

Plaintiff ██████████ — a low-income victim of domestic violence and participant in the Housing Choice Voucher Program — hereby moves the Court to issue a preliminary injunction that will protect her rights to a continuing and adequate housing subsidy. Federal and D.C. law require Defendant District of Columbia Housing Authority to pay a continuing and adequate subsidy to Ms. ██████████’s landlord. The Housing Authority nonetheless determined that it would issue only a “temporary” subsidy for Ms. ██████████ that was a legally insufficient dollar amount, and then it discontinued all payments to her landlord altogether. Without a continuing and adequate subsidy, Ms. ██████████ faces imminent irreparable harm through eviction from her home.

Ms. ██████████ respectfully requests the Court to issue a preliminary injunction requiring the Housing Authority to issue a housing voucher to her immediately, in a legally sufficient dollar amount, and to resume payment of the associated subsidy (including back payments and late fees) to her landlord forthwith, pending final judgment in this case. In support of this motion, Ms. ██████████ submits the attached Memorandum of Points and Authorities.

Respectfully Submitted,

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INTRODUCTION

Plaintiff █████ █████ — a low-income victim of domestic violence and participant in the Housing Choice Voucher Program— seeks the Court’s immediate intervention to protect her rights to a continuing and adequate housing subsidy. Both federal and D.C. law guarantee that Defendant District of Columbia Housing Authority must continue to pay a subsidy to the landlords of recipients of housing assistance who experience domestic violence, even after a family breaks up. And for good reason. Those essential guarantees protect domestic violence victims in families that receive a housing subsidy from an intolerable dilemma: separating from their abuser without the ability to afford housing, on the one hand, or staying in housing with their abuser (and relying on the abuser to afford the rent) on the other. Although Ms. █████ is a victim of domestic violence and her low income qualifies her for continued assistance, the Housing Authority issued her only a temporary housing voucher, in a legally insufficient dollar amount, and then discontinued all payments to her landlord under that voucher. Because of the Housing Authority’s actions, the landlord has not received full payment of rent since last December.

Because of these events, Ms. █████ received notice last week that the landlord will be filing an action to obtain possession of her apartment. If successful, that action would evict Ms. █████ from her apartment, thereby irreparably harming her and her children. The Court should intervene promptly to prevent this imminent irreparable harm. Ms. █████ respectfully moves the Court to issue a preliminary injunction requiring the Housing Authority to issue a new housing voucher to her immediately, establishing a legally-sufficient subsidy, and to resume payment of that subsidy (including back payments and late fees) to her landlord forthwith, pending final judgment in this case.

STATUTORY AND REGULATORY BACKGROUND

A. The Violence Against Women Act’s Protections for Victims of Domestic Violence

The Violence Against Women Reauthorization Act of 2013 (“VAWA”) provides a number of substantive protections for women who are victims of domestic violence. *See generally* 34 U.S.C. § 12291 *et seq.* VAWA establishes an enforceable statutory right for tenants receiving assistance under covered housing subsidy programs, prohibiting a local housing authority from denying or terminating such assistance “on the basis that the . . . tenant is or has been a victim of domestic violence . . . if the . . . tenant otherwise qualifies for . . . assistance.” 34 U.S.C. § 12491(b)(1).

The Department of Housing and Urban Development (“HUD”) regulations implementing this individualized statutory right expressly require that if an assisted family breaks up because of “an occurrence of domestic violence,” the local housing authority “*must ensure* that the victim retains assistance.” 24 C.F.R. § 982.315(a)(2) (emphasis added). HUD regulations governing general program requirements also incorporate VAWA protections, prohibiting termination of assistance under any covered housing program “on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence.” 24 C.F.R. § 5.2005(b)(1).

B. The Housing Choice Voucher Program Requirements Under Federal and D.C. Law.

1. Section 8 of the United States Housing Act and the Housing Choice Voucher Program.

The housing programs covered by these VAWA requirements include, among others, the Housing Choice Voucher Program (“HCVP”). 34 U.S.C. § 12491(a)(3)(H). The HCVP, which was created under the Housing and Community Development Act of 1974, is codified as Section 8 of the United States Housing Act of 1937. 42 U.S.C. § 1437f(o). HUD has promulgated

regulations implementing the program at 24 C.F.R. Part 982. The purpose of rent subsidy programs, including the HCVP, is to aid “low-income families in obtaining a decent place to live and of promoting economically mixed housing.” 42 U.S.C. § 1437f(a). The HCVP is designed and intended to assist low-income families by providing rent subsidies that enable them to rent units in the private rental housing market. The program provides that the tenant will pay approximately thirty percent of his or her income toward the rent each month, with the local housing authority paying the remainder directly to the private landlord. 42 U.S.C. § 1437f(o)(2)(A). The housing authority’s payment is known as the Housing Assistance Payment, and the tenant’s payment is known as the Total Tenant Payment.

