UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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DIANA ESTEVEZ, ARCELIANO GONZALEZ, GERMANIA GONZALEZ, ALBANIA NUNEZ, ANA REYES, MARIA PAULINO, MARIA TORRES,

MARIA MORONTA, NANCY GARCIA, ZOILA PINZON, EMMA ROMAN, BERNARDINA INIRIO, MARY ALBERICCI, GILMA BERMUDEZ, EVELYN TAVARES, GUADALUPE GODINEZ, GLADYS ABREU, and RAMONA CALDERON,

Plaintiffs,

- against -

COSMOPOLITAN ASSOCIATES LLC,

Defendant.
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MEMORANDUM AND ORDER INCLUDING PRELIMINARY INJUNCTION
05 CR 4318 (JG)

APPEARANCES:

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JOHN GLEESON, United States District Judge:

Plaintiffs are tenants residing at Cosmopolitan Houses, a large residential complex owned by defendant Cosmopolitan Associates LLC ("Cosmopolitan"). Plaintiffs seek an

injunction prohibiting Cosmopolitan from refusing to renew their leases and requiring Cosmopolitan to accept their enhanced vouchers issued pursuant to the "Section 8" housing program established by the United States Housing Act, 42 U.S.C. § 6301, *et seq.*, as amended at 42 U.S.C § 1437f (2003), as partial payment of their monthly rent payments. For the reasons set forth below, the injunction is granted.

BACKGROUND

The Section 8 housing program was created in 1974 "for the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C § 1437f(a). Generally, two types of housing assistance are available to eligible individuals under Section 8: project-based and tenant-based. Project-based assistance refers to subsidies given directly to privately-owned developments and used to lower rents. Project-based subsidies are tied to a specific residential development; a tenant who moves from that property loses the benefit of the subsidy. By contrast, tenant-based assistance refers to subsidies given to individual tenants, who use the funds to pay rent. These subsidies are tied to the individual tenant, and are carried with a relocating tenant for use in a new home. Landlords who receive subsidy vouchers then remit the vouchers for payment from the local public housing agency through which the federal program is administered.

Until 1996, an additional obligation -- the so-called "endless lease" provision -- was placed upon owners of Section 8 housing. It provided that landlords could not refuse to renew the leases of Section 8 tenants at the conclusion of a lease period, "except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State or local law, or for other good cause." 42 U.S.C. § 1437f(d)(1)(B)(ii) (repealed 1996).

Also, the "take one, take all" provision of 42 U.S.C. § 1437f(t)(1)(A) (repealed 1996) provided that "once a landlord [had chosen] to participate by accepting a Section 8 tenant, it [could] not turn away subsequent Section 8 certificate holders based on their status as Section 8 participants." *Salute v. Stratford Greens*, 918 F. Supp. 660, 663 (E.D.N.Y. 1996), *aff'd* 136 F.3d 293 (2d Cir. 1998). These two provisions were considered onerous, however, and were thought to diminish landlords' incentives to provide Section 8 housing. Both were effectively repealed in 1996. *See Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 300 n.5 (2d Cir. 1998).

Project-based assistance contracts are typically 20-year contracts. They were first made available in 1975, and so they began to expire in large numbers in the mid-1990s. Upon expiration, landlords were able to opt out of project-based assistance programs, provided they gave adequate notice of their intent to do so. Congress became concerned that, as project-based assistance contracts ended and landlords began charging market rent, tenants who had come to rely upon housing subsidies would be forced out of their homes.

As a result of that concern, Congress amended the Housing Act in 1999 to provide that upon termination of or failure to renew a project-based assistance contract, the tenants who had benefitted from those contracts would receive "enhanced voucher" assistance. 42 U.S.C. § 1437f(t). Enhanced vouchers are a hybrid of project- and tenant-based assistance. They function as subsidies in an amount sufficient to pay the difference between the reasonable market price of the rental and the greater of 30 percent of the tenants' household income or the rental amount that the household was paying when the tenants first became eligible for enhanced vouchers. 42 U.S.C. § 1437f(t)(1)(D).

