STATE OF INDIANA	)	MARION SUPERIOR COURT 11
	)	SS:
COUNTY OF MARION	)	CAUSE NO. 49D11-2504-PL-016374
	)	
CADENCE BLANCHARD, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
INDIANA HOUSING & COMMUNITY DEVELOPMENT AUTHORITY, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION AND GRANTING CLASS CERTIFICATION

1. Plaintiffs Cadence Blanchard ("Blanchard"), Muriel Amlett ("Amlett"), and Lisa Carpenter ("Carpenter") (collectively "Plaintiffs" unless identified separately by name) brought this lawsuit against Indiana Housing and Community Development Authority ("IHCDA") and its Board of Directors over the closure of the second version of the Indiana Emergency Rental Assistance program ("IERA2"). Plaintiffs have moved for a preliminary injunction and class certification. On an expedited schedule, the parties conducted discovery, briefed the motions, and presented evidence and argument at a hearing on May 28, 2025.

2. Having considered the parties' arguments and their evidence, the Court grants in part and denies in part the motion for a preliminary injunction and grants the Plaintiffs' motion for class certification. Pursuant to Indiana Trial Rule 52(A), the Court sets forth its findings of fact and conclusions of law in support of its ruling on the preliminary injunction motion. To the extent any finding of fact is more properly understood as a conclusion of law, it shall be treated as such, and vice versa.

PROCEDURAL BACKGROUND

3. On April 7, 2025, Plaintiff Cadence Blanchard filed a complaint challenging the decision to terminate the IERA2 program. She sought a temporary restraining order, a preliminary injunction, and the certification of a class. The parties each filed briefing and heard argument on the motion for a temporary restraining order on April 14, 2025. The Court denied the motion and set a briefing schedule and a hearing on the motion for preliminary injunction, and noted the parties should also be prepared to address the Plaintiffs' request for class certification.

4. On April 21, 2025, Plaintiffs filed an amended complaint. The amended complaint added Amlett and Carpenter as plaintiffs. Am. Compl. ¶¶ 8–10. The amended complaint alleged that the decision to terminate the IERA2 program (1) violated the Indiana Administrative Orders and Procedures Act ("AOPA"); (2) violated Article I, Section 1 of the Indiana Constitution; (3) violated Article I, Section 23 of the Indiana Constitution; and (4) violated Indiana's Open Door Law. On April 24, 2025, plaintiffs filed amended motions for preliminary injunction and class certification. The Court set a hearing on those motions.

5. The Court held a hearing on May 28, 2025, receiving exhibits and witness testimony. Its rulings related to exhibits and witnesses are stated on the record.

6. The Court commends counsel for their excellent and civil advocacy in a hotly contested expedited case. Their written and oral advocacy was exceptional.

AOPA PROCEDURAL ISSUES

Waiver

7. One preliminary matter is the scope of evidence the Court can consider with respect to its judicial review under AOPA. Defendants argue that the Court's AOPA review "must be confined to the agency record for the agency action." IND. CODE § 4-21.5-5-11. But at the May 28 hearing, the Defendants stipulated to the admission of several exhibits that are outside the agency record, and similarly did not object to the admission of testimony that was outside the agency record. The Court finds that the Defendants have waived their right to insist that the Court rely solely on the agency record in rendering its decision under AOPA. *See Carter v. Carolina Tobacco Co.*, 873 N.E.2d 611, 624 (Ind. Ct. App. 2007) ("There were no objections at trial to the testimony of any of CTC's witnesses or to the trial exhibits on the basis that such evidence exceeded the scope of any alleged agency record. Therefore, OAG has waived this issue.").

Exhaustion

8. There was not the sort of thorough agency record that typically accompanies a formal agency proceeding. There is no stated agency-specific appeal procedure at all; *i.e.,* no "formal process set up" to appeal decisions denying IERA2 benefits. As the Defendants would have it, after the Plaintiffs received their respective notices that the program had shut down without them receiving any benefits (described in more detail below), they should have approached the IHCDA; state they were "invoking [their] right to administrative review under AOPA. [And then state:] Please provide us with the appropriate processes that AOPA lays out." (Hrg.

Audio Transcript. ("Tr."), 3:48-49). These three Plaintiffs should have done "exactly" that to initiate an appeal of their denials. (*Id.*).

9. This is all relevant in the context of administrative exhaustion,[1] which the Plaintiffs contend was futile and should not therefore be insisted upon; but which the Defendants argue the Plaintiffs failed to satisfy and thus cannot get past this initial hurdle of their AOPA challenge.

10. There are certainly cases that stand for the proposition that failure to exhaust administrative remedies waive a petitioner's right to judicial review, which is true whether or not the agency provides a formal mechanism for administrative review. *See Matter of R.L.,* 246 N.E.2d 257, 260 (Ind. 2024), and *Johnson v. Patriotic Fireworks, Inc.*, 871 N.E.2d 989, 995 (Ind. Ct. App. 2007). That said, Indiana law does not require mechanical application of I.C. § 4-21.5-5-4. For example, in *Smith v. State Lottery Commission of Indiana,* 701 N.E.2d 926 (Ind. Ct. App. 1998), our Court of Appeals noted that "the requirement of exhaustion of administrative remedies 'will be relaxed where there is grave doubt as to the availability of the administrative remedy.'" *Id.* (quoting *Indiana High Sch. Athletic Ass'n v. Raike*, 329 N.E.2d 66, 82 (Ind. Ct. App. 1975)).

11. The Court has grave doubt as to the availability of an administrative remedy. In *Smith,* as with the IHCDA here, the "Lottery advises [plaintiff] should have consulted [AOPA] in order to understand the steps of the necessary administrative appeal process." *Smith,* 701 N.E.2d at 932. In *Smith,* as here, "the record reveals numerous and varied efforts of [plaintiff] and others in his proposed class to obtain satisfaction from the Lottery. None were offered forms to complete, nor did any of their other writings suffice to initiate an administrative

[1] I.C. § 4-21.5-5-4.

appeal process." *Id.* "The Lottery appears to argue that it can, at the same time, require that average citizens consult the Indiana Administrative Code and Indiana Code in order to determine what process is available and what they might do to communicate to the Lottery their wish to initiate it." *Id.* The Court in *Smith* ruled that the "rule for exhaustion of administrative remedies is 'relaxed' because 'there is grave doubt as to the availability of an administrative remedy.'" *Id.* (citation omitted).

12. In varying forms, certain Plaintiffs attempted to get more information regarding their benefit denials and whether there was anything more they could do to receive those benefits. *Infra*. At no time were they advised they could initiate an AOPA appeal, nor were they directed to any forms or procedures for doing so. These facts and circumstances are analogous to those in *Smith,* and support the Court's conclusion that the rule of exhaustion is relaxed because the Court has grave doubt as to the availability of any administrative remedy.

FINDINGS OF FACT

Federal Emergency Rental Assistance Funding

13. The American Rescue Plan Act of 2021 appropriated funds to the U.S. Department of the Treasury. *See* 15 U.S.C. § 9058c. The U.S. Department of the Treasury distributed these funds to States and Localities ("grantees") under the Emergency Rental Assistance program ("IERA2"). This was the second iteration of the ERA program.

14. Under the American Rescue Plan Act and the IERA2 program, no ERA grantee could obligate funds for services performed after September 30, 2025. 15 U.S.C. § 9058c(a)(1), (g); Defs. Ex. E at 22. No payments for rental assistance could be issued after September 30, 2025, and payments for forward-facing rent could not extend to rent for any months after September 30, 2025. Tr. 2:02 pm (Binder). For expenses incurred prior to September 30, 2025, IERA2

programs could cover those expenses with IERA2 funds for up to 45 days after September 30. Tr. 2:03 pm am (Binder).