The federal government, through HUD, allocates funds to local public housing agencies — here the District of Columbia Housing Authority — to administer the HCVP. Pursuant to the regulations, the local agency enters into a Housing Assistance Payments contract with a property owner on behalf of an eligible family and agrees to subsidize the rental payments in an amount based on the family’s income. 24 C.F.R. § 982.451. Under the HCVP, the “participant” is the family that has been admitted to the program and is currently assisted in the program. 24 C.F.R. § 982.4(b).

2. The District of Columbia Housing Act of 1999 and District of Columbia Municipal Regulations Title 14.

The D.C. Housing Authority Administrative Plan, set forth in chapters 49 through 59 of Title 14 of the D.C. Municipal Regulations, governs how the Housing Authority shall implement the requirements found in the applicable federal laws, regulations, and notices (as well as the requirements of the D.C. Code) regarding the HCVP. D.C. regulations parallel federal law by providing that if the family breaks up due to domestic violence or intrafamily offenses, the “victim of the violence or offense *shall continue* to receive assistance.” 14 D.C.M.R.

§ 5317.6(b)(1) (emphasis added). Specific procedures apply when a family receiving assistance under the HCVP breaks up into two different families, such as in cases of divorce or domestic violence. 14 D.C.M.R. § 5317.6.

A victim may submit documentation of domestic violence to the Housing Authority by providing any of the following: a) HUD-approved certification forms; b) records from law enforcement, court or administrative agencies; or c) documentation signed by the victim and a provider from whom the victim sought assistance in the situation who attests under penalty of perjury that he or she believes that the incident(s) of domestic violence constitute(s) grounds for VAWA protection. 14 D.C.M.R. §§ 4907.12 and 5317.6(c).

If the Housing Authority receives documentation that the head of household committed domestic violence against a member of the household, and seeks to remove the head of household from the assisted family, the Housing Authority is required to undertake a specific process to determine who will retain assistance. 14 D.C.M.R. §§ 5317.6(c) and (d). Prior to making a determination, the Housing Authority must notify both individuals that only one person shall retain assistance, how the Housing Authority will make the decision, and what information the individuals can provide. 14 D.C.M.R. § 5317.6(c)(1)-(2). After making its determination, the Housing Authority must notify both individuals in writing of its decision and the basis for its decision. 14 D.C.M.R. § 5317.6(c)(3). The person who does not “continue to receive assistance” is entitled to challenge that determination at an informal hearing. 14 D.C.M.R. § 5317.6(c)(4).

In addition to establishing the notice and informal hearing rights set forth above, the D.C. Municipal Regulations separately provide that when the Housing Authority takes adverse action against participants — which includes decisions terminating assistance — participants affected

by that adverse action are entitled to notice and an informal hearing to challenge the adverse action. *See* 14 D.C.M.R. § 8902.1. This requirement derives from the due process requirements addressed in *Goldberg v. Kelly*, 397 U.S. 254 (1970), which entitle an individual to notice and an opportunity to be heard before housing benefits, which are constitutionally-protected property interests, may be terminated or otherwise adversely affected.

The D.C. Municipal Regulations regarding informal hearing procedures for the Housing Choice Voucher Program define a “participant [family]” as “a family that has been admitted to the [Housing Authority] program and is currently assisted in the program.” 14 D.C.M.R. § 8999. A family is defined as “a person or group of persons, as determined by the [Housing Authority], approved to reside in a unit with assistance under the program.” 14 D.C.M.R. § 8999. When a participant receives notice of an adverse action that the Housing Authority proposes to take, the participant should also be notified of the time frame in which to request an informal hearing to contest the proposed action. 14 D.C.M.R. § 8902.3. If an adversely affected participant timely requests an informal hearing, a hearing officer designated by the Housing Authority conducts the informal hearing, at which both the participant and the Housing Authority have the opportunity to present evidence and arguments. 14 D.C.M.R. § 8904.1 *et seq.* Following the hearing, the hearing officer issues a written proposed decision. 14 D.C.M.R. § 8905.1. If either party disagrees with the hearing officer’s decision, it may appeal to the Executive Director of the Housing Authority. 14 D.C.M.R. § 8905.3. In that event, “the Executive Director will render a final written decision within fifteen (15) days of receipt of the request.” 14 D.C.M.R. § 8905.4.

