

2.

The Housing Authority failed to comply with the Constitution of the United States, federal law and the Texas Constitution (1) in denying Plaintiffs Maldonado and Rangel housing solely on the basis of their arrests; (2) in denying Plaintiff Ruiz on the basis of one isolated deferred adjudication for filing a false police report; (3) in failing to consider the time, nature and extent of Plaintiffs' conduct and Plaintiffs' rehabilitative and other favorable evidence; and (4) in failing to give notice to Plaintiffs of their right to present evidence of rehabilitation and other favorable evidence at their appeal hearing.

JURISDICTION

3.

This court has jurisdiction under 28 U.S.C. Section 1331 because this case raises issues under federal law and the United States Constitution. The court has supplemental jurisdiction of the Texas Constitution claims under 28 U.S.C. Section 1367.

PLAINTIFFS

4.

Plaintiffs are all adult residents of Travis County, Texas. They each meet the income eligibility standards for admission to the conventional public housing program.

DEFENDANTS

5.

Defendant Housing Authority of the City of Austin is a federally subsidized, state-chartered, locally established and

administered public body situated in Austin, Texas. Its actions and those of its employees are under color of law.

6.

Defendant Hyacinth Onyekanne is sued in his official capacity as Director of Housing Management and Admissions for the Housing Authority of the City of Austin. His actions complained of here were taken under color of law.

FACTUAL BACKGROUND

7.

The United States Housing Act of 1937 established the low rent public housing program for the purpose of remedying the acute shortage of decent, safe, and sanitary dwellings for families of low income. Pursuant to this program, the Housing Authority of the City of Austin was established to construct and administer low rent public housing in Austin. To ensure the program is administered in a fair and even-handed manner, Congress has required that the Secretary of the United States Department of Housing and Urban Development promulgate regulations governing the admissions policies of public housing bodies. These regulations set out binding criteria that housing authorities are to follow in selecting and rejecting applicants for public housing.

8.

The Housing Authority follows an "arrest-only" denial policy in the selection of its tenants. Pursuant to its written policies, the Housing Authority will deny an applicant admission

into the Housing Authority's housing program on the sole basis that the applicant has been arrested, without considering whether the applicant did indeed commit any crime, or the time, nature and extent of the conduct. Moreover, in the event unfavorable information is received on an applicant, the Housing Authority does not consider the time, nature and extent of the applicant's conduct or other factors which might indicate a reasonable probability of favorable future conduct unless the applicant's alleged unfavorable conduct occurred more than ten years prior to the date of the application.

Facts as to Plaintiff Maldonado

9.

In January 1995, Plaintiff Maldonado applied for public housing with the Housing Authority of the City of Austin. Pursuant to the Housing Authority's admissions requirements, Plaintiff Maldonado later submitted a criminal history report issued by the Texas Department of Public Safety. Plaintiff Maldonado's criminal report with the Texas Department of Public Safety states that he was arrested for burglary of a habitation in 1991. The report also states that no charges were filed for this incident. There are no other criminal incidents listed in Plaintiff Maldonado's report. Plaintiff Maldonado denies having ever been involved in a burglary of a habitation.

10.

Pursuant to the Housing Authority's policy to deny housing to any applicant who has been arrested within the past ten years

for certain types of criminal activity, the Housing Authority rejected Plaintiff Maldonado's application for public housing. On January 9, 1996, the Housing Authority sent Plaintiff Maldonado a notice of rejection stating that his application had been rejected. The sole stated reason for denial was for a "burglary of habitation." In the notice, the Housing Authority stated that Plaintiff Maldonado had a right within ten calendar days from the date of the letter to request an informal review of the Housing Authority's denial of his application.

11.

Plaintiff Maldonado requested an informal review with the Housing Authority. On January 29, 1996, the Housing Authority sent Plaintiff Maldonado notice of the informal review hearing. The notice stated that at the hearing he had the following rights:

Please be advised that at this hearing you shall have the right to be represented by counsel and present evidence and arguments in support of your defense or rebutting the grounds for rejection. You have a right, upon written request to review your application file in advance of the hearing.

Plaintiff Maldonado was not given notice of his right to present evidence at the hearing relating to the time, nature, and extent of his conduct. Plaintiff Maldonado was not given notice of his right to present evidence which might indicate a reasonable probability of favorable future conduct, including rehabilitation evidence.