The IERA2 Program

15. The State of Indiana received a disbursement from the IERA2 program in the initial amount of $291,755,610.50. *See* Defs. Ex. A. Christopher Johnston, director of the Indiana Office of Management and Budget, signed an "award terms and conditions" document on August 6, 2021. *See id.*

16. The Office of Management and Budget designated the State Budget Agency, itself an agency of the Office of Management and Budget, "to accept and administer funds" under the American Rescue Plan Act. *See* Defs. Ex. B.

17. The State Budget Agency entered into a Memorandum of Understanding with the IHCDA on September 9, 2021, to "memorialize an agreement to pass through the federal award to IHCDA." Defs. Ex. B at 1. The federal award referred to funding received under the American Rescue Plan Act. Defs. Ex. B at 1.

18. The Memorandum of Understanding stated that a written determination from the Director of the State Budget Agency that "funds are not appropriated or otherwise available to support continuation of performance of this memorandum" shall "be final and conclusive." Defs. Ex. B at 2.

19. IHCDA used the funds available to it to operate IERA2. *See* Defs. Ex. C at 1. The program could provide up to 18 months of rental assistance to approved applicants. *See* Defs. Ex. C at 1; 15 U.S.C. § 9058c(d)(1)(A)(i). Residents of Hamilton and Marion County were not eligible to participate in the program because those counties "electe[d] to run their own rental assistance programs." Defs. Ex. C at 11, 19.

20. IERA2 applicants had to satisfy various eligibility and documentation requirements. *See* Defs. Ex. C at 11–15. IHCDA would review materials from the applicant to determine whether an applicant was eligible to receive rental assistance. If necessary, IHCDA staff would reach out to applicants to request additional documentation to determine eligibility. *See* Defs. Ex. C at 11; Tr. 10:59 am (Binder). Applicants that were determined to be eligible would proceed to a "quality control" stage, where IHCDA staff would double-check eligibility. Tr. 10:59 am (Binder). Once approved by the quality control process, payment would be disbursed. *Id.*

21. An ideal application—*i.e.*, an application that did not require any additional documentation, was already matched to a participating landlord, and could be processed in the most efficient manner—would take about 21 days to process. Tr. 2:31 pm (Binder). "Incredibly few" applications to the IERA2 program were ideal applications. Tr. 2:33 pm (Binder). Prior to cessation of operations, IHCDA processed approximately 665 IERA2 applications per week, and so approximately 2,660 applications per month. Tr. 2:31 (Binder).

22. A first-time approved applicant could receive rental assistance for rental/utility arrears plus up to three months of forward-facing assistance, provided that amount did not exceed 18 months of assistance. *See* Defs. Ex. C at 8–9.

23. Applicants who had already received one payment from the IERA2 program were able to apply for a second payment. Defs. Ex. C at 1. Before an applicant could be approved for a second payment, the applicant was required to complete a family development counseling program funded by the IERA2 program. *Id.* To successfully complete the counseling program, an applicant had to score "self-sustaining" or "thriving" in one of twelve evaluation categories. Defs. Ex. C. at 18.

24. The IERA2 program has an end date in one of three ways: (1) it runs out of money prior to the program end date of September 30, 2025; (2) it does not run out of money prior to September 30, 2025, but September 30, 2025 turns the page on the calendar and the program ends by its terms (with some caveats); and (3) a decision is made to terminate the program early that complies with AOPA. It was important to IHCDA to limit (or avoid) having IHCDA (or other funds from the State of Indiana) be expended in furtherance of IERA2.[2]

25. As such, IHCDA would monitor "where things stood" financially on a regular basis to make sure that it did not run out of money or unnecessarily spend its own. Prior to March 17, 2025, IHCDA's most recent assessment of when it needed to shut down the program in order not to run out of federal funds and/or incur costs not covered by IERA2, was that it could accept and process applications through March 28, 2025, which meant the last payments would be sent out in mid-to-late June, 2025. (Tr., 2:28-29) (Binder).

26. This plan was not followed for the reasons at the center of this dispute.

[2] Certain funds in IERA2 were allowed to be spent on third-party vendors subject to certain conditions. It also had wind-down provisions that contemplated the program either running out of money or time (September 30,2025).

Closing the IERA2 Program

27. Plaintiffs do not claim that IERA2 could not be closed prior to September 30, 2025, if done so in a manner compliant with AOPA. Its position is that the manner in which it was closed violates AOPA. I.C. § 4-21.5-5-14(d).

28. On March 17, 2025, IHCDA received an email from Alex Hickner, Chief of Staff of Indiana's Office of Business Affairs stating, *in toto*:

From: Hickner, Alex <AHickner@gov.IN.gov>
Sent: Monday, March 17, 2025 3:40 PM
To: Rayburn, Matt <MRayburn@ihcda.IN.gov>
Cc: Speedy, Mike <MSpeedy@gov.IN.gov>; Eckerty, Doug <DEckerty@ihcda.IN.gov>
Subject: IERA

Matt,

Secretary Speedy would like to shutter the Indiana Emergency Rental Assistance program effective immediately. How quickly can we share with those utilizing the program that March is the last month that they have access to this program?

How much money is still in that fund that we would be sending back to the federal government.

Thanks,

Alex Hickner
Chief of Staff
Indiana Office of Business Affairs, Governor Mike Braun
200 W. Washington St, Indianapolis, IN 46204
M: (317)607-4411

This email is part of the record for each Plaintiff.

29. On March 18, 2025, special advisor Doug Eckerty visited IHCDA in person and informed IHCDA staff that pursuant to Secretary of Business Affairs Mike Speedy ("Sec. Speedy"), March 2025 was to be the last month IREA2 checks were to be distributed. (Ex. J

at 128). Here is what was said by Mr. Eckerty about the "reason for shutting down" IERA2 when it was shut down:

> A. At that point in time, the only thing conveyed to me was around, again, just a desire for March to be the last month those assistance payments were made.
> Q. Just the desire? That's what was communicated to you?
> A. Yes.

(*Id.* at 129).

30. The decisions made on March 17 and 18, 2025 to shut down IERA2 before it had exhausted its available federal funds and to make no further payments after March 2025 are collectively referred to as the "Order." As evidenced by the March 17 email and the March 18 communication, the amount of federal aid remaining was not a factor in the decision to shut down IERA2. There was no assessment of how much assistance could still be delivered or whether ongoing need existed. There was no assessment of how it may impact claimants who might have expected and relied upon their applications (in various forms of advancement) to be processed. The record reflects no assessment at all.

31. The only explanation in the record for the denial of the three plaintiffs claims is in emails they received in early April, 2025, as follows:

> **The Indiana Emergency Rental Assistance Program (IERA), which provided assistance for rent and utility payments for Indiana residents, is now closed**. IERA was launched during the pandemic and was specifically designed to aid those whose income was negatively affected by COVID. With the COVID emergency declared over in May 2023, the program has served its purpose. **Our agency is required to begin closeout of the program immediately.**

E.g., Record, Blanchard_000299.

32. But the evidence in the record and at the hearing was that the decision to shut down the program when it did happened on March 17 and 18, 2025, as outlined above. The reason given to the Plaintiffs were reasons generated after the Order, and cannot support it legally or factually. Legally, the explanation is an impermissible post hoc explanation. *See generally Developmental Svcs. Alternatives, Inc. v. Ind. Family and Social Svcs. Admin.,* 915 N.E.2d 169 (Ind. Ct. App. 2009) (discussing principles applicable to post hoc rationalization in the administrative review context).

33. Factually, IHCDA's July 2024 Policy Manual – which was IHCDA's operative position (and part of the record) as of March 17, 2025, stated:

> The economic crisis caused by the novel coronavirus disease (COVID-19) pandemic and the continuing economic recovery has created a continuing need for rental and utility assistance throughout the State of Indiana. IERA2 provides rental and utility/ home energy assistance to households negatively impacted during the pandemic with the goal of promoting housing stability.

