

## centerforconstitutionalrights

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April 19, 2010

Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals for the Second Circuit  
40 Foley Square  
New York, NY 10007

Re: *ACORN v. United States*, 10-992

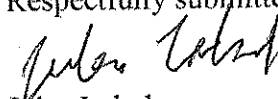
Dear Ms. Wolfe,

The government's April 16 letter (Dkt # 63) informing the Court that HUD has decided after four months to renew the contract for Section 8 subsidies at the Mott Haven property managed by plaintiff MHANY states that "plaintiffs' contentions of irreparable harm are premised largely on the fact that this contract has not yet been renewed." That claim is palpably false. As plaintiffs opposition to the stay plainly states, their claims of irreparable harm are based on three main contentions: 1) that their pending applications for new, soon-to-be awarded federal grants and their ability to apply for upcoming grants will be permanently denied with no remedy if the stay is granted, a harm the District Court already found irreparable, 2) that the contract for this particular building, AND MHANY's ability to rent vacant apartments to poor people in other buildings they manage, will be blocked if the stay is granted, and 3) a stay is likely to help drive plaintiff ACORN into bankruptcy. See Pls Opp to Stay Motion (Dkt # 30-1) at 2, 9-12.

Moreover, the government's decision to renew this contract illustrates that there was no reason for an administrative stay here, for the only reason that defendants requested that this Court decide their stay motion by 10 am, Friday April 2 – less than 48 hours after they filed it– was because they had informed the District Court that they would be able to enter into this specific contract within 48 hours after the District Court denied their application for a stay.

Finally, while plaintiffs welcome the government's belated decision to renew this contract, that decision simply highlights the arbitrary nature of the statute. The government states that HUD has now determined that the entity that owns the Mott Haven project, MHANY 1999 II Housing Development Fund Corporation, is not a subsidiary, affiliate, or ally of ACORN. But MHANY 1999 is a wholly-owned subsidiary of MHANY, has the same address and executive director as MHANY and an overlapping Board of Directors, and the one building it owns is managed by MHANY. How is it that MHANY 1999 is not an ally of ACORN, but MHANY is? This situation illustrates the arbitrariness of denying an entity federal funds based on an unchallengeable determination that they are an "ally" or "affiliate" of ACORN - terms which are nowhere defined in the statute and, at least with respect to "ally", could broadly exclude virtually any group that has ever worked closely with ACORN, and, as the record here demonstrates, makes other organizations reluctant to associate with ACORN or groups that work with it. See A56; B4-5; B174.

Respectfully submitted,

  
Jules Lobel

