IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 18-10053-AA

GEORGIA STATE CONFERENCE OF THE NAACP *et al*.,

Appellants,

v.

CITY OF LAGRANGE, GEORGIA,

Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
Newnan Division
Civil Action File No. 3:17-CV-00067

OPENING BRIEF OF PLAINTIFFS-APPELLANTS GEORGIA STATE CONFERENCE OF THE NAACP, TROUP COUNTY NAACP, PROJECT SOUTH, CHARLES BREWER, CALVIN MORELAND, APRIL WALTON, PAMELA WILLIAMS, JOHN DOE #1, JOHN DOE #2, AND JOHN DOE #3

Reed N. Colfax
Jamie L. Crook
RELMAN, DANE & COLFAX, PLLC
1225 19th Street, NW, Suite 600
Washington, DC 20036
(202) 728.1888
(202) 728.0848 (fax)
rcolfax@relmanlaw.com
jcrook@relmanlaw.com

Atteeyah Hollie
Georgia Bar No. 411415
SOUTHERN CENTER
FOR HUMAN RIGHTS
83 Poplar Street N.W.
Atlanta, GA 30303
(404) 688-1202
(404) 688-9440 (fax)
ahollie@schr.org

Justin B. Cox
Georgia Bar No. 17550
NATIONAL IMMIGRATION LAW CENTER
PO Box 170208
Atlanta, GA 30317
(678) 279-5441
(213) 639-3991 (fax)
cox@nilc.org

Mayra B. Joachin
NATIONAL IMMIGRATION LAW CENTER
3435 Wilshire Blvd., Suite 1600
Los Angeles, CA 900100
(213) 639-3900
(213) 639-3911 (fax)
joachin@nilc.org

Counsel for Plaintiffs-Appellants

CORPORATE DISCLOSURE STATEMENT AND CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney certifies, pursuant to Rule 26.1 of the Federal rules of Appellate Procedure, that Plaintiffs Georgia State Conference, NAACP; Troup County Chapter of the NAACP, and Project South are each non-profit, civil rights organizations and no publicly held corporation has 10% or greater ownership in any of them.

The undersigned attorney further certifies, pursuant to Eleventh Circuit Rule 26.1-1, that the following may have an interest in the outcome of this case:

Batten, Hon. Timothy C. (Trial Judge)

Brewer, Charles (Plaintiff-Appellant)

City of LaGrange, Georgia (Defendant-Appellee)

Colfax, Reed (Counsel for Plaintiffs-Appellants)

Cox, Justin (Counsel for Plaintiffs-Appellants)

Crook, Jamie (Counsel for Plaintiffs-Appellants)

Daniel, Jeffrey (Counsel for Defendant-Appellee)

Doe, John #1 (Plaintiff-Appellant)

Doe, John #2 (Plaintiff-Appellant)

Doe, John #3 (Plaintiff-Appellant)

Georgia State Conference of NAACP (Plaintiff-Appellant)

Geraghty, Sarah (Counsel for Plaintiffs-Appellants)

Hollie, Atteeyah (Counsel for Plaintiffs-Appellants)

Jones, Kenneth (Counsel for Defendant-Appellee)

Joachin, Mayra (Counsel for Plaintiffs-Appellants)

Keaney, Melissa (Counsel for Plaintiffs-Appellants)

Moreland, Calvin (Plaintiff-Appellant)

Milton, Alexa (Counsel for Plaintiffs-Appellants)

Project South (Plaintiff-Appellant)

Todd, Jeffrey (Counsel for Defendant-Appellee)

Troup County NAACP (Plaintiff-Appellant)

Tumlin, Karen (Counsel for Plaintiffs-Appellants)

Walton, April (Plaintiff-Appellant)

Williams, Pamela (Plaintiff-Appellant)

/s/ Jamie L. Crook
Jamie L. Crook

Counsel for Plaintiffs-Appellants

STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants respectfully request an opportunity to present oral argument on the issues in this appeal. This case involves important questions concerning the application of the federal Fair Housing Act to individuals who already reside in their homes, and the Court's ruling may have ramifications for future renters and homeowners who experience a broad range of housing discrimination

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 because Plaintiffs appeal from a final judgment by a District Court in this Circuit. The judgment was entered on December 7, 2017, and Plaintiffs filed a timely notice of appeal on January 4, 2018. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; *see also* 42 U.S.C. § 3613.

STATEMENT OF THE ISSUES

1. Do the prohibitions against housing discrimination codified in the federal Fair Housing Act, 42 U.S.C. § 3604(b), apply only at the moment of sale or rental of housing, or do they also apply to residents who have completed the rental or purchase of their homes?

2. Does the Complaint adequately allege discrimination at the time of sale or rental and that Plaintiffs have suffered cognizable harms as a result of that discrimination?

STATEMENT OF THE CASE

I. City of LaGrange's Court Debt Policy and Immigrant Utilities Policy

This appeal arises out of a challenge to two policies of Defendant-Appellee City of LaGrange ("LaGrange") that restrict access to essential utility services including electricity, gas, and water. A distinguishing feature of LaGrange is that it

is the sole provider of these essential utilities for its residents. In this unique role, LaGrange applies two unusual policies, the "Court Debt Policy" and the "Immigrant Utilities Policy," which disproportionately limit African Americans and Latinos' access to these services.

A. Court Debt Policy

Pursuant to its Court Debt Policy, LaGrange conditions access to essential housing-related utility services on the payment of outstanding fines and fees that have been imposed by the LaGrange Municipal Court.[1] LaGrange requires utility applicants to acknowledge its purported authority (1) to deny utility services to people with court debt before they receive utility services and (2) to disconnect existing services based on failure to pay court debt, regardless of the nature of the underlying offense or the amount of court debt that is owed. *See generally* Joint Appendix ("J.A.") 31-32, 37 (Compl., D.C. Doc. No. 1, ¶¶ 50-58, 71). LaGrange

[1] LaGrange Municipal Code Section 20-1-7(h), *available at* https://goo.gl/WaFceF (accessed on February 26, 2018), provides as follows:

> *Payment of unpaid bills and debts, service termination.* Any applicant for utility service who owes an unpaid utility bill or other debt to the city, including but not limited to court judgments and fines, shall pay such unpaid bill or debt prior to obtaining utility service. Additionally, customers who owe debts to the city of any type shall be subject to having utility services terminated for failure to pay said debts without any prior notice from the city.

Relevant portions of the policy also appear in the City's application for utility service. *See* J.A. 83 (Compl. Ex. B).

then attaches court debt to utility accounts, which enables LaGrange to coerce rigorous court debt payment plans through threats of disconnection. J.A. 30-31, 32-35, 37, 41, 73 (Compl. ¶¶ 49, 59-65, 71, 80-81, 210). In recent years, LaGrange has attached court debt to utility accounts arising out of offenses that were over a decade old. J.A. 37 (Compl. ¶ 71).

LaGrange's Court Debt Policy has a disproportionate, discriminatory effect on African Americans. J.A. 37, 39-40, 73 (Compl. ¶¶ 72, 77-78, 211). From January 2015 to September 2016—the time period for which Plaintiffs have data—approximately 90% of the individuals with utility accounts to which LaGrange attached court debt were African-American. By contrast, the population of LaGrange is approximately 49% African-American, and the population of Troup County, where LaGrange is located, is approximately 34% African-American. J.A. 29, 37 (Compl. ¶¶ 43-44, 72).

LaGrange has been on notice of the disproportionate impact of its Court Debt Policy since at least early 2016, when Plaintiffs Georgia State Conference of the NAACP ("Georgia NAACP") and Troup County NAACP convened public town hall meetings on this subject. J.A. 40-41, 51 (Compl. ¶¶ 79, 117(a)). Around the same time, the *LaGrange Daily News* published an article, based on three years of data, demonstrating that residents with court debt attached to their utility accounts are concentrated in areas of the City that are predominantly African-

American. J.A. 39-41 (Compl. ¶¶ 77-79). Nevertheless, LaGrange has never advanced any legitimate justification for the Court Debt Policy, notwithstanding its discriminatory effect on African Americans and their ability to obtain essential utilities from LaGrange.

LaGrange's Court Debt Policy is an outlier; Plaintiffs are aware of *no* similar policy anywhere in the country. J.A. 38 (Compl. ¶ 74). LaGrange could pursue collection of court-related debts through many less discriminatory measures than depriving its residents of access to essential services like electricity, gas, and water—including approaches used in other jurisdictions such as wage garnishment, levy, or accepting credit card payments. J.A. 19, 38, 73 (Compl. ¶¶ 10, 76, 211).

B. Immigrant Utilities Policy

Pursuant to its Immigrant Utilities Policy, LaGrange requires that applicants for utility services provide valid Social Security Numbers ("SSNs") and unexpired photo identification issued by the United States or a state government. J.A. 41-43 (Compl. ¶¶ 82-84, 89).

LaGrange allows no exceptions to these requirements. It will not accept other forms of identification such as an Individual Tax Identification Number ("ITIN"), which is issued by the federal government, requires proof of identity, and, like an SSN, allows for running a credit report. Nor will LaGrange accept a foreign-issued identification document such as a passport. J.A. 21, 42-43, 48

(Compl. ¶¶ 15, 86-89, 108). Other utility providers across Georgia and the country routinely accept these other forms of identification. J.A. 21, 42-43, 48 (Compl. ¶¶ 15, 85-90, 105, 108).

Not only does LaGrange deny utilities to those who lack SSNs and/or compliant photo identification, but it also prohibits third parties from opening utility accounts on behalf of individuals who cannot themselves meet the requirements of the Immigrant Utilities Policy—and it enforces that prohibition with criminal penalties. *See* J.A. 43-44 (Compl. ¶¶ 91-92); LaGrange Mun. Code § 20-1-11, *available at* https://goo.gl/WaFceF (accessed on February 26, 2018). Those who cannot meet the requirements of the Immigrant Utilities Policy thus have exceedingly limited housing choices anywhere in LaGrange. J.A. 44-46, 69 (Compl. ¶¶ 93, 192).

