No. 23-134

In the Supreme Court of the United States

SUELLEN KLOSSNER,

Petitioner,

v.

IADU TABLE MOUND MHP, LLC, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF AMICUS CURIAE NATIONAL HOUSING LAW PROJECT IN SUPPORT OF PETITIONER

Katherine E. Walz
Counsel of Record
Eric Dunn
Lila Gitesatani
NATIONAL HOUSING LAW PROJECT
1663 Mission St., Suite 460
San Francisco, CA 94103
(415) 546-7000
kwalz@nhlp.org

September 12, 2023 *Counsel for Amicus Curiae*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

STATUTES

JUDICIAL RULES

REGULATIONS

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

INTEREST OF THE AMICUS CURIAE

The National Housing Law Project (NHLP) is a nonprofit organization committed to ensuring access to housing for low-income persons, including people with disabilities and tenants relying on housing choice vouchers.[1] NHLP advances housing justice for poor people and communities, primarily through technical assistance and training to legal aid attorneys and by co-counseling on important litigation. NHLP works with organizers and other advocacy and service organizations to strengthen and enforce tenants' rights, increase housing opportunities for underserved communities, and preserve and expand the nation's supply of safe and affordable homes. NHLP coordinates the Housing Justice Network, a collection of more than 1,600 legal services attorneys, advocates, and organizers from around the country. The network has actively shared resources and collaborated on significant housing law issues for over 40 years, including through a dynamic listserv, working groups, and a periodic national conference.[2]

In addition to various other materials and trainings, since 1981 NHLP has published *HUD Housing*

---

[1] No party or counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. NHLP has authored this brief and fully funded the preparation and submission of this brief.

[2] Counsel of record for all parties was served timely notice of amicus curiae's intent to file this brief on August 30, 2023. *See* S. Ct. R. 37.2.

Programs: Tenants' Rights. Commonly known as the "Greenbook," this resource is known as the seminal authority on the rights of HUD tenants and program participants and is regularly used by tenant advocates and other housing professionals throughout the United States.

The Eight Circuit's holding presents significant issues that jeopardize the ability of people with disabilities to access housing. The ability of tenants to request reasonable accommodations is crucial to ensuring equality and combating disability discrimination. Housing Justice Network members routinely work with people with disabilities to request and enforce their rights to reasonable accommodations in housing, including to overcome admission barriers, prevent eviction or displacement, and enable tenants and low-income homeowners with disabilities to live comfortably and successfully in their homes. NHLP has a strong interest in upholding the progress the FHAA has achieved in expanding equal access to housing for people with disabilities.

SUMMARY OF ARGUMENT

People with disabilities frequently cannot work and must therefore rely on a constellation of public benefits to meet their basic needs for food, housing, health care, and other necessities. A landlord's refusal to accept such benefits from a person with a disability effectively denies housing to that person because of their disability. Such discrimination violates the Fair Housing Amendments Act (FHAA) unless acceptance of the public benefit in question would impose unreasonable burdens on the landlord. As with any reasonable accommodation analysis, the determination of whether the costs and burdens of participation in a public benefit program on which a tenant with a disability relies calls for a case-specific, fact-intensive analysis of such factors as the housing opportunity in question, the actual costs and burdens on the particular landlord, and the ability of that specific landlord to bear them.

The trial court, after conducting a case-specific analysis of a tenant's request to use her Section 8 voucher to subsidize the space rent in her mobile home park, determined that accepting that voucher would not impose an undue hardship on the landlord in this specific case.[3] Yet the Eighth Circuit reversed, ruling broadly that a landlord's duty to make reasonable accommodations in its policies and practices to enable equal use and enjoyment by persons with disabilities simply "does not extend to alleviating a

---

[3] *See Klossner v. IADU Table Mound MHP, LLC,* 565 F.Supp.3d 1118 (N.D. Iowa 2021).

tenant's lack of money to pay rent."[4] In so doing, the Eighth Circuit became the third federal circuit to adopt an arbitrary distinction between accommodations that ameliorate the economic effects of a disability from accommodations that ameliorate other effects disabilities may have.

