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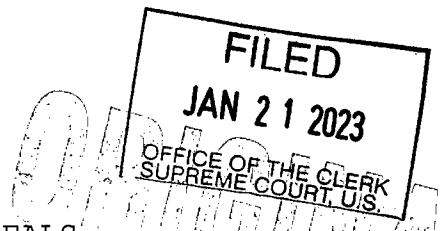

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Gricely Rosa

Petitioner,

v.

Lawrence Housing Authority; PHA Beatrice Gomez; Llaidy Pagan, Lawyers Residents Lawrence, Essex County, Massachusetts and Citizens of the

Respondent

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

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PETITION FOR A WRIT OF CERTIORARI

Barron, Chief Judge,

Lynch and Thompson, Circuit Judges.

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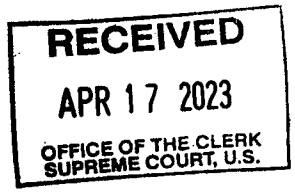

QUESTION PRESENTED

Language of both the Fair Housing Amendments Act of 1988 (FHAA)[2] and the Americans with Disabilities Act of 1990 (ADA)[3] is rooted in the Rehabilitation Act of 1973.[4] Section 504 of the Rehabilitation Act (§ 504) prohibiting discrimination against handicapped individuals in any program or activity that receives federal funding-this includes federally assisted housing programs; require to accommodate disabled known physical or mental limitations of an otherwise, qualified individual with a disability." see also 42 U.S.C. § 12112(a), when "such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

The question presented is:

Is to what extent a public housing agency must alter its policies and procedures to accommodate the handicapped 42 U.S. Code § 12102, or does the denial of an applicant's request for a reasonable accommodation becomes justiciable? Whom is subject to consideration of reasonable accommodation [24 CFR 982.552 (2) (iv)].

TABLE OF CONTENT

TABLE OF AUTHORITIES

CASES

STATUES

PETITION FOR A WRIT OF CERTIORARI

Gricely Rosa petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The decision and order of the Federal District of Massachusetts granting summary judgment for Respondent Lawrence Housing Authority Inc., on Gricely's Fair Housing claim (**Pet. App. 1a-12a**) **is reported.** The opinion of the First Circuit (**Pet. App. 1a-11a**) affirming the grant of summary judgment is reported at 18-cv-11576-DJC

JURISDICTION

The judgment of the First Circuit was entered on October 24, 2022. The jurisdiction of this Court is invoked under 42 USC § 3604(f)).

STATUTORY PROVISIONS INVOLVED

42 U.S. Code §12102.Definition of disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(A)
An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

INTRODUCTION

This case presents an important and recurring question regarding the scope of the Fair Housing Act [42 U.S.C. 3601, 42 U.S. Code § 12102 et seq. seq.]; its implementing regulations, as applied in Housing discrimination claims the ADA, and 504 Rehabilitation Act. FFAA national commitment to end the unnecessary exclusion of persons with [disabilities] from the American mainstream."; creating disability as a protected class, creating affirmatives' obligations for housing providers making it unlawful: To refuse to permit reasonable physical and Reasonable accommodations in housing rules and policies. requests for accommodation will be considered reasonable if they do not create an "undue financial and administrative burden" or result in a "fundamental altercation" in the nature of the program or services offered. *Vinson v. Thomas, 288 F.3d 1145,1152 n. 7 (9th Cir.2002)*. See also, *Zukle v. Regents of the Univ. of California, 166 F.3d 1041, 1045n. 11 (9th Cir.1999)*. Whether a given accommodation is a "reasonable accommodation" to which a participant is entitled under this provision typically is a fact-based inquiry that looks at the circumstances of the case. See Barnett, 535 U.S. at 405, 122 S.Ct. 1516;

The circuit courts are sharply divided on the question of whether this same analysis applies in a specific subset of cases: when the proposed reasonable accommodation is a Higher Rental Standard and Longer Search Time that will enable a "Protected Class" to afford such person equal opportunity to use and enjoy a dwelling and such accommodations may be necessary 24 CFR 982.402 (b)(8)]. This is an acknowledged split, with the First Circuit decision in this case standing against decisions from the Second, Fourth, Fifth, Circuits.

In this case, the First Circuit Discrimination was apparent when they solely by reason of his/her handicap, excluded from participation, denied the benefit of, terminated assistance and subjected to discrimination. Thus, in the First Circuit, even when the request is a Higher Rental Standard and Long Search Time enables the disabled equal opportunity; LHA was not required to approve such accommodation. The First Circuit position on this issue is discriminatory, exceptions to neutral policies may be mandated were disabled persons' disability-linked needs for alterations to the policies are essentially financial in nature. See, e.g., Smith & Lee Assocs. v. City of Taylor, 102 F.3d 781,795-96. (102 F.3d 781 (6th Cir. 1996)

Thus, in the First Circuit, Merits of the Reasonableness Analysis: Ordinarily, an accommodation is reasonable under the FHAA "when it imposes no 'fundamental alteration in the nature of the program' or 'undue financial or administrative burdens." Howard, 276 F.3d at 806 (quoting Southeastern Community College v. Davis, 442 U.S. 397, 410, 412, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979)); see also PGA Tour, Inc. v. Martin, 532 U.S. 661, 689, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001).