As LaGrange is aware, many non-citizens, including those who are undocumented and individuals in more than fifty visa categories, are categorically ineligible to obtain SSNs. J.A. 42 (Compl. ¶ 85). As LaGrange is also aware, people who are undocumented as well as many lawfully present non-citizens cannot meet the requirements to obtain the limited forms of federal- or state-issued photo identification that LaGrange also requires. J.A. 43 (Compl. ¶ 90). Without these documents, it is impossible to hold a utility account with LaGrange. The group of people who are ineligible for SSNs and federal- or state-issued

identification documents, and who are therefore barred from having utility accounts with LaGrange, are disproportionately Latino. J.A. 46 (Compl. ¶ 94). LaGrange's Immigrant Utilities Policy therefore has a discriminatory disproportionate effect on Latinos. J.A. 29-30, 46, 74 (Compl. ¶¶ 43-45, 94-98, 213).

The City has not justified the discriminatory effect its Immigrant Utilities Policy has on Latinos. Over the last several years, the City has claimed publicly that the Immigrant Utilities Policy is mandated by various federal laws, but those claims have been false. *See* J.A. 46-48 (Compl. ¶¶ 99-107). There are other effective means LaGrange could use to confirm identity and credit history. J.A. 43, 46, 48, 74 (Compl. ¶¶ 88, 108, 213).

II. Plaintiffs-Appellants

Plaintiffs-Appellants—hereinafter referred to as "Plaintiffs"—are seven individuals and three organizations who have suffered injury because of LaGrange's Court Debt and Immigrant Utilities Policies.

Four individual Plaintiffs and two of the organizational Plaintiffs are harmed by the Court Debt Policy. Charles Brewer, Calvin Moreland, and April Walton are African-American residents of LaGrange. LaGrange has added court debt to their utility accounts. J.A. 55, 59, 63 (Compl. ¶¶ 132-133, 148, 163). Pamela Williams is an African-American landlord who leases residential rental properties in LaGrange

and has suffered lost rental income when her tenants have been subjected to the Court Debt Policy. J.A. 27, 65-66 (Compl. ¶¶ 34, 175-178). Georgia NAACP and Troup County NAACP are membership organizations whose members include individuals who have been subjected to LaGrange's Court Debt Policy. J.A. 23-25, 49 (Compl. ¶¶ 22, 28-29, 110-113).

The remaining three individual Plaintiffs and organizational Plaintiff are harmed by the Immigrant Utilities Policy. John Doe #1, John Doe #2, and John Doe #3[2] are non-citizen, Latino residents of LaGrange. Although all three of them have ITINs and Mexican passports, they do not have and are ineligible to obtain SSNs or a form of photo identification that complies with LaGrange's Policy. J.A. 67-69, 70 (Compl. ¶¶ 99, 181-183, 189-191, 199-200). Project South is a membership organization whose members include individuals who have been subjected to the Immigrant Utilities Policy. J.A. 23, 25, 52-53 (Compl. ¶¶ 22, 30, 121-123).

The City's Court Debt and Immigrant Utilities Policies have had a devastating effect on the individual Plaintiffs. For example, because of arrears resulting from Ms. Walton's court debt, LaGrange disconnected her utilities, constructively evicting her, her disabled mother, and her young children from their

[2] Pursuant to the leave of the District Court, Mr. Doe #1, Mr. Doe #2, and Mr. Doe #3 are proceeding under pseudonyms. *See* Order Granting Doe Pls.' Mot. for Leave to Proceed Under Pseudonym, D.C. Doc. No. 15.

home, and causing her emotional distress and anxiety over the likelihood of future disconnection. J.A. 62-65 (Compl. ¶¶ 162-174).

LaGrange has repeatedly threatened to disconnect Mr. Brewer's utilities based in part on arrears attributable to his court debt (which arose out of a traffic offense). LaGrange made these threats despite its knowledge that Mr. Brewer is disabled and suffers from congestive heart failure and severe sleep apnea, conditions that require uninterrupted electricity access to power his oxygen tank and CPAP machine. J.A. 54, 55-58 (Compl. ¶¶ 128, 131-142, 144). As a result, Mr. Brewer, whose only income is Social Security Income, suffers severe stress and anxiety that LaGrange will disconnect his utilities and deprive him of the ability to receive imperative medical treatments in his home. J.A. 35, 58 (Compl. ¶¶ 67, 144).

Like Ms. Walton and Mr. Brewer, Mr. Moreland lives in constant fear that his utilities will be disconnected and that he will have to leave LaGrange if he is unable to comply with the court-debt repayment plan that LaGrange demands as a condition of providing utility services. J.A. 59-62 (Compl. ¶¶ 147-159).

Ms. Williams has lost thousands of dollars of rental income because LaGrange has disconnected and threatened to disconnect the utility services of her tenants based on the Court Debt Policy. J.A. 22, 27, 65-67 (Compl. ¶¶ 20, 34, 175-179). She has foregone collecting rent payments from tenants whom the City has

required to make court debt payments under threat of utility disconnection. J.A. 66 (Compl. ¶¶ 176-178).

The Immigrant Utilities Policy has similarly had crippling effects on Mr. Doe #1, Mr. Doe #2, and Mr. Doe #3, all of whom live with their school-age children in LaGrange. J.A. 27-28, 67, 68, 80 (Compl. ¶¶ 35-37, 180, 188, 197). Mr. Doe #1 must rely on his landlord to maintain a utilities account for his home, which severely limits where he can live and burdens his ability to prove his residence when engaging in routine tasks like registering his children for school. J.A. 27, 67-68 (Compl. ¶¶ 35, 181-85). Mr. Doe #2 also must rely on his landlord to maintain a utilities account and cannot buy his own home because he would not be able legally to obtain utilities there. J.A. 28, 68-69 (Compl. ¶¶ 36, 189-94). Mr. Doe #3 risks prosecution in order to have utilities in the home that he owns, because his utilities account is in the name of a friend who could meet the requirements of the Immigrant Utilities Policy. J.A. 28, 70-71 (Compl. ¶¶ 37, 198-203).

Georgia NAACP, Troup County NAACP, and Project South suffer injury from LaGrange's enforcement of its Court Debt and Immigrant Utilities Policies because they have members who have been subjected to and harmed by the Policies. J.A. 23-25, 49-50, 52-53 (Compl. ¶¶ 22, 28-30, 110-114, 121-125). Georgia NAACP has also suffered injury in its own right because it has had to

divert resources away from its normal programmatic work in order to counteract LaGrange's discriminatory Court Debt Policy, causing delay to its planned projects and activities and frustrating its mission. J.A. 23, 50-52 (Compl. ¶¶ 23, 115-120).

III. Procedural History

Plaintiffs commenced this lawsuit to obtain injunctive and declaratory relief, an end to the Court Debt and Immigrant Utilities Policies, and monetary damages as remedies for the injuries they have suffered as a result of these policies. Plaintiffs claim that the Court Debt Policy has an unjustified disproportionate impact on African Americans and that the Immigrant Utilities Policy has an unjustified disproportionate impact on Latinos, in violation of the federal Fair Housing Act, 42 U.S.C. § 3604(b). J.A. 72-74 (Compl. ¶¶ 206-213). Plaintiffs also bring state-law claims for tortious interference with utility services and unconscionability. J.A. 74-76 (Compl. ¶¶ 214-224).

LaGrange subsequently moved to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing that Plaintiffs had not stated viable claims. *See* Def.'s Mot. to Dismiss Pls.' Compl., D.C. Doc. No. 16.

Following briefing but without oral argument, the District Court dismissed Plaintiffs' claims in an eleven-page Order (J.A. 84-94, D.C. Doc. No. 27), based on three holdings. First, it held that § 3604(b) does not apply to conduct that occurs after the moment the purchase or rental is completed. J.A. 90-91 (Order at 7-8).

Second, it held that only one of the individual Plaintiffs, Mr. Doe #2, pleaded any "discriminatory conduct before acquisition" and that the other Plaintiffs' allegations were limited to later, "post-acquisition" conduct. J.A. 89-90 (Order at 6-7). Third, it held that Mr. Doe #2's allegations that he would like to purchase a home in LaGrange but cannot because he is unable legally to obtain utilities for it were insufficiently concrete to establish his standing, in part because he did not plead that he applied for services and was turned down. J.A. 90 (Order at 7). The District Court therefore dismissed Plaintiffs' FHA claims with prejudice and without leave to amend. J.A. 93 (Order at 10). The District Court further declined to exercise supplemental jurisdiction over Plaintiffs' state-law claims and dismissed them without prejudice. J.A. 93 (Order at 10).

STANDARD OF REVIEW

This Court reviews an order granting a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure *de novo*, "'accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.'" *Renfroe v. Nationstar Mortg., LLC*, 822 F.3d 1241, 1243 (11th Cir. 2016) (quoting *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008) (per curiam)). "[T]o survive a motion to dismiss, a complaint need only present sufficient facts, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A

'claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

SUMMARY OF THE ARGUMENT

This appeal asks the Court to decide whether the Fair Housing Act ("FHA"), 42 U.S.C. § 3604(b), which prohibits discrimination "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith," is limited to discrimination at the moment of sale or rental, or whether it also protects residents from discrimination in connection with housing they already occupy.

The answer to that question is already clear from precedent by this Court and other Circuit Courts, which have routinely applied § 3604(b), as well as other subsections of § 3604, in cases involving discrimination challenges by people who, like the individual Plaintiffs in this case, are already in possession of their homes. In applying § 3604(b) to protect current residents from a range of forms of housing discrimination in connection with housing that they already occupy, this Court and other Courts have interpreted the FHA broadly and inclusively, consistent with the congressional policy supporting the enactment of the FHA to provide for fair housing throughout the nation, *see id.* § 3601, and the Supreme Court's instruction

to afford the Act a "generous construction," *see Trafficante v. Metro Life Ins. Co.*, 409 U.S. 205, 212 (1972).