This Court should grant certiorari and reverse the Eight Circuit's ruling, which calls into question multiple core principles at the heart of fair housing law beyond the question of whether a landlord can ever be required to accept a Section 8 housing voucher as a reasonable accommodation. If accommodations related to a tenant's manner of payment are deemed categorically beyond the reach of the FHAA, then a landlord may be free—in any circumstances—to disregard disability benefits as a viable source of income with which to pay rent, insist applicants meet income documentation requirements designed for tenants who pay rent with wages, or even refuse to simply adjust the rent due date commensurate with the receipt of tenants' disability checks. Yet the Fair Housing Act makes no distinction between accommodations that ameliorate disability-related effects on a tenant's manner of payment and those that ameliorate any other types of effects. This Court should grant review and clarify that, where a nexus exists between a tenant's disability and the impediment to meeting the financial obligations of a tenancy, a reasonable accommodation may be required under the FHAA and courts should decide that question through a fact-specific analysis.

---

[4] *Klossner v. IADU Table Mound MHP, LLC*, 65 F.4th 349, 351 (8th Cir. 2023).

ARGUMENT

I. THE FHAA CAN REQUIRE ANY KIND OF ACCOMMODATION THAT AMELIORATES ANY KIND OF DISABILITY-RELATED NEED FOR ACCOMMODATION.

The Fair Housing Act was amended in 1988 to impose on landlords, and other providers of housing and related services, an affirmative duty "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."[5]

Courts interpreting this statute have held generally that a person is entitled to an accommodation where the person has a disability, where there is a nexus between that disability and a lack of equal use or enjoyment of housing (often called a "disability-related need for accommodation"), and where some accommodation the landlord can make will alleviate the disability-related impediment to equal use and enjoyment, while not imposing undue financial and administrative burdens on the landlord.[6] Since every disability is unique and may manifest in myriad different ways and under a great variety of circumstances, courts have routinely held that "[t]he rea-

---

[5] 42 U.S.C. § 3604(f)(3)(B).

[6] *See, e.g., Howard v. HMK Holdings, LLC*, 988 F.3d 1185, 1190 (9th Cir. 2021); *Olsen v. Stark Homes, Inc.*, 759 F.3d 140, 156 (2d Cir. 2014).

sonable accommodation inquiry is highly fact-specific, requiring case-by-case determination."[7]

The FHAA makes no limitations on the types of disability-related needs that may entitle a person to an accommodation. Hence accommodations may be required with respect to a variety of requests from allowing waiving "no pets" policies for tenants who use emotional support animals to cope with mental illness[8] to the enforcement of yard maintenance ordinances on physically debilitated individuals[9] to the granting of variances in municipal zoning laws for the operation of facilities serving recovering alcoholics.[10] Under the FHAA, the duty to make an accommodation for a person with a disability-related need is broad, and limited only by the possibility of an undue financial or administrative burden or a fundamental alteration of the landlord's operations.[11]

---

[7] *United States v. California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1418 (9th Cir. 1994).

[8] *See Castillo Condo. Ass'n v. U.S. Dep't of Hous. & Urb. Dev.,* 821 F.3d 92, 100 (1st Cir. 2016).

[9] *See McGary v. City of Portland,* 386 F.3d 1259, 1262 (9th Cir. 2004).

[10] *See Tsombanidis v. W. Haven Fire Dep't,* 352 F.3d 565, 580 (2d Cir. 2003).

[11] Department of Justice and HUD, Joint Statement on Reasonable Accommodations under the Fair Housing Act (hereafter "Joint Statement") at 7 (May 17, 2004), available at https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf.

II. WHETHER A REASONABLE ACCOMMODATION IS REQUIRED IN A PARTICULAR INSTANCE DEPENDS ON THE CASE-SPECIFIC FACTS AND CIRCUMSTANCES.

Reasonable accommodations in housing cases have consistently turned on the unique facts and particularities of the parties and circumstances before the court. This fact-intensive approach commonly leads to different results in cases even where tenants present similar disability-related needs for accommodation, but in different kinds of housing or with landlords having different levels of resources.