For the purposes and scope of the Fair Housing Act the Complainant is disabled as defined by FHA § 3604(h). The term "mental impairment" includes mental or psychological disorders such as emotional or mental illnesses. 24 C.F.R. § 100.201(a)(2); *42 U.S.C.§ 3602(h)(1);* Infection with HIV, the virus that causes AIDS, qualifies as a "physical or mental impairment" for the purposes of the *FHAA.* ***24 C.F.R. § 100.201(a)(2);*** *Bragdon v. Abbott, 524 U.S. 624, 639-642, 118 S.Ct. 2196, 141L.Ed.2d 540 (1998)* ; see also id. at 656, 118 S.Ct. 2196 (Ginsburg, J., concurring) *24 C.F.R. § 100.201(b).*

The question presented is one of great significance. When an applicant with disability needs a Higher Payment Standards or Longer Search Times as accommodation in order to have equal access to the HCV program. In this case, the petitioner voucher

was terminated after the denial of numerous accommodation and court complaints fighting her disability rights. Whether or not, the petitioner fails to address the district court's opinion and analysis; AIDS), Autism and Chronic mental illness fall squarely into the LHA's category of "[p]redictable assessments" for which the necessary individualized assessment "should be particularly simple and straightforward." *29C.F.R.1630.2(j)3).*

This case presents an excellent vehicle to resolve the question presented. The issue is squarely presented and outcome-determinative. The petitioner sought a Higher Rental standard based on http://www.masslegalhelp.org/housing/accommodations.; if necessary to lease up an apartment as accommodation request.

The petitioner sought Longer Search Times based on Chapter 8 of HOUSING SEARCH AND LEASING by HUD.gov https://www.hud.gov/sites/documents/DOC_35618.PDF); PHA has the authority to grant extensions of search time and to determine the length of an extension, the circumstances under which extensions will be granted. There is no limit on the number of extensions that the PHA can approve. It is disputed that the petitioner is "Protected Class" and was entitled to Higher Rental standard and Longer Search Times because of disability.

As the First Circuit acknowledged, this case therefore turns on the question of whether a "Protected Class" was

entitled to the requested Higher Rental standard and Longer Search Times as reasonable accommodation under the ADA. Moreover, had the court below conducted fact-specific analyses into whether the requested Higher Rental standard and Longer Search Times was a reasonable accommodation or an undue hardship, the petitioner would have met his burden of proof to defeat summary judgment and proceed to trial.

Finally, review is also warranted because the decision below is incorrect. Whether a proposed accommodation is a reasonable accommodation under the ADA is a case-by-case inquiry that requires an examination of the facts. See U.S. Airways, 535 *Giebeler* made the necessary initial showing that the requested accommodation was reasonable on the particular facts of this case. Barnett, 535 U.S. at 405, 122 S.Ct. 1516. *Branham* failed to carry its burden as articulated in Vinson of rebutting the showing made by Giebeler that the requested accommodation was in fact reasonable. Vinson, 288 F.3d at 1154.

The First Circuit and Lower Court violated…overlooked, misapplied, neglected and made vital legal errors in their Holdings… leading to nonsensical and Problematic outcomes— not ensuring that person with disabilities have full access to the PHA's programs and services. **SEC. 202. DISCRIMINATION. 42 USC 12132.** [®] When providing access to programs or services, the public entity has an obligation to do so in an integrated setting.

[®]42 U.S.C. §§ 12102(1), 12111(8), 12112(5)(A), 12131(2), 12182(b)(2)(a)(ii) (1994). 28 C.F.R. § 35.130 (b)(1)(iv) (1999)

The petitioner respectfully requests that this Court grant review.

STATEMENT OF THE CASE
A. Factual Background and Proceedings In The District Court.

Petitioner Gricely Rosa is "handicapped" diagnosed with Mixed Anxiety, Depressive Disorder, Bipolar Disorder, Moderate Persistent Asthma, Borderline Personality Disorder, PSTD, History of Sexual abuse, Mood Disorder, Anxiety Disorder, Hypertensive Disorder, Carpal Tunnel Syndrome on both hands, seizures, Chest pain, HIV ± since age 16, grandson Autism since birth 2014, disability, as defined in 42 U.S.C. § 12112(a).

Who sought an exception to the subsidy standards, a Higher Payment Standards, Longer Search Times as a reasonable accommodation since February 2018.