Based on that congressional intent, the plain statutory text, and persuasive guidance from the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Justice ("DOJ")—the two federal agencies with authority to enforce the FHA—courts have applied § 3604(b) to protect existing residents from such discriminatory housing practices as, *e.g.*, discrimination in the provision of municipal services (the same type of conduct at issue in this case), the siting of public housing, quid pro quo harassment and the creation of a hostile housing environment, interference with one's use and enjoyment of a dwelling, and the enforcement of discriminatory rules and policies.

In the face of that precedent, however, the District Court here determined that § 3604(b) required a "narrow reading" and accordingly limited its application to conduct occurring before the completion of the purchase or rental of a home. In the Order from which Plaintiffs appeal, the District Court relied on the flawed reasoning of another district court, without conducting any analysis of controlling precedent, the statutory text, congressional intent, or persuasive regulatory guidance, all of which recognize that § 3604(b)'s prohibitions against discrimination do not suddenly stop the moment when a sale or rental transaction has been completed.

The District Court's "narrow reading" of § 3604(b) is untenable. This Court has considered the merits of several appeals involving § 3604(b) claims by current residents, without ever suggesting that discriminatory practices occurring after housing is acquired are beyond its scope. Other Circuit Courts have directly rejected the argument that LaGrange made below, which the District Court accepted, holding that the language of § 3604(b) establishes its ongoing application after an individual has acquired possession of a dwelling. *See, e.g.*, *Bloch v. Frischholz*, 587 F.3d 771, 779-81 (7th Cir. 2009) (en banc); *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 713-14 (9th Cir. 2009) ("*CCCI*"). As the Ninth Circuit recognized in *CCCI*, a contrary interpretation of § 3604(b) would lead to the perverse outcome of denying protection from a range of plainly discriminatory conduct targeted at current residents.

The District Court's attempt to distinguish this case from this Court's additional precedent involving claims under § 3604(f)(2)—a parallel provision to § 3604(b) that covers disability discrimination—was also incorrect. There is no basis in the statutory text or the anti-segregation, pro-integration intent of the FHA to conclude that Congress intended greater protections for persons with disabilities than it did for every other protected classification enumerated in § 3604. The District Court's conclusory rejection of other persuasive case law involving claims under § 3604(b) on the ground that those cases challenged discrimination by

landlords or homeowner associations was equally flawed. Nothing in the language of the FHA provides a basis for limiting the temporal scope of the FHA based on the nature of the defendant.

Even if § 3604(b) were limited to discrimination at the time of sale or rental (which it is not), the District Court erroneously concluded that only one Plaintiff alleged such discrimination. To the contrary, *all* Plaintiffs alleged that LaGrange enforces its discriminatory Court Debt and Immigrant Utilities Policies at the moment of sale or rental. They have furthermore included sufficient allegations to show Article III injury arising out of this conduct, establishing the standing of the individual Plaintiffs and the organizational Plaintiffs as membership organizations. Georgia NAACP has furthermore suffered injury as an organization based on its diversion of resources and frustration of its mission arising out of the imperative to investigate and counteract LaGrange's discriminatory Court Debt Policy, giving it standing in its own right.

ARGUMENT AND CITATIONS OF AUTHORITY

I. 42 U.S.C. § 3604(b)'s Prohibition Against Discrimination in the Provision of Housing-Related Services Protects Current Residents

A. The Fair Housing Act Demands a Broad and Inclusive Interpretation

The FHA was enacted in 1968 just days after the assassination of Dr. Martin Luther King, Jr., during a time of "considerable social unrest," when state and local

government housing policies were exacerbating existing patterns of residential segregation. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2516 (2015) ("*ICP*"); *Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 502 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 295 (2016). Heeding a warning from the Kerner Commission that the nation was "moving towards two societies, one black, one white—separate and unequal," *see ICP*, 135 S. Ct. at 2516 (internal quotation marks omitted), Congress declared in enacting the FHA that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. Congress deemed this policy "to be of the highest priority." *Trafficante*, 409 U.S. at 211 (internal citation omitted).

The Supreme Court has accordingly held that the "broad and inclusive" reach of the FHA demands that its provisions be afforded a "generous construction." *Trafficante*, 409 U.S. at 209; *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995); *see also Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1223 (11th Cir. 2016) ("[T]he Supreme Court has repeatedly instructed us to give the Fair Housing Act a broad and inclusive interpretation." (internal quotation marks omitted)).

Section 3604(b) of the FHA provides that it is unlawful—

> [t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of

> services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

Id.

In construing this section of the FHA, the District Court disregarded the clear instructions of the Supreme Court and this Court to construe this language broadly and instead chose "a *narrow* reading of the Act," holding that "it applies only to conduct occurring at the time of acquisition." J.A. 90 (Order at 7) (emphasis added). Indeed, the District Court adopted the narrowest possible reading of § 3604(b), holding that its anti-discrimination protections do not extend to the largest group of individuals who require fair housing protections: people who already live in the homes where they experience discrimination. As shown next, that holding cannot be reconciled with the Supreme Court's directive to interpret the FHA broadly or this Court's precedent.

B. This Court Has Never Restricted the Application of § 3604(b) to Prospective Tenants or Homeowners

This Circuit has repeatedly reached the merits of claims under § 3604(b) based on alleged discrimination against current residents. Indeed, Plaintiffs are not aware of a single decision in which this Court has restricted the application of § 3604(b), or any other subsection of § 3604, to the moment of sale or rental.

In *Wells v. Willow Lake Estates, Inc.*, 390 F. App'x 956 (11th Cir. 2010), for example, the Court reversed the dismissal of a current resident's § 3604(b) claim

for national origin discrimination, based on allegations concerning the defendant mobile home park's selective enforcement of regulations. *Id.* at 960.[3] In *Woodard v. Fanboy, L.L.C.*, 298 F.3d 1261 (11th Cir. 2002), this Court reinstated a jury verdict in favor of the plaintiff, a current resident, holding that she presented sufficient evidence to establish a § 3604(b) violation by showing that the landlord evicted her because she rejected his sexual advances and because of her familial status. *Id.* at 1263, 1268.

In *Paradise Gardens v. Secretary, Housing & Urban Development*, 8 F.3d 36 (11th Cir. 1993) (unpublished), this Court affirmed the holding of a HUD ALJ that a planned community's rules governing the use of common areas "discriminate[d] against families with children and interfere[d] with their enjoyment and use of the facilities of Paradise Gardens" and therefore violated § 3604(b). *See id.*; *The Sec'y, U.S. Dep't of Hous. & Urban Dev., on Behalf of Joseph A. Labarbera et al.*, Fair Hous. - Fair Lending (P-H) P 25,037, 1992 WL 406531, at *13 (HUD ALJ Oct. 15, 1992). Similarly, in *Fair Housing Center of the Greater Palm Beaches, Inc. v. Sonoma Bay Community Homeowners Ass'n, Inc.*,

[3] The District Court erred in seeking to distinguish *Wells* on the ground that it involved a claim under § 3604(f) and not § 3604(b). J.A. 91 (Order at 8). *Wells* involved a claim based on national origin discrimination under § 3604(b) as well as disability-based claims under § 3604(f). Moreover, the District Court erred in holding that this Court's precedent involving § 3604(f) claims was not relevant to the proper construction of § 3604(b). *See infra* Part I.G.2.

682 F. App'x 768 (11th Cir. 2017), this Court addressed the merits of a challenge under § 3604(b) to the defendant homeowner association's rules that restricted the congregation of resident children on the property. Although the Court upheld a verdict for the defendants, it did so on proximate causation grounds. *Id.* at 789-90. It never suggested that § 3604(b) did not protect current residents.

These § 3604(b) cases are consistent with this Court's application of other provisions of § 3604 to "post-acquisition" conduct. For example, in cases arising under § 3604(f)(2), a parallel to § 3604(b) for disability-based discrimination,[4] this Court has considered the merits of claims based on conduct affecting current residents. In *Hunt*, for example, it held that plaintiffs who had resided in their apartment for six years stated claims under § 3604(f)(2) (as well as § 3604(f)(1) and (3)) based on harassment directed at their son because of his disability. 814 F.3d at 1219, 1224-25; *see also Wells*, 390 F. App'x at 960 (reinstating current resident's § 3604(f)(2) claim); *Telesca v. Vill. of Kings Creek Condo. Ass'n*, 390 F. App'x 877, 880-81 (11th Cir. 2010) (holding that a current homeowner had

[4] Section 3604(f)(2) makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—(A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that person."

standing to challenge the condominium owner association's refusal to assign an accessible parking space under § 3604(f)(2)).

This Court has furthermore recognized the cognizability of claims brought by current residents under § 3604 in general, without limitation to any particular subsection. In *Jackson v. Okaloosa County*, 21 F.3d 1531 (11th Cir. 1994), the Court held that a current resident had standing to challenge a housing authority's decision as to the siting of new public housing, because she alleged that the decision would affect the conditions of her continuing residency in that neighborhood. *See id.* at 1539-40;[5] *see also Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1482 (11th Cir. 1993) (holding that defendant was not exempt from prohibition against familial status discrimination and remanding for further proceedings on current residents' § 3604 claims); *Sofarelli v. Pinellas Cty.*, 931 F.2d 718, 722 (11th Cir. 1991) (vacating dismissal of current homeowner's § 3604 claim against his neighbors).

In sum, it is already settled in this Circuit that § 3604(b) and other subsections of § 3604 prohibit housing discrimination against current residents and that their anti-discrimination prohibitions do not just stop at the moment of sale or

[5] The Court recognized cognizable harms specific to her status as an existing resident including "'the loss of important benefits from interracial associations'" and the segregative effect of more public housing. *Id.* at 1539 (quoting *Trafficante*, 409 U.S. at 210).

rental. Because the District Court's holding conflicts with this precedent, it should be reversed.