The manual attributed the need for funding to the "economic crisis caused by" COVID-19—not to the public health emergency itself, which had ended more than a year earlier. No evidence or new assessment has been cited to explain how or why the "continuing need" that

was IHCDA's position had changed by March 2025 when the underlying fact – that the COVID emergency had ended in May 2023 – was both known to it and unchanged.

34. The denial emails stated that IUHRC was "**required to begin closeout of the program immediately**." There was no federal or statutory mandate that it do so. The only "requirement" was from the Order. No meaningful advance notice was provided to program beneficiaries.

35. The closure was executed in days, with final payments completed by the week of March 31, 2025, well ahead of the federal September 30, 2025, deadline for available fund use. IHCDA closed the portal for new applications on March 21, 2025. IHCDA continued processing applications that had reached the quality control stage. Applications approved from that stage were paid out. Tr. 11:52 am (Binder).

36. IHCDA sent emails to contractors notifying them that contracts were being terminated because of the closure of the program. *See, e.g.*, Defs. Ex. F.

The Plaintiffs

37. Plaintiffs Blanchard, Amlett, and Carpenter were among those who received emails from IHCDA explaining that "[y]our application for rental assistance is being declined." Agency Record Part 3 at Blanchard_000299; *see* Agency Record Part 1 at Blanchard_000001–000002; Agency Record Part 2 at Blanchard_000179.

Candace Blanchard

38. Blanchard is a resident of Floyd County, Indiana. She received one payment from the IERA2 program in April 2025. She was placed on a waitlist to receive family development counseling through the IERA2 program. She has not completed counseling. Tr. 9:39 am (Blanchard).

39. She is a student at Indiana University Southeast. After injuries from a car accident limited her ability to work, Blanchard and her husband applied for assistance from the IERA2 program in March 2024, and received one month's back rent and a payment to their landlord of five months' forward rent. After her husband lost his job and her employment hours were limited, Blanchard applied for IERA2 assistance again in the fall of 2024. Because she had less income than she did at the time of her original application and was still renting and in need of assistance, she was still qualified to receive assistance.

40. Blanchard spent several months attempting to communicate with IHCDA and IHCDA's contractor to be placed on a waiting list so she could satisfy the counseling requirements. *See* Ex. 57; Ex. 60; Ex. 61; Ex. 62; Ex. 67. The responses Blanchard received from IHCDA contractors included, "At this time, there is no timeline for the opening of the housing counseling waitlist, however participation in the housing counseling program is a requirement for the IERA program if you previously received assistance or applied at in time in the past." Ex. 63 (*sic*).

41. In January 2025, Blanchard was finally placed on the waiting list so she could satisfy the counseling requirements. *See* Ex. 64. After Blanchard fell behind on rent again, in February 2025 her landlord filed an eviction action against her in Floyd Superior Court, Cause Number 22D02-2503-EV-000282.

42. Blanchard still had not been placed with a counseling provider when IHCDA closed the IERA2 program. The notice Blanchard received from IHCDA that the IERA2 program had shut down did not include any information for appealing the decision or obtaining further information. Instead, it stated, "Your application for rental assistance is being completed. No

further recertifications will be offered. No additional payments will be sent." The notice directed Blanchard to call 211 or her township trustee. *See* Ex. 66.

43. As a result of struggling to afford rent, Ms. Blanchard has gone without food and has not shopped for groceries for several months, has not purchased textbooks and school supplies needed for her studies at Indiana University Southeast, and incurred additional student loan obligations which she will be forced to repay with interest.

44. Blanchard has applied for a subsidized housing unit that she hopes will be available in mid-June, but is not sure how she will pay for the $600-plus in anticipated monthly cost for rent plus utilities.

Muriel Amlett

45. Plaintiff Muriel Amlett is a resident of Vigo County, Indiana. Tr. 9:51 am (Amlett). She applied for a first payment of assistance from the IERA2 program. The IERA2 program closed before she received any payment. Tr. 9:53–9:54 am (Amlett).

46. After Amlett lost her job in January 2025, she fell behind on rent. In February 2025, Amlett received written notice that her landlord intended to evict her. At her landlord's suggestion, Amlett applied for IERA2 assistance in early March 2025. *See* Ex. 69. Amlett's landlord agreed not to file in court for eviction in anticipation of Amlett's rent being paid by the IERA2 program.

47. Amlett's application for IERA2 assistance was pending when IHCDA shut down the program. *See* Ex. 69. In April 2025, Amlett's landlord filed an eviction action against her in Vigo Superior Court, Cause Number 84D04-2504-EV-002480. *See* Ex. 68. If Amlett's IERA2 application is not revived, she will be evicted on June 6, 2025. *See* Ex. 70. If Amlett is evicted, she will likely become homeless and be forced to live out of her truck. An eviction on Amlett's

record will make it hard for her to find a new apartment in the future. The prospect of homelessness is causing Amlett significant fear and stress.

Lisa Carpenter

48. Plaintiff Lisa Carpenter is a resident of Wabash County, Indiana. Tr. 9:24 am (Carpenter). She received one payment of rental assistance from the IERA2 program. Tr. 9:26 am (Carpenter). She completed the family development counseling program and submitted documentation. Pltfs. Ex. 2025.03 to 2025.04 Emails - Carpenter and IHCDA.

49. Carpenter's sole source of income since 2009 has been a monthly Social Security Disability Income check. Carpenter applied for and received a payment from the IERA2 program in 2024. Carpenter made a second application for rental assistance from the IERA2 program later in 2024. In response to her second application for rental assistance from the IERA2 program, Carpenter was required to and did meet the Counseling Requirements. *See* Ex. 52. Carpenter received her second payment from the IERA2 program after August 2024. Carpenter's two IERA2 payments covered a total of seven months' rental assistance.

50. In early March 2025, Carpenter applied for a third IERA2 payment. *See* Ex. 52. When Carpenter attempted to log into the IHCDA website to learn the status of her application, the website was unresponsive. *See* Ex. 52. On March 31, 2025, Carpenter sent an email to IHCDA: "I am reaching out to see where my approval or denial may be found, for the IERA. I have read recent articles regarding it ceasing. I submitted my redetermination information on March 5th. I have attempted numerous times to login to their website without success. Many have expressed receiving an email which I have not, as of this date[.] Please advise, as I am unsure what my next cause of action ." Ex. 52 (*sic*).

51. The same day, Carpenter received a response from IHCDA: "The Indiana Emergency Rental Assistance Program (IERA), which provided assistance for rent and utility payments for Indiana residents, is now closed. IERA was launched during the pandemic and was specifically designed to aid those whose income was negatively affected by COVID. With the COVID emergency declared over in May 2023, the program has served its purpose. Our agency is required to begin closeout of the program immediately. IHCDA is not able to re-open applications, reset passwords, or provide status updates at this time. If your application is completed or declined in the coming days, you will be notified by email. If payment will issue, you will be notified by email." Ex. 52.

52. On March 31, 2025, April 5, 2025, and April 11, 2025, Carpenter called or emailed IHCDA asking if her application would be processed and if she would receive assistance. Her requests included statements such as, "I'm in limbo now. I feel like I've followed a chain of command"; "Please advise quickly. I recognize that there is limited staff, and many people in the same position as myself. The unknown factor is distressing"; "Does this mean my application will be denied since the program is closed?" Ex. 52.

53. The responses to Carpenter's calls and emails stated that the IERA2 program was closed. The responses did not provide any information about obtaining more information or appealing the decision, but instead directed Carpenter to call 211 or her township trustee. *See* Ex. 52.