FACTUAL BACKGROUND

Plaintiff ██████████ ██████████ married her ex-husband ██████████ ██████████, on ██████████ 2000. Declaration of ██████████ ██████████ (“Pl.’s Decl.”) ¶ 3. Together they have three children, ages ██████████, ██████████,

and [REDACTED]. *Id.* On or about December 1, 2017, Ms. [REDACTED] and Mr. [REDACTED] received an enhanced HCVP voucher due to the closing of the Sursum Corda, a public housing property. *Id.* ¶ 4. After receiving the voucher, Mr. [REDACTED] went to the Housing Authority and listed himself on the voucher as “head of household,” unbeknownst to Ms. [REDACTED]. *Id.* ¶ 5. When Mr. [REDACTED] and Ms. [REDACTED] were approved for a voucher, Mr. [REDACTED]’s annual income comprised approximately one-third of the total household income, and Ms. [REDACTED]’s comprised the rest. *Id.* ¶ 6. The total monthly rent for the apartment in which they were living was approximately \$2,077. *Id.* ¶ 7. Pursuant to 42 U.S.C. § 1437f(o)(2)(A), the amount of the voucher based upon their combined income was approximately \$300, and the Mr. [REDACTED] and Ms. [REDACTED] were responsible for the remainder, *i.e.*, the Total Tenant Payment. *Id.*

On September 2, 2018, Mr. [REDACTED] verbally threatened Ms. [REDACTED]’s life, in the presence of their two minor children. *Id.* ¶ 8. Ms. [REDACTED] called the police, filed a police report, and sought and obtained a Civil Protection Order (“CPO”) against Mr. [REDACTED]. *Id.*; Ex. A. When Ms. [REDACTED] contacted the police, Mr. [REDACTED] vacated the household, leaving Ms. [REDACTED] and her children as the tenants. *Id.* ¶ 9. Ms. [REDACTED] has since filed for and been granted a divorce from Mr. [REDACTED]. *Id.* at ¶ 3.¹

When Mr. [REDACTED] vacated the household, Ms. [REDACTED] was concerned that he would — and thus she would not — retain the housing subsidy, because Mr. [REDACTED] had listed himself on the voucher as “head of household.” In addition, the subsidy is materially lower than it would be if the voucher were based solely on her income (instead of their combined income). Without a

¹ Ms. [REDACTED] went by the name [REDACTED] [REDACTED] from the time of her marriage until she changed her last name to [REDACTED] at the time of her divorce in [REDACTED] 2019. The Exhibits submitted with this Memorandum predate [REDACTED] 2019 and therefore refer to her by her married name ([REDACTED]).

subsidy based solely on her income, Ms. [REDACTED] is unable to pay her rent and is subject to eviction from her home. *Id.* ¶¶6-7, 9.

On October 10, 2018, Ms. [REDACTED]'s counsel contacted the Housing Authority about initiating the family breakup process, which would ensure that she continued to receive assistance due to the domestic violence. Declaration of Elena Bowers (“Bowers Decl.”) ¶ 5, Ex. 1. Two weeks later, on October 26, 2018, Ms. [REDACTED] met with three members of the Housing Authority and provided them with copies of the CPO (which the court had issued to protect her from further violence). Pl.’s Decl. ¶ 10. Ms. [REDACTED] also provided the Housing Authority members with a letter she had obtained from D.C. Survivors and Advocates for Empowerment attesting that she was the victim of domestic violence and had sought services. *Id.*, Ex. B. The Housing Authority acknowledged it had received the documents and notified Ms. [REDACTED] that it would be in touch. Pl.’s Decl. ¶ 11. Ms. [REDACTED] received no further communication from the Housing Authority, even though she repeatedly attempted to contact the Housing Authority over the following weeks. *Id.*

