No. 22-7304

In The

Supreme Court of the United States

GRICELY ROSA,

Petitioner,

v.

LAWRENCE HOUSING AUTHORITY,
BEATRICE GOMEZ AND LLAIRY PAGAN RODRIGUEZ,

Respondents.

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

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BRIEF IN OPPOSITION

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INTRODUCTION

The United States Housing Act of 1937 ("Housing Act") authorizes the U.S. Department of Housing and Urban Development ("HUD") to designate federal funds to state and local public housing authorities ("PHA") to provide safe and affordable housing to low-income citizens.[1] The Housing and Community Development Act of 1974 established the Section 8 Housing Choice Voucher Program ("Section 8 Program") as a vehicle for providing an adequate supply of safe, economically-mixed housing to low-income families.[2] Under the Section 8 Program, HUD enters into annual contributions contracts with PHAs to fund the issuance of Section 8 vouchers.[3] With HUD funds provided through annual contribution contracts, PHAs enter into Housing Assistance Payment ("HAP") contracts with landlords to subsidize rent payments on behalf of qualifying low-income tenants.[4]

All PHAs must submit an "administrative plan" to HUD describing the details of their respective Section 8 programs and their compliance with federal and state equal housing requirements.[5] HUD publishes annually a list of Fair Market Rents ("FMRs") for each metropolitan area and non-metropolitan county in the United States.[6] PHAs in turn determine a rent payment standard that is between 90% and 110% of the HUD-published FMR.[7] The Section 8 Program requires the tenant to pay a portion of the rent, which is determined by the PHA's calculation of the tenant's adjusted income.[8] This calculation is the tenant's annual income minus any exclusions or deductions provided for in the HUD program requirements.[9] The PHA also determines a reasonable utility allowance for the tenant based on the number of qualified tenants in the dwelling.[10] Ultimately, the PHA subsidizes rent payments to cover the amount of the rent minus 30

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[1] 42 U.S.C. §1437
[2] Pub. L. No. 93-383, tit. II, §8(a), 88 Stat. 633, 662 (codified at 42 U.S.C. §1437f)
[3] 42 U.S.C. §1437f(o); 24 C.F.R. § 982.151
[4] 42 U.S.C. § 1437f(o); 24 C.F.R. § 982.1(a)(1)-(2)
[5] 42 U.S.C. § 1437c-1(b); c-1(d)(15)
[6] 42 U.S.C. § 1437f(c)(1)(B)
[7] 42 U.S.C. § 1437f(o)(1)(B)
[8] 42 U.S.C. § 1437f(o)(1); 24 C.F.R. § 5.601, et seq.
[9] 24 C.F.R. § 5.609; 24 C.F.R. § 5.611
[10] 42 U.S.C. § 1437f(o)(2)(D)

percent of the tenant's monthly adjusted income, which is the Section 8 "rent ceiling" pursuant to the Housing Act.[11]

To participate in a Section 8 program, an eligible family may apply to any authorized PHA, each of which maintains a waiting list and then awards subsidies in the form of vouchers, as they become available to eligible participants on its list.[12] Families must supply any information the PHA may require as necessary for determination of eligibility and/or for annual recertification or interim reexamination of family income and/or composition.[13] Family composition must be approved by the PHA, and the family must request PHA approval to add any other family member as an occupant of the subject rental unit.[14] Once a family is determined eligible for assistance and receives a Section 8 voucher, the family must find an acceptable rental unit that meets the fair market rent standards set by HUD.[15]

The initial term of a Section 8 voucher must be at least 60 calendar days.[16] At its discretion, the PHA may grant one or more extensions of the initial term in accordance with its Administrative Plan.[17] If a family needs and requests an extension of the term as a reasonable accommodation to make the program accessible to a disabled family member, the PHA must extend the voucher term up to the term reasonably required for that purpose.[18] In granting an extension of a voucher term, a PHA may require a family to report progress in leasing a unit.[19]

It is axiomatic that the goal of the Section 8 Program is to provide as much decent, safe, and affordable housing to as many deserving families as possible. The demand for Section 8 vouchers is tremendous. PHAs such as Respondent Lawrence Housing Authority ("LHA") are under constant pressure to maximize efficiency to provide more and