12.

On February 13, 1996, Plaintiff Maldonado attended an

informal hearing at the Housing Authority. The hearing officer for this hearing was Hyacinth Onyekanne, Director of Housing Management and Admissions for the Housing Authority. Plaintiff Maldonado was not represented by counsel. The only evidence relied upon by the Housing Authority for evidence of burglary of habitation was Plaintiff Maldonado's Texas Department of Public Safety criminal history report, which stated that he had been arrested for burglary of habitation but that no charges were filed. Plaintiff Maldonado explained to the hearing officer that he had not been involved in a burglary and that burglary charges were not filed against him. Defendant Onyekanne did not consider the time, nature and extent of the conduct, rehabilitation evidence, or other evidence which might indicate a reasonable probability of favorable future conduct. Defendant Onyekanne acted in accordance with the Housing Authority's policy of considering such evidence only when the denial of an application is for an incident occurring more than ten years prior to the date of the application.

13.

On February 19, 1996, Defendant Onyekanne wrote Plaintiff Maldonado notifying him that he had decided to uphold the decision of the Housing Authority. Defendant Onyekanne stated that his decision was based on the fact that "DPS records show that you were involved in Burglary of a Habitation."

Facts as to Plaintiff Rangel

14.

In August 1994, Plaintiff Rangel applied for public housing with the Housing Authority of the City of Austin. When the Housing Authority reached Plaintiff Rangel on the waiting list, it requested, and Plaintiff Rangel submitted, a criminal history report issued by the Texas Department of Public Safety. Plaintiff Rangel's criminal report with the Texas Department of Public Safety states that Plaintiff Rangel was arrested for unlawfully carrying a weapon in 1989. The report also shows that no charges were filed for this incident. There are no other criminal incidents listed in Plaintiff Rangel's report. Plaintiff Rangel denies having ever carried a weapon unlawfully.

15.

Pursuant to the Housing Authority's policy to deny housing to any applicant who has been arrested within the past ten years for certain types of alleged criminal activity, the Housing Authority rejected Plaintiff Rangel's application for public housing. On February 20, 1996, the Housing Authority sent Plaintiff Rangel a notice of rejection stating that her application had been rejected. The sole stated reason for denial was "Carrying Prohibited: unlawful carrying weapon Arrest Date 4-9-89." In the notice, the Housing Authority stated that Plaintiff Rangel had the right, within ten calendar days from the date of the letter, to request an informal review of the Housing Authority's denial of her application.

16.

Plaintiff Rangel requested an informal review with the Housing Authority. On February 29, 1996, the Housing Authority sent Plaintiff Rangel notice of the informal review hearing. The notice stated that at the hearing she had the following rights:

Please be advised that at this hearing you shall have the right to be represented by counsel and present evidence and arguments in support of your defense or rebutting the grounds for rejection. You have a right, upon written request to review your application file in advance of the hearing.

Plaintiff Rangel was not given notice regarding her right to present evidence at the hearing relating to the time, nature, and extent of her conduct and to other factors which might indicate a reasonable probability of favorable future conduct, including rehabilitation evidence.

17.

On March 12, 1996, Plaintiff Rangel attended an informal hearing at the Housing Authority. The hearing officer for this hearing was Hyacinth Onyekanne, Director of Housing Management and Admissions for the Housing Authority. Plaintiff Rangel was not represented by counsel. The only evidence relied upon by the Housing Authority for evidence of unlawfully carrying a weapon was Plaintiff Rangel's Texas Department of Public Safety criminal history report, which stated that she had been arrested for unlawfully carrying a weapon but showed that no charges were filed. Plaintiff Rangel explained to the hearing officer that she had been arrested with several others when a gun was found in her father's car, but that the gun neither belonged to her nor

did she know to whom it belonged. She was taken to jail -- apparently for having no driver's license and no insurance. She was subsequently released. Charges were not filed against her for unlawfully carrying a weapon.

18.

Defendant Onyekanne gave no consideration to the fact that this was a single isolated incident occurring seven years ago or any other favorable information. He also did not consider rehabilitation evidence or other evidence which might indicate a reasonable probability of favorable future conduct because of the Housing Authority's policy of considering such evidence only when the denial of an application is for an incident occurring more than ten years prior to the date of the application.