After over a month without hearing from the Housing Authority, Ms. [REDACTED]'s counsel sent a letter to the Housing Authority on November 29, 2018, requesting confirmation that she would continue to receive assistance; however, she also received no response to this letter. Bowers Decl. ¶ 6, Ex. 2.² Coincidentally, also on November 29, 2018, the Housing Authority issued a Notice of Final Rulemaking — Violence Against Women Act which promulgated new regulations governing the family breakup process in cases of domestic violence, detailing and

² Ms. [REDACTED]'s low income unquestionably qualifies her for assistance under the HCVP. Ms. [REDACTED]'s annual income is approximately \$45,000 for a family of three. Pl.’s Decl. ¶ 12. At present, a family of three in the District of Columbia is considered “very low income” and income-qualified if its annual total household income is less than \$52,750. *See* 14 D.C.M.R. § 7602.1 and https://www.huduser.gov/portal/datasets/il/il2018/select_Geography.odn (select District of Columbia for state and county and click the “View HMFA Calculations” hyperlink).

further clarifying the process for removing the head of household. *See* 65 DCR 13209 (Nov. 30, 2018).

Two weeks after her November 29th letter, on December 13, 2018, Ms. ██████'s counsel sent yet another letter to the Housing Authority to request that it comply with the new rules and regulations. Bowers Decl. ¶ 7, Ex. 3. Ms. ██████'s counsel again requested confirmation that Ms. ██████ would continue to receive assistance and again Ms. ██████ received no response to this letter. After receiving no reply from the Housing Authority for a second time, Ms. ██████'s counsel sent a letter to Mr. Watson Fennell, the Director of the Office of Fair Hearings at the Housing Authority. *Id.* ¶ 8, Ex. 4. Ms. ██████ requested resolution or an informal hearing regarding the Housing Authority's failure to take action on her request for a family breakup due to domestic violence. *Id.*

Finally, Ms. ██████'s counsel received a response from the Housing Authority on December 26, 2018, notifying her that it was issuing her a temporary housing voucher. *Id.* ¶ 9, Ex. 5. The Housing Authority issued Ms. ██████ the temporary voucher based on the Housing Authority's determination that Ms. ██████ "meets the VAWA definition" (*i.e.*, the VAWA definition for a "victim" of domestic violence). *Id.* Despite the Housing Authority's admission that Ms. ██████ met the VAWA definition of a victim of domestic violence, the Housing Authority notified Ms. ██████ that her husband would have the right to request a hearing once he received notice from the Housing Authority. *Id.* To that end, the Housing Authority informed Ms. ██████ that her temporary voucher could still be revoked depending on the outcome of that future hearing. *Id.* The Housing Authority also informed Ms. ██████ that because she only had a temporary voucher, the Authority would not process documentation from her and either her current or potential future landlord to initiate voucher payments to the landlord (commonly

referred to as a “lease-up”). *Id.* Ms. ██████’s counsel responded to the Housing Authority’s e-mail, requesting an interim recertification for the voucher so that it could be re-calculated without Mr. ██████’s income. *Id.* ¶ 10, Ex. 6. The Housing Authority made clear to Ms. ██████ that it also would not allow her to recertify her voucher in order to remove Mr. ██████’s income for purposes of calculating the Total Tenant Payment. *Id.* ¶ 11, Ex. 7.

On January 9, 2019, Ms. ██████’s counsel requested a hearing with the Housing Authority, because the temporary voucher and denial of recertification deprive her (as a victim of domestic violence) of her right to continuing and adequate assistance, and leave her at risk of eviction due to nonpayment of rent. *Id.* ¶ 12, Ex. 8. The Housing Authority’s Fair Hearing Administrator denied this request two days later. The Administrator explained that the Housing Authority’s practice is to deny such a hearing to a family member, such as Ms. ██████, who is not designated as the “head of household”, on the ground that such a family member allegedly has no standing to request a hearing. *Id.* ¶ 13, Ex. 9.