For example, a landlord was found to have violated the FHAA in one case, *Davis v. Lane Management*, by failing to repair a broken elevator, forcing a mobility-impaired tenant to crawl up and down the stairs of the apartment building.[12] In *Davis*, the repairs were financially feasible and were the only means of accommodating the tenant's condition.[13] But in *Congdon v. Strine*, a landlord did not violate the FHAA by failing to provide a similar accommodation where replacing the troubled elevator would have been cost-prohibitive, the landlord had a maintenance contract in place for the existing elevator, and the landlord offered to accommodate the tenant by providing a ground-floor unit.[14] The Third Circuit held that a municipal government could have owed a duty to make a reasonable accommodation in its zoning laws for the siting of a nursing home where the development would

---

[12] *See Davis v. Lane Mgmt., LLC,* 524 F.Supp.2d 1375, 1377 (S.D. Fla. 2007).

[13] *Id.* at 1377.

[14] *Congdon v. Strine,* 854 F.Supp. 355, 363 (E.D. Pa. 1994).

increase the tax base, arrange its own garbage collection, street maintenance and snow removal, and not excessively burden local emergency services providers.[15] But the same court held that such an accommodation could not be required to enable the development of a similar facility where the site plan presented problems with traffic safety and inadequate access for emergency vehicles, and where half the property was on protected wetlands.[16] Similarly, in cases seeking accommodations to allow assistance animals that were prohibited under breed restrictions have turned on such facts as whether the specific animals had any history of dangerous conduct,[17] or whether other animals could provide the necessary assistance.[18]

The fact-intensive nature of reasonable accommodation analysis is often visible even within the context of a single case. In *Groner v. Golden Gate Gardens Apartments,* a landlord fulfilled its duty to make a reasonable accommodation where, rather than immediately evicting a mentally ill tenant

---

[15] *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1105-06 (3d Cir. 1996).

[16] *Lapid-Laurel, L.L.C. v. Scotch Plains Zoning Bd.,* 284 F.3d 442, 445-447 (3d Cir. 2002).

[17] *See, e.g., Warren v. Delvista Towers Condo. Ass'n, Inc.,* 49 F.Supp.3d 1082, 1089 (S.D. Fla. 2014) (accommodation to allow pit bull as assistance animal appropriate absent evidence the animal had been dangerous).

[18] *See, e.g., Wilkison v. City of Arapahoe,* 302 Neb. 968 (2019) (accommodation to allow pit bull as assistance animal was not required because owner had other dogs that provided the necessary emotional support).

who disturbed his neighbor through screaming and door-slamming, the landlord soundproofed the tenant's door and repeatedly extended the tenancy while the tenant obtained counseling that could have reduced the noise problems.[19] But when these accommodations ultimately failed, and the tenant was not able to present any new or different accommodations by which he could remain in the apartment without disturbing his neighbors, the Sixth Circuit held that no further accommodations were necessary.[20]

---

[19] *See Groner v. Golden Gate Gardens Apartments,* 250 F.3d 1039, 1044 (6th Cir. 2001).

[20] *Id.* at 1047; *see also Humphrey v. Mem'l Hosps. Ass'n,* 239 F.3d 1128, 1138 (9th Cir. 2001) (in employment context, duty to continue attempting accommodations ends when no accommodation remains that could plausibly overcome the disability-relate impairment without imposing undue burdens on employer).

III. ACCOMMODATIONS MADE NECESSARY BY THE ECONOMIC MANIFESTATIONS OF A DISABILITY SHOULD BE CONSIDERED UNDER THE SAME FACT-INTENSIVE ANALYTICAL APPROACH AS APPLIES TO OTHER REASONABLE ACCOMMODATION REQUESTS.

A disability-related financial hardship can prevent a tenant from having equal use or enjoyment of housing just as a lack of mobility can prevent a tenant from accessing premises, or a behavioral condition can pose lease compliance challenges. A disability[21] for purposes of the act is "a physical or mental impairment which substantially limits one or more of such person's major life activities," such as walking, seeing, hearing, speaking, breathing, learning, caring for one's self, performing manual tasks, or working.[22] An impairment affecting such basic life activities can impact a tenant's ability to earn the income with which to qualify for admission to housing, or to pay the rent and other costs necessary to remain in the housing on an ongoing basis. Disabilities therefore compel many individuals to seek assistance from benefit programs of various kinds, including housing choice vouchers and other forms of subsidized housing,[23] to mitigate or compensate for the financial

---

[21] The FHAA, enacted in 1988, still uses the term "handicap." 42 U.S.C. § 3602(h). Amici use the more modern term, "disability," to mean the same thing.

