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21-83

No. ____

IN THE

Supreme Court of the United States

WILLIAM H. SORKPOR,
Petitioner ,

v.

THE HARLO FENWAY,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

July 13, 2021

QUESTION PRESENTED

This is a housing discrimination case of national importance. It sets back "*the policy of the United States to provide within constitutional limitations for fair housing throughout the United States*" 42 U.S.C. §3601. It shows a total departure by the lower courts from Supreme Court precedents, and congressional intent in construing the federal fair housing laws,—i.e., Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604(a)(1970) and the Civil Rights Act of 1866, 42 U.S.C. §1982(1968).

Title VIII and Section 1982 protect at least four types of minority home seekers' interests. The first is the individual minority home seeker's interest in, buying or renting the home of his or her choice, — limited only by his or her available finances.

This interest is also the black home seeker's consumer interest in equal spending power. As the Supreme Court once noted, Section 1982 was enacted: "*to assure that a dollar in the hands of a Negro can purchase the same thing as buy a dollar in the hands of a white man*". *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968).

When the facts underlying a housing discrimination claim show a violation of the plain language of 42 U.S C. §3604(a)— i.e., "refuse to sell or rent" and "refuse to negotiate a sale or rental",—and a minority home-seeker is subsequently denied a dwelling, the only remaining question for the courts to find liability is:

Whether Congress intended the Fair Housing Act to be construed — technically and broadly—to ensure that, the Title VIII protection of a minority home-seeker's interest in equal spending power is preserved; or, **whether** it is the intent of Congress for the courts to disregard the protection as well as the discriminatory-effects standard when they substitute "*a dollar in the hands*" of a minority home-seeker with racially correlating criteria, in search of intent to discriminate.

PARTIES TO THE PROCEEDING

William H. Sorkpor, petitioner on review was the plaintiff-appellant below.

The Harlo Fenway was the defendant-appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner William H. Sorkpor,—hereinafter referred to as, "Petitioner" or "Sorkpor" — respectfully petitions the Supreme Court of the United States,— hereinafter referred to as "Supreme Court"—for a writ of certiorari, to review the judgment of United States Court of Appeals for the First Circuit,— hereinafter referred to as, "First Circuit"— rendered on September 14, 2020.

OPINIONS BELOW

The First Circuit did not write an opinion. The United States District Court for the District of Massachusetts— hereinafter, "District Court"— did not write an opinion. The Massachusetts Human Rights Agency, aka, Massachusetts Commission Against Discrimination —hereinafter, "State Agency", "MCAD"— wrote a final. finding (Pet-App 4a—7a). It did not publish its finding.

JURISDICTION

Judgment from the First Circuit was entered on September 14, 2020. (Pet-App 2a). The First Circuit subsequently, *denied* a petition for a rehearing *en banc* on January 26, 2021. (Pet-App 1a). Petitioner filed this petition for a writ of certiorari timely, on April 26, 2021.

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

Unlawful discrimination in private and public housing is prohibited by two federal fair housing statutes: the Civil Rights Act of 1866, and the Fair Housing Act.

Civil Rights Act of 1866.

Section One of the Act reads in relevant parts:

> All citizens of the United States shall have the same right in every State and Territory as enjoyed by white citizens, thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Now, 42 U.S.C. § 1982 (1964) — hereinafter, referred to as "Section 1982".

The United States Supreme Court held in the case of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) that, the language of the statute barred all racial discrimination, — albeit pubic, or private—in the sale or rental of real and personal property. This proscription is a valid exercise of United States Congress' power to enforce the thirteenth amendment to the Constitution.

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-285, tit. viii, 82 Stat. 81, (codified as amended, at 42 U.S.C. §§ 3601-3619 (1982)—hereinafter, referred to as, "Title VIII" or "Fair Housing Act" or "FHA". It was built on Section 1982.

The plain language begins by declaring:

> It is the policy of the United States to provide within constitutional limitations for fair housing throughout the United States.

42 U.S.C. § 3601.

The Housing Act of 1949, ch. 338 § 2, 63 Stat. 413, as amended and codified at 42 U.S.C. §§1401-36 (1964).

The appropriateness of examining legislative history in interpreting statutes, brings into this petition the Housing Act of 1949. The language of 42 U.S.C. § 3601 is analogous to the goal of an earlier statute—the Housing Act of 1949: proclaiming a national goal of decent homes and suitable living environments for American families.

Consistency in the objective of the Fair Housing Act on one hand, and that of the Housing Act of 1949 on the other are worth judicial noticing. Because, when coupled with the consistencies in the means of achieving them, they show the intent of Congress: the language of the prohibitive section of the Fair Housing Act must be construed broadly to achieve a policy goal: "integration". *See Tafficante v. Metropolitan Life Ins., Co.,* 409 U.S. 205, 211 (1972) (quoting Senator Mondale, the FHA's principal sponsor as saying the law was designed to replace the "ghetto" by truly integrated and balanced living patterns).

Protection to seven classes by 42 U.S.C. §§ 3601-3619.

At the substantive heart of the Fair Housing Act, are the prohibitions contained in 42 U.S.C. §§ 3604, 3605 and 3606. Collectively, they define a discriminatory housing practice, as any act that is unlawful under §§ 3604, 3605, and 3606 of this Title VIII.

The critical prohibitory provision of the Fair Housing Act—relative to the underlying case of this petition, — is codified as amended at 42 U.S.C. § 3604.

It shall be unlawful: —

> (a) To refuse to sell or rent after making of a bona fide offer, or to refuse to negotiate, the sale, or rental of, or otherwise, make unavailable, or deny dwelling to any person because of race, color, religion, sex, national origin, disability, or familial status.

42 U.S.C. § 3604(a)(emphasis added).

The Fair Housing Amendment Act of 1988, Pub. L. NO. 100-430, 102 Stat. 1619 (1988), — hereinafter, "FHAA".

The FHAA added "people with physical and mental disabilities", and families with children to the groups protected by the Fair Housing Act. The FHAA has made the Fair Housing Act's prohibition consistent with the 2013 regulation of United States Department of Housing and Urban Development ("HUD").

Protection to four interests by 42 U.S.C. §§ 3601-3619.

In addition to protecting seven classes—i.e., race, color, sex, religion, national origin, handicap and family status, — the federal Fair Housing Act also, protects four main interests of minority home seekers. A violation of any one of them turns on color of the skin, and race; and therefore a violation of the plain language of 42 U.S.C. § 3604(a).