54. For the past several months, Carpenter has not been able to afford to purchase propane to heat her home or fuel her hot water heater. She has used space heaters to warm areas of her home and boiled water on her stove to make bath water.

55. Carpenter borrowed money from a friend to pay her May 2025 rent, which she must repay. Carpenter has an electric bill due June 2, 2025, which she cannot afford to pay. Carpenter is at risk of eviction, cutoff from her utilities, and continued lack of fuel to heat her home and water if she does not receive rental assistance.

Status of IERA2

56. Since closing the IERA2 program, IHCDA has dismissed most of the staff that reviewed and approved IERA2 applications. Defs. Ex. K at 6. It has closed out applications and user accounts. Defs. Ex. K at 6–7.

57. To restart the IERA2 program, IHCDA would need to rehire staff. Tr. 2:15 pm (Binder). Any staff that were not previously trained by IHCDA to review IERA2 applications would require about two weeks of training to permit them to begin reviewing applications. *Id.* To review applications at the pace of IERA2 staff before the end of the program, staff would require about another two weeks of training. Tr. 2:17 pm (Binder).

58. IHCDA would also need to determine which applications it was working. Tr. 2:15 pm (Binder). Under its current policy manual, any application that has gone more than 30 days without action is considered "stale." Tr. 2:15–2:16 pm (Binder). It might have to recall additional staff or revise its policies. Tr. 2:15–2:16 pm (Binder). IHCDA would need to rehire vendors as well. Tr. 2:16 pm (Binder). The start up process would take several weeks. Tr. 2:17 pm (Binder).

59. Not all expenses related to restarting the IERA2 program could be paid for using ERA2 funds. For example, the human resources onboarding process for IHCDA employees that were to work on the IERA2 program was completed by a "non-IHCDA staff member" and their payroll would not be covered. Tr. 11:12 am (Binder). However, those expenses in

large part (if not in total) were incremental and not direct expenses because they represent time expended by employees of IHCDA or other branches of the State of Indiana.

CONCLUSIONS OF LAW

60. Plaintiffs' amended motion for a preliminary injunction asks the Court to "order Defendants to stop or unwind their termination of the IERA2 program, to remove the IHCDA counseling requirements to the extent these bar Plaintiffs from receiving IERA2 assistance, and to resume distributing IERA2 assistance to Plaintiffs and putative Class and Subclass members." Pls. Am. Mot. for Preliminary Inj. 3 (filed Apr. 24, 2025); *see* Pls. Br. 24 (filed May 12, 2025) (seeking to "enjoin IHCDA to resume distributing ERA2 assistance to Plaintiffs and Class members until September 30, 2025, or for as long as practicable"). In support of their motion, plaintiffs argue that they are likely to succeed on just two of their claims—a claim under AOPA and a claim under Article I, Section 23. Plaintiffs do not seek preliminary injunctive relief based on their other claims.

Trial Rule 65

61. A motion for a preliminary injunction should be granted if the movant shows that (1) the movant will suffer irreparable harm without adequate legal remedy unless the injunction issues; (2) the movant has a reasonable likelihood of success on the merits by establishing a *prima facie* case; (3) the movant's threatened injury outweighs any harm to the nonmovant if the injunction issues; and (4) the public interest would not be disserved by an injunction. *See Apple Glen Crossing, LLC v. Trademark Retail, Inc.*, 784 N.E.2d 484, 487 (Ind. 2003).

62. The Court has the authority to grant the preliminary injunction Plaintiffs seek in these unique circumstances. Defendants argue that T.R.65 cannot apply in an AOPA case. The Court acknowledges that there is limited caselaw on the application of T.R. 65 to AOPA

cases, and that there are cases based on I.C. § 4-21.5-5-15 that state there are limited options available to trial courts when an AOPA decision is challenged. None squarely state that T.R. 65 does not apply in AOPA cases.

63. The Court of Appeals has implicitly validated the use of T.R. 65 injunctions in the context of AOPA cases. The Court of Appeals analyzed the merits of a T.R. 65 mandatory preliminary injunction in an AOPA appeal in *Scales v. Hospitality House of Bedford*, 593 N.E.2d 1283 (Ind. Ct. App. 1992). The Court of Appeals recognized that the trial court had done more than "preserve the status quo between the parties as it existed before the Board's decision" through an order staying under I.C. § 4-21.5-5-9(a). *Id.* at 1286. "The Department correctly points out that the trial court's order is more properly characterized as a mandatory preliminary injunction, and persuasively argues that the injunction was inappropriate." *Id.*

64. The Court dissolved the injunction on the merits of a T.R. 65 inquiry because "mere economic injury is insufficient to establish irreparable harm." *Id.* Otherwise stated, the Court of Appeals applied the substantive rules of T.R. 65 in the context of an AOPA appeal, implicitly endorsing application of T.R. 65 in an AOPA case.

65. The concurring opinion confirms that the Court evaluated whether T.R. 65 can apply in that context. Chief Judge Ratliff held that the injunction should have been summarily rejected because T.R. 65 does not apply in the context of AOPA. *Scales,* 593 N.E.2d at 1286-87 (Ratliff, concurring). The concurring opinion reflects that the Court of Appeals considered the applicability of T.R. 65 to AOPA, with a majority implicitly concluding that T.R 65 can apply by virtue of their substantive analysis of that rule.

66. Even assuming T.R. 65 does not apply, the Court can do more than remand back to the IHCDA. Defendants argue that even if plaintiffs prevailed on final judgment, they could

not obtain injunctive relief. AOPA permits a reviewing court only to "set aside an agency action and: (1) remand the case to the agency for further proceedings; or (2) compel agency action that has been unreasonably delayed or unlawfully withheld." I.C. § 4-21.5-5-15; *see Ind. State Bd. of Health Facility Adm'rs v. Werner*, 841 N.E.2d 1196, 1209 (Ind. Ct. App. 2006), *trans. denied*. ("remand is the appropriate remedy for improper administrative agency action").

67. That line of argument ignores *City of Indianapolis v. Bentley*, 56 N.E.3d 1163 (Ind. Ct. App. 2016), in which the Court of Appeals held:

> When an agency errs in its analysis, it makes sense to provide an opportunity for the agency to reconsider its decision by applying the correct analysis. Here, however, the trial court did not find that the Merit Board erred in its analysis. Instead, it found that there was no evidence supporting the Merit Board's decision. To remand to the Merit Board under these circumstances would, in essence, offer the City a chance of a second bite of the apple. Perhaps, the second time, it could manage to file its documents in a timely fashion. But to afford the City this chance would be unfair and would also render its own ordinance entirely meaningless. We do not believe that the City–County Council intended such a result when it passed the Ordinance, and we decline to read it in such a fashion. In this case, the only fair remedy is the one ordered by the trial court—reinstatement to the rank of sergeant and provision of back pay. In sum, we find no error in the remedy fashioned by the trial court.

Id. at 1169.

68. Under AOPA, the Defendants argue that all the Court can do is remand for further agency consideration. I.C. § 4-21.5-5-15(a). This is the starting point of the Court's analysis, but it does not end there. The Court of Appeals in *Werner* held:

> [C]ases have acknowledged that remand is not always appropriate. For example, we have concluded that where it would be pointless to remand, the trial court may compel agency action. *Indiana Civil Rights Comm'n v. Union Twp. Tr.*, 590 N.E.2d 1119, 1122 (Ind. Ct. App. [1992]).… In yet another case, we recognized that an agency's decision to deny an applicant's admission to an examination more than a year after he applied

> was unreasonably delayed and unlawful withheld. *Real Estate Appraiser License and Certification Bd. v. Stewart*, 695 N.E.2d 962, 965 (Ind. Ct. App. 1998). We concluded that the trial court did not exceed its authority in allowing the applicant to take the exam.