Enhanced vouchers are typically of higher value than pure tenant-based, fixed-value vouchers. They are available only when project-based assistance is terminated and continue only as long as the assisted family resides in same project in which the project-based assistance had been received. 24 C.F.R § 982.504(a)(2). If that "family moves, at any time, from that project," or if "the voucher is made available for use by any family other than the original family on behalf of whom the voucher was provided," the enhanced voucher is lost and the Section 8 assistance reverts to a standard tenant-based voucher. 42 U.S.C. § 1437f(t)(1)(C).

In order to administer Section 8 enhanced vouchers, New York City's local public housing agency, the New York City Department of Housing Preservation and Development ("HPD"), enters into a Housing Assistance Payments Contract ("HAP" contract) with the landlord of an apartment occupied by an assisted family. The use of a HAP contract is required by the United States Department of Housing and Urban Development ("HUD"), and it prescribes the form of the contract. *See* 24 C.F.R. 982.305(2). Under the HAP contract, the landlord receives a portion of the monthly rent from the tenant and the remainder in the form of an HPD enhanced voucher. The landlord can remit the voucher to HPD for payment. Without a HAP contract, the landlord cannot be reimbursed for a housing voucher.

Until 2003, Cosmopolitan received project-based rental subsidies pursuant to a HAP contract between Cosmopolitan and HPD. In 2003, Cosmopolitan opted out of its contract, with sufficient notice to plaintiffs, after which time the plaintiffs began to receive enhanced vouchers from HPD. Cosmopolitan entered into new HAP contracts with HPD and

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Cosmopolitan also received subsidies pursuant to the Section 8 Moderate Rehabilitation Program.

new Section 8 leases with plaintiffs. Until recently, plaintiffs had been using enhanced vouchers to pay their rent under those leases.

According to plaintiffs, in June 2005 they were informed by Cosmopolitan that it had chosen not to offer them new Section 8 leases. Plaintiffs claim that, as their leases have expired, Cosmopolitan has demanded the full contract rent but has refused to accept enhanced vouchers as part of the payment. Plaintiffs argue that they face the prospect of summary eviction proceedings because Cosmopolitan's refusal to accept their enhanced vouchers precludes them from paying the rent the landlord charges them.

Cosmopolitan argues that it is under no obligation to accept the enhanced vouchers and that refusing to do so is well within its rights as a voluntary participant in the Section 8 program. Under the statutory scheme governing enhanced vouchers, described above, Cosmopolitan would have to sign new HAP contracts with HPD, in addition to new leases with the tenants, in order to receive payment on the enhanced vouchers. Cosmopolitan asserts that it cannot be compelled to sign new HAP contracts.

Finally, Cosmopolitan has belatedly asserted that the statute does not provide a private right of action for the plaintiffs. According to defendant, plaintiffs can assert their Section 8 rights as an affirmative defense to eviction proceedings in state court, but they have no positive right of action in this Court under the statute.

DISCUSSION

To prevail on their motion for a preliminary injunction, plaintiffs must satisfy two requirements. First, they must demonstrate that, absent a preliminary injunction, they are likely to suffer irreparable injury. Second, they must show that either (a) they are likely to succeed on

the merits of their case, or (b) they have raised questions going to the merits that are sufficiently serious to render them fair grounds for litigation, and that a balancing of the hardships tips decidedly toward the movant. *Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir. 1996).

A. Irreparable Harm

As Cosmopolitan concedes, plaintiffs face the prospect of eviction from their homes. If Cosmopolitan is not enjoined, it will continue to seek fair market rents from plaintiffs and to refuse to accept plaintiffs' enhanced vouchers as partial payment of those rents. Not only will plaintiffs lose their housing, they may also lose permanently the benefits conferred by the enhanced vouchers, which are available to eligible tenants only so long as they remain in the same housing. Plaintiffs will suffer actual and imminent harm if injunctive relief is not granted, and such harm would not be remedied by monetary damages. *See McNeill v. New York City Hous. Auth.*, 719 F. Supp. 233, 254 (S.D.N.Y. 1989) ("The threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable injury, and satisfies the first prong of the test for preliminary injunctive relief.").