First, the minority home-seeker's consumer interest of equal spending power to buy, or rent a dwelling of his or her choice limited only by his or her finances. This is a protection to a minority home-seeker's economic interest. There is no Supreme Court precedent for this interest for individual minority home-seekers under the Fair Housing Act. There is a precedent under Section 1982, — given by *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409, 443 (1968) (Section 1982 was enacted "*to assure that a dollar in the hands of a Negro can purchase the same thing as a dollar in the hands of a white man*".).

Second, a protection against inferiority complex, —the "*stigmatic injury that results from racial discrimination*". *See generally, Brown v. Board of Educ.,* 347 U.S. 483, 494 (1954); Paul Brest, *Palmer v. Thompson: An Approach to*

the Problem of Unconstitutional Legislative Motive 1971

SUP. CT. REV. 95, 116n. 110 (1971); Heyman, *The Chief Justice, Racial Segregation and the Friendly Critics*, 49 CALIF. L. REV. 104, 113-15(1961). A victim of housing discrimination is not only denied a particular house, or an apartment: he/she also suffers through the consequences of the rejection that occurred as a result of the class. The Supreme Court alluded to this, in *Curtis v. Loether*, 415 U.S. 189, 195n. 10 (1974),— describing the Title VIII action by a black plaintiff as a "*dignitary tort*", and likened it to an action for defamation.

Third, the interest of home-suppliers seeking a market free of discrimination, for the sale, and rental of their properties. An example of this is given by a white lessor who, the Supreme Court held had cause of action against third parties who tried to block the rental of his home to a black home-seeker. *See Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969).

Fourth, is the interest of residents, who would like their apartment complexes, and communities integrated rather than segregated. There is a precedent for this interest in *Trafficante v. Metropolitan Life Ins.*, 409 U.S. 205 (1972).

Housing and Community Development Act of 1974, Pub. L. NO. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301(2006)—hereinafter, "Section 8 Voucher Program".

In 1974, to further combat the concentration of poverty and racial segregation United States Congress developed the Section 8 Voucher Program, which provides vouchers to low income tenants to assist with rental payments. See www.HUD.gov, Housing Choice Voucher Program (section 8), http://portal.hud.gov/portal/page/portal/HUD/topics/housing_choice_voucher_program_section_8.

42 U.S.C. § 3608(a): HUD, the agency responsible for administering the Fair Housing Act.

HUD's 2013 regulation endorses liabilities for claims of discriminatory-*effects* brought under the Fair Housing Act: recognizing that, a challenged practice under the Act may be analyzed under the disparate impact theory.

> A particular practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

24 C.F.R. § 100.500(a). Implementation of the Fair Housing Act's Discriminatory Effects Standard 78 Fed. Reg. 11460, 11482 (Feb. 15, 2013) (promulgating 24 C.F.R. § 100.500).

The Supreme Court's precedent—discriminatory-*effects*

standard relied in part on the 2013-regulation of HUD, and in part, on those long used in Title VII employment discrimination cases. The standard for interpreting disparate-impact claim uses a three-part burden shifting framework. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2523 (2015).

Title VII of the Civil Rights Act of 1964 Pub. L. No. 88-352, tit. VII, 78 Stat. 253 (codified as amended 42 U.S.C. § 2000e (1982), — hereinafter, "Title VII".

The Fair Housing Act as enacted, makes no allocation of burdens of proof. *See* EDWARD CLEARY, PRESUMING AND PLEADING: AN ESSAY ON JURISTIC IMMATURITY, 12 Stan. L. Rev. 5-14 (1959).

A party that has the burden of production on an issue will suffer an adverse finding on that issue, if it does not offer sufficient evidence on it. MCCORMICK ON EVIDENCE § 947 (E. Cleary 3d ed.1984).

The amount of evidence, sufficient to satisfy the burden need only be such that, "*a reasonable [person] could draw from it the inference of the existence of the particular fact to be proven*". *See* MCCORMICK ON EVIDENCE § 953 (E. Cleary 3d ed.1984). The Supreme Court has urged lower

courts to interpret the Act analogously as Title VII. *See e.g., Trafficante v. Metropolitan Life Ins.,* 409 U.S. 205 (1972). Disparate impact claims under the Fair Housing Act have an analog in Title VII. *See Texas Department of Housing and Communities Affairs v. Inclusive Communities Project, Inc.,* 135 S. Ct. 2507, 2522-24 (2015) (tying proper analysis of disparate impact claims under the FHA to counterparts under the [ ] employment discrimination law Tittle VII).

Section 703 (a)(1) of the Civil Rights Act of 1964,

provides that:

> It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge a individual, or otherwise discriminate against any individual, with respect to his compensation, terms conditions, or privileges of employment because of such individual's race . . . .

42 U.S.C. § 2000e-2(a)(1).

Section 703 (a)(2) of the Civil Rights Act of 1964

provides that:

> It shall be an unlawful employment practice for an employer to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race. . . .

42 U.S.C. § 2000e-2(a)(1).

Section 4(a) of the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602 et seq., as amended provides that:

> It shall be unlawful for an employer —
>
> "(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms conditions or privileges of employment because of such individual's age;"
> "(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age;" or
> "(3) to reduce the wage rate of any employee in order to comply with this chapter."

29 U.S.C. § 623(a)(1).

Massachusetts General Law 151b, chapter 1518, section 4 paragraphs 6 and 10.

INTRODUCTION

The need for federal fair housing has evolved out of a long history of discriminatory housing practices. Personal prejudices, business practices, and government policies,— at all levels— have promoted and maintained discrimination.

This petition arises from two appellate decisions of U.S. Court of Appeals for the First Circuit. The first affirmed summary judgment the District Court granted Respondent

~~on October 9, 2019.~~ The second one *denied* Petitioner's petition for *en banc* rehearing,—of the decision to affirm the summary judgment, — on January 26, 2021.

In the District Court Petitioner sued Respondent for racial and disability housing discrimination—i.e., "refuse-to-rent" and "refuse-to-negotiate-the-rental-of-property"— violation of the plain language of the federal Fair Housing Act. The decision to affirm clearly sets the First Circuit on a collision course with congressional intent, and Supreme Court interpretation of the Act. It conflicts with established positions of HUD, and the other circuits.

Antidiscrimination laws are to be construed to encompass disparate-impact claims when the text refers to consequence of action, and not just the mindset of actors. Impact claims focus on harm that has been done to a racial group, or other classes the Act protects. HUD has long interpreted the FHA as prohibiting housing practices that have discriminatory-*effects*. The complaint in the underlying case here started as intentional housing discrimination. But, as Respondent's justification kept shifting in the lower courts from "inability-to-pay-rent" to using "credit-score" as "*business necessity*"; ~~it morphed,—~~adding dimensions of a disparate impact claim.