[22] 42 U.S.C. § 3602(h); *see* 24 C.F.R. § 100.201(b) (defining "major life activities" for FHAA purposes).

[23] The Housing Choice Voucher program, often called "Section 8 voucher," is the largest and best-known of the federal "tenant-based" subsidy programs. *See* 42 U.S.C. § 1437f(o). Other voucher programs include the U.S. Department of Agriculture's Rural

impacts of a disability just as persons may rely on mental health counseling or medications to address behavioral impacts, or rely on assistance animals or mobility equipment to address physical limitations a disability may impose.

The proper analytical course when a tenant seeks a reasonable accommodation because of an inability to meet a financial criterion for admission or comply with some other economic rule or obligation under the tenancy is to determine whether a sufficient causal nexus links the disability to the problematic economic rule or policy at issue.[24] Where facts show the disability prevents the tenant from working and earning enough income to pay the rent or other housing-related costs, a sufficient causal relationship may be present.[25] But this may not necessarily be true in all cases.[26]

Housing Voucher Program, 42 U.S.C. § 1490r, and the Shelter Plus Care voucher program, established by the Stewart B McKinney Homeless Assistance Act, *see* 24 C.F.R. §§ 582.1(a), 582.100(a).

[24] *See* Joint Statement at p. 6 ("To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.").

[25] *See, e.g., Giebeler v. M & B Assocs.,* 343 F.3d 1143, 1147 (9th Cir. 2003) (tenant's disability prevented him from working and earing sufficient income to meet the landlord's admission criteria, which required a minimum income).

[26] *See, e.g., Geter v. Horning Bros. Mgmt.,* 537 F.Supp.2d 206, 209 (D.D.C. 2008) ("Plaintiff does not allege that because of his disability, he lacked the financial means to pay the rent. Indeed, such a claim is belied by plaintiff's own evidence showing that he continued to pay his rent and late payment fees for more than three years . . . ").

If a disability is shown to cause the tenant's inability to fulfill an economically-related rule or policy of the landlord, an accommodation may then be required—but only if reasonable, meaning the accommodation must not impose undue financial and administrative burdens on the landlord or fundamentally alter the nature of its programs or services.[27] Again, a court should evaluate the proposed accommodation and ascertain its reasonableness (or lack thereof) in light of all relevant facts, circumstances, and alternatives. Using this approach, courts have found reasonable such accommodations in financial or economic policies as waiving income documentation requirements,[28] adjusting rent due dates for tenants that receive disability benefits,[29] and admitting tenants who did not meet a landlord's usual minimum income requirement with co-signers or public benefits income.[30] A request that a landlord accept part of a tenant's monthly rent from a housing subsidy program is similar in nature, and its reasonableness should be evaluated based on the type of housing involved, the resources of the landlord, the specific burdens accepting the subsidy would carry, and other such factors.[31]

---

[27] *See Schaw v. Habitat for Humanity,* 938 F.3d 1259, 1264 (11th Cir. 2019); *see also Southeastern Community College v. Davis,* 442 U.S. 397, 412-413 (1979) (articulating reasonableness standards under Rehabilitation Act).

[28] *See Edwards v. Gene Salter Properties*, 739 Fed.Appx. 357, 358 (8th Cir. 2018), *cert. denied*, 139 S.Ct. 1271 (2019).

[29] *See, e.g., Galia v. Wasatch Advantage Grp. LLC*, No. 19-CV-08156-JCS, 2021 WL 1516372 (N.D. Cal. Apr. 16, 2021).

[30] *See, e.g., Giebeler*, 343 F.3d; *Schaw,* 938 F.3d.

[31] *See* Joint Statement at p. 7.