C. Other Circuits Have Expressly Rejected the Argument LaGrange Made Below and Have Applied § 3604(b) to Discrimination Claims by Current Residents

In *CCCI*, the Ninth Circuit considered a claim under § 3604(b) based on discrimination in the provision of municipal services to unincorporated, predominantly Latino neighborhoods. 583 F.3d at 699. The district court had dismissed the plaintiffs' § 3604(b) claim, finding that the statute was limited to "'discrimination in the provision of services in connection with the acquisition of a dwelling,' rather than discrimination in the provision of services to existing homeowners and renters." *Id.* at 711 (quoting the district court decision).

The Ninth Circuit reversed, holding that "the FHA reaches post-acquisition discrimination." *Id.* at 713. It reached that holding based on a plain reading of the statutory text:

> [T]he statutory language does not preclude all post-acquisition claims. . . . The inclusion of the word "privileges" [in the statutory text] implicates continuing rights, such as the privilege of quiet enjoyment of the dwelling. While defendants argue that "the provision of services or facilities in connection therewith" refers only to services or facilities provided at the moment of acquisition in connection with the sale or the rental, this is hardly a necessary reading. There are few "services or facilities" provided at the moment of sale, but there are many "services or facilities" provided to the dwelling associated with the occupancy of the dwelling. Under this natural reading, the reach of the statute encompasses claims regarding services or facilities perceived to be wanting after the owner or tenant has acquired

possession of the dwelling.

Id.

The Ninth Circuit also relied on HUD's regulation, *codified at* 24 C.F.R. § 100.65(b)(4), finding that "the sections [in the regulation] prohibiting 'failing or delaying maintenance or repairs of sale or rental dwellings' and 'limiting the use of privileges, services, or facilities associated with a dwelling' appear to embrace claims about problems arising *after the tenant or owner has acquired the property*." *CCCI*, 583 F.3d at 714 (quoting § 100.65(b)(2), (4), emphasis added).

In *CCCI*, the Ninth Circuit further reasoned that § 3604(b) should be construed to protect current residents because "limiting the FHA to claims brought at the point of acquisition would limit the act from reaching a whole host of situations that . . . would constitute discrimination in the enjoyment of residence in a dwelling or in the provision of services associated with that dwelling." *Id.* at 741. The Court then cited examples of discriminatory acts that would be beyond the FHA's scope if § 3604(b) was construed to apply narrowly at the time of acquisition—*e.g.*, preventing a person with disabilities from using laundry facilities, refusing maintenance based on tenants' national origin, sexually harassing tenants, and raising rent based on tenants' religion. *Id.* (citing Oliveri, *Is*

Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act, 43 Harv. C.R.-C.L. L. Rev. 1, 32-33 (2008)).

Shortly after the *CCCI* decision, the Seventh Circuit was presented with an argument to limit the scope of § 3604(b) to the acquisition of housing. In *Bloch*, the Seventh Circuit, sitting en banc, rejected that argument, holding that "the FHA's protections are [not] left on the doorsteps as owners enter their new homes." 587 F.3d at 776.[6] It found that an interpretation limiting the protections in § 3604(b) to discrimination at the time of sale or rental "would only go halfway toward ensuring availability of housing" and "clearly could not be what Congress had in mind when it sought to create 'truly integrated and balanced living patterns.'" *Id.* (quoting *Trafficante*, 409 U.S. at 211). The Court reasoned that the text of § 3604(b) is "broad, mirroring Title VII, which we have held reaches both pre- and post-hiring discrimination." *Id.* at 779. As further support for its conclusion that "certain claims for post-acquisition discrimination [can] proceed under § 3604(b)," the Seventh Circuit granted deference to HUD's determination that "§ 3604(b)'s protections extend to prohibit 'limiting the use of privileges, services or facilities associated with a dwelling . . . .'" *Id.* at 780-81 (quoting 24 C.F.R. § 100.65(b)(4)).

[6] The Court also held that § 3604(a) provided protection to current residents but that the plaintiff had not proven conduct affecting the availability of housing. *Id.* at 776-79.

While the analysis in *Bloch* relied in part on the fact that the challenged rule at issue in the case would have effect at the potential future "sale or rental of a dwelling," the Seventh Circuit subsequently made clear that § 3604(b) extends to discrimination in the provision of maintenance services to current residents, without any tether to a future housing transaction. *See Mehta v. Beaconridge Improvement Ass'n*, 432 F. App'x 614, 616-17 (7th Cir. 2011) (holding that the FHA prohibits "discrimination when failing to provide maintenance services or when limiting the use of privileges, services, or facilities associated with the [plaintiff's] dwelling" (citing 42 U.S.C. § 3604(b); *Bloch*, 587 F.3d at 780–81; *CCCI*, 583 F.3d at 713; 24 C.F.R. § 100.65(b)(2)-(4); *Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n, Inc.*, 456 F. Supp. 2d 1223, 1230 (S.D. Fla. 2005))). It therefore reinstated the plaintiff's § 3604(b) claim based on allegations that the defendant association—

> doled out privileges and services to white homeowners, while withholding them from [the plaintiff's] family[;] . . . failed to maintain their home's aluminum siding, roof, sump pump, sidewalk and parking space, while providing those services to white homeowners; and . . . engaged in preferential treatment when maintaining the grounds of the subdivision. . . . These allegations suffice to state a plausible claim of discrimination.

Mehta, 432 F. App'x at 616–17.

Like the Ninth Circuit in *CCCI* and the Seventh Circuit in *Bloch*, district courts in this Circuit and other Circuits have held that the text of § 3604(b), in

prohibiting discrimination in the terms, conditions, privileges, and provision of services and facilities, conclusively establishes its application to current residents, because the statutory language connotes ongoing actions related to the use and enjoyment of a dwelling, and not merely the initial housing transaction. For example, in *Savanna Club Worship Service*, cited by the Seventh Circuit in *Mehta*, the court held that discrimination in the provision of services, "even post-acquisition[,] would be addressable under [§ 3604(b) of] the FHA." 456 F. Supp. 2d at 1231; *see also Richards v. Bono*, No. 5:04-cv-484-OC-10GR, 2005 WL 1065141, at *4 (M.D. Fla. May 2, 2005) ("[T]he plain language of § 3604(b) should be read . . . as prohibiting unlawful discriminatory conduct after a tenant has taken possession of the dwelling."); *Hous. Rights Ctr. v. Sterling*, 404 F. Supp. 2d 1179, 1192 (C.D. Cal. 2004) (holding that the plain text of § 3604(b) protects not only the right to secure housing without discrimination but also "guarantees the[] right to equal treatment once [plaintiffs] have become residents of that housing" (internal quotation marks and citation omitted)); *United States v. Koch*, 352 F. Supp. 2d 970, 976 (D. Neb. 2004) ("[I]t is difficult to imagine a privilege that flows more naturally from the purchase or rental of a dwelling than the privilege of residing therein.").

D. Courts Have Applied § 3604(b) and the Parallel Provision in § 3604(f)(2) in Challenges by Current Residents to a Broad Range of Discriminatory Housing Practices

1. Quid pro quo harassment and hostile housing environment cases

At least six Circuits, including this Court in *Hunt*, have held that harassment and hostile housing environment claims are cognizable under § 3604(b) and/or (f)(2), claims that are necessarily brought by current residents after the moment of purchase or rental. *See Hunt*, 814 F.3d at 1224-25 (finding property manager's harassment of current tenants' disabled son, including forcing him to do maintenance work and calling the police to his unit, was actionable under § 3604(f)(1) and (2)); *The Fair Hous. Council of San Diego, Joann Reed v. Penasquitos Casablanca Owner's Ass'n*, 381 F. App'x 674, 676 (9th Cir. 2010) (rejecting the "narrow interpretation" of § 3604(b) that "would preclude the FHA from reaching acts of discrimination, including sexual harassment, on the sole basis of the timing of the discriminatory act"); *Neudecker v. Boisclair Corp.*, 351 F.3d 361, 363-64 (8th Cir. 2003) (reversing dismissal of current resident's § 3604(f)(2) claim based on a hostile housing environment theory); *Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997) (affirming HUD ALJ order holding landlord liable under § 3604(b) for sexual harassment of tenant); *Honce v. Vigil*, 1 F.3d 1085, 1089-90 (10th Cir. 1993) (recognizing quid pro quo harassment and hostile housing environment theories under § 3604(b)); *Shellhammer v. Lewallen*, 770

F.2d 167 (6th Cir. 1985) (unpublished) (affirming 1 Fair Hous.-Lend. Rptr. ¶ 15,472 (N.D. Ohio 1983)); *see also* 81 Fed. Reg. 63,054 (Sept. 14, 2016) (publication of HUD's final rule prohibiting *quid pro quo* and hostile housing harassment under the FHA), *codified at* 24 C.F.R. § 100.600.

The "post-acquisition" conduct at issue in these cases includes shocking and unacceptable acts of harassment. For example, in *Krueger*, the landlord entered the plaintiff's apartment uninvited, groped her in front of her children, made sexually suggestive comments, and threatened to evict her after she complained. 115 F.3d at 489-91. In *Neudecker*, the building management's agents preyed on the plaintiff's mental disabilities by sending him anonymous threatening letters, pinning him against a wall, and threatening to evict him based on fabricated complaints that he was stalking another tenant. 351 F.3d at 362-63. Under the District Court's restrictive reading of § 3604(b) in this case, however, the conduct at issue in these cases would not have been actionable, simply based on when it occurred. An analysis like the District Court applied here would immunize such harassment from the reach of the FHA, leaving vulnerable tenants powerless to enforce their rights to use and enjoy the housing they already occupy without being subjected to discrimination and harassment.