B. Likelihood of Success on the Merits

Tenants become eligible to receive enhanced vouchers upon "the termination or expiration of the contract for rental assistance." *See* 42 U.S.C. § 1437f(t)(2). Once eligibility has been triggered by such an event, "the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility for the project." 42 U.S.C. § 1437f(t)(1)(B). Plaintiffs contend that Cosmopolitan, by refusing to accept rent in the form of enhanced vouchers and refusing to renew leases with them on this basis, has violated 42 U.S.C. §

1437f(t). They assert that this provision necessarily creates an obligation for landlords to accept the enhanced vouchers.

Cosmopolitan does not dispute plaintiffs' right to use "enhanced vouchers for the very same apartment which had previously been the subject of a project based Section 8 Program and which no longer has any such status as a consequence of the Landlord's opting out." (Def. Mem. Law Opp'n at 11).[2] Instead, Cosmopolitan argues that, while § 1437f(t) mandates that tenants not be evicted based on their status, it does not obligate landlords to accept rent in the form of enhanced vouchers, nor does it preclude landlords from evicting those tenants who cannot make rent payments without the use of enhanced vouchers. Participation in Section 8 programs, Cosmopolitan asserts, is entirely voluntary. A landlord may stop accepting enhanced vouchers at any time. More specifically, Cosmopolitan argues that it cannot be obligated to do what is necessary for it to receive money in exchange for the enhanced vouchers -- enter into new HAP contracts with HPD. "[T]he requirement of participating in any such contractual arrangement cannot be foisted upon a landlord based upon the clear absence of any statutory authority therefor." (Def. Mem. Law Opp'n at 3). And since the enhanced vouchers are valueless to a landlord in the absence of a HAP contract, Cosmopolitan argues, it cannot be required to accept them from the plaintiffs.

This argument fails because it cannot be squared with the Section 8 statutory scheme. While it is true that Cosmopolitan is not mandated by the statute to enter into a

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[2] Both parties have made arguments about the relevance and meaning of HUD's interpretation of § 1437f(t), and specifically whether HUD believes that the statute creates a "right to remain." However, because Cosmopolitan agrees that such a right exists, this is not the question before me. Rather, I am asked to decide whether § 1437f(t) creates an obligation for Cosmopolitan to accept enhanced vouchers in partial payment of plaintiffs' rents.

contractual arrangement with HPD, it is equally true that § 1437f(t) provides clear statutory authority for obligating landlords to accept the plaintiffs' vouchers. Otherwise, "1437f's grant to the tenant of the right to remain would be illusory," and the protection the statute was enacted to afford would be eliminated. *Jeanty v. Shore Terrace Realty Assoc.*, 2004 WL 1794496, at *3 (S.D.N.Y. Aug. 10, 2004). "Moreover, the language providing a tenant's right to remain appears within the enhanced voucher subsection of the statute. It makes little sense, therefore, to interpret the statute to mean that landlords must allow a tenant to remain exclusive of any obligation to accept the tenant's enhanced voucher." *Id.*

1 The text and structure of the statute

The interpretation of a statute begins with the statute's language. *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 300 (1989); *Saks v. Franklin Covey Co.*, 316 F.3d 337, 345 (2d Cir. 2003) ("Every exercise in statutory construction must begin with the words of the text."). When Congress does not expressly define a statutory term or phrase, a court should "normally construe it in accord with its ordinary or natural meaning." *Smith v. United States*, 508 U.S. 223, 228 (1993); *Sellan v. Kuhlman*, 261 F.3d 303, 311 (2d Cir.2001) ("we presume that [Congress] speaks consistently with the commonly understood meaning" of a term).

