

# Fair Housing and Immigrants' Rights

**Jamie Crook**

**[jcrook@aclunc.org](mailto:jcrook@aclunc.org)**

**ACLU**

Northern  
California

# Common Forms of Discrimination

- Requiring social security numbers, proof of lawful immigration status
- English-only policies
- Retaliatory threats
- Anti-immigrant ordinances

**Fair Housing Act, 42 U.S.C. § 3604 *et seq.***

# Fair Housing Act

- 42 U.S.C. § 3601, *et seq.*
- Prohibits discrimination in housing on the basis of race, color, and national origin
- Non-citizens are not a protected class, but
- Protections apply regardless of immigration status (“any person”)
- Can be proven through disparate impact or disparate treatment

# Fair Housing Act

Key types of unlawful acts:

- Discriminatory refusal to provide housing (§ 3604(a))
  - Refusal to rent, sell, show
  - Evictions, constructive evictions
- Discriminatory terms and conditions (§ 3604(b))
  - Harassment, unequal maintenance or services, etc.
- Discriminatory statements (§ 3604(c))
- Retaliation (§ 3617)

# HUD Guidance

## “Immigration Status and Housing Discrimination: Frequently Asked Questions”

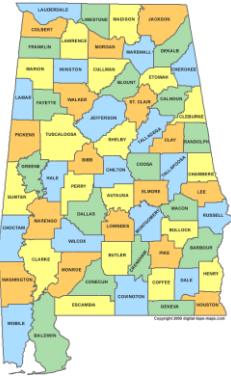
- Immigration status does not affect Fair Housing Act coverage
- Threatening to report a tenant to ICE in retaliation for exercising fair housing rights violates the Fair Housing Act
- Procedures to screen potential and existing tenants for citizenship and immigration status *may* violate prohibitions against national origin housing discrimination.

# English-Only Policies

- *Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 977 (N.D. Cal. 2013)
  - Plaintiffs stated claim under FHA based on allegations that housing authority denied request for an interpreter, employees stated plaintiff should learn English, and comment to HUD investigator that plaintiff had no right to live in public housing because she was undocumented
- *Cf. Vialez v. New York City Housing Authority*, 738 F. Supp. 109 (E.D.N.Y. 1991)
  - Failure to translate termination notice into Spanish did not state disparate impact claim based on national origin. All non-English speaking persons were affected in the same manner

# Central Alabama Fair Housing Center v. Magee

- 3604(a) challenge to § 30 of Alabama's HB 56, which criminalized transactions with the state by undocumented immigrants
  - Although §30 on its face did not condition housing on immigration status, as applied, HB 56 made it unlawful for mobile home owners who lacked lawful status to pay their annual mobile home registration fees
  - §30 made mobile home housing unavailable and changed the terms or restrictions of housing by conditioning housing on proof of lawful immigration status
  - Owners had to choose between facing civil and criminal liability if they did not pay their mobile home fee, while also facing liability if they attempted to remove their homes from the states
- HB 56 intended to encourage self-deportation





# Disparate Impact Claim in *Magee*

The subset of individuals most directly impacted by HB 56 are non-citizens and disproportionately Latinx

- Latinxs made up 3.7 % of the state's population but 64.8 % of non-citizens
- Latinxs made the largest racial group living in mobile homes (27.6% Latinxs compared to 14.6% white, 10.2% black, and 3.2% Asians)
- Latinxs were only 3.7% of state population, represented 7% of those living in mobile homes
- HB 56 significantly affected 2 groups that were disproportionately Latinx: non-citizens in AL, and mobile home owners
- There was also no direct evidence showing that *anyone* other than Latinxs would be harmed by the policy

# Disparate Treatment Claim in *Magee*

- Applying *Arlington Heights*, the court held that there was substantial evidence showing that race and national origin played a role in HB 56:
  - **Disproportionate impact:** HB 56 disproportionately affected Latinxs, as Latinxs made a disproportionate share of the state's immigrant population
    - Latinxs represented 3.7% of the state population, while between 65-77% of the undocumented immigrants living in AL (2.5% of state population) were Latinxs
  - **Substantive departures:** AL had substantively departed from the *values* it normally prioritized when passing legislation
    - The State abandoned its interest in protecting children
    - Change suggested that it was not targeting immigrants but Latinxs