19.

On March 18, 1996, Defendant Onyekanne wrote Plaintiff Rangel notifying her that he had decided to uphold the decision of the Housing Authority. Defendant Onyekanne wrote that his decision was based on the fact that "DPS records show that you were involved in Unlawful Carrying Weapon in 1989."

Facts as to Plaintiff Ruiz

20.

In December 1994, Plaintiff Ruiz applied for public housing with the Housing Authority of the City of Austin. Pursuant to the Housing Authority's admissions requirements, Plaintiff Ruiz later submitted a criminal history report issued by the Texas Department of Public Safety. Plaintiff Ruiz's criminal report

with the Texas Department of Public Safety states that Plaintiff Ruiz was arrested for resisting an officer by giving a false report to a police officer in 1991 and that she was convicted in 1993. But for an administrative error, the criminal report would have reflected that adjudication of Plaintiff Ruiz's guilt was deferred by a judge and then charges were dismissed after a period of probation. Plaintiff Ruiz was in fact never convicted of the misdemeanor, but rather pled "nolo contendere" upon the advice of a court-appointed attorney who advised her that contesting the charge would cost her \$500 and that if she pleaded no contest and completed probation, no charge would appear in her record. There are no other criminal incidents listed in Plaintiff Ruiz's report. Plaintiff Ruiz denies having ever given a false report to a police officer.

21.

Pursuant to the Housing Authority's practice of denying housing to any applicant who has any criminal record, the Housing Authority rejected Plaintiff Ruiz's application for public housing. On February 23, 1996, the Housing Authority sent Plaintiff Ruiz a notice of rejection stating that her application had been rejected. The sole stated reason for denial was for "resisting officer." In the notice, the Housing Authority stated that Plaintiff Ruiz had a right within ten calendar days from the date of the letter to request an informal review of the Housing Authority's denial of her application.

22.

Plaintiff Ruiz requested an informal review with the Housing Authority. On March 14, 1996, the Housing Authority sent Plaintiff Ruiz notice of the informal review hearing. The notice stated that at the hearing she had the following rights:

Please be advised that at this hearing you shall have the right to be represented by counsel and present evidence and arguments in support of your defense or rebutting the grounds for rejection. You have a right, upon written request to review your application file in advance of the hearing.

Plaintiff Ruiz was not given notice regarding her right to present evidence at the hearing relating to the time, nature, and extent of her conduct and evidence on other factors which might indicate a reasonable probability of favorable future conduct, including rehabilitation evidence.

23.

On March 25, 1996, Plaintiff Ruiz attended an informal hearing at the Housing Authority. The hearing officer for this hearing was Hyacinth Onyekanne, Director of Housing Management and Admissions for the Housing Authority. Plaintiff Ruiz was represented by a paralegal from Legal Aid. The only evidence relied upon by the Housing Authority for "resisting an officer by giving a false report to a police officer" was Plaintiff Ruiz's Texas Department of Public Safety criminal history report, which stated that she had been arrested for resisting an officer. The report also erroneously stated that she had been convicted.

24.

At the hearing Plaintiff Ruiz explained to Defendant Onyekanne that she had never resisted an officer by filing a false report. She explained that she filed a police report when a missing child support payment had become over twenty days late. Ms. Ruiz told Defendant Onyekanne how she then followed the instructions of the Domestic Relations Office and the Austin Police Department as to how she should proceed when several child support checks arrived at once. She further explained that she had been certain that there was some mix-up when she was informed that a warrant had been issued for her arrest because she had cashed the missing check. She told Defendant Onyekanne that she had gone to the police station where she was arrested and charged with filing a false police report. Ms. Ruiz explained that upon the advice of a court-appointed attorney, she pled "nolo contendere" to the charge, received a deferred adjudication, and completed probation with the expectation that the charge would be dismissed and not appear on her record.

25.

Although Ms. Ruiz and her Legal Aid advocate presented Defendant Onyekanne with court documents, he did not consider the fact that a court had released Ms. Ruiz from all penalties and disabilities as a result of the misdemeanor charge. Defendant Onyekanne did not consider the type of crime that Ms. Ruiz allegedly committed or the relevance of the crime to her potential as a good tenant. Finally, Defendant Onyekanne did not

consider any rehabilitation evidence or other evidence which might indicate a reasonable probability of favorable future conduct because of the Housing Authority's policy of considering such evidence only when the denial of an application is for an incident occurring more than ten years prior to the date of the application.