HUD, and courts that have recognized disparate impact and disparate treatment theory under the Fair Housing Act agree that, a plaintiff may present evidence encompassing both types of claim in a single case. *See* Robert G. Schwemm, *Housing Discrimination: Law and Litigation* § 10:7 n.1 (2017). See *id.* at §10:5 n. 3, ¶ 1.

HUD's interpretation is confirmed by twelve Courts of Appeals. They all agree that the FHA imposes liability based on discriminatory *effects: even* in the absence of the intent to discriminate.

The First Circuit stands alone in its interpretation of the Fair Housing Act. This represents a throw-back to the old traditional common law notion of intent: which the Supreme Court abrogated in favor of *strict liability approach* in 1971:

> [G]ood intent or absence of discriminatory intent does not redeem . . . procedures . . . that operate as 'built in headwinds' for minority groups. . . . Congress directed the trust of the [Act] to the consequences of practices not simply motivation.

Griggs v. Duke Power Co., 401 U.S. 424, 432(1971).

Housing courts have borrowed extensively from *Griggs.*

STATEMENT OF THE CASE

Petitioner filed a housing discrimination case under the Fair Housing Act, 42 U.S.C. §3604(a); against Respondent. Although Petitioner alleged, Respondent acted with a racial animus, Respondent denied it. Every effort to discover the evidence with a subpoena was thwarted by the District Court. First, it *denied* a motion made by Petitioner under Rule 56(f) of the Federal Rules of Civil Procedure, to extend time, — to discover the evidence he needed to oppose a summary judgment motion Respondent had filed under Rule 56 (c) of the Federal Rules of Civil Procedure. Then, it *granted* Respondent a summary judgment to dismiss the claim. The First Circuit, affirmed the dismissal,

I. This Case Ideally Illustrates An Old But Still Growing Trend In Housing Discrimination: The Inability of Black Home-Seekers To Rent An Apartment And A Business Necessity Justification By Landlords.

A. The Empirical Evidence.

Empirical evidence persuasively suggests that, the inability of black home-seekers to rent or purchase housing of their choice,— or any housing for that matter, — is not exclusively attributable to poverty or inability to pay rent. *See e.g.*, Massey, Douglas, *Effect of Socioeconomic Factors on the Residential*

Segregation of Blacks and Spanish Americans in US Urban Areas, 44 Am. Soc. Rev. 1015, 107-19 (1979)(although Hispanic/white segregation is highly responsive to differences in level of education, income, and occupation, black/white segregation remains relatively constant); Farley, Reynolds, *Residential Segregation in Urbanized Areas of the United States in 1970: An Analysis of Social Class and Racial Differences Demography* Vol. 14, No. 4, pp. 497, 514 (1977)(pattern of segregation among whites and blacks of like education and income not attributable economic and social differences); Hermalin, Albert & Farley, Reynolds, *The Potential for Residential Integration in Cities, And Suburbs: Implications for the Busing Controversy*, 38 Am. Soc. Rev. 595, 608 (1973) (residential segregation attributable not to economic factors but to explicit or covert white discrimination).

B. The Rejection of Minority Home-Seekers Is Always Under Circumstances That Give Rise To An Inference Of Discrimination.

In the civil action here, Petitioner's rental application was rejected under circumstances that gave rise to the inference of unlawful "refuse-to-rent" and "refuse-to-negotiate for a rental". Respondent's sales-marketing manager who worked on the application found Petitioner financially qualified.

Consistent with Respondent's inhouse and industry policies: she pre-qualified Petitioner; waived off his first month rent; scheduled a move-in date; and withdrew $500.00 application fee from Petitioner's bank account—Respondent's commitment to hold the studio for Petitioner to move in.

Then, Mr. Cramer rejected the application, for "inability-to-pay-the-rent". Under analogous circumstances, the Supreme Court once held that:

> Where a Negro [applicant] meets the objective requirements of a real estate developer so that a sale would in all likelihood have been consummated were he white where statistics show that all of [the]...lots, in the development have been sold only to whites a prima facie inference of discrimination arises as a matter of law if his offer to purchase is refused.

Williams v. Matthews, 499 F.2d 819, 826 (8th Cir. 1974), *cert. denied* 419 U.S. 1021 (1974).

C. The Factual Patterns of This Case Support The Empirical Evidence.

1. Background Facts

On October 5, 2017 Petitioner submitted application at the office of Respondent, to rent a studio in an 83,000 sq. ft. apartment complex in Boston, Massachusetts. The property was managed by Respondent for an investment consortium. Prudential Financial, Inc. was the major share-

holder. Initially, Petitioner and Respondent's sales/marketing manager struck a bona fide rental agreement. But thereafter, Respondent's general-manager upended the agreement: he, declined the application. He also rejected requests to negotiate the rental of the studio-unit.

2. Interpreting The Fair Housing Act The Wrong Way: Or Is It?

Petitioner Filed An Administrative Complaint

On October 10, 2017, Petitioner filed an administrative complaint: "refuse-to-rent" housing discrimination—predicated on his race, and status as a Social Security Disability benefits recipient, — at MCAD, under the *Massachusetts General Law 151b, chapter 1518, section 4 paragraphs 6 and 10;* and the federal Fair Housing Act. It was jointly investigated with HUD. (Pet. App. 4a, 8a-10a).

Respondent's "inability-to-pay-rent" justification.

Respondent justified the adverse action as the following:

> The monthly rental rate for the [studio] unit is $2,485. The Complainant [Sorkpor] lists on his application that his monthly income is $1,276 . . . . The property did consider the amount[ ] that the Complainant receives from SSDI in . . . evaluating his financial criteria . . . however the Complainant's income is approximately [half] of the rental amount due on. . .monthly basis. The *declining* of the application was entirely a financial decision as the Complainant [was] financially unqualified for the rental rate.

Respondent did not disclose that, it had destroyed Part II of the rental application: it had information on Petitioner's two bank accounts,—to show "*[he] was financially qualified for the rental rate*". To shore up its justification—in the "*Position Statement*" Respondent filed at MACD — it characterized Petitioner as a black African American, a Social Security Disability recipient, whose available funds was only $1,276, — from Social Security.

To respond to the claim of intentional refuse-to-rent, based on race, and disability benefits, Respondent had the burden of production—i.e., to proffer with evidence to support its position. *See Director Office of Worker's Compensation Program, Dept. of Labor v. Greenwich Collieries,* 512 U. S. 267, 272 (1995).

