FHIP in 1988 and codified it in 1992, FHIP has consistently sustained private fair housing organizations through three grant streams: the Private Enforcement Initiative (“PEI”) to support investigative and enforcement activities; the Education and Outreach Initiative (“EOI”); and the Fair Housing Organization Initiative (“FHOI”) to build organizational capacity. With this funding, private organizations handle most housing discrimination complaints and enforcement nationwide.

HUD’s July 2, 2026 Notices of Funding Opportunity (“NOFOs”) endanger fair housing organizations and their vital work. The NOFOs deviate from FHIP’s authorizing statute, decades of FHIP practice, and Congress’s intent. For the first time since FHIP’s codification in 1992, the FY2025 NOFOs provide no new awards for PEI or EOI—the lifeblood of fair housing organizations—nor do they fulfill existing multi-year PEI awards. Instead, HUD attempts to direct \$46 million—the vast majority of funds—away from existing qualified organizations in favor of organizations with no experience in fair housing enforcement, while diverting the remaining \$10 million to governmental agencies for which Congress separately appropriated. These unprecedented actions have no lawful justification and would seriously harm the nation’s fair housing enforcement infrastructure. The district court rightly vacated HUD’s unlawful notices and directed funding to flow under the prior framework. HUD’s request to stay that well-founded order should be denied.

ARGUMENT

I. CONGRESS CREATED FHIP TO FUND A STABLE NETWORK OF SPECIALIZED FAIR HOUSING ORGANIZATIONS

Congress established FHIP to fund specialized nonprofit organizations like Plaintiffs as an essential, permanent component of the fair housing enforcement infrastructure. Enacted in 1968, the Fair Housing Act gave the government limited enforcement powers. It authorized HUD to investigate and attempt conciliation but not to sue, while the Justice Department could sue only where discrimination reflected a pattern or practice. S.Rep. No. 102-332, at 95 (1992); H.R.Rep. No. 100-711, at 16 (1988). Thus, “[p]rivate fair housing organizations evolved in response to the need for increased enforcement of as well as education about rights under the nation’s fair housing laws.” S.Rep. No. 102-332, at 98.

Early on, the government experimented with support for private fair housing organizations. *See id.* at 97-98 (describing demonstration project with National Committee Against Discrimination in Housing and experimental partnership with private groups in Chicago). In 1988, Congress provided two years of demonstration funding for the then-new FHIP. *See* Housing and Community Development Act of 1987, Pub.L. No. 100-242, §561, 101 Stat. 1815 (1988). Congress recognized that housing discrimination was durable and “increasingly sophisticated,” warranting funding for private organizations with “practical experience” in fair housing enforcement. H.R.Rep. No. 100-122(I), at 90-91 (1987). Congress acknowledged

that “[p]rivate persons and fair housing organizations [were] burdened with primary enforcement responsibility” and faced “limited financial resources,” absent federal funding. H.R.Rep. No. 100-711, at 16.

In 1992, finding housing discrimination remained “widespread and pervasive,” Congress permanently codified FHIP. S.Rep. No. 102-332, at 96-97. At the time, FHIP funding was only \$6 million a year, leaving “woefully inadequate” coverage of regions including the South and Southwest. *Id.* at 97. Then Congress “significantly increase[d] the authorization levels for FHIP” in FY1993 and 1994 to “build the capacity of new and existing fair housing enforcement organizations, particularly in unserved and underserved areas of the country, or where large concentrations of protected classes exist.” *Id.* at 95.

Congress found that “the proven efficacy of private nonprofit fair housing enforcement organizations” made them “a necessary component of the fair housing enforcement system.” *Id.* at 183-84 (statutory findings). Specialized experience was key. Congress provided capacity-building funding to existing “qualified fair housing enforcement organization[s]”—private nonprofits with at least two years of experience in processing and enforcement of housing discrimination complaints. 42 U.S.C. §3616a(c)(1), (h)(1). Congress “particularly” wanted such funding to go to “underserved” areas. *Id.* §3616a(c)(2). Congress further directed HUD to use FHIP funding to support fair housing organizations’ investigative and enforcement work.

Id. §3616a(b)(2). And Congress required HUD to establish a national education-and-outreach program. *Id.* §3616a(d). Through these statutory provisions, Congress designed these funding streams to work together: outreach to teach people their rights; experienced private organizations to enforce those rights; and capacity-building to foster such organizations nationwide. S.Rep. No. 102-332, at 99.