The foregoing events have made Ms. ██████ utterly unable to afford her rent. Her ex-husband has not contributed to her rent for three months (January through March 2019) and there is no basis for believing he will contribute anything in the future. Pl.’s Decl. ¶ 12. Given her low income, Ms. ██████ cannot afford her rent without a subsidy that is increased to account for the contribution to rent that her ex-husband previously made. *Id.* Yet in December 2018, the Housing Authority refused to increase the subsidy and also refused to conduct a hearing where Ms. ██████ could challenge that refusal. Then, as of February 1, 2019, the Housing Authority stopped paying any subsidy whatsoever to Ms. ██████’s landlord. *Id.* Ms. ██████’s landlord last received full payment of her rent three months ago (in December 2018). Ms. ██████ is unable to pay what already is owing (much less fully cover future rent). *Id.*

Last week, on March 6, 2019, counsel for the landlord informed Ms. [REDACTED]'s counsel that the landlord will soon be filing an action to obtain possession of her apartment, based on nonpayment of rent. If successful, that action would evict Ms. [REDACTED] and her children from their apartment. Bowers Decl. ¶ 14.

This action followed.

ARGUMENT

To justify issuance of a preliminary injunction, Ms. [REDACTED] must show: (1) that she is likely to succeed on the merits; (2) that she is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in her favor; and (4) that an injunction is in the public interest. *Nat'l Ass'n for Fixed Annuities v. Perez*, 219 F. Supp. 3d 10, 13 (D.D.C. 2016) (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008)). Historically, courts in this Circuit have applied a “sliding-scale” approach to the preliminary injunction analysis under which “a strong showing on one factor could make up for a weaker showing on another.” *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011). Under the sliding-scale approach, for example, the movant need not “show a 51% likelihood of success” on the merits “if each of the other three factors ‘clearly favors’ granting the injunction.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009) (quoting *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)). Following the Supreme Court’s 2008 decision in *Winter*, the D.C. Circuit has questioned whether the sliding-scale approach is still valid but has never squarely reached the issue. *See, e.g., Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018). In this case, Ms. [REDACTED] has justified entry of a preliminary injunction regardless of whether the Court considers a sliding scale or all four factors standing alone.

Ms. [REDACTED] is likely to prevail on the merits of her claims, because the Housing Authority has denied her statutory right to continuing and adequate assistance under VAWA, even after the Housing Authority admitted that she meets the definition of a domestic violence victim. Without the security of a voucher establishing a continuing subsidy based on only her income, Ms. [REDACTED] faces the imminent threat of irreparable harm, because she and her children face prompt and virtually inevitable eviction for nonpayment of rent. Conversely, the Housing Authority will suffer no harm from an order requiring it to award Ms. [REDACTED] a continuing and adequate subsidy pending the outcome of this case. Finally, the public interest favors defending victims of domestic violence such as Ms. [REDACTED], and providing them the assistance to which they are statutorily entitled, in order to protect them from eviction.

I. MS. [REDACTED] IS LIKELY TO SUCCEED ON THE MERITS OF HER CLAIMS BECAUSE DEFENDANTS VIOLATED HER RIGHTS TO CONTINUING AND ADEQUATE HOUSING ASSISTANCE.

A. The Housing Authority violated Ms. [REDACTED]'s rights, as a domestic violence victim, to a housing voucher that establishes a continuing subsidy based solely on her income.

Ms. [REDACTED] is likely to prevail on the merits of her claims, because the Housing Authority violated her rights (under VAWA and the D.C. regulations) to a voucher that establishes a continuing housing subsidy based solely on her income. VAWA guarantees domestic violence victims broad and substantial housing protections. The Housing Authority has expressly conceded that Ms. [REDACTED] “*meets the VAWA definition*” of a victim of domestic violence. Bowers Decl. ¶ 9, Ex 5 (emphasis added). And for good reason. Ms. [REDACTED]'s husband threatened her life, in her home, in front of her minor children. Pl.'s Decl. ¶ 8. To prevent further violent acts against her, Ms. [REDACTED] obtained a CPO from the Superior Court of the District of Columbia, which she provided to the Housing Authority. *Id.* at ¶¶ 8, 10. Ms.

█'s CPO, as well as the letter she received from the D.C. Survivors and Advocates for Empowerment, satisfied the documentation requirements under federal and D.C. law to prove that she is a domestic violence victim. *See* 34 U.S.C. § 12491(c)(3); 24 C.F.R. § 5.2007(b); D.C.M.R. §§ 14-4907.12 & 14-5317(c).