D. Even When A Black Home-Seeker's Ability To Pay Is Established, The Title VIII Protected Interest Of Equal Spending Is Eroded With A Racial-Effect Justification.

1. Petitioner Was Financially Qualified.

Petitioner proved he was very qualified to pay the $2,485 rent requested. MCAD assessed that between his income and funds in his two bank accounts, his annual finances came to $33,683.00: more than enough to cover the annual rent payment of $29,820. MCAD further assessed that, taking all the funds available to Petitioner, his finances after annual rent payment was $10,063.

See Pet. App. 6a. That made the "inability-to-pay-the-rent" justification false.

MCAD therefore found a "*refuse-to-rent*" violation. *See Id.* (". . . *Complainant can establish that [] Respondent refused to rent . . . .*"). Because direct proof of illegal refuse-to-rent is rare, a complainant filing such a claim under *Massachusetts law* is permitted to prove discrimination without direct evidence of discriminatory intent by relying on evidence that, respondent has given false reason or pretext for the adverse action. *See Wheelock College v. Massachusetts Comm'n Against Discrimination*, 371 Mass. 130, 139 (1976) (". . . *[Complainant] need only present evidence from which a reasonable jury could infer that the respondent's facially proper reason for its action against him is not the real reason for the action")(internal quotations omitted).*

2. What Happens After A Finding Of Pretext?

MCAD used "*business necessity*"— that it predicated on credit score to justify a final disposition of "Lack-of-Probable-Cause": "*While Complainant can establish that . . . Respondent refused to rent ... Respondent has provided a legitimate business reason for refusing to rent to the Complainant.*" See Pet. app. 6a.

This became the mantra for construing the Fair Housing Act in the lower courts. The District Court even argued at summary

judgment that a landlord could still reject a housing applicant, for financial reasons even if the applicant is financially qualified.

3. Proceedings In the District Court

On July 13, 2018, Petitioner filed a civil action of intentional "refuse-to-rent" housing discrimination,— predicated on his race, and status as a Social Security Disability benefits recipient, — at the District Court under the Fair Housing Act. The justification of Respondent shifted though, — from "**inability- to-pay-the-rent**" to the MCAD-created justification of "***business necessity***" that it predicated on a "**credit-only-policy**". The racially correlated credit only policy betrayed the need to apply disparate-impact theory. Then came the declaration of the general-manager Respondent used to support its motion for summary judgment. He averred that, he refused to negotiate the rental of the studio-apartment.

(1) "Mr. Sorkpor told me that the CoreLogic representative told him to work out a deal with me [Mr. Cramer] to rent [the] apartment by paying three months rent up-front. I again explained to Sorkpor that as a result of Core-Logic's *denial* decision, I could not make a deal with him. Mr. Sorkpor also asked me [Mr. Cramer] to call Core-Logic representative, [because she asked Sorkpor to tell Mr. Cramer to call her so that they could come up with a way by which Sorkpor could move into the studio unit as scheduled by Ms. Bohl], but I did not because, CoreLogic "Decline" decision was final as stated in Bozzuto's Application Policies. . . ." (emphasis added).

(2) "Mr. Sorkpor again called me on October 9, 2017 to push for a deal to rent [the] apartment. I again told him that I could not do so".

The affirmations also presented the direct evidence that Respondent violated the plain language of 42 U.S.C. §3604(a). The facts affirmed were not new to the case. They were part of the pleadings; but there was no solid evidence to back them up. Mr. Cramer's declaration provided that solid evidence. Between the pleadings, and that declaration, there were genuine issues of material fact for trial. More so, where Mr. Cramer's declaration also averred that he destroyed Part II of the rental application:

> "After Mr. Sorkpor left the Harlo on October 5, 2017, I intended to scan both sides of the application before discarding it because that is what Bozzuto does [to] the applications submitted at Harlo. However, I inadvertently only scanned one side before discarding the application."

The District Court *granted* summary judgment, never uttered "*disparate impact*" or "*discriminatory effects*" in the summary-judgment-hearing transcript, of October 8, 2019.

4. The First Circuit's Judgment Represents A Throw-Back From The Supreme Court's Strict Liability Approach To The Common Law Notion Of Intent.

The Supreme Court first recognized discriminatory-effect-based liability and its corollary defense of *business necessity* in *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971). The Supreme Court held that conduct free of any intent to discriminate could still be in violation of the Act. *See id.* at

431 ("*. . . . Congress directed the thrust of the [Act] to . . . practices not simply the motivations*"). That represented an abrogation of the traditional common law notions of intent, in enunciating the *strict liability approach. See* Christopher, P. McCormack, *Business Necessity: Judicial Dualism and the Search for Adequate Standards* 15 Ga. L. Rev. 376, 386(1981). The effect is to enable the remedial force of the statute to reach unnecessary discriminatory practices. Id. at 379-80.

The First Circuit affirmed the District Court's decision granting summary judgment to dismiss liabilities against Respondent. It wrote no opinion but stated the following:

> The summary judgment record reveals no direct evidence of discrimination, and on appeal Sorkpor has failed to elucidate some genuine issue of material fact bearing on the analysis required for indirect-evidence-based claim. See generally Batista v. Cooperativa De Vivianda Jardines De San Ignacio, 776 F.3d 38, 43 (1st Cir.2015) (FHA-disability-discrimination claim) ("Summary judgment for the defendant is warranted on a disparate treatment claim if the plaintiff cannot produce either (a) direct evidence of discriminatory intent or (b) indirect evidence creating an inference of discriminatory intent.")(internal citations omitted).

See Pet.App. 2a

It made no difference to the First Circuit that, the District Court overlooked Mr. Cramer's declaration—supporting Respondent's summary judgment motion— averred, he "refused

to negotiate the rental" of the studio.

To "refuse to negotiate the rental of a dwelling" is proof of purpose to discriminate. It is a direct violation of the language of the Act. The lower courts either ignored the evidence or gave it judicial deference:

> When there is a proof that a discriminatory purpose has been a motivating factor in the decision, judicial . . . deference is no longer justified. Determining whether invidious discriminatory purpose was a motivating factor demands sensitive inquiry into such circumstantial, and direct evidence as may be available.

Village of Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977).