Lawrence Housing Authority absorbed a 2BR Disability Housing Choice Voucher of San Juan, Puerto Rico from HOWPA (HIV+ patient) Section 8 Program in May 2010 **¶ 10.** In, 2010 Lived 34 Avon St. Lawrence (2BR) problems with landlord. Case No. 11-SP-00437 *Noci v. Rosa* and 11-CV-0015 *Rosa v. Noci* under the Quiet Enjoyment Law, Gen. L. c.186 *§ 14.* Going forward LHA adopted a disparate and harshly treatment. In 2011 lived Sycamore Village, 59 Franklin St. Lawrence, Ma (2BR); were Ms. Santiago at 115 Lowell St. Lawrence, lived in a 2BR being one person subsidized by LHA. When terminated from employment in 2011 $6 due no income. (2012) 19 Cypress St. Lawrence, Ma (2BR), Ms. Rosa's mother

Blanca Garcia was added to voucher as medical accommodation. On January 1, 2013. Unit did not meet HQS, On December 4, 2012; Ref: 3330-J. D J violations of Chapter II of the" State Sanitation Code ", Ms. Gomez got mad and threaten to terminate voucher if Ms. Rosa did not move out while her daughter was about to have a newborn baby. On November 2013 moved to 549 Haverhill St. Lawrence. (2BR) On (03/14) Ms. Rosa's daughter (pregnant) again and grandson Jeily (Autism) move out the because violation HQS and non-removal of snow on premises ¶ 12. On April 17, 2014 Ref. 5038; On October 10, 2014 her voucher was reduced to 1-BR; forced to move out with threats of rent increase from ($116) to ($296) at the bottom of document in hand writing by Ms. Fernandez. Rosa 's share exceeded 40 percent of her monthly adjusted income. On January 2015, Ms. Rosa entered into a 1BR one year lease at 499. Haverhill St. Lawrence, Ma 01841 Decl. ¶ 14. On February 2015 Ms. Rosa's daughter was involved in criminal activities and had open DCF case for child neglect. Ms. Rosa's daughter voluntarily surrenders her two children Jeily (Autism) and her newborn (11 months) Yoseni (2 months), both children on early intervention because of child development delay and authorized to act in/and her children's behalf in all matters until deceased. Gomez Decl. ¶ 15;

Petitioner sought to modify her family composition [24 CFR 5.403,982.201]; Exception to subsidy Standard [24 CFR 982.402 (b)(8) justified by age and handicap, when persons cannot share a bedroom because of a verified medical or health reasons. ¶ 10 Gomez Decl. ¶ 16, ¶ 17. On May 11 ,2015 Petitioner visited LHA due to violation of Notice **PHI 2010-26]; MSHDA Policy** after request is presented, MSHDA will respond in 10 days; 1.14.4 Approval/Denial of the Accommodation Request; PART I: NONDICRIMINATION Admin Plan (1/5/15, pg.2); PART II Policies Related to "handicapped" and the Eligibility Factors and Requirements. Using of disparaging comments, utter disrespect with seemingly malicious intent subsequently doubled down on the same treatment discriminating against Ms. Rosa including through its systematic failure to properly provide reasonable accommodations.

While in waiting room another applicant asked Magaly to approve an apartment without lead certificate because it was newly constructed. When Magaly told the petitioner "Another baby ooh my boss is not going to approve it in a sarcastic voice, and walked away AGE *DICRIMINATIONACT OF 1975;* PROHIBITED ADMISSION CRITERIA [24 CFR 982.202(b)] during the meeting Ms. Gomez got verbally aggressive threatens to terminate voucher and kicked her out of office. Were petitioner was admitted at GLFHC 34 Haverhill St. Lawrence due to Anxiety attack caused by Beatrice Gomez.

After the troubling Petitioner received a notice for informal dated May 15, 2015 for conference on May 22, 2015 10 am. Gomez Decl. ¶ 18

On May 22, petitioner went accompanied by counsel Lucas McArdle Where Beatrice Gomez agreed to issue a 3 BR voucher. On July 14, 2015 petitioner delivered a 30-day notice, the landlord signed on July 18, 2015 and returned on July 20, 2015; waited 15 minutes, Magaly Fernandez gave the petitioner a 1BR, **Gomez Decl. ¶ 24-25; when** petitioner waited to speak to Beatrice Gomez to inquiry about accommodation. Ms. Gomez stated "your family composition is 1; giving the option to get custody of her grandchildren in violation *Family Composition [24 CFR 5.403,983.201].* LHA issued 3BR voucher on November 2015, a 10-month delay. **Gomez Decl. ¶ 19, ¶ 21, ¶ 27,**

Petitioner sought to rent 3BR for $ 1,400 dwelling at 42 Everett St. South Lawrence. Lawrence Housing Authority refused stating "it was over the market Value". **Gomez Decl. ¶ 34; Pagan Decl. ¶ 9**

Petitioner filed a complaint with HUD against LHA for violating the Fair Housing Act, inquiry No. 507800 because LHA refused to make a reasonable accommodation for disabled tenant in violation MGL c.151B, Section 4, Paragraph 6 and 7A, and Tittle III. On May 23, 2016 HUD Case No. 01-16-4228-8 Accepting Ms. Rosa's complaint of Housing Discrimination under the Fair Housing Act (the Act) [42U.S.C. 3601, et seq.]and referred the c case to the MCAD for further investigation as required by the

Act [42U.S.C. 3601(f)] and the Right to Sue. (Exb.) MCAD Docket No. 16BPH0081. Gricely v. Lawrence Housing Authority; In June 9, 2016 Ms. Rosa tried to settled for $100,000 or in the alternative her receiving the appropriate 3BR voucher increase and $50,000. MCAD told LHA to the petitioner a 3-bedroom apartment as accommodation; LHA agreed to rent the petitioner and case was disposed. **Corrigan Decl. ¶ 9.**, On November LHA 2017 rented the petitioner a 3BR apartment on 48 Union St. Lawrence, Ma 01841 for $1,400. **Pagan Decl. ¶ 11** Before eviction for violating the "none smoking policy" petitioner sought Portability to Jefferson County denied by Llaidy Rodriguez **Corrigan Decl. ¶ 16** and HHA in 2019 been unsuccessful; LHA sent portability package without voucher to HHA, Pagan Decl. ¶ 26. Suggesting the landlord to deliver the voucher himself, the petitioner was unable to rent apartment. Rosa's family became homeless. **Gomez Decl. ¶ 36**; Exh( ).