Thereafter, Congress regularly instructed HUD to allocate most FHIP funds to private enforcement through Appropriations Committee reports and Joint Explanatory Statements accompanying appropriations bills, while appropriating separate funds for government enforcement through the Fair Housing Assistance Program (“FHAP”).² Congress also has supported private fair housing organizations in additional ways. *See, e.g.*, American Rescue Plan Act, Pub.L. No. 117-2, §3208, 135 Stat. 67 (2021) (providing additional \$20 million “to ensure fair housing

² For instance, the Senate Report for FY2026 instructed that PEI should receive \$40.5 million of \$56 million in FHIP funding, with separate funds for FHAP. For committee reports with equivalent instructions, see S.Rep. No. 118-199, at 140 (2024); S.Rep. No. 118-70, at 135 (2023); H.R.Rep. No. 117-402, at 165 (2022); H.R.Rep. No. 117-99, at 151 (2021); H.R.Rep. No. 116-452, at 137 (2020); S.Rep. No. 116-109 (2019).

For examples of Joint Explanatory Statements specifying levels for FHIP grants that prioritize private enforcement, see H.R. Comm. on Appropriations, 117th Cong., Committee Print on H.R. 2617/Public Law 117-328 at 2874 (2023); H.R. Comm. on Appropriations, 117th Cong., Committee Print on H.R. 2471/Public Law 117-103 at 2617 (2022); H.R. Comm. on Appropriations, 117th Cong., Committee Print on H.R. 133/Public Law 116-260 at 2290 (2021); H.R. Comm. on Appropriations, 116th Cong., Committee Print on H.R. 1865/Public Law 116-94 at 1200-01 (2020).

organizations have additional resources” during COVID-19). And that, at least historically, is how HUD has used FHIP funds. *See* HUD Office of Policy Development & Research, Study of the Fair Housing Initiatives Program at 19 (2011) (finding 50% of funds had gone to private enforcement since inception).³

II. THE FY2025 NOFOS EXCEED THE DISCRETION CONGRESS GAVE HUD IN FHIP

By completely defunding private enforcement and outreach, HUD’s FY2025 NOFOs exceed HUD’s discretion under the Fair Housing Act. HUD’s Motion for Stay suggests (at 13) that the use of FHIP funds is “committed to its discretion.” But the Act, as amended in 1992, provides that HUD “shall” support private-enforcement work through experienced fair housing organizations when Congress makes funds available under that subsection. 42 U.S.C. §3616a(b)(1)-(2). It also provides that HUD “shall” establish national, regional, and local education-and-outreach programs. *Id.* §3616a(d). Cutting off these funding streams thus is contrary to the statute.

HUD’s plans to issue \$46 million in FHOI funding for just five awards, under criteria that exclude existing fair housing organizations, also is contrary to the FHIP statute.⁴ Under §3616a(c), HUD “shall” use funds to build the capacity of fair

³ *Available at* https://www.huduser.gov/publications/pdf/fhip_2011.pdf.

⁴ Because FHOI awards cannot exceed 50% of a recipient’s operating budget, §3616a(c)(1), issuing multi-million-dollar awards means that recipients are limited

housing organizations, particularly in “underserved” areas. *Id.* §3616a(c)(1)-(2). FHIP cannot reach underserved areas if it limits capacity-building grants to only five recipients and makes virtually all existing fair housing organizations ineligible.

To justify zeroing out PEI and EOI grants, HUD relied below on §3616a(a), which provides that HUD “may” make grants to private organizations, in addition to State or local governments and other public entities. Dkt. No. 23 at 10; *see also* Mot. at 3. In HUD’s view, subsections (b), (c), and (d) of the FHIP statute apply only if Congress appropriates specifically for each grant program or HUD independently chooses to support that grant. Dkt. No. 23 at 10. But §3616a(a) sets out only who may participate in FHIP generally. It lists “State and local” agencies because another subsection permits them to perform outreach work. 42 U.S.C. §3616a(d)(2)-(3). Reading subsection (a) as unbounded by the statute’s other provisions would nullify the statute’s detailed treatment of specific grants.

III. THE FY2025 NOFOS DEFY CONGRESS’S APPROPRIATIONS INSTRUCTIONS

The district court correctly rejected HUD’s argument that the FY2025 appropriation for FHIP was a “lump-sum” appropriation that HUD could allocate however it wanted. Dkt. No. 28 at 14, 22. HUD’s Motion renews that argument (at 13), contending it did not act arbitrarily. But HUD disregards the instructions in

to organizations with budgets far larger than virtually all fair housing organizations. Dkt. No. 28 at 8.

