

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Richard J. Volis — PETITIONER
(Your Name)

vs.

HOUSING AUTHORITY OF THE CITY OF
LOS ANGELES; et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard J. Volis
(Your Name)

13823 Almetz Street
(Address)

Sylmar, California 91342
(City, State, Zip Code)

(818) 912-3493
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Housing Authority of the City of Los Angeles' (HACLA) Administrative Plan required to accommodate all disabled voucher holders is unreasonable in its particular policy or practice that has a disproportionately adverse effect on members of a class protected in circumstances as dire as Appellant's?
2. Whether HACLA's practice or policy has caused, or will cause, a discriminatory effect on members of a protected class?
3. Whether the important questions of law are presented which are of national and statewide importance?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES

DOUGLAS GUTHRIE, Executive Director

PETER LYNN, Section 8 Director

ANGELA ADAMS, Section 8 Assistant Director

JOHN KING, 504 Coordinator

JOSEPH NGUYEN, Section 8 Manager

SANDRA CHAVEZ, Section 8 Advisor

BLANCA MACRIS, Risk Manager

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TABLE OF AUTHORITIES CITED

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18 U.S.C. § 1291	42 U.S.C. § 1437f(o)
18 U.S.C. § 1331	42 U.S.C. § 1437f(o)(2)(A)
28 U.S.C. § 2107(a)	42 U.S.C. § 3604(f) (3) (B)
29 U.S.C. § 701	42 U.S.C. § 12101
29 U.S.C. § 794(a)	42 U.S.C. § 12132
42 U.S.C. § 1437f	42 U.S.C. § 12203(a)
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24 C.F.R. § 982.1(a)(1)	Fed. R. App. P. 4(a)(1)
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24 C.F.R. § 982.303(b)(2).	

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

RICHARD J. VOLIS v. HOUSING AUTHORITY OF LOS
 reported at ANGELES; et al, (C.D. Cal. 2016); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 15, 2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 15, 2019, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(in the case set out verbatim appears in Appendix D)

Statutes

18 U.S.C. § 1291	42 U.S.C. § 1437f(o)
18 U.S.C. § 1331	42 U.S.C. § 1437f(o)(2)(A)
28 U.S.C. § 2107(a)	42 U.S.C. § 3604(f) (3) (B)
29 U.S.C. § 701	42 U.S.C. § 12101
29 U.S.C. § 794(a)	42 U.S.C. § 12132
42 U.S.C. § 1437f	42 U.S.C. § 12203(a)
42 U.S.C. § 1437f(a)	

Regulations

24 C.F.R. § 982.1(a)(1)
24 C.F.R. § 8.28(a)
24 C.F.R. § 8.28(a)(3)
24 C.F.R. § 8.28(a) (4)
24 C.F.R. § 982.303(a)
24 C.F.R. § 982.303(b)
24 C.F.R. § 982.303(b)(2).

Federal Rules of Appellate Procedure

Fed. R. App. P. 4(a)(1)

Fed. R. App. P. 54

STATEMENT OF THE CASE

In 2013, HACLA issued Appellant Richard J. Volis, a Section 8 housing resident since 1993, a voucher to find new housing after his Section 8 unit failed multiple health inspections in 2013.

Appellant, who suffers with Secondary Traumatic Brain Injury (TBI), cumulated with cognitive impairment and preexistent conditions of Bi-polar disorder, Obsessive-compulsive disorder (OCD), Post-traumatic stress disorder (PTSD), and HIV. Because of Appellant's disabilities he requested a reasonable accommodation to extend the term of his Section 8 voucher to be allowed enough time to locate a suitable housing in the same neighborhood in proximity to UCLA Olive View Medical Center, where he receives medical and psychiatric care since 1993. As well as finding housing that would except his two prescribed emotional support dogs. Any move out of the area where Appellant resides to this day would be of great hardship in new and unfamiliar surroundings that would agitate his disabilities.