The text of 42 U.S.C. § 1437f(t), given its ordinary meaning, makes clear that tenants renting apartments in developments receiving project-based assistance will, upon the termination of that assistance, have the right to remain in their apartments as long as they remain

eligible and continue to occupy the apartments.[3] *See Jeanty*, 2004 WL 1794496, at *3. The statute provides as follows:

> Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (o) of this section, except that under such enhanced voucher assistance –
> (A) ... the assisted family shall pay as rent no less than the amount the family was paying on the date of the eligibility event for the project in which the family was residing on such date;
> (B) the assisted family *may elect to remain in the same project* in which the family was residing on the date of the eligibility event for the project ...

42 U.S.C. § 1437f(t)(1) (emphasis added).[4] A plain reading of these words makes clear that, upon the occurrence of an eligibility event, Section 8 tenants receive added protections, notably the enhanced vouchers, with their increased value and the unfettered right to remain. *Id.* It is these additional benefits that set enhanced vouchers apart from other tenant-based voucher assistance.

In order to give effect to these protections, it is imperative that the family actually possess the option to stay, *i.e.*, that it is able to use the means spelled out in the statute to pay the rent. Without the right to pay the rent with the benefit of the enhanced voucher, the right to remain would be gutted -- only those tenants who could afford market rent would be able to exercise the right to remain, and tenants who can afford the market rent would be ineligible for

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[3] Actually, as the text of the statute quoted immediately below in the text reveals, the tenant has the right to remain in the "project," not the "apartment." The distinction is not material to this case.

[4] As discussed above, tenants become eligible for enhanced vouchers upon an "eligibility event," defined by 42 U.S.C. § 1437f(t)(2) as "the termination or expiration of the contract for rental assistance." Plaintiffs in this case became eligible to receive enhanced vouchers when Cosmopolitan opted out of project-based assistance in 2003.

Section 8 assistance. Thus, the plain language of § 1437f(t) dictates that plaintiffs must be able to tender enhanced vouchers, and that landlords must be required to accept them as rent.

2. The Legislative History

This reading is clearly supported by the legislative history. The intent of Congress in creating enhanced vouchers was to address the risk at which families were placed as project-based subsidy contracts expired in large numbers and units were converted to the private market:

> [I]n many circumstances, standard vouchers are inadequate in the face of market-rate rents, forcing residents to either find other shelter, or remain in their homes and face the awful choice between paying rent or buying food and medicine. ... [W]e have introduced legislation designed to address the two aspects of the current problem - unprotected residents and the loss of affordable housing. ... *[E]nhanced vouchers will allow particularly vulnerable populations the ability to remain in their own homes.*

Section 8 Housing: Hearing Before the Sen. Subcomm. on Hous. and Transp.,106th Cong. (1999) (written testimony of Rep. Rick Lazio, Chairman, H. Subcomm. Hous. and Cmty.) (emphasis added); *see also Senior Citizen Housing: Testimony Before the Hous. and Cmty. Opportunity Subcomm. of the H. Banking and Fin. Serv. Comm. on The Aging Crisis and H.R. 202: Preserving Affordable Housing for Senior Citizens into the 21st Century,* 106th Cong. (1999) (statement of Jane O'Dell Baumgarten, Member, AARP Bd. of Dirs.) ("The enhanced vouchers would allow older and disabled tenants - as well as other families with low incomes located in low-vacancy areas - to stay in projects opting out of the Section 8 program."). Additionally, the conference report accompanying the bill explicitly stated that its purpose was to "prevent the involuntary displacement of low-income families, the elderly and the disabled because of the ... expiration of subsidy contracts," H.R. Rep. No. 106-379, pt. 2, at 9 (1999) (Conf. Rep.), and that

subsection (t) of § 1437f would prevent "existing residents of Federal-assisted housing from being forced to move from their homes." *Id.* at 169.