Appropriations Committee reports and Joint Explanatory Statements, through which Congress routinely instructs HUD on FHIP funding allocations. *See supra* note 2; CRS, Appropriations Report Language: Overview of Development and Components at 1 (2023) (“Congress uses report language to [provide] an explanation of the measure’s legislative intent, which often includes a range of directives to the agency.”). Such instructions “offer persuasive evidence of legislative intent.” *Child Trends, Inc. v. United States Dep’t of Educ.*, 795 F. Supp. 3d 700, 720 n.12 (D. Md. 2025); *see, e.g., Auburn Hous. Auth. v. Martinez*, 277 F.3d 138, 147-48 (2d Cir. 2002) (relying on joint explanatory statement to resolve HUD funding dispute). The FY2025 NOFOs’ stark deviation from Congress’s consistent guidance, without any sound explanation, confirms the district court correctly held them arbitrary and capricious.

Congress funded HUD for FY2025 through a continuing resolution based on the prior year’s appropriations law. *See Full-Year Continuing Appropriations and Extensions Act*, Pub.L. No. 119-4, §1101(a)(12), 139 Stat. 9 (2025). FY2025 funds were made available “to the extent and in the manner” provided the year before, including any “requirements, authorities, conditions, [and] limitations.” *Id.* §§1102, 1105.⁵ Thus, the previous year’s committee report continued to reflect congressional

⁵ Among those limits, the FY2024 Appropriations Act prohibited any use of funds that “eliminates a program, project, or activity” or that reduces one by more

intent for FY2025 funds. *See* CRS, Appropriations Report Language at 5 (explaining prior committee reports can indicate “congressional intent” for “full-year CRs”).

Both the Joint Explanatory Statement and Senate Appropriations Committee report for FY2024 instructed HUD to prioritize private enforcement with FHIP’s \$56 million appropriation: \$10.4 million for education and outreach and \$3.7 million for capacity building, leaving \$41.9 million for private enforcement. H.R. Comm. on Appropriations, Committee Print on H.R. 2617/Public Law 117-328 at 2874; S.Rep. No. 118-70 at 135. This guidance reflected the same emphasis on private enforcement that the Committee had given HUD for years. *See supra* note 2. The statement and report used no language inviting HUD to choose differently. *Cf.* CRS, Appropriations Report Language at 8 (explaining Congress varies language to “provide a higher degree of flexibility” or to request “more specific action”). Moreover, HUD’s FY2025 budget request to Congress closely followed these FY2024 instructions. *See* HUD, 2025 Congressional Justifications at 33-3 (\$42.3 million for private enforcement, \$10 million for outreach, and \$2.7 million for capacity-building).⁶ HUD’s FY2025 NOFOs bear no resemblance to these figures.

than ten percent absent approval of both Appropriations Committees. Consolidated Appropriations Act, Pub.L. No. 118-42, div. F, tit. IV §405, 138 Stat. 25 (2024).

⁶ *Available at* https://archives.hud.gov/budget/fy25/FY_2025_Congressional_Justification_v3_E-File.pdf.

HUD’s allocation of \$10 million of FHIP funds to the “Administrative Enforcement Initiative” for government enforcement collapses a funding distinction Congress maintained for decades. Congress has repeatedly funded state and local enforcement through FHAP, keeping FHIP separate. *See supra* note 2 (collecting examples). HUD itself proposed \$26.4 million for state and local agencies in FY2025 via FHAP, not FHIP. HUD, 2025 Congressional Justifications at 33-2–33-4. HUD’s NOFOs again bear no resemblance to what Congress instructed or HUD itself proposed.

HUD errs in suggesting (at 13) that the FY2025 appropriation gave it discretion because it lacked the minimum grant levels that Congress specified in the FY2026 Consolidated Appropriations Act. The specification of grant levels for FY2026 reflects Congress’s increasing concern at HUD’s disregard of congressional intent for FHIP. It does not imply that Congress intended prior appropriations to give HUD free rein. *See supra* note 2.

Nor can HUD justify its FY2025 NOFOs by casting them (at 14) as “comprehensive” when combined with its FY2026 NOFOs. FY2026 grants are not scheduled to begin until July 2027, a gaping break in funding that threatens fair housing organizations’ survival. In any case, the FY2026 NOFOs’ restoration of private enforcement grants shows that HUD understands Congress wants FHIP to prioritize private enforcement through qualified fair housing organizations.