Because Ms. █ is a domestic violence victim, both VAWA (and its implementing regulations) and the D.C. regulations guarantee her continuing and adequate HCVP assistance. *See, e.g.*, 34 U.S.C. § 12491(b)(1) (“An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”); 24 C.F.R. § 982.315(a)(2) (“If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA *must ensure that the victim retains assistance.*”) (emphasis added); 24 C.F.R. § 5.2005(b)(1) (“An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or *as a direct result of* the fact that the applicant or tenant is or has been a victim of domestic violence”) (emphasis added); D.C.M.R. § 14-5317.6(b)(1) (“In the case that there is no judicial decision relating to the assistance, DCHA shall consider the following: [a]ny incidence of domestic violence, dating violence, sexual assault, or stalking, or an intrafamily offense, in which case *the victim of the violence shall continue to receive assistance*”) (emphasis added).

The Housing Authority has violated Ms. ██████'s rights, under these provisions, to continuing assistance. The Housing Authority has terminated payments of any amount to Ms. ██████'s landlord. And the voucher that the Housing Authority has issued is only temporary, and subject to revocation in a future hearing that Ms. ██████'s ex-husband is entitled to request (and which the Housing Authority will not allow her to attend).

Ms. ██████'s right to continuing assistance necessarily includes an entitlement that the assistance will be adequate in amount (otherwise the assistance will be meaningless). The Housing Authority also has violated Ms. ██████'s entitlement to assistance that is adequate in amount. Before it entirely discontinued subsidy payments to the landlord, the Housing Authority calculated Ms. ██████'s subsidy based upon the combined income of her and her ex-husband. As explained above, higher combined family income lowers the subsidy amount under the HCVP. Accordingly, the HCVP requires that her subsidy must be calculated based on *current* family income and composition. 42 U.S.C. § 1437f(o)(2). By calculating the temporary voucher payment based on the higher combined income amount, the Housing Authority paid a subsidy too low to cover her rent, wholly undermining her right to continuing assistance. By discontinuing all subsidy payments to the landlord, the Housing Authority fully breached her right to continuing assistance.

B. The Housing Authority undermined Ms. ██████'s rights to continuing and adequate assistance by refusing her any forum to vindicate those rights.

Defendants further undermined Ms. ██████'s rights to continuing and adequate assistance by refusing her any forum to vindicate those rights. Ms. ██████ repeatedly requested a hearing in which she could challenge the adequacy of her housing subsidy (and the temporary character of her voucher). The Housing Authority denied the requests and even claimed that she had no standing to participate in a hearing involving her ex-husband that could determine her own

housing subsidy. Bowers Decl. ¶ 13, Ex. 9. These actions by the Housing Authority violated procedural protections mandated by federal and D.C. law.

First, the Housing Authority's refusal of any hearing violated her rights under the Fifth Amendment's Due Process clause. It is well established Ms. [REDACTED] has a protected property interest in her HCVP subsidy. *See, e.g., Robinson v. D.C. Hous. Auth.*, 660 F. Supp. 2d 6, 20 (D.D.C. 2009) ("There is no debate that the plaintiff's participation in the Section 8 program constitutes a property interest in this respect because 'a [p]articipant in the Section 8 [p]rogram enjoys a property interest in continued occupancy of subsidized housing'"); *Lowery v. D.C. Hous. Auth.*, Civ. No. 04-1868, 2006 U.S. Dist. LEXIS 13319 at *20 (D.D.C. Mar. 14, 2006) ("It is uncontested' that a Participant in the Section 8 Program 'enjoys a property interest in continued occupancy of the subsidized housing, and, further, that the interest constitutes a statutory entitlement. Accordingly, the protections of procedural due process apply.'") (citation omitted). It is axiomatic that the Housing Authority must provide her with notice and an opportunity for a hearing in front of a neutral decision-maker, before depriving her of the subsidy, including by terminating or diminishing her rights to the subsidy. *See Lowery*, 2006 U.S. Dist. LEXIS 13319 at *25 ("An applicant becomes a Participant when the initial HAP contract becomes effective . . . Thereafter, the Participant can be terminated from the Section 8 Program only for specified reasons and only with notice and an opportunity for a hearing."). The Housing Authority nonetheless denied her any opportunity for a hearing before it issued her a temporary voucher (establishing an inadequate subsidy amount) and then terminated her subsidy payments entirely.