The enhanced voucher program was created to ensure that tenants would not be displaced upon the termination of project-based subsidies. This intent was codified in subsection (t) of § 1437f, which expressly provides that the tenants "may remain" and that they may use enhanced vouchers to do so. *Jeanty*, 2004 WL 1794496, at *3. Defendant's proposed construction of § 1437f(t) -- that the tenants can pay their rent with enhanced vouchers only if the landlord decides to accept them -- is irreconcilable with the express purpose of the law.

3. The Repeal of "Endless Leases"

Cosmopolitan argues that the protection conferred upon the subclass of tenants eligible for § 1437f(t) assistance is an "end run" around the 1996 repeal of the endless lease provision. "If such an obligation were statutorily mandated at this time pertaining to a situation where a landlord had opted out of the Project Based Section 8 Program it would obviously be contrary to the Congressional repeal of the 'Endless Lease' provision and thus would make little to no sense." (Def. Mem. Law Opp'n at 13). Putting aside the fact that Congress is free to "end run" one of its enactments with another, I disagree with Cosmopolitan that it did so here. Indeed, precisely *because* of the repeal of the endless lease provision, it made perfect sense for Congress to enact a law expressly intended to protect eligible tenants (through the use of enhanced vouchers) from losing their homes upon the expiration of project-based assistance contract. And it would have made no sense to leave the validity of those vouchers, and hence the ultimate protection of those tenants, solely to landlords' discretion. I see no reason why Congress could not intend, as I believe it did, to repeal the endless lease provision and thereby establish a greater

element of voluntariness in landlords' participation in the Section 8 program, while at the same time granting extra protection to the subgroup of tenants who would otherwise be put out of their homes by the change in the law. *See Jeanty*, 2004 WL 1794496, at *3 n.7 ("Congress may allow landlords to sever their relationships with HUD in prior legislation but may nonetheless enact legislation to protect tenants living in these same housing developments from the consequences of opt-outs at later dates.").

Furthermore, the burden placed upon landlords by the enhanced voucher scheme is far less weighty -- and far more specific -- than the burden that had been imposed by the endless lease provision. Prior to its repeal, the endless lease provision precluded a landlord from refusing to renew a lease to a Section 8 tenant if the tenant's status as a Section 8 participant was the proximate cause of the refusal; a landlord could not terminate a tenancy absent egregious conduct by the Section 8 tenant. *Salute*, 136 F.3d at 297. By contrast, the right to remain granted under § 1437f(t) lasts only so long as the original family, *i.e.*, the family living in the apartment upon termination of the project-based assistance, does not move. In this context, the specific enactment that enables an identified group of Section 8 recipients to remain in their homes governs the general Congressional intent of allowing landlords to opt out of a lease. *See generally U.S. v. Torres-Echavarria*, 129 F.3d 692, 699 n.3 (2d Cir. 1997) ("The operative principle of statutory construction is that a specific provision takes precedence over a more general provision." (citing *United States v. Moran*, 236 F.2d 361, 363 (2d Cir. 1956)); *American Land Title Ass'n v. Clarke*, 968 F.2d 150, 157 (2d Cir. 1992) ("where two statutes conflict, the statute that addresses the matter under consideration in specific terms controls over one that does so in a general manner, unless of course Congress has manifested a clear intent to the contrary.").

Finally, Cosmopolitan argues that landlords need not be obligated by § 1437f(t) because tenants are free to use the vouchers elsewhere and so can still be adequately protected. Cosmopolitan's premise -- that the two types of assistance are equal -- is mistaken. Because the "enhanced" nature of the plaintiffs' vouchers is tied to their specific residences, and because enhanced vouchers confer benefits that are unavailable through traditional vouchers, it is simply not true that a tenant can receive identical benefits in another residence. Additionally, an interpretation of enhanced vouchers as fungible with all other vouchers would render all of § 1437f(t) redundant in spite of Congress's clear intent to distinguish enhanced vouchers from other tenant-based assistance. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute.") (quotation marks and citations omitted); *U.S. v. Dinerstein*, 362 F.2d 852, 855 -56 (2d Cir. 1966) (rejecting an interpretation of a statutory provision that "largely overlaps" with another provision in favor of "a construction which leaves to each element of the statute a function in some way different from the others.").