Even if HUD had discretion, its whipsawing of grant priorities still would be arbitrary. It is irresponsible to depart from Congress’s guidance and longstanding practice for one year, only to revert once legal requirements are reinstated. That one-year disruption endangers fair housing organizations operating on exceedingly lean budgets, Dkt. No. 28 at 8, for no good reason consistent with FHIP’s goals. Moreover, reverting to prioritization of PEI and EOI in FY2026 belies HUD’s purported justifications that the FY2025 NOFOs are “modernizing” FHIP. A one-year departure from the norm achieves nothing besides destroying the private enforcement infrastructure that took decades to build.

IV. THE DOLES MEMO FLOUTS CONGRESSIONAL INTENT

The district court correctly concluded that the July 2 memorandum by Robert Doles failed to provide sound justifications for HUD’s actions. Indeed, the Doles Memo highlights HUD’s departure from Congress’s intentions for FHIP.

The Doles Memo claims that HUD is “modernizing” FHIP. Dkt. No. 23-1 at 311. But FHIP’s structure and purpose are codified in §3616a. It is Congress’s prerogative to modify that structure, not HUD’s. Also, the Doles Memo recites only pabulum about “periodic refinement” of FHIP given changing circumstances. *Id.* at 312. It identifies no evolutions in housing discrimination warranting HUD’s wholesale disruption of FHIP.

Furthermore, the Doles Memo’s assessment of FHIP is unfounded. Stripping funding from the network of fair housing organizations will worsen “investigative backlogs” and blunt efforts to counteract “more complex, less visible” forms of housing discrimination. *Id.* The Memo’s claim that FHIP was funding “activities that lacked foundation in statutory and regulatory FHIP requirements,” *id.*, is unsubstantiated and wrong anyway. Until now, FHIP had followed its authorizing statute and Congress’s intentions for the program.

The Doles Memo’s stated aims are misleading and contrary to FHIP’s purposes as well. It claims the FY2025 NOFOs will “expand geographic coverage,” “broaden” expertise, and “strengthen the long-term resilience of the national fair housing infrastructure.” *Id.* at 313. HUD’s NOFOs do the opposite—losing geographic coverage, expertise, and organizational resilience by concentrating FHIP funding in a handful of grants that existing organizations cannot receive. Worse, the Doles Memo treats fair housing organizations like maligned welfare recipients—charging them with “perpetual dependence” on federal funding. *Id.* FHIP’s goal always has been to sustain these organizations as a vital organ of the fair housing enforcement system, particularly in areas underserved without federal resources. HUD’s NOFOs, if unaddressed, would set fair housing enforcement back decades.

CONCLUSION

Defendants’ Motion for Stay should be denied.

Respectfully submitted,

/s/ Minsuk Han

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 27(d)(2)(A) and 29(a)(5). This brief contains 2,599 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Minsuk Han

Minsuk Han

CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of October 2026, I caused to be filed electronically the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Minsuk Han

Minsuk Han

APPENDIX A

LIST OF *AMICI CURIAE*

Patty Murray

Vice Chair, Committee on Appropriations
Member, Appropriations Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Senator from Washington

Kirsten Gillibrand

Ranking Member, Appropriations Subcommittee on Transportation,
Housing and Urban Development, and Related Agencies
Senator from New York

Elizabeth Warren

Ranking Member, Committee on Banking, Housing, and Urban Affairs
Senator from Massachusetts

Angela Alsobrooks

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Maryland

Lisa Blunt Rochester

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Delaware

Catherine Cortez Masto

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Nevada

Ruben Gallego

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Arizona

Andy Kim

Member, Committee on Banking, Housing, and Urban Affairs
Senator from New Jersey

Jack Reed

Member, Committee on Banking, Housing, and Urban Affairs
Member, Appropriations Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Senator from Rhode Island

Brian Schatz

Member, Appropriations Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Senator from Hawai'i

Tina Smith

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Minnesota

Chris Van Hollen

Member, Committee on Banking, Housing, and Urban Affairs
Member, Appropriations Subcommittee on Transportation, Housing and
Urban Development, and Related Agencies
Senator from Maryland

Mark Warner

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Virginia

Raphael Warnock

Member, Committee on Banking, Housing, and Urban Affairs
Senator from Georgia

Richard Blumenthal

Senator from Connecticut

Cory Booker

Senator from New Jersey

Tim Kaine

Senator from Virginia

Edward Markey

Senator from Massachusetts

Jeff Merkley

Senator from Oregon

Charles Schumer

Senator from New York

Peter Welch

Senator from Vermont