The Seventh Circuit held that, under some circumstances a showing of discriminatory-*effect* is sufficient to show Fair Housing Act violation, without showing intent: listing four factors for assessing circumstances under which conducts that produce disparate impact will violate the Act:

> (1) How strong is the plaintiff's showing of a discriminatory effect?
>
> (2) Is there some evidence of discriminatory intent, though not enough to satisfy the constitutional standard of Washington v. Davis, [426 U.S. 229, 247 (1976)]?
>
> (3) What's the defendant's interest in taking the action complained of?

(4) Does the plaintiff seek to compel the defendant to affirmatively provide housing. . . ?

Village of Arlington Heights v. Metropolitan Housing Corp., 558 F.2d 1283 (7th Cir.1977).

The Supreme Court has defined factors, that must be considered to determine whether, a conduct constitutes intent. The first is: "*the impact of the challenged decision (whether it disproportionately impacts one race)*". *See Village of Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 264-68(1977).

In *United States v. City of Black-Jack*, the *Eighth Circuit* began its opinion by holding that, the Fair Housing Act like Title VII, does not require a showing of racial purpose. *Id.* 508 F.2d 1174, 1184-85 (8th Cir. 1974) (applying Supreme Court interpretation of Title VII three years earlier in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Rather, because "*[e]ffect and not motivation is the touchstone*", a Fair Housing Act plaintiff need only prove that defendant's conduct actually or predictably results in racial discrimination—in other words a discriminatory-effect. Ibid.

This interpretation was endorsed by twelve appellate courts excluding the First Circuit. Furthermore, as recently as 2015

the Supreme Court noted that: while the FHA does not "*force housing authorities to reorder their priorities*", it does aim to "*ensure that those priorities ... be achieved without arbitrarily creating discriminatory effects or perpetuating segregation*". *See* Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 2522.

E. Under The Disparate-Effect Theory The Need To Eliminate Proof of Discriminatory-Intent Is Acute: Yet The Lower Courts Demure When Racially Correlating Criteria Are Proffered As "Business Necessity" To Justify Intentional Discrimination.

The disparate-impact (disparate-effect) standard is needed because, the substantial difficulty of proving discriminatory-intent would otherwise frustrate statutory objectives. *Boyd v. Lefrak Org*, 509 F.2d 1110, 1117 (2nd Cir) (Mansfield, J., dissenting), *reh'g denied,* 517 F.2d 918(2nd Cir.), *cert denied*, 423 U.S. 896 (1975). See also Robert, Schwemm, Discriminatory *Effect* and the Fair Housing Act, 54 Notre Dame Law, 204-05 (1978).

The need to relieve a plaintiff of the burden of proving discriminatory-intent is acute under the disparate impact theory, yet when Respondent latched on to the MCAD-orchestrated-justification of "business necessity" to justify a typical intentional *refuse-to-rent* and refuse-to-negotiate

for rental claim; the lower courts accepted it without applying the *effects* standard: "*Intentional discriminatory practices cannot be justified as business necessity*". *See* Christopher, P. McCormack, *Business Necessity: Judicial Dualism and the Search for Adequate Standards* 15 Ga. L. Rev. 376, 385(1981). *See also,* Christopher, P. McCormack, *Business Necessity Under Title VII of the Civil Rights Act of 1964: A No Alternative Approach,* 84 Yale L.J. 98, 100 (1974) ("*business purpose justification not subject to further scrutiny would make it too easy for [defendants] to mask discriminatory motive*").

The First Circuit's judgment demurred on the need for disparate impact theory on appellate review, stating that:

(a) "It is hornbook law that theories not raised squarely in the district court cannot be surfaced for the first time on appeal".

(b) "[N]ew arguments cannot be raised for the first time in a reply brief".

Pet. App 2a.

The Complaint for the civil action showed that, Petitioner made a disparate impact argument from MCAD and the District Court. The two briefs that Petitioner filed at the First Circuit would contradict those assertions.

The Supreme Court first recognized discriminatory-effect

-based liability and its corollary defense, *business necessity* in *Griggs v. Duke Power Co.,* 401 U.S. 424, 432 (1971). This makes it oxymoron to accept a "*business necessity*" where there was no discriminatory-effect claim or argument.

Like Title VII, the Fair Housing Act is interpreted to prohibit facially neutral policies and practices that operate to disproportionately exclude individuals in protected classes regardless of lack of subjective intent of the perpetrator. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971) (under Title VII defendant's lack of intent does not redeem practices that discriminate in operation); Robert Schwemm, Housing Discrimination Law 59 (1983)(same, Title VIII).

F. Credit-Only-Policy As "Business Necessity" Is Now The Touchstone-Justification For Housing Discrimination Because The Lower Courts Do Not Invoke The *Effects* Standard.

The District Court wrote no opinion: the reasoning behind the summary judgment remains a mystery. But, Respondent argued in its "Brief Of Appellee" that, the District Court *granted* summary judgment based on its credit-only policy. Petitioner argued for the evaluation of the evidence under the disparate impact theory— in the "*reply brief*" that he filed for appellate review. The First Circuit affirmed and stated that:

"new arguments cannot be raised for the first time in a reply brief". Pet. App 2a. It also wrote no opinion.

The First Circuit affirmed the use of a credit-only policy to substitute the dollar in the hands of a black home-seeker with credit score. Legal commentators plausibly argue that a landlord should not care where tenants get their money for as long as the landlord gets paid. E.g., Paula Beck, *Fighting Section 8 Discrimination, The Fair Housing Act's New Frontier*, 31 HARV. C.R.C.L. L. REV. 155, 158 (1996).

The First Circuit is setting the precedent for the use of credit as a "*business necessity*" to justify intentional "refuse-to-rent", and "refuse-to-negotiate" violations, under the Fair Housing Act. HUD has declined to endorse credit-check as a "*legally sufficient justification*" to screen rental applicants. Implementation of the Fair Housing Act's Discriminatory *Effect* Standard, 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013). Legal commentators support the HUD regulation. *See, e.g.,* Christopher, P. McCormack, *Business Necessity: Judicial Dualism and the Search for Adequate Standards*, 15 Ga. L. Rev. 376, 385 ("*intentional discriminatory practices cannot be justified as business necessity*").

The First Circuit affirmed a race correlating criterion.

See Credit Scores and Credit Reports: Problematic Uses and How They Worsen the Racial Economic Gap, NAT'L CONSUMER L. CTR. (May 20, 2014). A credit-only policy produces discriminatory-*effects*, and directly implicate the impact theory. Legal commentators believe that:

> This . . . rationale seems particularly appropriate to Title VIII since its stated purpose of providing fair housing within the United States clearly would be unattainable unless the Act ... construed to prohibit not only open direct discrimination but also those practices which have the *effect* of discriminating along racial lines.