Cosmopolitan argues that nothing in the text of § 1437f(t) requires it to enter into new HAP contracts.[5] I agree. But I reject entirely Cosmopolitan's implicit assumption that if it chooses not to enter into new HAP contracts and thus cannot redeem the enhanced vouchers for cash, the *tenants* will be obligated to pay the difference. Cosmopolitan remains free to refuse to sign contracts with HPD and thereby to forfeit any rental income above and beyond the direct payments made by tenants pursuant to § 1437f(t). However, Cosmopolitan may not refuse to

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[5] *Kulick and Rheingold Realty, LLC v. Montero*, 801 N.Y.S.2d 778 (N.Y.City Civ.Ct. 2005), cited by Cosmopolitan for the proposition that landlords cannot be compelled to enter into HAP contracts, is inapposite for two reasons. First, that case (and the others cited by Cosmopolitan for this proposition) was decided *prior to* the enactment of § 1437f(t). Second, the decision whether to enter into HAP contracts and be reimbursed for enhanced vouchers is entirely at Cosmopolitan's discretion.

accept plaintiffs' enhanced vouchers or attempt to evict plaintiffs on grounds of non-payment of the voucher portion of the rent.

C. Plaintiffs' Right of Action Under § 1437f(t)

At oral argument on September 30, 2005, Cosmopolitan asserted for the first time that plaintiffs do not have a private right of action against Cosmopolitan. At that time, I invited written submissions on this issue. In a subsequently-filed letter brief, Cosmopolitan contends that "the situation is a voluntary one for all concerned," and that plaintiffs can "either remain or take their subsidy elsewhere," but they cannot bring suit. (Defendant's letter dated Oct. 6, 2005 at 4). Cosmopolitan argues that 42 U.S.C. § 1437f(t) is merely "a directive to federal agencies engaged in the distribution of federal funds," and does not create a private right of action under *Alexander v. Sandoval*, 532 U.S. 275 (2001). *Id.*

In *Cort v. Ash*, 422 U.S. 66 (1975), the Supreme Court set forth four factors courts must consider in determining whether an individual may have a private right of action under a federal statute that is silent on that subject: (1) whether the plaintiff is one of the class for whose "especial" benefit Congress enacted the statute, "that is, does the statute create a federal right in favor of the plaintiff"; (2) whether there exists "any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one"; (3) whether it remains "consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff"; and (4) whether the cause of action is "one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law." *Id.* at 78; *see Salahuddin v. Alaji*, 232 F.3d 305, 308 (2d Cir. 2000); *Gonzalez v. St. Margaret's House Hous. Dev. Fund Corp.*, 620 F. Supp. 806, 809 (S.D.N.Y. 1985).

These factors are not all given equal weight; "what must ultimately be determined is whether Congress intended to create the private remedy asserted." *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 15-16 (1979); *see Alexander*, 532 U.S. at 286 (2001). Therefore, some courts have collapsed these four criteria into a single dispositive question of legislative intent. *Transamerica Mortgage*, 444 U.S. at 15-16; *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575-76 (1979) ("The first three factors discussed in *Cort*, -- the language and focus of the statute, its legislative history, and its purpose -- are ones traditionally relied upon in determining legislative intent.") (citations omitted). The tenants' case is supported by clear evidence that Congress intended to create a private right of action, and, in any event, meets all four prongs of the *Cort* analysis. Therefore, I find that an implied private right of action exists under § 1437f(t).

1 Section 1437f(t) Creates a Federal Right in Plaintiffs' Favor

In making a determination of whether a particular statutory provision gives rise to a federal right, courts look at three factors:

> First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must show that the asserted right is not so vague and amorphous that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation upon the states, meaning the provision must be couched in mandatory rather than precatory terms.