26.

On April 4, 1996, Defendant Onyekanne wrote Plaintiff Ruiz, notifying her that he had decided to uphold the decision of the Housing Authority. He stated that his decision was based on the fact that "the evidence establishes that you were involved in resisting an officer in 1991 and convicted in 1993."

FIRST CAUSE OF ACTION: ARREST-ONLY DENIAL POLICY
VIOLATES HUD'S REGULATIONS GOVERNING
ADMISSIONS CRITERIA

27.

The Department of Housing and Urban Development regulation governing the criteria to be used in selecting and rejecting applicants for public housing states, in pertinent part:

- (a) The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant
- (b) The criteria to be established in relation to avoiding concentration of families with serious social problems in PHA projects and information to be considered shall be reasonably related to whether the conduct of the applicant in present or prior housing has been such as would not be likely to interfere with other tenants in such a manner as to diminish their enjoyment of the premises by adversely affecting their health, safety or welfare or to affect adversely the physical environment or the financial stability of the project if the applicant were admitted to the project.

24 C.F.R. § 960.205 (1995). The Housing Authority's "arrest-only" denial policy--its policy of rejecting applicants solely on the basis of a prior arrest--is in violation of this regulation because it is not reasonably related to the above criteria and because it fails to consider the individual attributes and behavior of applicants. Defendants' actions in denying Plaintiffs under this policy give rise to a cause of action directly under the regulation and under 42 U.S.C. § 1983 for declaratory and injunctive relief, damages, and attorney's fees.

SECOND CAUSE OF ACTION: FAILURE TO GIVE NOTICE
OF THE RIGHT TO PRESENT REHABILITATIVE AND OTHER
FAVORABLE EVIDENCE DENIED PLAINTIFFS THEIR
RIGHT TO PROCEDURAL DUE PROCESS OF LAW

28.

Plaintiffs are entitled under the Fourteenth Amendment of the United State Constitution to procedural due process of law. Defendants violated Plaintiffs' due process rights in denying Plaintiffs' applications for public housing without giving them written notice of their right to present evidence in an informal hearing relating to the time, nature, and extent of the conduct, in addition to other factors which might indicate a reasonable probability of favorable future conduct -- including the right to present evidence of rehabilitation. The Housing Authority's actions give rise to a cause of action under 42 U.S.C. § 1983 for declaratory and injunctive relief, damages, and attorney's fees.

THIRD CAUSE OF ACTION: ARREST-ONLY DENIAL POLICY DENIED
PLAINTIFFS THEIR RIGHT TO SUBSTANTIVE DUE
PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS

29.

Plaintiffs are entitled under the Fourteenth Amendment of the United States Constitution to substantive due process of law and equal protection of the laws. Defendants' decisions to deny the applications of Plaintiffs Maldonado and Rangel solely on the basis that their Texas Department of Public Safety reports show they were once arrested and to deny the application of Plaintiff Ruiz solely on the basis that she received deferred adjudication for a non-violent, non-drug-related offense is arbitrary and capricious, shocks judicial notions of fairness, and is not rationally related to the right to protect the health, safety, and welfare of other tenants. Defendants' actions give rise to a cause of action under 42 U.S.C. § 1983 for declaratory and injunctive relief, damages, and attorney's fees.

FOURTH CAUSE OF ACTION: VIOLATION OF HUD'S
REGULATIONS GOVERNING ADMISSIONS CRITERIA
BY FAILING TO CONSIDER REHABILITATION
EVIDENCE AND OTHER FAVORABLE EVIDENCE

30.

The pertinent HUD regulations governing the admissions process for public housing state, in pertinent part:

In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors which might indicate a reasonable probability of favorable future conduct or financial prospects. For example:

- (1) Evidence of rehabilitation;

(2) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;

(3) Evidence of the applicant family's willingness to attempt to increase family income and the availability of training or employment programs in the locality.