# *Arlington Heights* Factors Continued...

- **Background:** Throughout history, influxes in immigration often led to discriminatory legislation towards that particular immigrant group
  - The number of immigrants living in Alabama had increased drastically
  - Legislation that comes on the heels of significant immigrant influx, and which has a disproportionate impact on that immigrant group, should be eyed carefully
- **Contemporaneous statements:** Statements made by AL legislators, incl. HB 56's drafter, showed that the term "illegal immigrant" was just a racially discriminatory code for Latinxs
  - HB 56 debates were laced with derogatory comments about Latinxs, and the legislators often conflated Latinxs with immigration when describing the harms they wanted to fix through HB 56

# Takeaways from *Magee*

- The Fair Housing Act protects any person regardless of immigration status
- It is no defense to an FHA claim to assert that those harmed by the State's actions are undocumented
- *Magee* remains the only FHA case where a disparate treatment claim successfully challenged an anti-immigrant policy

**“The entire purpose of the FHA is to root out discriminatory-housing practices, whether implemented with the intent to deprive certain groups of equal access to housing or not.”**



# ***Reyes v. Waples Mobile Home Park Ltd. Partnership***

- 251 F. Supp. 3d 1006 (E.D. Va. 2017), *rev'd & remanded*, 903 F.3d 415 (4<sup>th</sup> Cir. 2018)
- Mobile home park required all adult occupants to prove legal status in U.S.
- District court ruled for defendants on both FHA & § 1981
  - On 1981 claim, reasoned that “[a]ny burden or barrier the ... plaintiffs faced was the result of their status as illegal aliens, not because they were non-citizens.”
- 4th Circuit: plaintiffs sufficiently alleged prima facie case for FHA disparate impact claim based on statistics
- Cert petition filed

**42 U.S.C. § 1981**

## 42 U.S.C. § 1981

“All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens . . . .”



# Discrimination Based on Alienage

*Perez v. Wells Fargo*, 2017 WL 3314797 (N.D. Cal. Aug. 3, 2017)

- DACA grantees with work authorization sued Wells Fargo for requiring that credit applicants be a U.S. citizen or permanent resident with a citizen co-signer
- Motion to dismiss denied:
  - **42 U.S.C. § 1981 prohibits discrimination between classes of non-citizens, not preempted by ECOA (ECOA does not authorize creditors to discriminate based on alienage)**



# More § 1981 examples

- *Martinez v. Patch*, 2008 WL 113907 (D. Colo. Jan. 9, 2008)
  - Mexican citizen alleged housing discrimination based on race and national origin under § 1981 and the Fair Housing Act
  - Court concluded her real complaint was discrimination based on citizenship
  - No claim under the Fair Housing Act but claims of alienage discrimination were actionable under § 1981

# More § 1981 examples

- *Espinoza v. Hillwood Square Mutual Association*, 522 F. Supp. 559 (D. Va. 1981)
  - Private discrimination based on citizenship is actionable under § 1981
  - Notes that § 1982 only reaches race discrimination
  - Denied plaintiffs' motion for summary judgment based on factual disputes



# California's Unruh Civil Rights Act and Fair Employment and Housing Act



# California Unruh Civil Rights Act

## Cal. Civ. Code § 51

- “(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, **citizenship, primary language, or immigration status** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”
- “(g) Verification of immigration status and any discrimination based upon verified immigration status, **where required by federal law**, shall not constitute a violation of this section.”

# California Fair Employment and Housing Act

Incorporates Unruh Civil Rights Act

Cal. Gov't Code § 12955(d)

# **California Immigrant Tenant Protection Act**

# Cal. Civ. Code § § 1940.3, 1940.35

- Prohibits a landlord from threatening to report a tenant or tenant's family member or friend to immigration enforcement
  - Actual or perceived immigration or citizenship status
- Prohibited conduct includes:
  - Asking tenants about immigration status
  - Threatening to disclose immigration status in attempt to induce tenants to move out
  - Threatening to report in retaliation for making a complaint
  - Evicting based on immigration status
  - Reporting tenant's suspected immigration status

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