Lindsay v. New York City Housing Authority, 1999 WL 104599, at *3 (E.D.N.Y.,1999) (citing *Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997).

Typically, language expressly identifying the class of people Congress intended to benefit counsels in favor of a private remedy, while the language of criminal statutes and laws

intended to protect the general public does not. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 690 (1979). Section 1437f(t) specifies that only "families renting at the time of the termination of the project-based subsidy contract" are granted "the right to remain in their units, using enhanced vouchers." *Jeanty*, 2004 WL 1794496, at*3. Thus, the statute explicitly identifies the special class of people intended to receive its protections. Cosmopolitan does not contend otherwise.

Section 1437f(t) also contains specific and enforceable requirements. It sets forth eligibility criteria for participation in the enhanced voucher program, and prescribes the methodology for determining the amounts the eligible tenants will be required to pay toward their monthly rent. Finally, the requirements imposed upon landlords are not permissive. As explained above, § 1437f(t) places an obligation upon landlords to allow the eligible tenants to keep their homes, assisted by the enhanced vouchers. Thus, § 1437f(t) provides plaintiffs with an enforceable federal right and satisfies the first part of the *Cort* analysis.

2. A Private Right of Action is Consistent with Statutory Intent

A private remedy should not be implied if doing so "would frustrate the underlying purpose of the legislative scheme." *Cannon*, 441 U.S. at 703. As Cosmopolitan correctly points out, both the statute and the legislative history are silent on the question of a private remedy. However, the explicit purpose of § 1437f(t) is to "allow particularly vulnerable populations the ability to remain in their own homes." *Section 8 Housing: Hearing Before the Sen. Subcomm. on Hous. and Transp.*,106th Cong. (1999) (written testimony of Rep. Rick Lazio, Chairman, H. Subcomm. Hous. and Cmty.). Section 1437f(t) was intended to benefit the subclass of tenants residing in buildings with expiring project-based assistance contracts, and to that end it created a "right to remain" for those tenants. If those very tenants are left without a

right of action, Congress's purpose in enacting § 1437f(t) would be frustrated. Indeed, this very case, where the landlord urges me to relegate the plaintiffs to a state court eviction proceeding for nonpayment of rent, proves the point. *See Cannon*, 441 U.S. at 693 ("the right- or duty-creating language of the statute has generally been the most accurate indicator of the propriety of implication of a cause of action."); *Alexander*, 532 U.S. at 287 (declining to imply a private right of action in the absence of "rights-creating language.").

A private cause of action here is consistent with the "underlying purposes of the legislative scheme," *see Sternberg v. U.S.A. Nat'l Karate-Do Fed'n*, 123 F. Supp. 2d 659, 664 (E.D.N.Y. 2000), and indeed "will further the purpose of the statute." *Knapp*, 54 F.3d at 1277 (finding that the prior version of § 1437f(t), which has since been repealed, implied a private right of action); *see Gonzalez*, 620 F. Supp. at 809 ("It would seem consistent with the purposes of the [Housing] Act and useful to its enforcement to allow such an action to insure the intended beneficiaries the benefits the Act intended to confer on them.").[6] Indeed, absent a private remedy, there would be no readily available mechanism for enforcement or protection of the tenants' right to remain. At the time a tenant needs to vindicate her right to remain, the landlord has already opted out of the Section 8 program, and (as in this case) may no longer be a party to a HAP contract with the housing authority through which the program is administered. In those circumstances, the tenant is more likely than the housing authority to give "practical and effective content to the statute" by bringing suit. *Sternberg*, 123 F.Supp.2d at 665.

[6] Similarly, the few courts that had occasion to rule on the since-repealed "take one, take all" provision found "clear congressional intent to create an enforceable right for applicants." *Salute v. Greens*, 918 F.Supp. 660, 666 n.5 (E.D.N.Y.,1996); *see also Knapp v. Eagle Prop. Mgmt. Corp.*, 54 F.3d 1272, 1275-77 (7th Cir. 1995).