Petitioner return to LHA also filed an complaint in Lawrence Housing court CV# 18CV0079 for violating the Chapter 8 of Housing Search and Leasing search criteria as stated by https://www.hud.gov/sites/documents/DOC 35618.PDF); FAIR HOUSING POLICY [24 CFR 982.54(d)(6)]; Section 2-I. B NONDISCRIMINATION of the MSHDA Admin Plan, pg. 2-3 January 6, 2015; SECTION 504 of the REHABILITATION ACT of 1973, as AMENDED7 ; TITLE II of the AMERICANS with DISABILITIES ACT of 1990 (ADA) , Intentional Discrimination, Retaliation, and lying under the Oath, violating **Notice PHI 2010-26]** after a request for Higher

Rental Standard. **Corrigan Decl. ¶ 17**

On Abril, 2018 the judge entered a judgment to raise the plaintiff voucher up to 120% of the higher rental standard if necessary to lease up an apartment under a medical accommodation. **Corrigan Decl. ¶ 20**

Petitioner lost the opportunity to rent with HHA. On September 13, 2018 GLFHC wrote a letter to LHA that MS. Rosa *suffers of anxiety and other health problems, that Ms. Rosa was in need of housing and her voucher was terminated without notice to assist Ms. Rosa in obtaining her voucher back to seek housing.* 42 U.S.C§3602(h) **Pagan Dec. ¶ 39**

Petitioner had located a 3BR apartment located at 3BR 570 Haverhill St. Lawrence, Ma for $1,700 made accommodation request for a Higher Rental Standards, LHA did not approve the apartment stated" landlord did not rent to petitioner because drug influence". Petitioner took evidence of negative drug screen to LHA. Corrigan Decl. ¶ 27

On September 20 2018 Ms. Rosa tiered of fighting her disability rights an been unsuccessful, while in Northeast Housing court, LHA made stipulation to extend petitioners

voucher term to October 25, 2018. **Corrigan Decl. ¶ 24**; Utilizing methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, 28 C.F.R. § 35.130(b)(3). So, Petitioner after having exhausted all remedies used HUD right to sue LHA inquiry# No. 507800; filed law suit on in September 2018; Filed an Amended Complaint on May 14, 2019; CIVIL ACTION NO. 18CV11576 -DJC; where Judge Gasper failed to protect the "handicap" right on summary Judgement. **Corrigan Decl. ¶ 24**

The respondent central question before the Court is to what extent a public housing agency("PHA") must alter its policies and procedures to accommodate the handicap of a Section 8 Program participant. In short, when is a request for reasonable accommodation simply unreasonable?

Judge Gasper stated "there were at least a statute of limitation, did not know if Rosa will prevail in this matter because of those standards, not any disrespect to Rosa's situation or challenges, but the court don't know that Petitioner will prevail in this case, and will take the matter under advisement. HUD inquiry No. 507800 was used in the 2-year statutes of limitation (2018). The district court process took exactly two years until Summary Judgment.

The court asked counsel if there were any possibility given the court haven't ruled yet that further mediation might be helpful? LHA counsel said: I don't think so I don't believe

there is a mechanism for reinstatement after a voucher expires. Nothing is preventing Petitioner from reapplying, there may be a mechanism to accelerate the movement up the waiting list. I don't know, I haven't had the opportunity to explore that. Unfortunately, LHA options are limited. And don't believe that theirs a mechanism for reinstatement. Mediation will be fruitless. The court failed to review Rosa's exhibits demonstrating discrimination of her disability.

Ms. Debra M. Joyce, RMR, CRR, FCRR Official Court Reporter Fraudulently deleted the Original Transcript minutes without authorization, the only deletion requested Rosa's medical condition.

The court was deciding things as a matter of law requiring to apply the standards of law that apply, the need to give it some further Counsel slandered the Petitioner using unlawful harassment; a hostile an offensive way to ridiculed Ms. Rosa' s methods of fighting her disability rights; utilizing negative stereotypes, while the Judge did nothing to stop such hostile and intimidating environment causing the plaintiff an emotional breakdown (Civ. Code Section 51), the Disabled Persons Act (Civil Code Sections 54.1 and 54.2), and Government Code Section 11135.

As relevant here, Rosa's claimed that her request for reasonable accommodation was required by the ADA. Id. The

district court had jurisdiction under 28 U.S.C. § 1331 because the case involves a federal question under the ADA.