24 C.F.R. § 960.205(d) (1995). The Housing Authority considers the above favorable information only when an applicant's alleged unfavorable conduct occurred more than ten years prior to the date of application. The Housing Authority's policy of refusing to consider favorable information in the original consideration of Plaintiffs' applications and at the informal review hearing is in violation of the above regulation. Defendants' actions give rise to a cause of action directly under the regulation and under 42 U.S.C. § 1983 for declaratory and injunctive relief, damages, and attorney's fees.

FIFTH CAUSE OF ACTION: ARREST ONLY DENIAL POLICY
VIOLATES THE FAIR HOUSING ACT

31.

The Housing Authority's "arrest only" denial policy--its policy of denying housing solely on the basis that an applicant has been arrested within the past ten years--has a discriminatory impact on classes of minority applicants, of which all three Plaintiffs are members, and is not reasonably related to the Housing Authority's legitimate mission of providing safe and affordable housing. Defendants' actions give rise to a cause of action under 42 U.S.C. §§ 3604 and 3613 and 42 U.S.C. §1983 for

declaratory and injunctive relief, damages, and attorney's fees.

SIXTH CAUSE OF ACTION: ARREST-ONLY DENIAL POLICY AND
FAILURE TO GIVE NOTICE OF THE RIGHT TO PRESENT
FAVORABLE EVIDENCE VIOLATED PLAINTIFF'S DUE
PROCESS AND EQUAL PROTECTION RIGHTS UNDER
THE TEXAS CONSTITUTION

32.

Plaintiffs are entitled under Article 1, § 19 of the Texas Constitution to procedural and substantive due course of law. Plaintiffs are entitled under Article I, §3 of the Texas Constitution to equal protection of the laws. Defendants' "arrest-only" denial policy violated Plaintiffs' right to due course of the law and equal protection of the law. Defendants also violated Plaintiffs' due process rights in denying their applications for public housing without giving them written notice of their right to present evidence at the informal hearing relating to the time, nature, and extent of their conduct, in addition to other factors which might indicate a reasonable probability of favorable future conduct -- including the right to present evidence of rehabilitation. The Housing Authority's actions give rise under Sections 65.011, 37.003, and 37.009 of the Texas Civil Practices & Remedies Code to a cause of action for declaratory and injunctive relief and attorney's fees.

DAMAGES

33.

Plaintiffs seek to recover their actual damages resulting from the illegal denial of their applications for public housing.

REQUEST FOR RELIEF

34.

Plaintiffs request that this court:

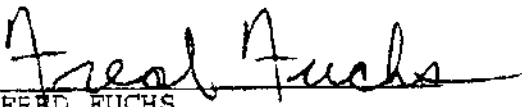
- (a) Enter a declaratory judgment that Defendants violated Plaintiffs' rights under federal law, the United States Constitution, and the Texas Constitution;
- (b) Enter a declaratory judgment that Defendants' tenant selection policies on their face and as applied, violate the United States Constitution, federal law and the Texas Constitution;
- (c) Grant appropriate injunctive relief ordering Defendants to revise their tenant selection policies and procedures so as to bring them into compliance with the United States Constitution, the Texas Constitution and federal law;
- (d) Grant Plaintiffs an injunction ordering Defendants to reinstate Plaintiffs' applications effective the date they originally applied; to process Plaintiffs' applications in accordance with the law; and to offer Plaintiffs the next available appropriate apartment;
- (e) Award Plaintiffs their actual damages, including damages for emotional distress;
- (f) Award Plaintiffs their reasonable attorneys' fees, to the extent allowed by law, pursuant to 42 U.S.C. §1988, 42 U.S.C. § 3613(c)(2), and Texas Civil Practices & Remedies Code §37.009.

- (g) Assess costs against Defendants; and
- (h) Grant Plaintiffs such other and further relief as the court deems proper and just.

Respectfully submitted,

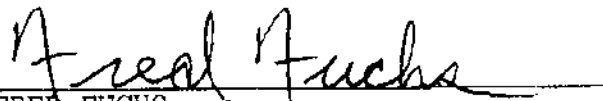
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BY:


FRED FUCHS
State Bar No. 07498000
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' First Amended Complaint has been hand delivered to Ms. Iris J. Jones, 2610 Nations Bank Tower, 515 Congress Avenue, Austin, Texas 78701, and to Ms. Brenda Jo Cox, 1640 E. 2nd Street, Austin, Texas 78702, attorneys for Defendants, on this 1st day of July, 1996.


FRED FUCHS