Duncan Hood & Neet, *Redlining Practices, Racial Re-Segregation, and Urban Decay: Neighborhood Housing Service as a Viable Alternative* 7 Urb. Law, 510, 530 (1975). *See Smith v. Anchor Bldg. Corp.*, 536 F.2d 231, 233 (8th Cir.1976) ("*a thoughtless housing practice can be as unfair to minority rights as a willful scheme*"); *United States v. City of Black-Jack*, 508 F.2d 1175, 1179 (8th Cir.1974) ("*Effect and not motivation is the touchstone in part because, clever men may easily conceal their motivation*"), *cert. denied*, 422 U.S. 1042 (1975); Robert G. Schwemm, *Discriminatory Effect and the Fair Housing Act* 54 Notre Dame Law, 199, 216 (1978)("*defendant less likely to escape liability for disguised intentional conduct because*

objective effects are easier to prove than subjective intent").

In *American Insurance Association v. U.S. Department of Housing and Urban Development*, 74 F. Supp. 3d 30 (D. D. C. 2014), when the district court declined to evaluate the evidence under the discriminatory-effect and disparate impact doctrines the D. C. Circuit vacated and ordered the decision to be considered in light of Supreme Court standard in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). *American Insurance Association v. U.S. Department of Housing and Urban Development,* No. 14-5321, 2015 U.S. App. Lexis 16894 (Sept. 23, 2015).

II. Finding Discriminatory-Effect-Based Liability Under the Fair Housing Act: The Three-Step Burden-Shifting Analysis.

The Supreme Court established a three-step burden shifting framework for determining Effect-based liabilities under the Fair Housing Act. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2523 (2015). With this standard the Supreme Court emphasized the need to relieve plaintiffs of the burden of proving discriminatory-intent.

A. Racial-Correlating Policies Give The Inference Of Some Intent To Disproportionately Exclude Black Home-Seekers From Housing.

At the first-step of the three-step burden-shifting frame-work the plaintiff has the burden of establishing a *prima facie* case of disparate-*effect. Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2523(2015); 24 C.F.R § 100.500 (c)(1).

Petitioner pointed to Respondent's credit-only policy as having the effect of actually or predictably excluding black and other minority home-seekers disproportionately from housing. *Bishop v. Pelsok,* 431 F. Supp. 34, 37 (N.D. Ohio 1976)(*"objective criteria cannot have the effect of excluding blacks from housing unless the criteria are demonstrably a reasonable measure of the applicant's ability to be a successful tenant"*) (citing Griggs). *See also* Credit Scores and Credit Reports Problematic Uses And How They Worsen the Racial Economic Gap, NAT'L CONSUMER L. CTR. (May 20, 2014).

B. Between Legislative Intent, And A HUD 2013 Regulation The Only Plausible Factor Legally Sufficient To Justify "Refuse-To-Rent"/"Refuse-To-Negotiate" Is Bankroll.

At the second-step, the burden shifts to the defendant to prove that its policy is necessary to achieve a valid

interest. *See* 24 C.F.R §100.500 (c)(2). *See also Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 2015 WL 2473449 at *14 (June 25, 2015) ("*a defendant may defeat a disparate impact claim by pointing to a "valid interest served" by the policy or practice at issue, and by showing that such policy or practice is "necessary to achieve [that] valid interest*"").

It is not clear what interest a credit-only policy is to serve. Under the *"strict liability approach"* the Supreme Court requires for a showing of "business necessity" that, the criterion "*must be related to job performance.*" *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

A credit-only policy that excludes bankroll cannot be a function of compliance with legislative intent because:

a) HUD-2013-regulation which, has declined to endorse credit-checks as "*legally sufficient justification*". Implementation of the Fair Housing Act's Discriminatory *Effect* Standard 78 Fed. Reg. 11460, 11471(Feb. 15, 2013).

b) Remarks made by the legislators who passed the Fair Housing Act, — "*[i]n buying a house this bill says that a man's bankroll and credit-rating . . . will be major factors*

in his choice." See 114 Cong. Rec. 9583 (1968) (statement of Rep. Erlenborn); Robert Schwemm, *Discriminatory Effect and the Fair Housing Act* 54 Notre Dame Law, 199, 235 (1978) ("*[A] seller financing sale, is concerned with buyer's ability to meet financial and other contractual obligations*").

A bankroll provides readily available liquidity which, better satisfies the "*real interest*" of a landlord. Screening conduct that relies on credit score and to the exclusion of a more liquid asset is immediately suspect of a racial housing discrimination: because, the landlord's legitimate right to the tenant's ability to pay the rent for the life of the lease, —his "real interest"— has been satisfied. See 114 Cong. Rec. 9583 (1968)(statement of Rep. Erlenborn).

C. **Availability Of Non-Discriminatory Alternatives.**

The availability-of-alternatives component removes the analysis from the realm of balancing. See Christopher P. McCormack, *Business Necessity in Title VIII: Judicial Dualism and the Search for Adequate Standards,* 15 Ga. Law Rev. 376 (1981).

At the third step of the framework, the burden shifts for the plaintiff to provide less discriminatory alternative.

See 24 C.F.R § 100.500(c)(3). The proffered less discriminatory alternative: "*must serve defendant's articulated interest, be supported by evidence and may not be hypothetical or speculative*". Implementation of the Fair Housing Act's Discriminatory *Effect* Standards, 78 Fed. Reg. 11460, 11473 (Feb 15, 2013); *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 2523 (2015).

A finding of a less discriminatory alternative almost certainly means that *business-necessity* justification will be held unlawful. *See* Christopher, P. McCormack, *Rebutting the Griggs Prima Facie Case under Title VII: Limiting Judicial Review of Less Restrictive Alternative* 1981 U. Ill. L. Rev. 181, 205(1981). A defendant's failure even to consider such alternatives has been held violative of Title VII, even if the plaintiff does not offer evidence of alternatives. See *Allen v. City of Mobile*, 464 F. Supp. 433, 440 (S.D. Ala. 1978) ("*failure to consider alternative procedures fatally defective*").

The declaration of Mr. Cramer that Respondent used to support its motion for summary judgment is critical in

two ways. First, it provides uncontroverted evidence that, the viable nondiscriminatory alternative to the credit-only policy that Petitioner provided, met the Supreme Court and HUD requirements. Second, it averred that: Mr. Cramer would not "negotiate" a nondiscriminatory alternative whereby Petitioner could move into the studio.