Werner, 841 N.E.2d at 1209. The Court in *Werner* nonetheless remanded because it found that to do so would not have been pointless, unnecessary, or futile. *Id.* at 1210.

69. In 2016, *Bentley* followed suit and affirmed a trial court's failure to remand and instead compel agency action because there was no evidence to support the agency decision, and to remand would simply give the agency a "second bite of the apple" to generate record justification. *See also Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020).

70. There is no "bright line rule" that can be taken from these cases that the Court can apply to whether it "must" remand pursuant to I.C. § 4-21.5-5-15(a), or whether it can instead compel agency action under I.C. § 4-21.5-5-15(b). The Court views the guiding principles of whether it can decide not to remand as quasi-equitable in nature. The unique nature of the "countdown" to September 30, 2025, supports the decision not to remand. If the Court did remand, the ability of Plaintiffs to obtain any relief will almost certainly evaporate with the passage of time and the approaching September 30 deadline for fund expenditure.

71. As of May 29, 2025, the IHCDA IERA2 bank account has a balance of $29,889,222.08. Prior to March 17, 2025, the IHCDA believed it could accept new IERA2 applications for a few more weeks (through March 28, 2025) and process and pay those claims through (conservatively) mid-June, 2025. That accounts for approximately 10 weeks of "operating" the IERA2 program. We are now effectively in June, 2025. It will take a month to get the program operational, so July 1, 2025. Ten weeks from then is September 15, 2025

– a mere 15 days prior to the end of the IERA2 program. And these are estimates. The estimates are premised on the proposition that the IHCDA will not have to use its or State of Indiana "funds" to run or wind down the program (other than incidental marginal built in costs associated with full-time personnel who are already on the state payroll). Beyond the "second bite at the apple" issue, *supra,* the problem of relief is one of timing.

72. If the Court vacates the agency orders and remands pursuant to I.C. § 4-21.5-5-15(a), any subsequent ability to challenge those orders will, as a practical matter, be "too late" because once the federal money is "gone" after September 30, 2025, it is "gone" for good. Compounding this is that IHCDA and/or another state agency wants to return the funds to the federal government and plans to do so as early as June 2, 2025.

73. Following *Werner* and *Bentley,* the Court finds that remand would be futile and pointless under I.C. § 4-21.5-5-15(a). By the time the remand process has run its course, the federal money would be "gone." Moreover, the absence of any justification for the original agency order – when the agency had every opportunity to set forth a justification – leads to the conclusion that there was not one and it would be futile to remand.

74. The Court concludes that T.R. 65 in AOPA cases in limited circumstances such as those here. But in the alternative, the Court can compel agency action under I.C. § 4-21.5-5-15(b) and the cases cited above.

Conclusions as to Irreparable Harm

75. An "unlawful act constitutes *per se* 'irreparable harm.'" *Dep't of Fin. Inst. v. Mega Net Servs.*, 833 N.E.2d 477, 485 (Ind. Ct. App. 2005). If the act to be enjoined "clearly violates a statute," *State v. Economic Freedom Fund*, 959 N.E.2d 794, 804 (Ind. 2011), or infringes on a constitutionally protected right, *see, e.g.*, *Individ. Members of Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 457 (Ind. Ct. App. 2024), the movant need not show further injury.

76. As concluded below, IHCDA has likely acted contrary to AOPA in closing the IERA2 program. That action therefore causes *per se* irreparable harm. By the terms of the statute and in light of its definitions, denial of ERA assistance to any eligible household under § 3201(f)(2), Pub. L. No. 117-2, including Plaintiffs, threatens irreparable harm.

77. All Plaintiffs have also demonstrated that, unless IERA2 payments are resumed, they are at risk of immediate or imminent eviction and homelessness, as well as a spiraling and compounding series of injuries, extrication from which will prove exceptionally difficult. This constitutes a threat of irreparable harm. The timing of the intent of the Defendants to return IERA2 funds as early as June 2, 2025, also supports a finding of irreparable harm without Court intervention.

Conclusions as to Likelihood of Success

Plaintiffs Are Not Likely to Prevail Under Article I, Section 23

78. Plaintiffs assert that the closure of the program violates Article I, Section 23 of the Indiana Constitution. Pls. Br. 18. To obtain a preliminary injunction on that claim, plaintiffs must demonstrate a "reasonable likelihood of success." *State v. Econ. Freedom Fund,* 959 N.E.2d 794, 803 (Ind. 2011). Plaintiffs have not done so.

79. Article I, Section 23 of the Indiana Constitution provides that "[t]he General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." To pass muster, a classification must be "reasonably related" to characteristics that "distinguish the unequally treated classes," and the "preferential treatment must be uniformly applicable" to "all persons similarly situated." *Whistle Stop Inn, Inc. v. City of Indianapolis*, 51 N.E.3d 195, 198 (Ind. 2016) (quoting *Paul Stieler Enters., Inc. v. City of Evansville*, 2 N.E.3d 1269, 1273 (Ind. 2014)).

80. Plaintiffs argue that closing the program discriminates between "Indiana residents whose IERA2 applications had progressed to the quality control stage by March 21, 2025, and Indiana residents whose applications had not." Pls Br. 18. But that classification is a byproduct of the program's closure. And there is an inherent distinction between the applications at different stages of review. Applications at the quality control stage of review could be processed quickly. Defs. Ex. J (Welling Dep.) at 57:8–13 (explaining quality control would involve "just double-checking eligibility" and "double-checking calculations"). Applications at earlier stages would require substantially more work to process. IHCDA would have to, for example, assign a reviewer to the application, *id.* at 50:25–51:10; evaluate documentation, *id.* at 51:11–17; contact the applicant's landlord, *id.* at 46:23–47:4, and perhaps reach out to the applicant for additional documentation or information.

81. Plaintiffs assert that IHCDA's decision to require applicants who had already received IERA2 assistance to obtain housing counseling is "irrational[]." Pls. Br. 23. But it is reasonable to distinguish between first-time applicants for assistance and returning applicants. The counseling service that IHCDA offered was designed to help returning applicants "create more stable Indiana households." Defs. Ex. C at 18. There is a rational reason to require

repeat applicants for assistance to obtain counseling—those applicants, unlike first-time applicants, have shown themselves to be at risk of housing instability despite having already received rental assistance. That track record provides a basis for concluding that repeat applicants need additional help. They are not similarly situated to first-time applicants.

82. Plaintiffs allege that "IHCDA's decision to terminate the IERA2 program" creates an unjustified distinction between "(a) residents of Indiana counties which received and distributed ERA2 funding directly, and did not terminate their assistance programs early, and (b) residents of Indiana counties which did [not] receive and distribute ERA2 funding directly, and were thus required to participate in IHCDA's IERA2 program." Am. Compl. 12 ¶ 81. But the distinction between residents of different counties existed prior to the program's closure. As IHCDA's policy manual observes, Hamilton County and Marion County were excluded from the program because those counties had "elect[ed] to run their own rental assistance programs" with federal funding. Defs. Ex. C at 19; *see* Defs. Ex. C at 11.

83. The classification Plaintiffs challenge relies on an "inherent characteristic" of the two classes—county residency—and treats similarly situated individuals equally. Courts have repeatedly rejected claims that residents of different counties must be treated identically. *See, e.g., Herr v. State*, 212 N.E.3d 1261, 1269 (Ind. Ct. App. 2023), *trans. denied* ("Herr has not shown he was treated differently than other similarly situated individuals. He is treated the same as other voters in his county. As such, there is no Article 1, Section 23 violation."); *Lomont v. State*, 852 N.E.2d 1002, 1007–08 (Ind. Ct. App. 2006) (concluding no Article I, Section 23 violation where defendants in some counties could avoid a felony conviction via county diversion program, but not all counties had implemented diversion programs). There

is a rational reason why county residency matters. Marion County and Hamilton County created their own programs, which means their residents had opportunities others did not.