Second, the Housing Authority's refusal of any hearing violated Ms. [REDACTED]'s rights under the federal regulations implementing the HCVP. Those regulations allow a family

member to request an interim determination of family income or household composition at any time (based on changes since the last determination) and require the Housing Authority to make such a determination within a reasonable time. 24 C.F.R. § 982.516(c)(2). By refusing Ms. ██████'s requested hearing (at which she would have requested redetermination of her subsidy based solely on her income), the Housing Authority refused to make the prompt interim determination required by federal regulation.

Third, the Housing Authority's refusal of any hearing violated its own regulations. The D.C. Municipal Regulations require informal hearings for a number of different Housing Authority determinations, including, among others: adjustments of participants' income and the computation of Housing Assistance Payments; termination or denial of assistance for any reason; any other determination that affects eligibility or receipt of assistance in which the individual requesting the informal hearing alleges a misapplication of law or Housing Authority policy or a mistake of relevant fact(s); and determinations of household and head-of-household status. 14 D.C.M.R. § 14-8902.1. The determination at issue fits within these categories.

Furthermore, the Housing Authority denied Ms. ██████ a hearing on the ground that she was not the "head of household" and therefore allegedly did not have standing to initiate informal hearing procedures. Bowers Decl. ¶ 13, Ex 9. However, standing to request a hearing under the regulations is not limited to a "head of household." *See* D.C.M.R. § 14-8902.1 ("DCHA shall provide written notice to *participants* and applicants with the opportunity for an informal hearing to contest any of the following DCHA determinations") (emphasis added). Ms. ██████ is a "participant" within the meaning of the regulations, because she is part of a "family" that has been admitted to, and is currently assisted under, the PHA program. *See*

D.C.M.R. § 14-8999. Therefore, she was entitled to a hearing to contest the Housing Authority's determination in this case.³

The Housing Authority's repeated refusal to provide a forum to hear Ms. ██████'s claims underscores how important it is for this Court, in this forum, to intervene now — to protect her rights to continuing and adequate assistance, by issuing the requested preliminary injunction.

II. MS. ██████ RISKS IMMINENT AND IRREPARABLE HARM IN THE ABSENCE OF A PRELIMINARY INJUNCTION.

Ms. ██████ also risks imminent and irreparable harm in the absence of a preliminary injunction. It is well established that a loss of housing, or housing benefits, constitutes irreparable harm sufficient for a court to grant preliminary relief. *See, e.g., Lee v. Christian Coal. of America*, 160 F. Supp. 2d 14, 32–33 (D.D.C. 2001) (“[T]he risk of being evicted from one’s home amounts to irreparable injury that money damages cannot remedy”); *Lattimore v. Northwest Coop. Homes Ass’n*, Civ. No. 90-0049, 1990 U.S. Dist. LEXIS 3285, at *19–*20 (D.D.C. Mar. 26, 1990) (finding irreparable harm where the movant, defending against the loss of her Section 8 subsidy, risked homelessness in the absence of an injunction); *Park Village Apartment Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) (concluding that tenants receiving Section 8 assistance were likely to suffer irreparable harm absent a preliminary injunction because they faced eviction from their rental units); *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 328 (E.D.N.Y. 2012) (“As a general matter, courts have held that the ‘threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable harm and satisfy the first prong of the test for preliminary injunctive relief.”) (citations omitted); *see also Hruby v. Larsen*, Civ. No. 05-894, 2005 U.S. Dist. LEXIS

³ In any event, the Housing Authority designated Ms. ██████ a “temporary head of household” in the temporary voucher. Under the Housing Authority’s own logic she should have received a hearing as head of household.

42285, at *14 (D. Minn. June 30, 2005) (loss of housing coupled with the inability “to find suitable, affordable housing” satisfies the irreparable harm element).

The evidence here plainly satisfies Ms. ██████’s burden to show that at least some “irreparable injury is *likely* in the absence of an injunction,” regardless of whether she satisfies the other three factors. *English v. Trump*, 279 F. Supp. 3d 307, 316 (D.D.C. 2018) (quoting *Winter*, 555 U.S. at 7, 22). Ms. ██████ cannot afford to pay the tenant portion of the rent that the temporary (improperly calculated) voucher did not cover. Pl.’s Decl. ¶¶ 6, 9, 12. She certainly cannot afford to pay the entire rent, and since February 1, 2019, the Housing Authority has refused to pay any subsidy to Ms. ██████’s landlord. Pl.’s Decl. ¶ 12. Given the Housing Authority’s violative conduct and Ms. ██████’s limited income, the landlord last received full payment of rent in December 2018. It therefore comes as no surprise that last week, Ms. ██████ received notice that the landlord will be filing an action to obtain possession of the apartment. If successful, that action would evict Ms. ██████ and her children. Bowers Decl. ¶ 14. The Court should issue the preliminary injunction now to prevent this imminent irreparable harm.