2. Other types of housing discrimination affecting current residents

Since the FHA's incipience, the Courts of Appeals have applied § 3604(b) and other provisions in § 3604 to a range of forms of housing discrimination affecting people who already reside in the housing in connection with which the discrimination is experienced. *See, e.g.*, *Castillo Condo. Ass'n v. U.S. Dep't of Hous. & Urban Dev.*, 821 F.3d 92, 100 (1st Cir. 2016) (affirming HUD ALJ decision holding condominium owner association liable under § 3604(f)(2), as well as subsections (f)(1) and (f)(3), based on discrimination against current resident); *Rodriguez v. Vill. Green Realty, Inc.*, 788 F.3d 31 (2d Cir. 2015) (reinstating current tenants' claims under § 3604(f)(1), (2), (c), and (d) based on the landlord's discriminatory attempts to constructively evict them based on their daughter's disability); *Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 658 F.3d 375 (3d Cir. 2011) (reinstating current residents' § 3604(a) claims against township's redevelopment plan); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1498 (10th Cir. 1995) (reversing dismissal of current resident's § 3604(f)(1) and (2) claims challenging city's imposition of restrictions on the operation of a group home in which he already resided); *Woods-Drake v. Lundy*, 667 F.2d 1198, 1201 (5th Cir. 1982) (holding a landlord's enforcement of discriminatory rules against current tenants, prohibiting them from receiving African-American guests, was actionable discrimination "in the 'terms, conditions and privileges of rental,'"

pursuant to § 3604(b)); *Mayers v. Ridley*, 465 F.2d 630, 633 (D.C. Cir. 1972) (en banc) (reinstating current homeowners' § 3604(c) claim and holding that its protections were not limited to pre-sale statements).

3. Discrimination in the provision of housing-related municipal services

Courts have long recognized, like the Ninth Circuit in *CCCI*, that § 3604(b) prohibits discrimination against current residents in the provision of housing-related municipal services. In *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180 (4th Cir. 1999), for example, the Fourth Circuit held that § 3604(b) applies to the ongoing provision of "services of the kind usually provided by municipalities," which affects current, not prospective, residents. *Id.* at 183 (internal quotation marks omitted); *see also Southend Neighborhood Improvement Ass'n v. County of St. Clair*, 743 F.2d 1207, 1210 (7th Cir. 1984) (holding that § 3604(b) "applies to services generally provided by governmental units such as police and fire protection or garbage collection"); *cf. Cmty. Servs., Inc. v. Wind Gap Mun. Auth.*, 421 F.3d 170, 176 (3d Cir. 2005) (holding that by its "express terms," § 3604(f)(2) (the disability-based parallel to § 3604(b)) "applies to 'the provision of services or facilities' to a dwelling, such as sewer service, and courts have specifically allowed claims under this section to be brought against municipalities").

Where, as here, the challenged governmental conduct bears a sufficient nexus to housing, courts have routinely held that defendant municipalities can be held liable for discrimination in the provision of services under § 3604(b), consistent with *CCCI*. *See, e.g.*, *Cooke v. Town of Colorado City*, 934 F. Supp. 2d 1097, 1115 (D. Ariz. 2013) (denying summary judgment on current residents' § 3604(b) claim challenging discrimination in provision of water services); *Cmty. Action League v. City of Palmdale*, No. CV-11-4817 ODW(VBKx), 2012 WL 10647285, at *5 (C.D. Cal. Feb. 1, 2012) (denying motion to dismiss § 3604(b) claim by individuals "who already have rented dwellings in the City" challenging provision of "racially distinct housing services"); *Kennedy v. City of Zanesville*, No. 2:03-cv-1047, Doc. No. 464 (S.D. Ohio, Aug. 27, 2008) (jury verdict in favor of African-American plaintiffs denied water services by the city on § 3604(b) claim); *Miller v. City of Dallas*, Civ. A. 3:98-CV-2995-D, 2002 WL 230834, at *14 (N.D. Tex. Feb. 14, 2002) (noting that plaintiffs' § 3604(b) claim based on discrimination in the provision of police protection services to houses they already owned would survive summary judgment); *Campbell v. City of Berwyn*, 815 F. Supp. 1138, 1143-44 (N.D. Ill. 1993) (denying motion to dismiss § 3604(b) claims brought by African-American homeowners alleging discriminatory provision of police services); *see also Jimenez v. David Y Tsai*, No. 5:16-cv-04434-EJD, 2017 WL 2423186, at *6 (N.D. Cal. June 5, 2017) (refusing to dismiss § 3604(b) claim

based on alleged race and national origin discrimination in the provision of maintenance services to a predominantly Latino-occupied apartment complex).

Where other Circuit Courts have dismissed current residents' § 3604(b) claims against municipal defendants, it has not been based on any rule that per se bars claims based on discriminatory practices that occur after the moment of sale or rental, but has instead been based on the lack of an adequate nexus between the challenged conduct and the use and enjoyment of housing. In *Jersey Heights*, for example, the Fourth Circuit held that although discrimination in the provision of municipal services related to housing is actionable under § 3604(b), the conduct at issue—the siting of a bypass—was not a housing-related service. *See* 174 F.3d at 180; *see also Southend Neighborhood Improvement Ass'n*, 743 F.2d at 1210 (holding that the challenged conduct relating to the defendant county's administration of tax deeds was too "distinct" from those types of housing-related municipal services to fall within the scope of § 3604(b)).

Likewise in *Cox v. City of Dallas*, 430 F.3d 734 (5th Cir. 2005), the Fifth Circuit acknowledged that current residents may bring challenges under § 3604(b), as well as § 3604(a), based on discrimination they experience in connection with housing they already occupy, while finding that in that specific case, the municipal conduct at issue (a city's failure to regulate an illegal dump) was not a housing service. *Id.* at 742-43 & n.18 (emphasizing that its holding "is not to say that a

current owner or renter evicted or constructively evicted from [her] house does not have a [§ 3604(a)] claim" (emphasis added)); *id.* at 745-46 & nn.36-37 (acknowledging circumstances under which a current resident could pursue a claim under § 3604(b)). These holdings in *Cox* are consistent with the Fifth Circuit's recognition in an early FHA case that § 3604(a) and (b) should be interpreted to protect people from discrimination and harassment that interferes with their use and enjoyment of housing they already occupy. *See Evans v. Tubbe*, 657 F.2d 661, 662-63 (5th Cir. 1981).

E. Federal Agencies with Statutory Authority to Enforce the FHA Have Long Held the Position that § 3604(b) Prohibits Housing Discrimination Whenever It Occurs

The two federal agencies with FHA enforcement power, HUD and the DOJ, have long maintained that housing discrimination against current residents is actionable under § 3604(b).

HUD has statutory authority to interpret and apply the FHA, 42 U.S.C. § 3608(a), pursuant to which it has promulgated regulations through notice-and-comment rulemaking. *See* 24 C.F.R. Part 100. In exercising that authority, HUD has determined that the discrimination prohibitions in § 3604(b) and (f)(2) apply whenever housing discrimination occurs and are not limited to the moment of sale or rental. Its regulation codified at 24 C.F.R § 100.65 prohibits *inter alia*, "[f]ailing or delaying maintenance or repairs of sale or rental dwellings because of race,

color, religion, sex, handicap, familial status, or national origin" and "[l]imiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her." 24 C.F.R. § 100.65(b)(2), (b)(4).

Courts have relied on HUD's interpretation that § 3604(b) "embrace[s] claims about problems arising after the tenant or owner has acquired the property" in applying the statute to claims brought by current residents after the completion of sale or rental. *CCCI*, 583 F.3d at 714; *see also, e.g.*, *Bloch*, 587 F.3d at 781 (construing § 3604(b) to apply after sale or rental based in part on deference to 24 C.F.R. § 100.65(b)(4)).[7]

A second HUD regulation, *codified at* 24 C.F.R. § 100.70, expressly identifies discrimination in the provision of municipal services—a continuing harm affecting current owners and residents, and the conduct at issue here—as an unlawful practice. *See* 24 C.F.R. § 100.70(d)(4). It would be nonsensical to limit this definition of a discriminatory housing practice to people who have not yet obtained housing, and therefore do not yet receive municipal services.

[7] Courts in this Circuit have similarly relied on 24 C.F.R. § 100.65(b)(4) in construing § 3604(b) to allow claims by current residents. *See, e.g.*, *Fair Hous. Ctr. of the Greater Palm Beaches, Inc. v. Sonoma Bay Cmty. Homeowners Ass'n, Inc.*, 136 F. Supp. 3d 1364, 1371-72 (S.D. Fla. 2015); *Smith v. Zacco*, No. 5:10-CV-360-TJC-JRK, 2011 WL 12450317, at *6 (M.D. Fla. Mar. 8, 2011); *Richards*, 2005 WL 1065141, at *3 & n.17; *Savanna Club Worship Serv.*, 456 F. Supp. 2d at 1230.

A third HUD regulation, consistent with the unanimous line of harassment and hostile housing environment cases cited above in Part I.D.1, prohibits quid pro quo and hostile housing harassment, which again includes conduct targeted at people who have already obtained the housing in connection with which they experience discrimination. 24 C.F.R. § 100.600; *see also West v. DJ Mortg., LLC*, 271 F. Supp. 3d 1336, 1351 (N.D. Ga. 2017) (relying on 24 C.F.R. § 100.600 in holding housing harassment actionable under 42 U.S.C. § 3604(b)).

HUD's interpretation of the meaning of the FHA is entitled to "great weight." *Trafficante*, 409 U.S. at 210. The regulations codified at 24 C.F.R. §§ 100.65, 100.70, and 100.600 provide further persuasive support from the agency with authority to interpret and enforce the FHA that § 3604(b) applies whenever housing discrimination occurs, regardless of whether the plaintiff already lives in the housing where the discrimination is experienced.