84. In *Collins v. Day*, the Indiana Supreme Court established the controlling two-part test for evaluating Section 23 claims. 644 N.E.2d 72, 80 (Ind. 1994): (1) "disparate treatment accorded by the legislation must be reasonably related to inherent characteristics which distinguish the unequally treated classes;" and (2) "the preferential treatment must be uniformly applicable and equally available to all persons similarly situated." *Id.*

85. IERA2 was created by the federal American Rescue Plan Act ("ARPA"), not by state law. Under ARPA, both states and certain local governments could apply directly to the U.S. Department of the Treasury for IERA2 funds. The State of Indiana accepted federal funds and designated IHCDA to administer IERA2 program statewide (with a few exceptions). Some counties (including Marion) applied directly to the Treasury and administered their own IERA2 programs independently. The State exercised no control over county participation or administration of IERA2 funds. These separate administrative structures resulted in different eligibility requirements, including, for example, Marion County's rule requiring applicants to have an open eviction case to receive assistance.

86. Plaintiffs allege that the premature termination of IERA2, while county-operated programs continued or fully expended their funds, created unequal privileges for Indiana residents. However, the alleged disparity was not "accorded by" any classification established by state legislation or drawn by Indiana law. The county-operated programs function independently, under their own federal grant, and were insulated from the reach of the state.

87. As explained in *Collins*, prerequisite to a Section 23 claim is that "the legislature singles out . . . a class of persons to receive a privilege . . . not equally provided to others." *Collins v.*

Day, 644 N.E.2d 72, 78 (Ind. 1994). Here, the State did not single out any class of persons. Counties that operated independent IERA2 programs did so based on federal eligibility and authority. The IHCDA's IERA2 termination applied "uniformly" to all individuals who sought assistance from IHCDA in all but a few Indiana counties. Every IERA2 applicant, regardless of county of residence, was subject to the same termination decision. The IHCDA's action did not create any subclassification within its program.

88. Article I, Section 23 governs classifications created by the State of Indiana. In this case, the State created no such classifications. Any disparities arose from federal program design, which permitted both state and local governments to act independently as direct grantees, and from county-level decisions to participate directly in the federal program. The existence of differing eligibility standards, program structures, and administrative authorities further undermines any argument that residents were similarly situated for purposes of Article I, Section 23.

89. Indiana courts have held that residence in different counties, even where counties vary in size or resources, does not constitute a classification for privileges and immunities purposes in the context of voluntary programs such as IERA2. *Lomont,* 852 N.E.2d at 1008. The counties operating independent IERA2 programs were generally among the largest in the state. Notwithstanding the lack of required state classification, *Lomont* supports the conclusion that county residence, combined with differing eligibility requirements (e.g., Marion County's restriction to applicants with open eviction cases), is sufficient to establish the inherent differences required under the first prong of *Collins*.

90. As to the second prong, IERA2's termination applied "uniformly," not just to similarly situated applicants, but to all applicants within the administrative jurisdiction of the State.

Collins, 644 N.E.2d at 80. Any non-uniformity arose from administrative boundaries established by federal law, not classifications imposed by the State of Indiana.

91. There is likely no equal privileges or immunities violation under Article I, Section 23.

The Challenged Orders Were Likely Not In Excess Of Statutory Authority

92. Plaintiffs argue that it is beyond IHCDA's authority to "terminate fully funded assistance programs like IERA2." Pls. Br. 16. The question under AOPA is whether the "agency action was "in excess of statutory jurisdiction, authority, or limitations." I.C. § 4-21.5-5-14(d).

93. IHCDA's enabling statutes authorize it to "to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties," I.C. § 5-20-1-4(a)(35), and "to accept and expend such moneys as may be received from any source . . . for effectuating [IHCDA's] corporate purposes." I.C. § 5-20-1-20.

94. The legislature also vested IHCDA with "all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of" its enabling statutes. Ind. Code § 5-20-1-4(a). By law, "[t]he omission of a power from [the list of express powers] does not imply that the authority lacks that power" and that IHCDA "may exercise any power that is not listed" but "is consistent with the powers listed . . . to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute." *Id.*

95. During the hearing, both plaintiffs and defendants agreed that the powers "necessary or convenient" include the power to close programs if done pursuant to AOPA.

96. Plaintiffs are not likely to succeed on their statutory authority argument.

Plaintiffs are Unlikely to Prevail On Their Claim That the Counseling Requirement Is Illegal

97. Plaintiffs challenge the legality of the counseling requirement as a condition precedent to obtaining certain IERA2 funding. Their position is that the federal government's conditions associated with that funding – including its FAQs – do not permit this condition.

98. To receive second and subsequent payments, applicants were required to complete IHCDA's "Counseling Requirements." This entailed scheduling and completing an assessment with a local counseling provider referred to as a "Family Matrix." *See generally* Ex. J 64:5 *et seq.*; Ex. 53. Applicants would then be required to take a course of counseling, retake the assessment, and demonstrate improvement in at least one subject area. *See generally* Ex. J 64:5 *et seq.*

99. Plaintiffs argue that federal regulation requires that award grantees administer federal funds "in a manner consistent with Federal statutes, regulations, and the terms and conditions of the Federal award." 2 C.F.R. § 200.400(b). Compliance with the "Frequently Asked Questions" or "FAQs" guidance documents issued by the U.S. Treasury was required as a term and condition of the IERA2 award and therefore binds ERA2 grantees, including the State of Indiana. *See* Ex. 6 at Blanchard000008; Ex. 71 at 2–3.

100. Plaintiffs argue that Treasury's IERA2 FAQs prohibit grantees from imposing additional eligibility criteria beyond the terms of § 3201(f)(2), Pub. L. No. 117-2. *See* Ex. 73 at 19–20.

101. The Court analyzes this issue as one of contractual/statutory construction and concludes that the provision is perhaps ambiguous but *at this stage* the Court is not convinced that Plaintiffs are likely to prevail on their interpretation that the provision prohibits the counseling condition precedent in certain circumstances.

Plaintiffs Are Likely Entitled To Relief On Their AOPA Claim

102. AOPA defines an "[a]gency action" as "(1) [t]he whole or part of an order, (2) the failure to issue an order, or (3) an agency's performance of, or failure to perform, any other duty, function, or activity under [AOPA]." I.C. § 4-21.5-1-4. AOPA defines an order, in turn, as "an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons." I.C. § 4-21.5-1-9. An order "operates retrospectively upon events that have already occurred." *Smith v. State Lottery Comm'n of Ind.*, 701 N.E.2d 926, 930 (Ind. Ct. App. 1998), *trans. denied*, 726 N.E.2d 314 (Ind. 1999) (quotation omitted). Plaintiffs argue that the orders subject to review under AOPA are IHCDA's "denials on the IERA2 applications of Plaintiffs." Pls. Reply 4. Those denials flowed directly from the Order. Here, the applicable "agency order" was the decision to shut down IREA2 by the end of March 2025, which was made on March 17 and 18, 2025.