III. THE REMAINING FACTORS JUSTIFY RELIEF

A. The balance of equities weighs in Ms. ██████’s favor and injunctive relief will not substantially harm the Housing Authority’s interests.

The balance of equities plainly weighs in Ms. ██████’s favor. Although she faces substantial irreparable harm through eviction, the Housing Authority faces no cognizable risk of harm if the Court issues a preliminary injunction in this case. Issuing the preliminary injunction would simply require the Housing Authority to provide Ms. ██████ with the benefits to which she is entitled under both federal and D.C. law. Numerous courts have held that housing authorities face no harm in providing benefits where, as here, the plaintiff is eligible for those benefits. *See, e.g., Palmer v. Upland Hous. Auth.*, EDCV 12-02074, 2013 U.S. Dist. LEXIS

27211, at *42 (C.D. Cal. Feb. 21, 2013) (granting Section 8 assistance to plaintiffs on grounds that “[t]he hardship to Plaintiffs — imminent homelessness — tips the balance of equities in their favor, in light of the essentially absent hardship faced by Defendants”); *Solomon v. Hous. Auth. of the City of Pittsburgh*, No. 2:06-cv-1155, 2006 U.S. Dist. LEXIS 98825, at *8 (W.D. Pa. Sept. 18, 2006) (“The immediate reactivation of Solomon's Section 8 application does not appear to cause any tangible harm to HACP.”).

B. A preliminary injunction would further the public interest.

A preliminary injunction also plainly would further the public interest. Domestic violence in the United States destroys the physical and mental health of victims and also causes widespread economic harm.⁴ Congress has found that there is a strong link between domestic violence and homelessness; 44 percent of cities surveyed identify domestic violence as a primary cause of homelessness. 34 U.S.C. § 12471(1). Congress and HUD both recognize that families that experience domestic violence have unique needs that federal housing program administrators should address. 34 U.S.C. § 12471(12). The preliminary injunction would protect these interests.

In addition, “there is an overriding public interest . . . in the general importance of an agency’s faithful adherence to its statutory mandate.” *Jacksonville Port Auth. v. Adams*, 556 F.2d 52, 59 (D.C. Cir. 1977). VAWA and its implementing regulations, and D.C.’s own regulations, mandate that D.C.’s public housing agency must ensure that domestic violence

⁴ An estimated 5.3 million incidents of domestic violence occur each year among women 18 and older in the United States. Victims of domestic violence lose an estimated 8,000,000 paid work days a year, with total costs exceeding \$5.8 billion per year. H. Waters *et al.*, *The Economic Dimensions of Interpersonal Violence* at 21, Department of Injuries and Violence Prevention, World Health Organization, Geneva, 2004, available at https://www.who.int/violence_injury_prevention/publications/violence/en/economic_dimensions.pdf.

victims continue to retain adequate housing assistance. The requested preliminary injunction would further the public interest underlying those requirements.

CONCLUSION

The Court should issue a preliminary injunction requiring the Housing Authority to issue a housing voucher to Ms. [REDACTED] immediately, establishing a legally-sufficient subsidy based solely on her income, and to resume payment of that subsidy (including back payments and late fees) to her landlord forthwith, pending final judgment in this case.

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

██████████ ██████████,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. _____
)	
TYRONE GARRETT,)	
in his official capacity as)	
Executive Director of the DISTRICT OF)	
COLUMBIA HOUSING AUTHORITY)	
)	
and)	
)	
DISTRICT OF COLUMBIA HOUSING)	
AUTHORITY,)	
)	
<i>Defendants.</i>)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiff’s Motion for Preliminary Injunction, Memorandum in Support of Motion for Preliminary Injunction, Declaration of ██████████ ██████████, and Declaration of Elena Bowers and Proposed Order, and Plaintiff’s Complaint will be served by hand on March 13, 2019 on:

Ken Slaughter
District of Columbia Housing Authority General Counsel’s Office
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/s/ Derek Zotto
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