[11] 42 U.S.C. § 1437f(o)(2)(A)(i)
[12] 42 U.S.C. §1437f(o)(13) (J); 24 C.F.R. § 982.201 et seq.
[13] 24 CFR 982.551(b)(1-2)
[14] 24 CFR 982.551(h)(2)
[15] 42 U.S.C. § 1437f(r)(1); 24 C.F.R. § 982.302
[16] 24 CFR 982.303(a)
[17] 24 CFR 982.303(b)(1)
[18] 24 CFR 982.303(b)(2)
[19] 24 CFR 982.303(d)

more services to more and more families. As of August 17, 2020, there were 225,301 applicants on the centralized Massachusetts Section 8 voucher waitlist, 11,056 of whom either live or work in the Lawrence, Massachusetts.[20] The average wait time for a Section 8 voucher applicant seeking housing in Lawrence is 12 to 14 years.[21]

Congress specifically recognized the need to vest the maximum amount of power and responsibility with public housing agencies to promote efficient management of the Section 8 Program, as evidenced by the Fair Housing Act's ("FHA") Declaration of Policy: "It is the policy of the United States … to vest in public housing agencies that perform well, the maximum amount of responsibility in program administration of their housing programs…."[22] Consistent with Congress' declaration, the Department of Housing and Urban Development ("HUD"), through its regulations, vested in PHAs the right to make reasonable policy decisions not specifically authorized in the FHA.

As to the factors a PHA should consider when assessing a request for additional search time, HUD's Housing Choice Voucher Program Guidebook is instructive:

> **8.5 SEARCH TIME, EXTENSIONS, AND VOUCHER EXPIRATIONS**
>
> The PHA must issue a voucher for an initial period of at least 60 days. The term must be clearly indicated on the voucher, and the family must submit its request for tenancy approval within the specified period, unless the PHA grants an extension.
>
> **Extensions of Search Time**
>
> The PHA has the authority to grant extensions of search time and to determine the length of an

[20] See Petitioner's Appendix, Memorandum and Order of the U.S. District Court for the District of Massachusetts (July 20, 2021), at 17.
[21] Id.
[22] 42 U.S.C. § 1437(a)(1)

extension and the circumstances under which extensions will be granted. If the PHA grants an extension, it must provide written notice to the family. There is no limit on the number of extensions that the PHA can approve. Discretionary policies related to extension and expiration of search time must be described in the PHA's administrative plan.

PHAs must approve an additional search term if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

When establishing PHA policy on the *length* of the extension, consider the following:

• How tight is the local housing market? For example, a PHA located in a tight housing market may wish to automatically extend the voucher period whenever an extension is requested due to the likelihood that it will take voucher holders longer to locate decent housing renting for amounts that can be approved by the program. A PHA located in a housing market where the supply of affordable units exceeds the demand may choose not to grant extensions except in special circumstances.

• What is the approximate wait time for an applicant on the waiting list? **If the wait is long and there are many potentially eligible applicants waiting for a voucher, PHAs may wish to grant extensions only to those voucher holders who have demonstrated that they have made substantial effort to locate housing or to those with extenuating circumstances.**

HUD Housing Choice Voucher Guidebook (7420.10G) at pp. 8-11 to 8-12 (emphasis added).[23]

STATEMENT OF THE CASE

Although it is not easily decipherable from the subject Petition, the question presented to this Court is to what extent a PHA such as Respondent LHA must alter its policies and procedures to accommodate the handicap of a Section 8 Program participant. Petitioner Gricely Rosa ("Ms. Rosa") was a Section 8 participant for many years. After her private landlord terminated her tenancy for cause (to wit: violation of the landlord's no-smoking policy) in 2017, LHA issued Ms. Rosa a new Section 8 voucher, giving her the opportunity to search for a new apartment with the promise of an LHA subsidy. Under the HUD-approved LHA Administrative Plan, the maximum length of a voucher term was 180 days. Ms. Rosa was given more than 15 months to search for an apartment. She failed to find an apartment, her voucher expired, and she was terminated from the Section 8 Program.

Ms. Rosa claims that her disability prevented her from finding an apartment and that Respondents discriminated against her by failing to accommodate her request for additional search time beyond 15 months. These claims are without merit. Respondents steadfastly endeavored to help Ms. Rosa in the face of her incessant legal attacks and refusal to comply with the basic rules of the Section 8 Program. Respondents accommodated Ms. Rosa's extension requests until they became unreasonable and threatened the integrity of the Section 8 Program.

STATEMENT OF THE FACTS

The undisputed facts and procedural history of this case are stated succinctly in the District Court's July 20, 2021 Memorandum and Order (see Petitioner's Appendix) and, in the interests of brevity and judicial economy, are not recited here.