103. Under Indiana law, a reviewing court must uphold an agency order "where a reasonable person would conclude that the evidence as presented, with its logical and reasonable inferences, was of such a substantial character and probative value so as to support the administrative determination[.]" *State ex rel. Dep't of Nat. Res. v. Lehman*, 378 N.E.2d 31, 36 (1978). "Substantial evidence requires something more than a scintilla and something less than a preponderance of the evidence." *Id.* The agency order must be "soundly based in evidence and inferences flowing therefrom." *Id.*

104. In reviewing agency orders, a court cannot "try the case de novo" nor "substitute [its] judgment for that of the agency." *Am. Senior Cmtys. v. FSSA*, 206 N.E.3d 495, 499 (Ind. Ct. App. 2023), *trans denied.* Rather, its role is to determine whether there is "any basis that may

lead a reasonable person to make the same decision made by the administrative agency." *Ind. State Bd. of Health Facility Adm'rs v. Werner*, 841 N.E.2d 1196, 1206 (Ind. Ct. App. 2006), *trans. denied*. "[A]n action . . . is arbitrary and capricious only where there is no reasonable basis for the action." *Indiana Alcohol & Tobacco Comm'n v. Spirited Sales, LLC*, 79 N.E.3d 371, 380 (Ind. 2017) (quoting *Breitweiser v. Indiana Office of Env't Adjudication*, 810 N.E.2d 699, 702 (Ind. 2004)).

105. "An agency's decision is deemed 'arbitrary' and 'capricious,' as would allow a reviewing court to set aside the agency's decision, when it is patently unreasonable and is made without consideration of the facts and in total disregard of the circumstances, and lacks any basis that might lead a reasonable person to the same conclusion." 1 IND. LAW ENCYC. ADMINISTRATIVE LAW AND PROCEDURE § 76 (citation omitted). An agency action "must be soundly based in evidence and inferences flowing therefrom." *State ex rel. Dept. of Natural Resources v. Lehman,* 378 N.E.2d 31, (Ind. Ct. App. 1978).

106. The United States Supreme Court's decision in *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020), is instructive. There, the Court considered the Acting Secretary of Homeland Security's decision to end the Deferred Action on Childhood Arrivals ("DACA") program, an immigration policy established without rulemaking in a three-page memorandum that allowed eligible unauthorized aliens to apply for forbearance of removal and certain federal benefits. *See id.* at 8–9; *id.* at 39, 54 (Thomas, Alito, Gorsuch, JJ., concurring in the judgment in part, dissenting in part) (noting DACA was established in three-page memorandum without rulemaking). The Acting Secretary's stated reason was that the Attorney General had bindingly declared the program illegal. *See*

id. at 12–13, 24–25. The Court concluded nevertheless that the Acting Secretary's decision was arbitrary and capricious. *See id.* at 28.

107. The Attorney General's determination had addressed only the benefits component of DACA, not the forbearance component, and this partial determination could not justify rescission of the entire program. *See id.* at 27. Moreover, the Acting Secretary had failed to consider the "serious reliance interests" to which the program had arguably given rise and to "weigh any such interests against competing policy concerns." *Id.* at 30, 33.

108. Indiana decisions have likewise confronted agency action that exceeded any rationale for them. In *Werner*, 841 N.E.2d 1196, the Court of Appeals reversed the trial court's determination that the agency's indefinite suspension of plaintiff's professional license had not been arbitrary or capricious. *See id.* at 1198. The ALJ had entered "extensive findings of fact and conclusions of law" supporting the ALJ's recommendation that plaintiff's conduct merited the lesser sanction of censure. *Id.* at 1207. But the agency's board, after hearing argument, disregarded the ALJ's findings and conclusions; entered none of its own; and ordered plaintiff's license suspended indefinitely. *See id.* On plaintiff's motion to vacate, the board adopted the ALJ's findings and conclusions but, with "no explanation," adhered to its suspension decision. *Id.*

109. On appeal, the board argued that it "simply decided" suspension was appropriate. *Id.* But "the mere fact that the Board had the authority" to impose suspension did not "preclude its decision from being arbitrary and capricious." *Id.* The board argued alternatively that the ALJ's findings and conclusions in fact supported its decision, "making additional findings unnecessary." *Id.* But that was "precisely the problem": "[a]bsent some explanation" for the board's departure from the ALJ's recommendations, the board's decision could not stand.

Id. The board's "failure to provide any explanation" invited the court "to speculate as to the basis for its decision," requiring the conclusion that the board's decision was arbitrary and capricious. *Id.* at 1208 (citing *Ind. State Bd. of Registration & Educ. for Health Facility Administrators v. Cummings*, 387 N.E.2d 491, 495–96 (Ind. Ct. App. 1979) ("Where only speculation furnishes the basis for a decision, such determination is arbitrary and capricious.")).

110. As in *Bentley, Werner,* and *Regents of the Univ. of Cal.,* here the record is devoid of any explanation associated with the decision to shut down IERA2. The most the Court has prior to and at the time the decision was made was that there was an unexplained "desire" on March 17 and 18 to stop payments in March 2025. Post hoc explanations over the next few days and in the notices sent to the Plaintiffs are facially not credible, and in any event were made by individuals not responsible for the decision and after it had been made.

111. The purpose of IERA2 was not tied to "the COVID emergency" being "declared over in May 2023." We know this, *inter alia,* because IHCDA said so in July 2024 in a statement that remained its position as of the morning of March 17, 2025: "The *economic crises caused by* [the COVID] pandemic and the *continuing economic recovery* has created a *continuing need* for rental and utility assistance throughout the State of Indiana." *Supra* (emphasis added). The relief under IERA2 is for "households negatively impacted *during the pandemic* with the goal of promoting housing stability." *Id.* (emphasis added). Those statements were made in July 2024, well after the May 2023 determination that there was no longer a covid emergency.

112. The post hoc explanation that "[i]n order to meet our federal deadlines for closeout, the IERA[2] program was closed on March 21" is similarly contradicted by the facts. Prior to the unexplained decision to shut down IERA2, the IHCDA's latest assessment was that it

could continue to accept applications through March 28, 2025, and make payments through mid-to-late-June 2025, without running out of federal funds or spending its own.

113. The absence of credibility of these post hoc explanations, however, is really of no consequence to the Court's decision, which is based on a record devoid of any rationale for IERA2's closure up the Order.

114. The Defendants argue that it was rational for IHCDA to shut down IERA2 because it was told to do so by Sec. Speedy. It had no choice. But even assuming *arguendo* that the decision at the IHCDA level is dependent on the decision of Sec. Speedy, the justification of "we were told to do so by our superior" does not mean that the decision is not arbitrary or capricious. "My superior told me to do so" does not account for *why* that was so.[3] If in fact the decision was Sec. Speedy's to make and in doing so bind IHCDA, then *some* rationale from Sec. Speedy is needed. Agency action is arbitrary and capricious when it is "patently unreasonable and … made without consideration of the facts and in total disregard of the circumstances." *Spirited Sales, LLC*, 79 N.E.3d at 380. There has to be *a* reasonable basis for the Order for it to sustain the Plaintiffs challenge. *Id.* Here, there is none either from Sec. Speedy or at the IHCDA level. At the IHCDA level the employees there just followed the Order. Shutting down IERA2 by the end of March 2024 was a *fait accompli* by March 18, 2025.

115. There was no consideration or reasonable basis for the Order—no findings, no analysis, no documented assessment to justify shutting down a federally funded housing stability program months before it was set to run out of federal money.

[3] Were this permitted, patently arbitrary and capricious decisions could be cordoned off from AOPA review.

116. Plaintiffs satisfy each of AOPA's other conditions for judicial review of IHCDA orders. IHCDA is an agency subject to AOPA. IHCDA has not contested and has therefore waived opposition to this conclusion. Plaintiffs have standing to contest IHCDA's orders on their pending IERA2 applications. *See* I.C. §§ 4-21.5-5-3(a)(1), (a)(4). IHCDA has not contested and has therefore waived opposition to this conclusion. Plaintiffs' claims are timely. *See* I.C. § 4-21.5-5-5. IHCDA has not contested and has therefore waived opposition to this conclusion.