When ascribing affirmative responsibilities to housing providers, Congress recognized that "more than a mere prohibition against disparate treatment was necessary in order that handicapped persons receive equal housing opportunities." HUD v. Dedham Hous. Auth., 1991WL 442793, *5 (HUDALJ November 15, 1991) ("Dedham I") (citing H.R. No. 711.) Congress also used the 1988 amendment to repudiate the use of stereotypes and ignorance when dealing with individuals with disabilities, stating that "generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion." H.R. No. 711, at 18.

Theirs a contradiction on Defendants Undisputed Facts and Summary Judgment statements from the Official Transcript statements ;clearly accepting Rosa's claims ; [illegible] to exhibits

The district court granted summary judgment to LHA, [did] not dispute that Rosa was disabled within the meaning of the ADA, or that she did not satisfy the basic prerequisites for the accommodation. Restricted access to any benefit enjoyed by others in connection with the housing program. Counsel "Ms. Rosa deserved to be removed from Section 8 Program and has failed to

establish her discrimination claims. Accordingly, those claims must be dismissed.

B. Proceedings in the First Circuit.

Rosa timely appealed. As is relevant here, she alleged that LHA failure to approve Higher rental Standard and longer Search time, violated the ADA's reasonable accommodation requirements, which require to accommodate disabled known physical or mental limitations of an otherwise, qualified individual with a disability." see also 42 U.S.C. § 12112(a), when "such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Like the district court, the First Circuit failed to acknowledged "handicapped" for purposes of the ADA, and the petitioner was entitled to higher rental standard and longer search times; was necessary to afford equal opportunity to use and enjoy a dwelling. The accommodation should have been granted as a "reasonable accommodation" under the Fair Housing Act, 42 USC 3604(f), Ignoring that "Liability thus turns on the accommodation question: Did LHA violate the ADA by failing to reasonably accommodate the "handicapped" and terminating assistance?"

The court ignored the scope of a reasonable accommodation under the ADA; failed to acknowledged that under First Circuit precedent, a higher rental standard and longer search is a reasonable accommodation under the ADA.

In so holding, the First Circuit did not rely on the ADA's definition of "Qualified individual" nor provide assurances that all "handicapped" will be provided the opportunity to request an accommodation so they can fully access and utilize the housing program and services. The Supreme Court's most extensive discussion of the overall scope of the accommodation concept appears in a recent ADA case, *U.S. Airways v. Barnett, 535 U.S.391, 122 S.Ct. 1516, 152.*

Barnett guides us analysis concerning the reach of the accommodation obligation under the FHAA, in two respects: First, *Barnett* holds that an accommodation may indeed result in a preference for disabled individuals over otherwise similarly situated nondisabled individuals. And second, *Barnett* indicates that accommodations may adjust for the practical impact of a disability, not only for the immediate manifestations of the physical or mental impairment giving rise to the disability.

The District and First Circuit ignored petitioner is "handicapped". **FAIR HOUSING POLICY [24 CFR 982.54(d)(6)]** Stating HCVA shall not deny any family or individual the opportunity to apply for or receive assistance; on the basis of race, color, sex, religion, creed, national or ethnic origin, age, family or marital status, handicap or disability, or sexual orientation.

Among other things, subjected qualified individual with

disabilities to discrimination, and has excluded them from participation in and denied the benefits on the basis of her disabilities, in violation of Section 504 of the 1973 Rehabilitation Act, 29 U.S.C. § 794, et seq., and its implementing regulations, 24 C.F.R. pt. 8 and 24 C.F.R. pt. 40.

The First Circuit did not sanction LHA conduct with respect to reasonable accommodations requests that constituted a pattern or practice of discrimination or a denial of rights to a group of people. Persons that raise an issue of general public importance, in violation of the FHA, 42 U.S.C. 3614(a).

"Reasonable accommodation" language, the legal analysis is Often similar, with some subtle variations. In some cases, the distinctions are not so subtle, but this is more a function of splits in the circuit courts interpreting a single statute, rather than differences in statutory language and analysis between the different statutes.

The First Circuit stated "the record reflects no genuine issue of material fact with respect to any of Rosa's failure-to-accommodate claims. See Suzuki v.Abiomed, Inc., 943 F.3d 555, 561 (1st Cir. 2019) (citing Flovac, Inc. v. Airvac, Inc., 813 F.3d 849,852 (1st Cir. 2016)) (summary judgment standard of review and general principles);

The court did not undertake a fact-specific inquiry into whether the requested accommodation was reasonable under the specific facts of this case nor the related inquiry into the requested Accommodation would have been an undue hardship for LHA in this case. ("The question of undue hardship is a second-tier inquiry under the statute; that is, the hardship exception does not come into play absent a determination that a reasonable accommodation was available.").

REASONS FOR GRANTING THE PETITION

This case satisfies all of the Court's criteria for review. Whether or not AIDS, Severe Mental Illness, and Autism Spectrum are not categorically exempted from the ADA's reasonable accommodation requirements is an important issue that recurs frequently 42 U.S.C. § 12112(a). Further percolation is unlikely to resolve this circuit split, so the legal issue is ripe for this Court's intervention. Moreover, this case presents an ideal vehicle to resolve the widely recognized and important conflict.