HUD's interpretation of § 3604(b) aligns with the position of the DOJ, which has authority to bring civil FHA enforcement actions on behalf of the United States. *See* 42 U.S.C. § 3614. Pursuant to its enforcement power, the DOJ, like HUD, has consistently maintained that the FHA's anti-discrimination protections, including § 3604(b), apply whenever housing discrimination occurs. For example, the DOJ recently filed a Statement of Interest in *Drayton v. McIntosh County*, No.

2:16-CV-53, Doc. 58 (S.D. Ga. Apr. 21, 2016),[8] in which it set forth its position that "post-acquisition conduct related to the terms, conditions, or privileges of housing, or to the provision of services connected to housing, is covered under § 3604(b) . . . . ." *Id* at 6; *see also id.* at 6-15; Br. for the Sec'y of the U.S. Dep't of Hous. & Urban Dev. as Amicus Curiae, *Intermountain Fair Hous. Council v. Boise Rescue Mission*, No. 10-35519 (9th Cir. Apr. 29, 2011) at 4-16;[9] Br. for the United States as *Amicus Curiae* in Support of Pls.-Appellants Urging Reversal and Remand on Fair Housing Act Claims, *Bloch v. Frischholz*, No. 06-3376 (7th Cir. Jan. 16, 2009) at 15-37.[10]

Like the HUD regulations, the DOJ's consistent position in amicus briefs and statements of interest that it has submitted to federal courts—that § 3604(b) protects against housing discrimination regardless of when it occurs—is persuasive to the proper interpretation of the scope of the statute's protections. *See*, *e.g.*, *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597-98 (1999) (holding that DOJ's consistent litigation position concerning the interpretation of a statute it was

[8] *Available at* https://www.justice.gov/crt/case-document/file/843366/download (accessed on Feb. 26, 2018).

[9] *Available at* https://www.justice.gov/sites/default/files/crt/legacy/2011/05/06/boisebrief.pdf (accessed on Feb. 26, 2018).

[10] *Available at* https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/bloch_amicus_1-16-09.pdf (accessed on Feb. 26, 2018).

charged with enforcing "warrant[s] respect"); *see also Ramos-Barrientos v. Bland*, 661 F.3d 587, 596 (11th Cir. 2011) (deferring to statutory interpretation expressed in agency's amicus brief).

F. Consistent with This Court's Precedent, District Courts in This Circuit Have Long Applied § 3604(b) and Other Subsections to Protect Current Residents from Housing Discrimination

District courts in this Circuit have, consistent with precedent including *Hunt*, *Wells*, and *Fanboy*, applied § 3604(b) and other subsections of this statute to protect current residents from blatant forms of housing discrimination. In doing so, these courts have ensured that current renters and homeowners are able to invoke the protections of the FHA and seek relief for the economic, social, stigmatic, and emotional injuries that flow from such conduct, regardless of whether that discrimination occurred after the time when the housing was acquired.

For example, district courts have extended the protections of § 3604(b) and (f)(2) to current residents subjected to sexual harassment and assault. *See West*, 271 F. Supp. 3d at 1351-55 (denying summary judgment on plaintiff's § 3604(b) claim for harassment, based on evidence that landlord groped her and made repeated unwanted sexual advances); *Richards*, 2005 WL 1065141, at *1, *4-*5 (holding that plaintiff stated a claim under § 3604(b) with allegations including that landlord "made sexually suggestive remarks toward the Plaintiff," physically attacked her, "asked for the Plaintiff to touch his genitals," "demanded oral sex,"

and "exposed his genitals and ejaculated" when she refused). In allowing the plaintiff's claims to proceed in *Richards*, the district court emphasized that it would be "anomalous," "inconsistent with the spirit of the Fair Housing Act, contrary to the Act's 'broad and inclusive' language, and at odds with a 'generous construction' of its provisions" to hold that § 3604(b)'s scope excludes any and all forms of housing discrimination simply on the ground that it occurred after the time of sale or rental. *Id.* at *3 (citing 24 C.F.R. § 100.65(b)).

District courts in this Circuit have also applied § 3604(b) to protect existing immigrant communities from housing discrimination based on national origin and race. In *Central Alabama Fair Housing Center v. Magee*, 835 F. Supp. 2d 1165, (M.D. Ala. 2011),[11] the district court granted a preliminary injunction pursuant to § 3604(a) and (b) in favor of current mobile home residents, enjoining the State of Alabama from implementing discriminatory registration requirements that would have forced the putative class of Latino mobile home residents to flee the State or risk breaking the new laws. *Id.* at 1184-85, 1200; *see also United States v. Sea Winds of Marco, Inc.*, 893 F. Supp. 1051, 1055 (M.D. Fla. 1995) (holding that allegations that landlord imposed discriminatory rules against and made derogatory

[11] The district court opinion was vacated as moot, No. 11-16114-CC (11th Cir. May 17, 2013), after the Alabama Legislature amended the law to eliminate the challenged requirements.

remarks to Latino tenants and subjected them to selective monitoring stated a claim under § 3604(b)).

And consistent with this Court's holding in *Hunt*, district courts in this Circuit have applied § 3604(f)(2), which parallels § 3604(b), to allow current residents to challenge a range of conduct targeted at people with disabilities. In *Marton v. Lazy Day Property Owners Ass'n, Inc.*, No. 2:10-cv-117-FTM-29DNF, 2011 WL 1232375 (M.D. Fla. Mar. 30, 2011), the court denied a motion to dismiss a current resident's § 3604(f)(1) and (f)(2) claims based on a mobile home community's refusal to allow her adult daughter on the property to care for her disabled mother and calling the police to escort the daughter off the property. *Id.* at *4-*5; *see also, e.g.*, *Elliott v. Sherwood Manor Mobile Home Park*, 947 F. Supp. 1574, 1577 (M.D. Fla. 1996) (holding that current mobility-impaired tenant stated a valid claim under § 3604(f)(2) against landlord who refused to build a ramp to her unit and then threatened to remove the ramp that the tenant built herself).

The district courts in this Circuit have followed this Court's lead in recognizing that the anti-discrimination provisions in § 3604(b) should be construed to protect people from housing discrimination, whether it occurs before, during, or after the moment of sale or rental of one's home.

G. The District Court's Flawed Reasoning Cannot Support the Dismissal of Plaintiffs' FHA Claims

1. The District Court erred in relying on *Paulk*

Disregarding this Court's precedent and the long line of persuasive authority from other Circuits and district courts, and in contravention of the Supreme Court's instruction to construe the FHA broadly, the District Court here concluded that "[c]ourts within the Eleventh Circuit have endorsed a narrow reading of the [FHA], such that it applies only to conduct occurring at the time of acquisition." J.A. 90 (Order at 7). It cited a single case as its basis for concluding that the protections of § 3604(b) cease once an individual obtains housing: *Paulk v. Georgia Department of Transportation*, No. CV 516-19, 2016 WL 3023318 (S.D. Ga. May 24, 2016).[12] Because *Paulk* is flawed and inconsistent with this Circuit's precedent, the District Court's holding, which was based entirely on *Paulk*, cannot stand.

The plaintiffs in *Paulk* challenged the siting of a proposed roadway pursuant to the FHA and 42 U.S.C. § 1983. The *Paulk* district court suggested two reasons why their race and disability discrimination claims under § 3604(b) and (f)((2) should fail: (1) the challenged siting of a road was insufficiently related to housing

[12] The *Paulk* plaintiffs appealed this ruling, but the parties voluntarily dismissed the appeal while it was pending. *See* No. 16-13406-W, Order Granting Joint Mot. for Dismissal of Appeal (11th Cir. Mar. 14, 2017); CIV 516-19, Doc. No. 39 (S.D. Ga. Mar. 15, 2017).

to fall within the scope of § 3604(b)(2) and (f); and (2) these two subsections do not apply to acts occurring after purchase or rental.

With respect to the former, the *Paulk* court held that the siting of a roadway was not a housing "service," and was therefore not an activity that could be subject to § 3604(b) or (f)(2). 2016 WL 3023318, at *9. In so holding, however, the *Paulk* court recognized that § 3604(b) prohibits discrimination in the ongoing provision of "services generally provided by local governmental units, such as police or fire protection and garbage collection," *id.*, in other words, conduct that necessarily implicates the rights of people already in possession of the homes where they receive such services.

The correct holding in *Paulk* that § 3604(b) encompasses discrimination in the ongoing provision of housing-related municipal services—the very type of discrimination at issue here—is analytically irreconcilable with *Paulk*'s other, incorrect holding that the anti-discrimination provisions in § 3604(b) do not extend to current residents. Current residents are by definition the victims of discrimination in the provision of housing-related municipal services.

The incorrect holding in *Paulk* that § 3604(b) does not "extend[] to services beyond the point of sale," 2016 WL 3023318, at *9, was not based on any precedent from this Court. Rather, it relied entirely on three district court decisions: *Gourlay v. Forest Lake Estates Civil Ass'n of Port Richey, Inc.*, 276 F.

Supp. 2d 1222 (M.D. Fla. 2003), *vacated*, No. 8:02CV195530TGW, 2003 WL 22149660 (M.D. Fla. Sept. 16, 2003); *Lawrence v. Courtyards at Deerwood Ass'n*, 318 F. Supp. 2d 1133 (S.D. Fla. 2004); and *Steele v. City of Port Wentworth*, No. CV405-135, 2008 WL 717813 (S.D. Ga. Mar. 17, 2008). These decisions were equally flawed and do not support deviating from this Court's precedent recognizing the application of § 3604(b) to protect current residents.

