



Testimony before the National Commission
Fair Housing and Equal Opportunity

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1 Fair Housing & Immigrants

- Forbidding property owners from renting or leasing property to illegal immigrants violates federal civil rights law.
- The Fair Housing Act (FHA)¹ prohibits housing practices that discriminate on the basis of race, color or national origin.
- Some cities that are considering immigrant restriction bills have included provisions that prohibit the renting or leasing of property to illegal immigrants within their municipalities.²
- These laws generally levy fines against property owners found to be renting to illegal immigrants,³ and a few of the proposed ordinances impose strict liability on anyone who rents or leases property to illegal immigrants.⁴
- These proposed ordinances clearly violate the Fair Housing Act. Local laws that restrict property owners' ability to rent or lease to "illegal aliens" without defining that term are not only unenforceable and void for vagueness, they also have the effect of encouraging racial and ethnic profiling of persons seeking to contract with landlords.
- Additionally, these proposed restrictions on the prohibition of renting property to "illegal aliens" are unconstitutionally vague. Not only is the term "illegal alien" not a legal term of art that can be applied to describe an individual's immigration status, the fact is that a person's immigration status can change from unlawfully present to lawfully present or from lawfully present to unlawfully present in a short period of time.
- Moreover, many families are of "mixed" immigration status, meaning that some households have citizens and lawfully present immigrants living under the same roof as unauthorized

1 42 U.S.C. §§ 3601 *et. seq.*

2 *See, e.g.,* City of Hazleton Illegal Immigration Relief Act Ordinance, section 5(a), which states: "Illegal aliens are prohibited from leasing or renting property. Any property owner or renter/tenant/lessee in control of property, who knowingly allows an illegal alien to use, rent or lease their property shall be in violation of this section."

3 The model ordinance imposes a minimum fine of \$1,000 against property owners in violation of their respective prohibitions on renting or leasing property to illegal immigrants.

4 *See, e.g.,* City of San Bernardino Illegal Immigration Relief Act, section 7(A), which states that: "Illegal aliens are prohibited from leasing or renting property. Any property owner or rent/tenant/lessee in control of property who allows an illegal alien to use, rent or lease their property shall be in violation of this section, *irrespective of such person's intent, knowledge, or negligence, said violation hereby being expressly declared a strict liability offense.*" (emphasis added).

immigrants, and a landlord's refusal to rent property to legally present individuals in such households could subject property owners to liability, as well.

- Because landlords and city officials have no authority or expertise to determine the immigration status of potential tenants, or the validity of documents presented to verify immigration status, the inevitable result of such ordinances is that landlords will avoid renting to persons of certain ethnic backgrounds, particularly Latinos, in order to avoid liability under these local immigration restrictions. It is also likely that misuse or misapplication of these laws will harm neighbors and business competitors in the municipalities.

- Like employers, property owners do not have the means or the authority to determine whether an individual has legal or illegal immigration status. Attempting to penalize landlords for renting or leasing property to illegal immigrants is tantamount to warning property owners to refrain from renting or leasing to *any* person who, in the landlord's judgment, *might* be an "illegal alien." This kind of provision will almost certainly be enforced in a discriminatory and disproportionate manner against legal immigrants and other persons of color whose ethnic origin - Latinos in particular - may subject them and their immigration status to additional scrutiny because of stereotypes and prejudice.

- Property owners will be vulnerable to lawsuits for violating the FHA if they abide by the restrictive renting and leasing provisions contained in many of these anti-immigrant ordinances. By the same token, however, failing to comply with these local ordinances will subject landlords to substantial monetary fines - in some cases, regardless of the lengths they go to ensure that their tenants have legal immigration status.

- Prohibitions requiring landlords to check documents, restrict the type of tenants they have, and not have any way for them to verify statuses and subject them to local fines or federal lawsuits benefits no one.

- As of January 1, 2008, it is now illegal to discriminate against someone on the basis of immigration status when seeking housing in the State of California under AB 976.

- Important cases addressing fair housing and immigration status:

- Garrett v. City of Escondido*, 465 F.Supp. 1043 (S.D. Cal. 2006) (TRO entered against City from enforcing ordinance requiring landlords to verify immigration status of all tenants).

- Villas at Parkside Partners v. City of Farmers Branch*, 496 F.Supp.2d 757 (N.D. Tex. 2007) (preliminary injunction entered against City from enforcing ordinance requiring landlords to verify immigration status of tenants of multi-family housing); 2008 WL 2201978 (permanent injunction granted).

•*Reynolds v. City of Valley Park, Missouri*, Findings of Fact, Conclusions of Law, Order & Judgment at 1-8, No. 4:06-CV-01487 (E.D. Mo. March 12, 2007), available at <http://clearinghouse.wustl.edu/chDocs/public/IM-MO-0001-0017.pdf> (granting Plaintiffs' Motion for Judgment on the Pleadings and declaring Ordinances 1707 and 1715 void).

•*Stewart v. Cherokee County*, Consent Order Granting Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and Stay at 1-4, No. 1:07-CV-00015 (N.D. GA Jan. 4, 2007), available at <http://clearinghouse.wustl.edu/chDocs/public/IM-GA-0001-0002.pdf>.

•*Maribel Delrio-Mocci et al. vs. Connolly Properties Inc. et al.*, No. 2:2008-CV-02753 (U.S. District Court, Newark, N.J. 2008)(includes Racketeer Influenced and Corrupt Organizations Act claims against property owners who allegedly rent or lease to "illegal aliens").

Recommendations

- The Fair Housing Act must be properly enforced to challenge discriminatory practices targeting immigrant populations. Enforcement actions will help to ensure that persons will not be denied housing opportunities based on their appearance, name, language, race or ethnicity.
- Education and outreach to the Latino community (and other immigrant groups) is a critical component of informing persons of their rights so they know where to report incidences of discrimination. We recommend comprehensive efforts to conduct education and outreach.