Appellant repeatedly informed HACLA of the difficulties he was experiencing in his search to find suitable housing. Despite Appellant's diligent searched for appropriate housing online and in newspapers, and he further sought and received assistance in finding housing from his counselor at UCLA Olive View Medical Center, the Gay and Lesbian Center, as well as APLA Health and Being Alive, non-profit organizations that seek to promote health care equity for those living with AIDS.

(cont.)

STATEMENT OF THE CASE

At the exact same time that Appellant was searching for new housing, he was also actively pursuing his rights under the ADA and Section 504 in a lawsuit filed against HACLA for violations of these statutes, as well as opposing unlawful practices of fraud and abuse by HACLA Personnel in 5 Administrative Hearings in 2013.

Despite Appellant's search efforts, HACLA rendered Appellant homeless in 2014 by refusing to extend his housing voucher beyond 270 days to permit him to continue searching for housing that would accommodate his disabilities as well as his two prescribed emotional support dogs.

Appellant filed this action pro se in the Central District of California on November 21, 2014. Appellant's Complaint alleged four causes of action: 1) disability discrimination for denial of an exception payment standard; 2) disability discrimination for refusal to extend the term of the Section 8 voucher; 3) retaliation and conspiracy; and 4) obstruction of justice. He sought general, punitive and emotional distress damages.

On May 13, 2016, Defendants filed a Motion for Summary Judgment, arguing that Appellant's first three causes of action for discrimination and retaliation failed as a matter of law and that Appellant's fourth cause of action for obstruction of justice was a nullity. After briefing, the District Court granted the Defendants' Motion for Summary Judgment on September 30, 2016.

(cont.)

STATEMENT OF THE CASE

The district court reasoned, in regard to Appellant's discrimination claim based on HACLA's refusal to extend his housing voucher, that "[n]o reasonable trier of fact could conclude that, by giving Plaintiff the maximum term reasonable accommodation provided for in its administrative plan, HACLA discriminated against Plaintiff on the basis of his disability..." The District Court also granted summary judgment as to Appellant's retaliation claim, reasoning that "[b]ecause HACLA is entitled to summary judgment on Plaintiff's disability discrimination claims, which are the basis for Plaintiff's retaliation claim, summary judgment on that claim is warranted as well." Judgment was entered on September 30, 2016, and Appellant filed a timely notice of appeal on October 17, 2016.

On February 15, 2019, the United States Court of Appeals for the Ninth Circuit affirmed the district court correctly concluded that the Appellant failed to raise a triable issue of material fact as to whether HACLA denied him a fourth extension of his Section 8 Voucher because of his disability.

On March 15, 2019, the United States Court of Appeals for the Ninth Circuit denied Appellant's Petition for Rehearing.

REASONS FOR GRANTING THE PETITION

The Court of Appeal's opinion conflict with recent and past opinions of the Appellate and Supreme Court rulings in (1) *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. (2015), (2) *Cleveland v. Policy Management Systems Corporation*, 526 U.S. 795 (1999), (3) *US Airways, Inc. v. Barnett*, 535 U.S., 122 S. Ct. 1516 (2002)(See *Reno v. Baird* 957 P. 2d 1333 (1998) Cal. Supreme Court), (4) *Federal Reserve Bank of New York*, 91 F.3d 379, 385 (2d Cir.1996) (See *Anderson v. Choate* 469 U.S. 287, 300 (1985)).

The Court of Appeal's opinion in this case breaks with other Appellate Courts and the Supreme Court in *Texas Department of Housing and Community Affairs*, and as originally promulgated by the U.S. Department of Housing and Urban Development, allows a plaintiff to attack a housing policy or procedure that may seem nondiscriminatory on its face, but which has a disparate impact on certain protected classes and may be a violation of the Fair Housing Act under a disparate impact theory. While this is the first time that the Supreme Court has ruled on this specific issue, every federal court of appeals that has reviewed the issue has upheld the validity of disparate impact claims.