[23] Available at: http://www.lb7.uscourts.gov/documents/15c6523.pdf

REASONS FOR DENYING THE PETITION

Ms. Rosa has offered no compelling reason for this Court to grant her Petition. This is not a case of national importance. There is no conflict among the Circuit Courts of Appeal or between the First Circuit and Massachusetts Supreme Judicial Court. Ms. Rosa has not cited any error in the decisions of the First Circuit and District Court below. Instead, Ms. Rosa has once again set forth an argument that simply ignores the proceedings below. As the First Circuit noted in its October 24, 2022 Judgment (see Petitioner's Appendix), Ms. Rosa failed to address the District Court's opinion and analysis on appeal. As District Court Judge Casper noted in her July 20, 2021 Memorandum and Order (see Petitioner's Appendix), Ms. Rosa essentially ignored Fed. R. Civ. P. 56 by failing to file a statement of facts or proper responses to Respondents' statement of facts with her summary judgment filings. This has been a recurring theme in Ms. Rosa's filings.

Ms. Rosa argues that there is a conflict among the Circuit Courts of Appeal with regard to "when a denial of a reasonable accommodation is ripe for judicial review." Accurate or not, this issue has never been raised before in this case and is wholly inapplicable to the question presented to the Court. Respondents have never challenged Ms. Rosa's fundamental right to seek redress of her grievances in the federal courts. In fact, Ms. Rosa's claims were fully addressed by the District Court and decided on the merits.

Much of the "Reasons for Granting the Petition" section of Ms. Rosa's Petition appears to be lifted, verbatim and unattributed, from an article by Joe Campolo, Esq. and L. Kanter-Lawrence, Esq. entitled "Ensuring Uniform Application of the Fair Housing Act," published in the NY Journal of Land Use (June 20, 2017), *available at* cmmllp.com/new-york-zoning-law-practice-report/. While it is well-written and informative, this article has nothing to do with the question presented to the Court and therefore is not instructive.

Ms. Rosa essentially ignores the merits of her reasonable accommodation claim, which requires a plaintiff to show: (1) a qualifying disability; (2) knowledge on the part of the defendant of the

disability (or that the defendant reasonably should have known of the disability); (3) a request for accommodation that is both reasonable and necessary to allow equal opportunity for use and enjoyment of the housing; and (4) that the defendant refused to make the requested accommodation. Astralis Condo. Ass'n v. Sec'y, U.S. Dep't of Hous. & Urban Dev., 620 F.3d 62, 67 (1st Cir. 2010).

"[A] reasonable accommodation is required where there is a causal link between the disability for which the accommodation is requested and the misconduct that is the subject of the eviction or other challenged action." *Bos. Hous. Auth. v. Bridgewaters*, 452 Mass. 833, 848 (2009). A "reasonable" accommodation does not impose a fundamental alteration in the nature of the program or an undue financial or administrative burden on the entity asked to make the accommodation. *Batista v. Cooperativa de Vivienda Jardines de San Ignacio*, 776 F.3d 38, 43 (1st Cir. 2015); *Andover Housing Authority v. Shkolnik*, 443 Mass. 300, 307 (2005). "The mandate for reasonable, but not onerous, accommodations strikes 'a balance between the statutory rights of the handicapped . . . and the legitimate interests of federal grantees in preserving the integrity of their programs.'" *Shkolnik*, supra at 307, quoting *City Wide Assocs. v. Penfield*, 409 Mass. 140, 142 (1991), quoting *Alexander v. Choate*, 469 U.S. 287, 300 (1985). One who has alleged discrimination in housing based on a failure reasonably to accommodate a handicap has the burden of proving that the proposed accommodation is "reasonable" and "necessary to afford person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

While Respondents do not doubt that Ms. Rosa suffers from psychiatric and mental problems, they have consistently questioned whether Ms. Rosa's psychiatric and mental problems "substantially limit" a "major life activity," and more to the point, how those psychiatric and mental problems impact Ms. Rosa's ability to search for an apartment. There must be a causal link between the disability for which the accommodation is sought and the obligation that cannot be fulfilled without the accommodation. Ms. Rosa has offered no evidence on this score. It is difficult to reconcile how a layperson can navigate the judicial system as adeptly as Ms. Rosa and yet be completely unable to comply with simple Section 8 rules.

As the District Court concluded:

> Respondents gave Ms. Rosa 15 months to find an apartment, significantly more than the 60 days required by HUD Regulations and the 180-day maximum voucher term under the LHA Administrative Plan. Mandating further extensions, particularly when doing so prevents one of the more than 200,000 families in Massachusetts (more than 11,000 of them in Lawrence) on the Section 8 waitlist from properly utilizing said voucher is not "reasonable."

See Petitioner's Appendix, Memorandum and Order, at 17.

CONCLUSION

For all the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the Petitioner by electronic mail and first-class mail and electronically filed with the Clerk of the Court for the United States Supreme Court on May 19, 2023.

/s/ Brian T. Corrigan
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