When the First Circuit applied the *Effects* standard to *Abril-Rivera v. Johnson,* 806 F.3d 599 (1st Cir.2015); it affirmed the district court, holding that: "*plaintiffs' disparate impact claims failed because the challenged actions were job related and consistent with business necessity, and plaintiffs have not shown that there were alternatives available to [the defendant] that would have had less [discriminatory effect] and serve [defendant's] needs.*" *See Abril-Rivera v. Johnson*, 806 F.3d 599, 607 (1st Cir.2015). See also *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, — U.S. —, 135 S. Ct. 2507, 2518 (2015) ("*before rejecting a justification . . . a court must determine that plaintiff has shown that there is 'an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs.*'"). The opposite is in this case, but both

the District Court and the First Circuit were not fully astute for lack of clarity of the discriminatory-effects standard.

REASONS FOR GRANTING THE WRIT

This case meets the standard criteria that, the Supreme Court has always used to grant certiorari. In perspective, it presents pure legal issues that have shed some light on the entrenched schism, indecisiveness, and apprehensiveness about the decisions coming out of the lower courts, — lately. These decisions are in juxtaposition with established Supreme Court precedents in adjudicating and reviewing housing discrimination claims of individual minority home seekers.

This is an outcome determinant here. Hence, the reason for the well-placed expectation that, the Supreme Court would grant certiorari to review, and establish uniform guidelines for the housing courts.

Squarely at issue here is how the lower courts must interpret the Fair Housing Act—for adjudication and appellate review of individual minority claims, — to preserve the intent of Congress in passing the Act. The logical starting point is the plain language statute.

I. Supreme Court Must Grant Certiorari To Set Guidelines In All Statutory-Controlled Litigations That The Plain Language Of A Statute Is The Direct And Non-Negotiable Expression Of The Intent Of Congress

Statutory interpretation always begins and end with the words of the statute itself. See, *Chevron USA, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43, 104 S. Ct. 2778, 2781-82, 81 L. Ed. 2d 694(1984).* If the words convey a clear meaning, courts may not sift through secondary indices of intent to discover alternate meanings.

Section 3604(a) of the Fair Housing Act does not use the word "*discriminate*" but discriminatory practices in housing are the object of its prohibitions. A discriminatory conduct not easily described as a refusal to rent or sell or to negotiate may be reached under the "otherwise, make unavailable, or deny" language, — an omnibus provision. *See* Calmore, The Fair Housing Act and the Black Poor: An Advocacy Guide, 18 Clearinghouse Rev. 609, 612 (1984); Robert G. Schwemm, Discriminatory Effect and the Fair Housing Act, 54 Notre Dame Law 199, 203(1978)(language reflects intent to reach "*almost every housing practice imaginable*").

A. A Literal Construction Of A Statute Cannot Result In Absurdity: The First Circuit's Decision Is An Aberration.

When the Act is construed broadly, the decision to affirm is a total departure from established precedents, directions, and instructions the Supreme Court set in *Jones v. Alfred H. Mayer Co.,* 392 U.S. 409 (1968) and *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).

On the other hand: with a technical construction the decision by the lower courts could be seen as an exercise of caution. Lower courts have become wary of relying on precedents that have been established under different statutes,—where there is no clear guideline from the Supreme Court.

There is one caveat: technical construction of statutes implies textualism— i.e., the statute's plain text. Where the plain language of a statute itself is violated: no amount of technical or broad construction can justify the violation.

The Fair Housing Act, as amended by the 1988 amendments makes it unlawful: "*to refuse to sell or rent . . . because of race, color, gender, religion, national origin, handicap, or familial.*" 42 U.S. C. § 3604(a) (1980).

B. Using The *Jones* Decision As Precedent

The *Jones* decision came under Section 1982. That said: by congressional intent both Section 1982, and the Fair Housing Act protect a black home-seeker's economic interest of equal spending power. The Supreme Court summed up the rational for the *Jones* decision simply as:

> So long as a Negro citizen, who wants to buy, or rent a home can be turned away simply because he is not white, he cannot be said to enjoy the same right . . . as is enjoyed by white citizens. . . to purchase [and] lease . . . real and personal property.

Jones v. Alfred H. Mayer Co., 392 U.S. 409, 421 (1968).

There was evidence of Petitioner's ability to pay the rent. It met the standard of the State Agency investigator: *"Complainant can establish that . . . Respondent refused to rent to the Complainant."* See Pet. App 6a. There was also evidence that Mr. Cramer's declaration, Respondent used to supported its summary judgment motion, stated that, he "refused to negotiate the rental" of the studio.

These are the kinds of proofs Congress had in mind when it enacted the Fair Housing Act, and Section 1982 as agreed to by the Supreme Court in the case of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968) ("*to assure that a dollar in the hands*

of Negro can purchase the same things as a dollar in the hands of a white man.").

The evidence is so much that "*a reasonable [person] could draw from it the inference of the existence of the particular fact to be proven*". *See* MCCORMICK ON EVIDENCE § 953 (E. Cleary 3d ed.1984).

C. The Lower Courts Would Rather Construe The Fair Housing Act To Encompass The Section 8 Voucher Program: It Offers No Protection To The Economic Interest Of Black Home-Seekers.

Congress passed the Housing and Community Development Act, Pub. L. No. 93-383, 88 Stat 633 (codified as amended at 42 U.S.C. § 5301 (2006)). It created the Section 8 Voucher Program (codified at 42 U.S.C. § 1437f (2006)). This case presents first hand knowledge that, the lower courts are construing the Fair Housing Act to encompass Section 8 Voucher Program ("Section 8"); instead of Section 1982, — when a black home-seeker demonstrates ability to pay. By so interpreting the Fair Housing Act, these lower courts have eroded the Act's protection to the economic interest of a black home-seeker, —as Congress intended. It provides one of the many grounds for the Supreme Court to grant a certiorari on this petition.

At the summary judgment hearing, the District Court

argued on behalf of Respondent that a landlord could still reject a housing-applicant under the fair housing laws for financial reasons, even if he/she is financially qualified. And the First Circuit affirmed.

At best, this could be a mix-up by the lower courts in the interpretation of the Fair Housing Act, and the governing statute of Section "8". Simply put: the lower courts are getting confused about a landlord's obligation to a black home-seeker under the Fair Housing Act versus the same landlord's obligation to the same black home-seeker under Section 8.