In *Cleveland v. Policy Management Systems Corporation*, 526 U.S. 795 (1999), ("While Cleveland only specifically addressed a conflict between SSDI and ADA claims, the analysis is not limited in its application to cases involving those particular statutory and administrative schemes.").

(cont.)

REASONS FOR GRANTING THE PETITION

In *US Airways Inc. v. Barnett* 535 U.S. 122 S. Ct. 1516 (2002) (See *Reno v. Baird* 957 P. 2d 1333 (1998) Cal. Supreme Court), held: An employer's showing that a requested accommodation conflicts with seniority rules is ordinarily sufficient to show, as a matter of law, that an "accommodation" is not "reasonable." However, the employee remains free to present evidence of special circumstances that makes a seniority rule exception reasonable in the particular case. Pp. 396-406.

In *Federal Reserve Bank of New York*, 91 F.3d 379, 385 (2d Cir.1996). Indeed, in *Anderson v. Choate* 469 U.S. 287, 300 (1985),, the United States Supreme Court noted that a balance must be struck "between the statutory rights of the handicapped to be integrated into society and the legitimate interests of federal grantees in preserving the integrity of their programs: while a grantee may not be required to make 'fundamental' or 'substantial' modifications to accommodate the handicapped, it may be required to make 'reasonable' ones."

Regardless, the HACLA Administrative Plan is not independently authoritative; it rather provides guidance for the daily administration of Section 8 housing and is at all times superseded by HUD regulations—including HUD's requirement that a PHA "must extend the voucher term up to the term reasonably required" for the purpose of accommodating a disability. 24 C.F.R. § 982.303(b)(2). Here, the record is clear that HACLA provided Appellant with a Section 8 voucher and voucher extensions totaling 270 days, the bounds of its Administrative Plan.

(cont.)

REASONS FOR GRANTING THE PETITION

The District Court erred, however, in finding that as a matter of law HACLA's Administrative Plan's 270-day limit is reasonable in Appellant's circumstances. As noted *supra*, HUD regulations require that PHAs "extend the voucher term up to the term reasonable required" to make reasonable accommodations for disabled voucher holders. 24 C.F.R. § 982.303(b)(2).

Furthermore, the Court of Appeal's opinion in this case overlooked the material fact that HACLA told Appellant that they would not issue him a fourth extension of his housing voucher. A request by the Appellant for a fourth extension of his housing voucher when HACLA directly told him that they would never grant it would have been futile, and "[t]he law does not require the doing of a futile act." *Ohio v. Roberts*, 448 U.S. 56, 74 (1980); *U.S. v. Santos-Pinon*, 146 F.3d 734, 736 (9th Cir. 1998) (finding that "'good faith' requires nothing of the prosecution to produce a witness where no possibility of procuring the witness exists").

Indeed, as HACLA argued in its Motion for Summary Judgment as well as in its briefing before the Court of Appeal it never extends housing vouchers beyond 270 days for any disabled individual in any circumstances due to the limitations in its Administrative Plan. ("HACLA will issue a voucher and will extend it . . . as may be reasonably required to accommodate a disability up to a maximum of 270 days.").

(cont.)

REASONS FOR GRANTING THE PETITION

Furthermore, the Court of Appeal erred, however, in finding that Appellant's retaliation claim is predicated on the same alleged acts as his disability discrimination claim, the district court correctly concluded that Appellant failed to raise a triable issue of material fact as to whether HACLA denied him a fourth voucher extension in retaliation for his ongoing litigation against HACLA.

In *Reno v. Baird* 957 P. 2d 1333 (1998) Cal. Supreme Court (See *US Airways, Inc. v. Barnett*, 535 U.S., 122 S. Ct. 1516 (2002)), the California Supreme Court differentiated between harassment and discrimination and held that individual supervisors may be liable for the former, but not the latter.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard G. Volis". The signature is fluid and cursive, with "Richard" on the top line and "G. Volis" on the bottom line.

Date: April 12, 2019