Among other flaws, *Gourlay* (which was vacated upon the parties' extra-judicial resolution of the case), relied heavily on *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 208 F. Supp. 2d 896 (N.D. Ill. 2002). *See Gourlay*, 276 F. Supp. 2d at 1233. The district court's decision in *Halprin* was subsequently modified by the Seventh Circuit in an opinion that refused to embrace a bright-line rule precluding the application of § 3604 to any form of post-acquisition conduct, and recognized that § 3604(a) and (b) could protect current residents; with respect to subsection (b), the Seventh Circuit specifically acknowledged that a fair reading of the statutory language could "include the privilege of inhabiting the premises." *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327, 329 (7th Cir. 2004) (citing *Trafficante*, 409 U.S. 205, as an example of "successful[]" litigation challenging "[a]cts of post-sale discrimination"). And as shown above in Part I.C, in *Bloch*, the Seventh Circuit, sitting en banc, emphasized that *Halprin* did not foreclose § 3604(b) claims by

current residents. 587 F.3d at 778-79. In *Lawrence*, the second case cited in *Paulk* for its "pre-acquisition" holding, the district court primarily relied on the flawed, vacated decision in *Gourlay*. *Lawrence*, 318 F. Supp. 2d at 1142-43.

The third case cited in *Paulk* was *Steele*, which held that "the scope of § 3604(b)" is limited to "services provided in connection with the sale or rental of housing." 2008 WL 717813, at *12. In reaching this incorrect holding, the district court in *Steele* relied primarily on the flawed decisions in *Lawrence* and *Gourlay*, and a misreading of the Fifth Circuit's decision in *Cox*. *See Steele*, 2008 WL 717813, at *11-*12. *Cox* did not turn on the fact that the plaintiffs were already in possession of their homes, as the court asserted in *Steele*, but instead on the insufficient nexus between the challenged conduct (failure to regulate an illegal dumpsite) and the plaintiffs' use and enjoyment of housing. *See supra* Part I.D.3.

The District Court here replicated and compounded the errors in the domino chain of cases cited in *Paulk* by adopting the part of the *Paulk* decision that supported LaGrange, without examining other legal authorities, without conducting any of its own analysis, and ignoring a second holding in *Paulk* that supported Plaintiffs—the recognition that § 3604(b) and (f)(2) encompass discrimination in the provision of municipal services, the conduct at issue here.

2. The District Court erred in rejecting this Court's precedent under § 3604(f)(2)

The District Court further erred in holding that this Court's precedent involving claims under § 3604(f)(2) was not relevant to the proper interpretation of § 3604(b). *See* J.A. 91 (Order at 8) (declining to follow *Hunt* and *Wells*).

First, as noted above, in *Wells* the plaintiffs sued under § 3604(b) as well as § 3604(f)(2), and this Court reinstated *both* claims. *See* 390 F. App'x at 958, 960 (reinstating § 3604(b) claims based on national origin discrimination as well as disability discrimination). And this Court has addressed other § 3604(b) claims by current residents without ever suggesting that its protections are limited by the timing of the discrimination. *See supra* Part I.B.

Moreover, this Court's case law applying § 3604(f)(2) to protect current residents from disability-based discrimination further establishes that the proper construction of the parallel provisions in § 3604(b) is that the latter also protects current residents from discrimination based on other protected classifications after the moment of sale or rental, and the District Court was wrong to conclude otherwise. Like § 3604(f)(2), subsection (b) prohibits discrimination in "the provision of services or facilities in connection with" housing against "*any person*," not "any person who does not yet occupy the housing at issue."[13] The

[13] The listing of additional protected classes in § 3604(f)(2)(A)-(C) is not a ground for distinguishing the temporal scope of conduct that can be challenged

statutory language of these subsections is virtually identical, as many courts have recognized. *See A Soc'y Without a Name v. Virginia*, 655 F.3d 342, 350 (4th Cir. 2011) (holding that the "relevant language" in § 3604(b) and (f)(2) is "materially the same"); *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1103-04 (9th Cir. 2004) (holding that "the plain statutory language of § 3604(f)(2) "replicates" that of § 3604(b)(2)). HUD likewise construes subsection (b) and (f)(2) consistently, addressing the scope of each and providing examples of conduct that would violate either section (depending on the protected classification at issue) in the same regulation. 24 C.F.R. §§ 100.65(b), 100.70(d)(4).

There is no basis for holding that § 3604(f) protects current owners and renters but § 3604(b) does not. It would contravene the broad legislative intent of the FHA to hold that subsection (f) protects current residents with disabilities from discrimination on that basis but that it is *not* unlawful to shut off a family's electricity, water, and gas, making it impossible for them to live in their home, based on their race, color, national origin, religion, sex, or familial status.

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under subsections (b) and (f)(2). *Cf.* J.A. 91 (Order at 8). That was not the basis for the holdings in *Hunt* or *Wells* that § 3604(f)(2) claims by current residents were actionable (nor did these decisions even cite subsections (A)-(C)).

3. The District Court erred in suggesting that only landlords and homeowner associations can be held liable for discrimination against current residents

The District Court committed further error in rejecting persuasive case law involving § 3604(b) claims against private defendants. J.A. 92-93 (Order at 9-10) (distinguishing cases finding § 3604(b) claims by current residents actionable on the ground that "[t]his action involves neither allegations against a landlord nor those against a homeowners' association"). The District Court engaged in no analysis as to why any distinction between those types of defendants and LaGrange, the Defendant in this case, was relevant to the proper construction of § 3604(b), and it is not.

Nothing in the text of § 3604(b) limits the categories of defendants who can be held liable for the types of discriminatory housing practices enumerated in the statute to landlords and homeowner associations. And as shown above in Part I.E, HUD has promulgated a rule that discrimination in the provision of municipal services—by definition discrimination committed by a public, municipal defendant—is a violation of § 3604, *see* 24 C.F.R. § 100.70(d)(4). Appellate and district courts across the country have recognized the viability of § 3604(b) claims based on discrimination in the provision of municipal services, *see supra* Part I.C and I.D.3, and this Court has never held to the contrary.

There was no basis for the District Court's conclusion that whereas landlords and homeowner associations can be liable for discrimination against people who already occupy housing, a defendant municipality like LaGrange cannot.

* * * * *

The District Court's blanket holding that § 3604(b) does not protect current residents cannot be reconciled with this Court's precedent or persuasive authority from other Circuits. Its flawed and cursory analysis of § 3604(b)'s scope disregarded the plain statutory language and regulatory guidance from the two federal agencies with power to enforce the FHA and construed the statute narrowly instead of broadly and inclusively. As a result, Plaintiffs were denied an opportunity to seek to prove that LaGrange's challenged utility policies have unlawful, disproportionate harms on African Americans and Latinos.

Affirming such an approach would be tantamount to allowing the perpetuation of discriminatory housing practices simply because the discrimination occurs at some undefined (and likely indefinable) moment after purchase or rental. That outcome cannot be reconciled with the purpose of the FHA or its interpretation by this Court. For all of these reasons, the District Court's interpretation of § 3604(b) was flawed, and Plaintiffs' FHA claims should be reinstated.

II. The Complaint Alleges Concrete Injuries Resulting from "Pre-Acquisition" Discrimination

Having wrongly held that § 3604(b) applies only at the time when housing is rented or purchased, the District Court construed the Complaint as alleging exclusively "post-acquisition" discrimination claims on behalf of every Plaintiff except Mr. Doe #2, and on that basis dismissed their claims. J.A. 89 (Order at 6). The Court further concluded that although Mr. Doe #2 did plead "discriminatory conduct before acquisition," his injuries were too "hypothetical and speculative" to establish standing. J.A. 89-90 (Order at 6-7).

Although this Court need not address these holdings by the District Court if it holds that § 3604(b) prohibits housing discrimination after the moment of purchase or rental as well as at the time of the initial housing transaction, the District Court's analysis was flawed here too. The individual Plaintiffs adequately alleged that the City applied its discriminatory policy against them at the time when they acquired their housing in LaGrange, and the organizational Plaintiffs alleged that some of their members experienced the same harms as the individual Plaintiffs. These allegations are sufficient to establish Article III standing based on discrimination at the time of sale or rental.

A. The Complaint Adequately Alleges Discrimination at the Time of Sale or Rental

The Complaint alleges that as a condition of receiving utility services, all applicants for utility services must sign a form that acknowledges LaGrange's right to attach court debt to their utility accounts. J.A. 18, 29, 34-35, 55, 59, 83 (Compl. ¶¶ 5, 40, 44, 65, 134-135, 149-150, Ex. B). Thus, Mr. Brewer, Mr. Moreland, and Ms. Walton, along with Ms. Williams's tenants, obtained utility services at the time of rental subject to the terms of LaGrange's discriminatory Court Debt Policy. The Complaint also alleges that the City applied its discriminatory Immigrant Utilities Policy to deny Mr. Doe #1, Mr. Doe #2, and Mr. Doe #3 the ability to open utilities accounts at all, conduct that coincided with their acquisition of housing. J.A. 67-68, 70 (Compl. ¶¶ 181, 189, 198). Furthermore, the Complaint alleges that the organizational Plaintiffs have members who have been subjected to the same discriminatory policies as a condition of purchase or rental in LaGrange. J.A. 23-25, 49, 53 (Compl. ¶¶ 22, 28-30, 111, 122).

Thus, even under the District Court's "narrow interpretation" of § 3604(b), Plaintiffs alleged sufficient facts to establish that they (and for the organizational Plaintiffs, their members) were subject to LaGrange's discriminatory policies at the time of sale or rental.

B. The Complaint Alleges Cognizable Injuries Arising out of LaGrange's Discriminatory Policies at the Time of Sale or Rental

Standing to sue under the FHA is as broad as Article III allows. *See, e.g.*, *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303 (2017) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Gladstone v. Vill. of Bellwood*, 441 U.S. 91 (1979); *Trafficante*, 409 U.S. 205). The Complaint sufficiently alleges facts to show injury and establish each Plaintiff's Article III standing based on conduct from the moment of sale or rental.

As an initial point, every Plaintiff except Ms. Williams alleges that they or their members have experienced direct discrimination, which itself constitutes injury under the FHA. *See, e.g.*, *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984).