To simply declare categorically that the duty to make reasonable accommodations "does not extend to alleviating a tenant's lack of money to pay rent," as the Eighth Circuit declared here, does not accord with either the text or the broad and inclusive spirit of the FHAA.[32] That conclusion likewise conflicts substantially with the opinions of seven members of this Court in *US Airways, Inc. v. Barnett,*[33] in which a worker sought a reasonable accommodation in an employer's seniority system to enable reassignment to a different job because of a disability.[34] Five members of the court held that such an accommodation could be required but only if justified by particular circumstances, given the burdens that such accommodations could cause to a seniority system.[35] Two additional justices would have upheld the accommodation without any showing of special circumstances.[36] Only two dissenting justices in *Barnett* analyzed the case in the manner the Eighth Circuit did here—voting to deny the accommodation as addressing a downstream effect of the disability, rather than a direct amelioration.[37]

---

[32] *Klossner*, 65 F.4th at 351; *see generally Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972).

[33] *US Airways, Inc. v. Barnett,* 535 U.S. 391 (2002)

[34] *See Id.* at 394.

[35] *See Id.* at 405-06.

[36] *See Id.* at 420 (Souter, J., dissenting, joined by J. Ginsberg).

[37] *See Id.* at 413 (Scalia, J., dissenting, joined by J. Thomas); *see also Klossner,* 65 F.4th at 354.

In *Barnett*, the worker did not contend that his failure to qualify under the seniority system resulted from his disability (*e.g.*, due to missed work time for medical treatment or other disability-related cause).[38] Hence the grounds for reasonable accommodation in the present case are even stronger, where the tenant's lack of money to pay rent without the voucher was the product of a disability.[39] Foreclosing any consideration of the accommodation request in such circumstance is arbitrary and unjust.

Indeed, the Eighth Circuit ruling was especially extreme, as the court perceived "no principled reason why a landlord could not be required in the name of 'reasonable accommodation' to reduce monthly rent for an impecunious disabled person" rather than make a reasonable accommodation that might enable the full rent to be paid yet impose some modest cost on the landlord.[40] Yet reasonable accommodations are typically those that enable persons with disabilities to comply with the material obligations of their housing—not to evade such obligations altogether.[41]

---

[38] *See generally Barnett,* 535 U.S. 391 at 394-95.

[39] *See Klossner,* 565 F.Supp.3d at 1129 ("Here, plaintiff's disabilities prevent her from working. As a result, she is on a fixed income limited to government aid that is insufficient to pay the market rent from her own resources.").

[40] *Klossner*, 65 F.4th at 355.

[41] *See, e.g., Hunt v. Aimco Properties, L.P.,* 814 F.3d 1213, 1227 (11th Cir. 2016) (providing tenant an opportunity to find adult daycare provider for developmentally disabled son, rather than evict tenant based on son's threats, could be reasonable accommodation); *see McGary v. City of Portland,* 386 F.3d 1259, 1264 (9th Cir. 2004) (granting extension of time for disabled homeowner to clean up yard would have been reasonable

This includes accommodations that impose some modest expense on the landlord.[42] Hence some courts have correctly declined to rule out the possibility of modest rent reductions as a reasonable accommodation that might plausibly be required in some circumstances—leaving the question to whether the reduction

---

accommodation in municipal nuisance ordinance).

[42] *See* Joint Statement at p. 8 ("Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative burden."); *see also United States v. California Mobile Home Park Mgmt. Co.,* 29 F.3d 1413, 1416 (9th Cir. 1994) ("Besides the fact that § 3604's reasonable accommodations requirement contains no exemption for financial costs to the landlord, the history of the FHAA clearly establishes that Congress anticipated that landlords would have to shoulder certain costs involved, so long as they are not unduly burdensome."); *Shapiro v. Cadman Towers, Inc.,* 51 F.3d 328, 335 (2d Cir. 1995) ("In light of the legislative history of section 3604, which specifically indicates that the term "reasonable accommodation" was intended to draw on the case law under section 504 of the Rehabilitation Act, and the fact that both provisions are directed toward eliminating discrimination against handicapped individuals, we conclude that the district court correctly relied on the standards for "reasonable accommodations" developed under section 504, rather than the more restrictive standard of religious accommodation developed under Title VII. Thus, Cadman Towers can be required to incur reasonable costs to accommodate Shapiro's handicap, provided such accommodations do not pose an undue hardship or a substantial burden.").