I. The Courts of Appeals Are Not Divided on The **Question Presented.**

A. THE FOURTH AND FIFTH CIRCUITS ARE IN CONFLICT WITH THE SECOND CIRCUIT REGARDING WHEN A DENIAL OF A REASONABLE ACCOMMODATION IS RIPE FOR JUDICIAL REVIEW

Under longstanding precedent, several circuits have adopted that a Higher Rental Standard and Longer Search times can be a reasonable accommodation required by the ADA. These circuits conclude that such request can be a "reasonable accommodation" because it enables enable the disabled to afford such person equal opportunity to use and enjoy a dwelling and such accommodations may be necessary **24 CFR 982.402 (b)(8)].**

Rather, these circuits employ a fact-specific analysis to determine whether a Higher Rental Standard and Longer Search times can be a reasonable accommodation. They therefore perform the same analysis that they would perform when analyzing requests for other accommodations under the ADA, examining whether the accommodation was reasonable or an undue hardship to the agency based on the facts of the case. See, e.g., U.S. Airways, Inc. v. Barnett, 535 U.S. 391, 401-02, 405-06 (2002) (holding that whether an accommodation is reasonable or an undue hardship depends on the facts and circumstances in the case).

In the Fourth and Fifth Circuits, the denial of a Reasonable Accommodation Is Justiciable the moment the Accommodation is Denied. When the District court may entertain a challenge to a municipality's denial of a reasonable accommodation under the FHA remains a significant and unresolved question of federal law on which lower courts disagree. In the Fourth and Fifth Circuit Courts of Appeals, an applicant's challenge is ripe no later than the moment at which the reasonable accommodation is denied.

In the Fourth Circuit, an Applicant May Seek Immediate Judicial Review of a Denied Reasonable Accommodation.

The Fourth Circuit ruled that appellant's claim was ripe, noting that an issue is "sufficiently concrete for judicial review once an accommodation is denied." *Id.* at 602. Contrasting takings claim, "which do not ripen until post-decisional procedures are invoked without achieving a just compensation," *id.* (citing *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985)), with FHA claims,[2] the Fourth Circuit emphasized that a violation of the latter "occurs when the disabled resident is first denied a reasonable accommodation, irrespective of the remedies granted in subsequent proceedings." *Id.*[3]

In the Fifth Circuit, a Denial Is Also Subject to Immediate Review but Denial May Be Actual or Constructive

Three years after *Bryant*, the Fifth Circuit highlighted that "as to the 'fitness of the issues for judicial decision,' we agree with the Court of Appeals for the Fourth Circuit that '[u]nder the Fair Housing Act … a violation occurs when the disabled resident is first denied a reasonable accommodation, irrespective of the remedies granted in subsequent proceedings.'" *Groome Resources Ltd., L.L.C. v. Parish of Jefferson*, 234 F.3d 192, 199 (5th Cir. 2000) (citing *Bryant*, 124 F.3d at 602).

The Fifth Circuit affirmed the district court's order that the issue was ripe for review, explicitly adopting the holding of *Bryant*. *Id.* at 199 ("[W]e agree with the Court of Appeals for the Fourth Circuit that '[u]nder the Fair Housing Act … a violation occurs when the disabled resident is first denied a reasonable accommodation, irrespective of the remedies granted in subsequent proceedings.'"). The Fifth Circuit went further, however, finding that the case was ripe for judicial review notwithstanding the fact that the municipality had simply delayed ruling on the request for an accommodation. Thus, the court ruled, denial of a reasonable accommodation "can be both actual or constructive, as an indeterminate delay has the same effect as an outright denial." *Id.* The Court emphasized that "[n]umerous courts have stressed that housing discrimination causes a uniquely immediate injury. Such discrimination, which under the FHA includes a refusal to make reasonable accommodations, makes these controversies ripe." *Id.* at 200.

The Supreme Court has held that "[E]very federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). In *City of Edmonds* v. *Oxford House, Inc.*, 514 U.S. 725 (1985), a case similar to Safe Harbor, certiorari was granted to review the Ninth Circuit's.

B. In the Second Circuit, an Applicant Denied a Reasonable Accommodation Who Has Appealed That Denial to the Highest Authority in the Municipality and Received a Final Decision Denying Its Request Is Not Permitted to Challenge the Denial Until It Exhausts All Administrative Remedies.

In contrast with both the Fourth and Fifth Circuits, in the Second Circuit an FHA claim for the denial of a reasonable accommodation is not ripe until the court "can look to a final, definitive position from a local authority to assess precisely how [the applicant] can use their property." *Sunrise Detox V, LLC v. City of White Plains*, 769 F.3d 118, 121 (2d Cir. 2014) (quoting *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 347 (2d Cir. 2005)). Unlike *Bryant* and *Groome*, which each emphasize the unique injuries that can arise in fair housing cases as a basis for immediate review, *Sunrise Detox*, relied upon by the Second Circuit in the *Safe Harbor* case, requires finality or the establishment of futility. 769 F.3d at 124 ("We thus see no basis in the record to apply the futility exception to the final-decision requirement in this case.").

The Second Circuit relied almost exclusively on its decision in *Sunrise Detox* when upholding the district court's order dismissing Safe Harbor's complaint as unripe. It did so without consideration of either the Fourth or Fifth Circuit Courts of Appeals precedents which would have required the district court to determine the FHA issue on the merits.