Moreover, Mr. Brewer and Mr. Moreland allege that they obtained utility services at the time of rental subject to the discriminatory Court Debt Policy and stringent repayment plan requirements and that as a result of that condition, they have been repeatedly threatened with utility disconnection, causing them to suffer emotional stress, fear, anxiety, and humiliation. *See* J.A. 58, 61 (Compl. ¶¶ 144, 158). These injuries are cognizable under the FHA. *See, e.g.*, *U.S. Dep't of Hous. & Urban Dev. v. Blackwell*, 908 F.2d 864, 872-73 (11th Cir. 1990).

LaGrange followed through on its threats to disconnect Ms. Walton's utilities, constructively evicting her and her family, causing significant economic and non-economic injuries. J.A. 64 (Compl. ¶¶ 169-71). In addition to cognizable injury in the form of emotional distress, *see Blackwell*, 908 F.2d at 872-73, Ms. Walton's allegations of constructive eviction based on the Court Debt Policy further establish her standing, *see, e.g.*, *Bloch*, 587 F.3d at 780.[14]

Ms. Williams alleges that, in addition to emotional distress, she has lost thousands of dollars in rental income by the City's application and enforcement of the Court Debt Policy to her tenants. J.A. 66 (Compl. ¶ 177-78). These injuries arise out of LaGrange's enforcement of its Court Debt Policy as a condition that applies from the moment of the initial rental transaction between Ms. Williams and her tenants, and they are plainly cognizable harms under the FHA. *See, e.g.*, *Broome v. Biondi*, 17 F. Supp. 2d 211, 227-28 (S.D.N.Y. 1997).[15]

Mr. Doe #1 and Mr. Doe #2 allege that as a result of the Immigrant Utilities Policy, they have had limited housing choices, and Mr. Doe #2 has been unable to

[14] *But see also CCCI*, 583 F.3d at 714 (emphasizing that the type of conduct that § 3604(b) prohibits includes but is not limited to constructive eviction).

[15] Under the FHA, standing to recover economic damages is not limited to the direct victims of housing discrimination. *See Bank of Am. Corp.*, 137 S. Ct. at 1303-05; *Harris v. Itzhaki*, 183 F.3d 1043, 1050 (9th Cir. 1999) (holding that under the FHA, "any person harmed by discrimination, whether or not the target of discrimination, can sue to recover for his or her own injury").

purchase a home. J.A. 67, 69 (Compl. ¶¶ 181, 192). Mr. Doe #3 was only able to obtain utilities and begin living in the home he purchased by relying on a friend to start an account in his name, thereby exposing them both to the ongoing risk of prosecution. J.A. 67-69, 71 (Compl. ¶¶ 181, 189, 192, 201-203). The injuries that flow from being blocked from obtaining the housing of one's choice, as Mr. Doe #1 and Mr. Doe #2 allege, are cognizable injuries. *See, e.g.*, *Jackson*, 21 F.3d at 1542; *United States v. Bankert*, 186 F. Supp. 2d 623, 629 (E.D.N.C. 2000); 24 C.F.R. § 100.70 (conduct that restricts "the choices of a person . . . in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community" violates the FHA). The threat of prosecution, which Mr. Doe #3 faces because of the Immigrant Utilities Policy, also suffices to establish cognizable injury. *Cf. Ga. Latino All. for Human Rights v. Governor of Georgia*, 691 F.3d 1250, 1269 (11th Cir. 2012) (holding that the threat of criminal prosecution constitutes irreparable harm).

These allegations also establish Article III injury for the organizational Plaintiffs, because they have members who have suffered similar harms as the

individual Plaintiffs due to the Court Debt and Immigrant Utilities Policies. *See* J.A. 49, 53 (Compl. ¶¶ 111-113, 122-123).[16]

Finally, Georgia NAACP's allegations that the Court Debt Policy has required it to divert its resources and has frustrated its mission, *see* J.A. 23, 50-52 (Compl. ¶¶ 23, 115-120), suffice to show injury for purposes of organizational standing under *Havens*, 455 U.S. at 379, based on LaGrange's enforcement of the Court Debt Policy, both at the time of sale or rental and against people who already occupy the housing where they receive utilities subject to the discriminatory policy. *See also Ga. Latino All. for Human Rights*, 691 F.3d at 1259-60 ("[A]n organization has standing to sue on its own behalf if the defendant's illegal acts impair its ability to engage in projects by forcing the organization to divert resources to counteract those illegal acts." (citation and internal quotation marks omitted)).

C. Mr. Doe #2's Injury Was Neither Hypothetical Nor Speculative

The District Court determined that Mr. Doe #2's alleged injury was "hypothetical and speculative" and that to show injury, he would have had to plead "that he, for instance, applied for utility services and was turned down." J.A. 90

[16] Because the interests the organizational Plaintiffs seek to protect are germane to their purposes, and because the claims asserted and the relief requested do not require the participation of individual members, Georgia NAACP, Troup County NAACP, and Project South have associational standing. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

(Order at 7). That holding disregards the allegations supporting Mr. Doe #2's claim.

The Complaint alleges that LaGrange requires an SSN and second form of state or federal government-issued photo ID as a condition of providing a utilities account; that Mr. Doe #2 lacks each document; and that he is therefore ineligible for utility services at any home he might purchase in LaGrange. J.A. 28, 68-69 (Compl. ¶¶ 36, 189, 192). It further alleges that because he cannot obtain utilities in his own name, he has been unable to purchase a home in LaGrange. J.A. 69 (Compl. ¶ 192). There is nothing hypothetical or speculative about Mr. Doe #2's allegation that he would like to, but cannot, buy a home because he is unable to obtain the essential utilities that every home requires to be habitable.

Second, it was incorrect to hold that Mr. Doe #2 could not establish standing unless he could show that he actually tried to apply for a utility account and was denied. A plaintiff is not required to engage in futile gestures to show standing. *See Pime v. Loyola Univ. of Chicago*, 803 F.2d 351, 353 n.1 (7th Cir. 1986) (citing *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977)). Here, it sufficed that Mr. Doe #2 alleged that he is categorically ineligible for a utilities account because he does not have and cannot obtain an SSN and second form of an

acceptable photo identification that LaGrange requires.[17] Were that not enough (and it is), it is furthermore plain from the Complaint that LaGrange refuses to sell people like Mr. Doe #2 the electricity, water, gas, and other essential utilities they need to reside in LaGrange. *See* J.A. 67 (Compl. ¶ 181) (alleging that Mr. Doe # 1 attempted to open a utilities account and was denied). Mr. Doe #1 is similarly situated to Mr. Doe #2 in that both lack the identification documents that LaGrange requires, and LaGrange's denial of utilities to Mr. Doe #1 more than suffices to allow a reasonable inference that LaGrange would have rejected a utility application by Mr. Doe #2 as well.

CONCLUSION

The District Court erred in dismissing Plaintiffs' claims under 42 U.S.C. § 3604(b) based on its flawed construction of the FHA and its failure to give Plaintiffs the benefit of their well-pleaded allegations. Plaintiffs therefore respectfully ask that this Court reverse the District Court's dismissal with prejudice of their FHA claims and require the District Court to exercise supplemental jurisdiction over their state-law claims on remand.

[17] The City's utility application form explicitly states that "the City requires a Social Security number." J.A. 83 (Compl. Ex. B).

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Respectfully submitted,

/s/ Jamie L. Crook

Reed N. Colfax
Jamie L. Crook
RELMAN, DANE & COLFAX PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036
(202) 728-1888
(202) 728-0848 (fax)
rcolfax@relmanlaw.com
jcrook@relmanlaw.com

Justin B. Cox
Georgia Bar No. 17550
NATIONAL IMMIGRATION
LAW CENTER
PO Box 170208
Atlanta, GA 30317
(678) 279-5441
(213) 639-3991 (fax)
cox@nilc.org

Atteeyah Hollie
Georgia Bar No. 411415
SOUTHERN CENTER
FOR HUMAN RIGHTS
83 Poplar Street N.W.
Atlanta, GA 30303
(404) 688-1202
(404) 688-9440 (fax)
ahollie@schr.org

Mayra B. Joachin
NATIONAL IMMIGRATION
LAW CENTER
3435 Wilshire Blvd., Suite 1600
Los Angeles, CA 90010
(213) 639-3900
(213) 639-3911 (fax)
joachin@nilc.org

Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE WITH FRAP WITH 32(g)(1)

The undersigned certifies that this Brief complies with the applicable type volume limitations in Rule 32(a)(7). This brief contains 12,551 words, exclusive of the components that are excluded from the word count limitation in Rule 32(f). This certificate was prepared in reliance upon the word-count function of the word processing system (Microsoft Word) used to prepare this brief. This brief complies with the typeface and type style requirements of Rule 32(a)(5) because it has been prepared in a proportionally spaced typeface using font size 14 Times New Roman.

Dated: February 27, 2018

/s/ Jamie L. Crook
Jamie L. Crook

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

In accordance with Rule 25(d) of the Federal Rules of Appellate Procedure, I hereby certify that on February 27, 2018, I electronically filed the Opening Brief of Plaintiffs-Appellants Georgia State Conference of the NAACP, Troup County NAACP, Project South, Charles Brewer, Calvin Moreland, April Walton, Pamela Williams, John Doe #1, John Doe #2, and John Doe #3 using the Court's CM/ECF system, which will automatically send electronic copies to the following counsel of record:

Jeffrey M. Todd
Lewis, Taylor & Todd, P.C.
205 N. Lewis Street, Suite 3
P.O. Box 1027
LaGrange, GA 30241
jtodd@lttpc.com

Kenneth D. Jones
Jeffrey R. Daniel
Hall Booth Smith, P.C.
191 Peachtree Street, N.E., Suite 2900
Atlanta, GA 30303-1775
kjones@hallboothsmith.com
jdaniel@hallboothsmith.com

Counsel for Defendant-Appellee

/s/ Jamie L. Crook
Jamie L. Crook

Counsel for Plaintiffs-Appellants