sought imposes undue costs on the landlord.[43] As a general rule, however, an accommodation that requires a landlord to accept ongoing non-compliance with a core obligations of a residential tenancy, is unlikely to be reasonable.[44]

---

[43] *See*, *e.g.*, *Bentley v. Peace & Quiet Realty 2 LLC,* 367 F.Supp.2d 341, 347 (E.D.N.Y. 2005) (providing apartment at discounted rent "is exactly the type of accommodation that falls with the purview of the FHAA. Whether the accommodation is 'reasonable' is a separate question."); *Vickerman v. Ramon Mobile Home Park Inc.,* No. EDCV142016VAPSPX, 2015 WL 13918532, at 8 (C.D. Cal. Aug. 14, 2015) ("Defendant Belleau offers no precedent barring a reduction in rent as a reasonable request and is generally silent on the matter. At the same time, the court is aware of no authority supporting the notion that landlords must accommodate disabled tenants to the extent of charging them no more rent than they can pay.").

[44] *See*, *e.g.*, *Groner v. Golden Gate Gardens Apartments,* 250 F.3d 1039, 1044 (6th Cir. 2001) (duty to make reasonable accommodations did not require landlord to tolerate ongoing noise complaints and disturbances after multiple interventions failed to prevent mentally ill tenant's screaming and door slamming).

IV. THE EIGHTH CIRCUIT'S DECISION CASTS DOUBT ON NUMEROUS COMMONPLACE REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES.

The arbitrary denial of accommodations pertaining to the economic or financial impacts of a disability upsets settled law around numerous accommodations that lower courts routinely find reasonable in the rental housing context.

A. Accepting Alternative Evidence of Ability to Pay Rent.

Landlords commonly require persons applying to lease housing to demonstrate having sufficient income to afford the rent and other anticipated costs of the tenancy. Often, these take the form of minimum income requirements (*e.g.*, requiring income of three-times the monthly rent). Tenants with disabilities often cannot meet such minimum income requirements, even if they can afford the rent—sometimes because such persons receive public benefits that help with other expenses, freeing up money to pay rent. Yet some landlords fail to recognize such public benefits as income in this context. As the Eleventh Circuit explained, to consider such benefits in evaluating whether a tenant has the means to afford the housing is superficially a reasonable accommodation because the landlord need only "accept proof that he brings in the same amount of money as any other [applicant], but in a different form."[45] Under the Eighth Circuit's reasoning in the present case, however, no such

---

[45] *Schaw,* 938 F.3d at 1268 (burden then shifts to landlord to present facts showing why such an accommodation would not be reasonable under the circumstances).

accommodation could ever be required.[46] Considering a different form of income in deciding whether the tenant can afford the housing would be deemed an accommodation to ameliorate the tenant's financial condition, not one to directly ameliorate the disability.[47]

Another possible accommodation that a tenant may seek to avoid denial of housing under a minimum income threshold is to have a co-signer or other financial partner on the lease.[48] Again, many landlords do not accept cosigners or guarantors as an alternative to meeting their minimum income thresholds. But where the tenant's reliance on the co-signer is made necessary by a disability-related lack of income, accepting a co-signer may be a reasonable accommodation. A court should evaluate such a request based on how likely the tenant appears to be able to afford the housing despite not meeting the landlord's minimum income limit, who the co-signer is and what resources that co-signer has to pay, the degree to which having to collect payment from a co-signer would impose a hardship on the specific landlord, and other such case-specific factors.[49] Yet the Eighth Circuit's reasoning would allow landlords to categorically ignore co-signer requests under any circumstances.

---

[46] *Klossner,* 65 F.4th at 354 ("A landlord's duty to make reasonable accommodations extends to direct amelioration of handicaps, but does not encompass an obligation to accommodate a tenant's 'shortage of money.'"), *quoting Salute v. Stratford Greens Garden Apartments,* 136 F.3d 293, 302 (2d Cir. 1998).

[47] *See Klossner*, 65 F.4th at 354.