C. After *Safe Harbor*, the Justiciability of a Denial of a Reasonable Accommodation Varies Depending Upon the Circuit Within Which a Handicapped Person Resides.

The FHA requires uniform Interpretation when seeking review of a denial of a reasonable accommodation, where an applicant disability should not determine the justiciability of his or her claim. Unfortunately, the Supreme Court's refusal to take this case perpetuates this reality.

Further, Safe Harbor undoubtedly also would have had an immediately justiciable claim under *Groome* and its progeny had its reasonable accommodation been denied in the Fifth Circuit, which finds justiciability whether the FHA claim is actual or constructive. The split among three Courts of Appeals impacts the rights of thousands of handicapped individuals who every year challenge the denial of reasonable accommodations.

First Circuit. The First Circuit rejected the analysis concerning the reach of the accommodation obligation under the FHAA, and instead determines whether a Higher Rental Standard and Longer Search times is a reasonable accommodation based on the facts of the case. The Court should grant certiorari in this case to harmonize these divergent interpretations of the ADA.

II. The Question Presented Is Important

The question presented is one of great significance. As to excluding, denying benefits, and terminating assistance of a "handicapped" from participation in services, programs or activities provided by the entity - this includes public housing authorities. Whether in providing access to programs or services, the public entity has an obligation to do so in an integrated setting. It is impermissible for an entity to use rules or policies to segregate the "handicapped".

The question presented directly affects the wellbeing and livelihood of individuals with disabilities. To be sure, not to subjected qualified individuals with disabilities to discrimination, and excluded them from participation in and denied them the benefits of programs and activities receiving federal financial assistance, on the basis of them disabilities, not granting requests for reasonable accommodation in rules, policies, practices or services when such accommodations was necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, as required by Section 504 and HUD's Section 504 regulations, including 24 C.F.R. § 8.3, 24 C.F.R. 8.24, 24 C.F.R. § 8.28, and 24 C.F.R. § 8.33

For disabled individuals in this subset, however, this issue can have significant and long-term impacts. In this case, for example, Rosa's voucher was terminated after numerous

accommodations denial for higher rental standards and long search times, a portability to Jefferson Country, portability to Haverhill Housing Authority, lower court order for a 120% rental standard if necessary to use and enjoy dwelling, Then Lawrence housing Authority made stipulation to terminate Mrs. Rosa voucher on October 28,2018.

Addressing the third prima facie element, the court in *Green* narrowed the required inquiry by reasoning that based on all the applicable statutes - the ADA, FHAA and § 504 - a modification to the rule/policy/service "must be made ". The "handicapped "are entitlement to a Higher Rental Standard based on www.masslegalhelp.org/housing/accommodationa and Long Search time based on **Chapter 8 of HOUSING SEARCH AND LEASING by HUD.gov states the following: Where t**here is no limit on the number of extensions that the PHA can approve.

III. This Case Presents an Excellent Vehicle to Resolve the Question Presented

This case is an excellent vehicle for resolving the question of to what extent a public housing agency must alter its policies and procedures to accommodate the handicapped 42 U.S. Code §12102, or does the denial of an applicant's request for a reasonable accommodation becomes justiciable? Whom is subject to consideration of reasonable accommodation Section 504 and HUD's Section 504 regulations, including 24 C.F.R. § 8.3, 24 C.F.R. 8.24, 24 C.F.R. § 8.28, and 24 C.F.R. § 8.33

As the First Circuit acknowledged, Rosa's case rises and falls on whether she was entitled to Higher Rental Standard and Long Search Time as a reasonable accommodation under the ADA. (stating that "liability * * * turns on the accommodation question: Did Lawrence Housing Authority violate the ADA by failing to reasonably accommodate her disability?"). Rosa requested Higher Rental Standard and Long Search Time because of his disability; when LHA sent an incomplete portability to HHA. Rosa requested LHA a Higher Rental Standard and Long Search Time for an equal opportunity to use and enjoy a dwelling. H.R.Rep. No. 100-711, at 25 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2186. See also id. at 28 ("In adopting this amendment, the Committee drew on case law developed under Section 504 of the Rehabilitation Act of 1973.

This therefore is a case involving denial of accommodation request to the "handicaps" where it was doubtful that a step-by-step analysis to determine if Rosa's is "handicapped" for purposes of the statute. Following Rosa's voucher termination after numerous denials, after exhausting remedies used HUD's letter NO. Inquiry to sue in the 2-year statue, because her family with children age 3 and 2 was homeless."); LHA sent portability Package w/o voucher suggesting landlord deliver it himself and refused to rent the dwelling. Rosa filed complaint Northeast Housing Court; On April 10, 2018 NE Housing Authority case CV0079 denied Ms. Rosa's Restraining Order also,

that LHA would request a 120% increase from HUD, if necessary, as accommodation. On October 28,2018 LHA denied Rosa A Higher Rental Standard Made stipulation to terminate Rosa's voucher when violated **Notice PHI 2010-26** and **MSHDA Policy** to respond within 10 days. Failed to rent Rosa a dwelling stating the landlord did not rent because Rosa was under the influence, Rosa took a negative drug test to LHA.