Like the Fair Housing Act,— and Section 1982—Section 8 is aimed at ending segregation and concentration of poverty in the housing market. *See* Paula Beck, *Fighting Section 8 Discrimination, The Fair Housing Act's New Frontier*, 31 HARV. C.R.C.L. L. REV. 155, 158 (1996). *See also,* Pub. L. No. 93-383, § 8(a), 88 Stat. at 662 ("*reciting that the statute was enacted for the purpose of aiding lower income families to obtain decent places to live and promoting economically mixed housing*").

Unlike the Fair Housing Act,— and Section 1982—Section 8 was not enacted to protect a black home-seeker's

economic interest of equal spending power. A landlord may refuse the application of a home-seeker in the Section "8" . People with vouchers encounter difficulties obtaining housing. Section "8" discrimination is a major housing issue. *See* Manny Fernandez, Despite New Law Subsidized Tenants Find Doors Closed, N.Y. TIMES, Sept. 20, 2008 at B1. Participation in the Section 8 Voucher Program is voluntary for landlords. *See* Graoch Assocs. # 33 v. Louisville/Jefferson County Metro Human Relations Comm'n, 508 F3d. 366, 376 (6th Cir.2007). Because voucher recipients are mainly minorities and persons with disability; it is common knowledge that landlords withdraw from the program for discriminatory reasons without any legal consequences.

Housing advocates believe the acceptability and legality of Section 8 discrimination have enabled landlords to use it as a proxy for other legally prohibited discrimination that is based on race, color, religion, national sex, familial status or disability, — in violation of the Fair Housing Act.

The take away here is that the lower courts would not construe the Fair Housing Act to appropriately rely on the Section 1982 precedent: "*to assure that a dollar in the*

hands of Negro can purchase the same things as a dollar in the hands of a white man."

D. The Supreme Court Must Grant Certiorari To Set The Guideline As To How The Lower Courts Can Rely On Section 1982 Precedents In Construing The Fair Housing Act.

The First Circuit and the District Court are in the majority of of the lower courts yet to give the Fair Housing Act the Supreme Court's interpretation that encompasses the black home-seekers' economic interest of equal spending power. Like Section 1982 Congress enacted Fair Housing Act to "*assure that a dollar in the hands of Negro can purchase the same things as a dollar in the hands of a white man.*" See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968).

These jurisdictions are on a collision course with the Supreme Court for overruling the precedent set in Jones. The Supreme Court can reverse this trend because: "*it is [the Supreme] Court's prerogative alone to overrule one of its precedents*". *State Oil Co, v. Khan,* 522 U.S. 3, 20 (1997).

Factual underpinnings of the Supreme Court precedent *might not be the same* here, but that does not grant a court of appeals license to disregard or overrule the precedent. See *Roper v. Simmons*, 543 U.S. 551, 594(2005). *See also Rodriguez*

de Quintas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989)("*if a precedent of this Court has a direct application in a case, yet appears to rest on reasons rejected in some other line of decision the Court of Appeals should follow the case which directly controls, leaving this Court the prerogative of overruling its own decision.*"); *Asostini v. Felton,* 521 U.S. 203, 237, 239 (1997) (*confirming rule from Rodriguez de Quintas that lower courts may not "conclude [that] recent cases by implication overruled an earlier precedent*").

Other lower Courts have done well incorporating minority home-seeker's protected economic interest into their decisions. *E.g., Bishop v. Pelsok,* 431 F. Supp. 34, 37 (N.D. Ohio 1976) (*"objective criteria cannot have the effect of excluding blacks from housing unless the criteria are demonstrably reasonable measure of the applicant's ability to be a successful tenant"*).

The court in the Northern District of Ohio went on to define a successful tenant as: "the one who stays for the period of the lease, pays his rent timely and complies with all provisions of the lease." *Id.* at n.5.

II. The Supreme Court Must Grant Certiorari Here To Reverse A Trend Of Lower-Courts' Collision Course With The National Jurisprudence

There is a vacuum of uniform guidance in the lower courts.

Like a kitchen-sink, the national jurisprudence is getting clogged with light-weight decisions, — that have no audit trail. The lower courts would not even set-up their findings in writing for any future revisiting,— such as this petition.

The lower courts have set themselves on a collision course with Rule 52(a) of the Federal Rules of Civil Procedure. That Rule requires that, a district court's findings be recited to facilitate appellate review—by making it clear how it reached its result. *See, generally, Lemelson v. Kellogg, Co.*, 440 F.2d 986, 988 (2d Cir.1971); 9 Wright & Miller, Federal Practice & Procedure § 2571.

The First Circuit had shown in the past that, it follows the "*clearly erroneous*" standard: Federal Rules of Civil Procedure 52(a). *E.g., Sweeney v. Board of Trustees of Keene State College*, 569 F.2d 169 (1st.Cir.1978). This begs the question: Why then, the departure from the most basic requirement of the clearly erroneous standard?

The answer is simple: the lower courts are on a collision course, that is eroding transparency and confidence in the jurisprudence of America. It goes even without judicial noticing that, in the American jurisprudence, appeals function both as a process for error correction as well as a process of

clarifying and interpreting the law. As evidenced by the First Circuit none of these functions is being served by a majority of the circuits.

The First Circuit relied on Inclusive Communities decision to affirm the district in 2015. *See Abril-Rivera v. Johnson,* 806 F.3d 599 (1st Cir.2015). This begs the question: Why then did the First Circuit choose not to review the district court's error of not evaluating the evidence under the disparate impact theory, given admissions made in the declaration of Mr. Cramer in support of Respondent's summary judgment motion?

In *Rodriguez de Quintas v. Shearson/Am. Express, Inc.*, the Supreme Court stated that: "*if a precedent of this Supreme Court has a direct application in a case, yet appears to rest on reasons rejected in some other line of decision the Court of Appeals should follow the case which directly controls, leaving this Court the prerogative of overruling its own decision.*" *Id.*, 490 U.S. 477, 484 (1989); *Asostini v. Felton,* 521 U.S. 203, 237, 239 (1997)(*confirming rule from Rodriguez de Quintas that lower courts may not "conclude [that]recent cases by implication overruled an earlier precedent*").

CONCLUSION

The most typical cases under the Fair Housing Act involve a landlord's refusal to rent an apartment to a minority home-seeker. The Supreme Court has set the standard for finding liability when discriminatory practices are brought to the attention of the courts. There is an urgent need in the courts for settled law under the Fair Housing Act for individual claims.

WHEREFORE, Sorkpor is most respectfully asking the Supreme Court of the United States to grant a certiorari.

Dated in Boston, Massachusetts on this day of July 13, 2021.

Respectfully submitted by Petitioner (pro se),

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