[48] *See, e.g., Giebeler v. M & B Assocs.,* 343 F.3d at 1155.

[49] *See Giebeler*, 343 F.3d at 1143.

B. Waiving Documentation Requirements Relevant to Wage Earners or Other Workers.

Another common policy that landlords apply in the rental admissions context is to require housing applicants to verify their incomes with documentation that only wage earners or those with taxable business income are likely to have. Such documentation is commonly not available to those who, for reasons of disability, cannot work or engage in other profit-making activities and whose incomes may consist of Social Security benefits or other non-taxable sources. As with a minimum income requirement, allowing a housing applicant to demonstrate having the means to afford rent and utilities with documentation of disability benefits, retirement income, or other sources tends to be necessary to afford such persons equal access to housing and unlikely to unduly burden the landlord.

In *Edwards v. Gene Salter Properties*, for example, a different Eighth Circuit panel held that a landlord could be required to make a reasonable accommodation in its policy of requiring income documentation through "pay stubs, an offer letter, or tax returns" for the benefit of a housing applicant whose "only sources of income were Social Security Disability Insurance (SSDI), retirement benefits, and rental income."[50] Yet under the reasoning below, such an accommodation is dubious because it ameliorates only the nature of the income documentation available to the tenant—not the underlying disability itself. The *Salter* court had it right: a disability that affects what income

---

50 *Edwards*, 739 Fed.Appx. at 358.

documentation a tenant has available is no less related to the disability than the form or sources in which such a person's income might be received.

C. Changing the Rent Due Date to Accommodate Disability Benefits.

Many tenants with disabilities receive assistance through disability benefits such as SSDI. Landlords often set their rent due dates on the first of the month. This creates a problem for tenants relying on disability benefits to pay rent on time without accumulating late fees, as disability benefits are often received by the tenant several days after the first of the month. To avoid continuously being charged more on rent, a routine reasonable accommodation for tenants with disabilities who can prove that their inability to pay on the original rent due date is directly related to their disability, is to request to alter their rent due date, making it possible to pay rent on time and avoiding late fees.[51]

The Eighth Circuit's reasoning below would call even this simple accommodation into question. Changing the rent due date is no more a "direct amelioration of a disability's effect"[52] than accepting a rent subsidy. Rather, such a measure facilitates a tenant's reliance on one type of public benefits in the same way that accepting a housing subsidy does.

---

[51] *Galia v. Wasatch Advantage Grp. LLC*, No. 19-CV-08156-JCS, 2021 WL 1516372 (N.D. Cal. Apr. 16, 2021); *Fair Hous. Rts. Ctr. in Se. Pennsylvania v. Morgan Properties Mgmt. Co., LLC*, No. CV 16-4677, 2018 WL 3208159 (E.D. Pa. June 29, 2018).

[52] *Klossner*, 65 F.4th at 8 (quoting *Bryant Woods Inn, Inc. v. Howard Cnty.*, 124 F.3d 597, 604 (4th Cir. 1997)).

Such accommodations may not be categorically disallowed on the contention that they merely "alleviate[s] a disabled tenant's impoverished economic circumstances" and not the effects of a disability.[53]

Accepting partial rent payments from a housing subsidy program is not fundamentally different than accepting tenants who rely on food stamps, whose relatives co-sign their leases, who document their incomes through alternative evidence, or who request adjustments in the timing of their payment deadlines. In some cases, the burdens of accepting such rental subsidies may be greater—and if too great, such accommodations would not be reasonable. But that should be determined, like all reasonable accommodation requests, under the specific facts and circumstances of the particular case and landlord. This Court should grant certiorari and make clear that the duty to make reasonable accommodations for people with disabilities does not evaporate any time the requested accommodation has to do with financial matters.

---

[53] *C.f. Klossner*, 65 F.4th at 10.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

Katherine E. Walz
Counsel of Record
Eric Dunn
Lila Gitesatani
NATIONAL HOUSING LAW PROJECT
1663 Mission St., Suite 460
San Francisco, CA 94103
(415) 546-7000
kwalz@nhlp.org
edunn@nhlp.org
lgitesatani@nhlp.org

Counsel for Amicus Curiae

September 12, 2023