117. The agency records in Plaintiffs' cases have been timely filed on the Court's docket by IHCDA. *See* I.C. § 4-21.5-5-13. IHCDA has not contested and has therefore waived opposition to Plaintiffs' satisfaction of this requirement. Untimely filing is otherwise excused. *See* I.C. § 4-21.5-5-13(a).

118. Plaintiffs have demonstrated a reasonable likelihood of success on Count I, Invalid Agency Action, I.C. § 4-21.5-5-14.

Conclusions as to Balance of Equities

119. IHCDA will not be injured by continuing to administer IERA2 in accordance with law provided doing so does not require third-party expenses that would otherwise not have been incurred. *See State v. Economic Freedom Fund*, 959 N.E.2d 794, 804 (Ind. 2011) (where *per se* rule applies, balance of harms weighs in movant's favor as a matter of law).

120. Alternatively, to the extent the *per se* rule does not apply, on the facts found above, the threatened harms to Plaintiffs unless an injunction is granted outweigh any potential injury to IHCDA if an injunction is granted.

Conclusions as to Public Interest

121. The public interest is *per se* not disserved by an order enjoining IHCDA from acting unlawfully. *See Economic Freedom Fund*, 959 N.E.2d at 804.

122. Alternatively, to the extent the *per se* rule does not apply, the public interest, as determined and declared by the General Assembly, *see* I.C. § 5-20-1-1(1), would not be disserved by an order vacating IHCDA's denial and closure of Plaintiffs' IERA2 applications and enjoining IHCDA to resume processing such applications.

Conclusions as to Bond

123. Based on the facts and circumstances here (indigent Plaintiffs and the amount of money that is being enjoined from being transferred to the federal government, and the fact that the money in IERA2 is not "State of Indiana" money), the Court orders a nominal security of $10.00 per Plaintiff upon the issuance of the injunction below. *See* Trial Rule 65(C).

Class Certification

124. All Plaintiffs bring this action on their own behalf and on behalf of a putative class of similarly situated others ("Class"), defined as follows:

> All Indiana residents who, on March 26, 2025, were members of eligible households, as that term is defined in section 3201(f)(2) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, which had not received 18 months of emergency rental assistance in total under ERA1 and ERA2.

125. All Plaintiffs are members of the Class. No Plaintiff has received more than 18 months of ERA1 or ERA2 assistance. Plaintiffs are each Indiana residents. Plaintiffs were and are obligated to pay rent on the dwellings in which they reside.

126. Plaintiffs were and are members of households in which one or more persons have qualified for unemployment benefits or experienced a reduction in household income,

incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the COVID-19 pandemic.

127. Plaintiffs were and are members of households in which one or more persons can demonstrate a risk of experiencing homelessness or housing instability. Plaintiffs were and are members of households whose incomes do not exceed 80 percent of the median income for the area in which they reside.

128. Plaintiff Amlett brings this action on behalf of a putative subclass of the Class ("Initial Payment Subclass"), defined as follows:

> All Indiana residents who, on March 26, 2025, were members of eligible households, as that term is defined in section 3201(f)(2) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, which had not received 18 months of emergency rental assistance in total under ERA1 and ERA2; and who had not received an initial IERA2 payment of past due rent plus three months forward rent.

129. Amlett is a member of the Initial Payment Subclass.

130. Plaintiff Blanchard brings this action on behalf of a putative subclass of the Class ("Waitlist Subclass"), defined as follows:

> All Indiana residents who, on March 26, 2025, were members of eligible households, as that term is defined in section 3201(f)(2) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, which had not received 18 months of emergency rental assistance in total under ERA1 and ERA2; and who were on IHCDA's waitlist to receive the counseling services necessary to fulfill the IHCDA Counseling Requirements.

131. Blanchard is a member of the Waitlist Subclass.

132. Plaintiff Carpenter brings this action on behalf of a putative subclass of the Class ("Recertification Subclass"), defined as follows:

> All Indiana residents who, on March 26, 2025, were members of eligible households, as that term is defined in section 3201(f)(2)

> of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, which had not received 18 months of emergency rental assistance in total under ERA1 and ERA2; and who had fulfilled the IHCDA Counseling Requirements and completed the recertification process.

133. Carpenter is a member of the Recertification Subclass.

134. Excluded from the Class and Subclasses are all Indiana residents who, on March 26, 2025, were members of eligible households, as that term is defined in section 3201(f)(2) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, which had applied for ERA1 funding before August 1, 2022, and which had received ERA1 payments.

135. No Plaintiffs fall within this exclusion.

Findings as to Numerosity

136. The Initial Payment Subclass contains approximately 1,700 members. The Waitlist Subclass contains approximately 2,200 members. The Recertification Subclass contains approximately a few hundred members. The Class contains all members of the Subclasses.

Findings as to Commonality

137. The claims of Plaintiffs, the Class, and the Subclasses stem from a common nucleus of operative fact or a common course of conduct: namely, Defendants' termination of the IERA2 program.

Findings as to Typicality

138. Plaintiffs and Class and Subclass members share identical interests in receiving IERA2 assistance.

Findings as to Adequacy

139. Plaintiffs and Class and Subclass members share identical interests in receiving IERA2 assistance. Plaintiffs' interest in receiving IERA2 assistance to maintain their current

residences and living conditions are sufficient to ensure vigorous advocacy. Plaintiffs' counsel are competent, experienced, and qualified with respect to class public interest litigation.

Findings as to Trial Rule 23(B)(2)

140. A single injunction directing IHCDA to stop or unwind their termination of the IERA2 program would provide final, appropriate relief for the Class and Subclasses.

ORDER

For the reasons above, the Court **ORDERS** as follows:

1. Plaintiffs' Amended Motion for Class Certification is **GRANTED**.

2. The Class and Subclasses are **CERTIFIED** under Trial Rule 23(B)(2).

    a. Plaintiffs are appointed to represent the Class.

    b. Plaintiff Amlett is appointed to represent the Initial Payment Subclass.

    c. Plaintiff Blanchard is appointed to represent the Waitlist Subclass.

    d. Plaintiff Carpenter is appointed to represent the Recertification Subclass.

    e. By separate order,[4] the Court will require the parties to submit proposed forms of notice to the Class and Subclasses under Trial Rule 23(C)(3).

3. Plaintiffs' Amended Motion for Preliminary Injunction is **GRANTED in PART and DENIED in PART** as follows:

    a. Upon each Plaintiff submitting their $10.00 in security to the Clerk of Marion County, Defendant Indiana Housing and Community Development Authority is hereby preliminarily **ENJOINED** from ceasing to process any IERA2 applications that had been submitted as of March 21, 2025, according to the provisions it had in place prior thereto for applications as if there had been no interruption in processing as of that date; from ceasing to issue payments to all applicants who are deemed eligible after review; from closing the application portal that was closed on March 21, 2025, and is ordered to process any applications received upon reopening for as long as it can do so

[4] Plaintiffs are to submit a proposed order, after which the Defendants will have five (5) business days to lodge any objections.

consistent with the terms of the IERA2 program agreement with the federal government, provided doing so does not require the expenditure of third-party expenses by the Indiana Housing & Community Development Authority and/or the State of Indiana that are not qualified for reimbursement or coverage under IERA2.

b. Defendants are enjoined from transferring any of the money held by IHCDA under the IERA2 program (presently $20,889,222.08) to the federal government or its agencies, until further order of this Court.

c. In the alternative, the Court compels IHCDA to vacate the Order and carry out IERA2 pursuant to its terms, but to do so in a manner that does not cost the IHCDA or the State of Indiana any out of pocket third-party expenses not covered by IERA2.

5. The Court sets an attorney conference on June 4, 2025, at 11:00a.m. (remote) to address any open issues and to schedule future deadlines and hearing/trial dates.

Dated: May 31, 2025

A. Richard M. Blaiklock, Judge MW
Marion Superior Court 11

Copies: Parties