

Using 42 U.S.C. § 1981 and State Law to Challenge Immigration Status Discrimination

Jamie Crook

jcrook@aclunc.org

ACLU

Northern
California

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

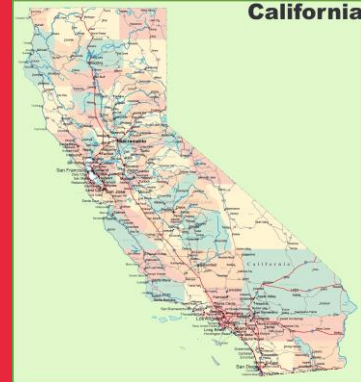
- *Martinez v. Patch*, 2008 WL 113907 (D. Colo. Jan. 9, 2008)
 - Mexican citizen alleged housing discrimination based on race and national origin under § 1981 and the Fair Housing Act
 - Court concluded her real complaint was discrimination based on citizenship
 - No claim under the Fair Housing Act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

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.

U Visa Certifications

U Visas for Victims of Serious Crimes

Qualifying Crimes Include:

- Blackmail
- Extortion

- *Would threatening a report someone to ICE in order to coerce a tenant to abandon an apartment qualify as blackmail or extortion in your state?*

Certification by a Law Enforcement Agency

- U Visa application must be supported by a certification from a law enforcement agency
- California's Department of Fair Employment and Housing
- New York City's Commission on Human Rights

Public Charge Notice of Proposed Rulemaking

DHS's Proposed "Public Charge" Rule

- Would make it easier for certain immigrants to be considered a "public charge" and thus denied admission or green cards because they use food, nutrition, or housing assistance
- Broadens the definition of public charge to consider whether applicant receives or is likely to use or receive cash and some non-cash assistance from the government.



Public Charge Nuts and Bolts

- Proposed rule only
- Children's use of benefits should not count against parents
- 36-month "look-back" period / 60-day grace period
- Explicitly includes
 - Section 8 Housing Choice Voucher Program
 - Project-Based Section 8 Rental Assistance
 - Public Housing

Public Charge Nuts and Bolts

- Immigrants eligible for public housing and Section 8 programs *AND* subject to Public Charge Rule:
 - Parolees
 - People granted withholding of removal
 - Immigrants admitted for temporary residence
 - Immigrants admitted under the Compacts of Free Association with the Marshall Islands, Federated States of Micronesia, and Palau
- Asylees, refugees, VAWA self-petitioners, and trafficking victims generally **NOT** subject to the Public Charge Rule

ACLU

WE THE PEOPLE