

Fair Housing & Immigrants' Rights

Overview of Existing Federal Civil Rights Framework

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Common Forms of Discrimination

- Requiring social security numbers, proof of lawful immigration status
- English-only policies
- Discriminatory land use and zoning
- Anti-immigrant ordinances

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)

Section 1981

“All persons within the jurisdiction of the United States have the same rights in every state and territory to make and enforce contracts . . . as is enjoyed by white citizens.” 42 U.S.C. § 1981(a)

- Covers discrimination in the making, performance or termination of contracts, including housing contracts
- Defendants may be public OR private actors

Section 1981

- Prohibits discrimination on the **basis of citizenship**. *Anderson v. Conboy*, 156 F.3d 167 (2d Cir. 1998)
- Requires proof of discriminatory intent
- Non-citizens can sue
- Prohibits racial discrimination – but courts recognize **national origin** claims as race claims. *St. Francis College v. Al-Khazraji*, 481 U.S. 604, 613 (1987)

National Origin Discrimination

Case Examples

Reyes v. Waples Mobile Home Park Ltd. Partnership

- 251 F. Supp. 3d 1006 (E.D. Va. 2017), *rev'd & remanded*, 903 F.3d 415 (4th 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

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

Martinez v. Optimus Properties

- 2017 WL 1040743 (C.D. Cal. Mar. 17, 2017)
- Property investment company sought to “flip” apartment buildings in L.A. by forcing out current, predominantly Latino tenants
- English-only policy implemented by managers; tenants told to learn English
- Locked out tenants who didn’t have their IDs
- Other discriminatory statements – food smelled, Latino tenants caused cockroaches
- At least one threat to call ICE

Southwest Key Programs, Inc. v. City of Escondido

- 2017 WL 1094001 (S.D. Cal. Mar. 24, 2017)
- Plaintiff sought to convert a former skilled nursing facility into a custodial facility for unaccompanied children taken into custody by ICE; City denied permit required for the conversion
- Court denied summary judgment on FHA claim:
 - Proposed facility could be a dwelling, notwithstanding involuntary placement there
 - Further factual development re: proposed facility necessary

Anti-Immigrant Ordinances

- Prohibitions on renting dwelling units to undocumented immigrants.
- Struck down on preemption and constitutional grounds.
 - *Lozano v. City of Hazelton*, 724 F.3d 297 (3d Cir. 2013)
 - *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 527 (5th Cir. 2013)
 - *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043 (S.D. Cal. 2006)

Keller v. City of Fremont

- 719 F.3d 931 (8th Cir. 2013)
- City ordinances prohibited hiring and providing rental housing to “illegal aliens” and “unauthorized aliens”
- FHA claim: plaintiffs failed to identify a specific disparate impact, alleged statistics inadequate.

“Is the relevant comparison the Ordinance's impact on all aliens not lawfully present, on all aliens, on all renters, or on the City's entire population?” Id. at 948

On a final note...

Protecting Undocumented Clients
During Litigation

Protective Orders

- Factors relevant to whether plaintiffs should be allowed to proceed anonymously:
 - (1) risk of **harassment**; (2) whether not allowing anonymity would **chill** prospective litigants; (3) whether litigation was in the **public interest**; (4) whether identity information was **central to case**; and (5) whether immigration status was **personal and sensitive**
- *Lozano v. City of Hazleton*, 620 F.3d 170 (3d Cir. 2008) *rev'd on other grounds*, 563 U.S. 1030 (2011);
- *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004)

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