Plaintiffs' argument finds additional support in the fact that the statute does not expressly provide for administrative enforcement. *See Salahuddin*, 232 F.3d at 311 (inclusion in the statute of increased penalties for offenders supports the conclusion that Congress intended enforcement by governmental agencies). If "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others," then the absence of any enforcement provision supports the inclusion of a private right. *Alexander*, 532 U.S. at 290; *Gonzaga Univ. v. John Doe*, 536 U.S. 273, 289-90 (where administrative procedures for enforcement are express in the statute, it weighs against the creation of a private right of action).[7]

3. Section 8 Assistance is Not an Area Traditionally Relegated to State Law

Finally, the question before me is not one typically relegated to the states. Although landlord-tenant law is obviously the province of state law, Section 8 is a comprehensive federal statutory scheme. The right to remain in one's home that is created by § 1437f(t), like the various other rights to assistance provided by the statute, derives exclusively from that federal scheme. Enforcement of those rights have not been relegated to the states. *See Gonzalez*, 620 F. Supp. at 810.

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[7] My view in this regard is not changed by 42 U.S.C. § 1404a, which provides that "The Secretary of Housing and Urban Development may sue and be sued only with respect to its functions under the United States Housing Act of 1937, as amended," or where it is expressly authorized to sue "by the statute or regulations under which such housing accommodations are administered." This statute creates a limited avenue for enforcement by HUD, but it is not the type of statute that contemplates administrative agency enforcement as the sole mechanism for the vindication of the rights conferred.

Considering all of the *Cort* factors, together with the prescribed emphasis on legislative intent, I find that Congress intended to create a private right of action under § 1437f(t).[8]

CONCLUSION

Plaintiffs' motion for a preliminary injunction is granted. Defendant is enjoined from refusing to renew their leases, and is ordered to accept their enhanced vouchers as partial payment of plaintiffs' monthly rent payments.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: November 28, 2005
Brooklyn, New York

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[8] I have seen no support for Cosmopolitan's contention that § 1437f(t) is merely "a directive to federal agencies." Furthermore, the cases cited by Cosmopolitan in support of the proposition that there is no private cause of action are inapposite.

In *McNeill v. New York City Hous. Auth.*, 719 F.Supp. 233 (S.D.N.Y. 1989), the court held that no private right of action exists against the landlord under 42 U.S.C. § 1437a, which forbids rental charges in excess of 30 percent of income and prohibits a landlord from suing to collect on any excess amount. *Id.* at 246-47. However, the tenants were permitted to maintain their action against the landlords as third-party beneficiaries of their HAP contracts. In declining to find an implied private right of action, *McNeill* expressly relied on the lack of Congressional intent to create a private right of action under § 1437a. As discussed above, that is clearly not the case here. *Id.* Moreover, because the essence of defendant's position is that it cannot be required to execute a HAP contract in connection with the enhanced vouchers, the third-party beneficiary avenue to relief in *McNeill* is not available here.

Similarly, the court in *Green v. Konover Residential Corp.*, 1997 WL 736528, at *8 (D.Conn. 1997), found that no private right of action exists under § 1437 "for failure to maintain the premises in a safe and sanitary condition," because "HUD should enforce the required conditions by asserting its rights under the HAP contracts." That reasoning is inapplicable here, where the right at issue -- the right to remain in the home -- is expressly conferred on the tenant, and its vindication is far more likely to require action by the tenant. Finally, *People to End Homelessness, Inc. v. Develco Singles Apartments Assoc.*, 339 F.3d 1 (1st Cir. 2003), dealt with whether enhanced vouchers could be issued by HUD if the landlord had not met the requirement of providing one year's notice to opt out. The court's decision that HUD was not prohibited from issuing enhanced vouchers has no relevance to the instant case.