Accordingly, this case squarely raises the question presented. Moreover, had the courts below conducted the individualized analysis required by the ADA and this Court's precedents, Rosa would have met his burden of proof to defeat summary judgment and proceed to trial. A reasonable jury could easily conclude that a higher rental standard and long search time was a reasonable accommodation in this case. After her voucher was terminated Rosas's daughter became a drug addict, her four grandchildren got abused; know in custody of DCF, Rosa would have been able to rent a dwelling for her disabled family if Lawrence Housing Authority would have not denied her long search time and a higher rental standard, and terminate her voucher.

In addition, LHA did not show that the accommodation would have caused an undue hardship. To the contrary, LHA stated:" Ms. *Rosa failed to fulfill her obligations, steadfastly endeavored to help in the face of incessant legal attacks*, Ms. Rosa deserved to be removed from Section 8 Program and has failed to

establish her discrimination claims. Accordingly, those claims must be dismissed. As a result, a reasonable jury could easily find that LHA would not have suffered undue hardship by granting Rosa's request.

Accordingly, this Court should take the opportunity in this Case to resolve these important prohibitions when more than one civil right law applies to a situation, the law will be read and applied together.

IV. The Decision Below Was Wrongly Decided

Review is also warranted because the first Circuit forsook the individualized, case-by-case assessment the ADA and this Court require and instead ignored her disability.

The ADA calls for a flexible, case-by-case analysis of reasonable accommodations Merits Analysis: Ordinarily, an accommodation is reasonable under the FHAA "when it imposes no 'fundamental alteration in the nature of the program' or 'undue financial or administrative burdens.'" Howard, 276 F.3d at 806 (quoting Southeastern Community College v. Davis, 442 U.S. 397, 410, 412, 99 S.Ct. 2361, 60 L.Ed.2d 980 (1979)); see also PGA Tour, Inc. v. Martin, 532 U.S. 661, 689, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001) (holding, in an ADA reasonable accommodation case, that where a rule is peripheral to the nature of

defendants' activities, "it may be waived in individual cases without working a fundamental alteration"). Since School Bd. of Nassau Cty. v. Arline, 480 U.S. 273 (1987), this Court has consistently reminded the lower courts to conduct individualized inquiries when evaluating disability cases; per se rules are disfavored. **Id. at 287** (noting that "in most [disability] cases, the district court will need to conduct an individualized inquiry and make appropriate findings of fact," in the context of analyzing whether an applicant was a "handicapped individual" under the ADA).

The plaintiff has, as a first step, the opportunity to show that an accommodation is reasonable "on its face, i.e., ordinarily or in the run of cases." Its failure to show that the accommodation is reasonable in the run of cases is not decisive, however. Instead, the plaintiff alternatively, may show that an accommodation is reasonable "on the particular facts," an individualized inquiry the Court has always favored in the ADA context. The Agency, in turn, may show special circumstances, which "typically [are] case-specific," "that demonstrate undue hardship in the particular circumstances."

The First Circuit's decision in this case tosses aside such individualized inquiry in favor of excluding from the participation in, be denied the benefits, terminate assistance

of "handicapped" after the denial of multiple reasonable accommodation request under the ADA. Carter v. Lynn Hous. Auth., 66 Mass. App. Ct. 117, 125 (2006). Although the regulations do not explicitly place the burden of producing evidence of mitigating factors on a tenant, I conclude that it is implied by the provisions of 24 C.F.R § 982.555 (2006), governing the informal hearing. Under § 982.555(e)(5), the family must be given the opportunity to produce evidence and question any witnesses.

Finally, review is also warranted because the decision below is incorrect. Whether a proposed accommodation is a reasonable accommodation under the ADA is a case-by-case inquiry that requires an examination of the facts. See U.S. Airways, 535 *Giebeler* made the necessary initial showing that the requested accommodation was reasonable on the particular facts of this case. Barnett, 535 U.S. at 405, 122 S.Ct. 1516. *Branham* failed to carry its burden as articulated in Vinson of rebutting the showing made by Giebeler that the requested accommodation was in fact reasonable. Vinson, 288 F.3d at 1154.

Conclusion

The petitioner respectfully requests that this Court grant review because the Lower Courts violated…overlooked, misapplied, neglected and made vital legal errors in their Holdings… More importantly this request directly contracts the admonition in Rule 10 that certiorari will rarely be granted "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." First Circuit's position also leads to nonsensical and Problematic outcomes– not ensuring that person with disabilities have full access to the PHA's programs and services. **SEC. 202. DISCRIMINATION. 42 USC 12132.**

Thus, Petitioner is not seeking to have this Court answer a new, important federal question. Instead, she is simply asking this Court to take the recognized standard for a failure to accommodate claim and apply it differently to the facts in this case.

Petitioner makes similar arguments regarding her due process claims in this matter, asking the Court to correct what she argues is the misapplication of wells stated law.

Also, Magaly Fernandez was served and continues to be on payroll at LHA.

Respectfully submitted,

s/ Gricely Rosa
GRICELY ROSA
PRO-SE

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January 24, 2023