



Tough Topics in Fair Housing

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Tough Topics

- What is a disability and what do we do with those on-line certificates?
- Reasonable accommodations in action
- Fair housing, COVID and evictions
- Reasonable accommodations in litigation today
- Criminal background screening
- Sexual Harassment
- National Origin Discrimination

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Disability Issues



Background

- Rules, policies, practices, and services may have a different effect on people with disabilities than on other persons.
- **Reasonable accommodation** = change in rules, policies or practices or a change in the way services are provided
 - Examples: waiver of pay extra fees or deposits to live on the first floor, assigning an accessible parking space, or waiving a no pet policy

See Bazelon Center, *Fair Housing Guide*, <https://secureservercdn.net/198.71.233.254/d25.2ac.myftpupload.com/wp-content/uploads/2018/05/Fair-Housing-Guide-2018-Updated.pdf>; DOJ & HUD, *Joint Statement: Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, 6, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddjstatement.pdf>; DOJ & HUD, *Joint Statement: Reasonable Modifications Under the Fair Housing Act*, May 5, 2008, available at https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf

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Applicable Statute: Fair Housing Act

Reasonable accommodations & the Fair Housing Act

- **Discrimination** against a buyer or renter
 - with a disability
 - Or someone associated with them who has a disability, like a visitor
- **Includes:**

"a refusal to make **reasonable accommodations** in rules, policies, practices, or services, when such accommodations may be **necessary to afford such person equal opportunity** to use and enjoy a dwelling"

42 U.S.C.A. § 3604(f)(3)(B); 24 C.F.R. § 100.204

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Person with a Disability

- The FHA defines a person with a disability to include:
 - Individuals with a **physical or mental impairment** which substantially **limits one or more major life activities**;
 - Individuals who are **regarded as having such an impairment**; or
 - Individuals with a **record of such an impairment**.

See 42 U.S.C. § 3602(h)

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Impairment of Daily Activities

["Individuals with a physical or mental impairment which substantially limits one or more major life activities"]

- **"Impairment"** means:
 - "unable to perform, or is significantly limited in performing, an activity that an average person in the general population can perform."
- **Major life activities** are activities that are of **central importance to daily life**, such as:
 - seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking
- Chronic or episodic disorders that are **substantially limiting** when active, or have a high likelihood of recurrence in substantially limiting forms, have been found to be disabilities.
- Includes **physical and mental** impairments

See DOJ & HUD, *Joint Statement: Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, 3-4, available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>; *Secretary v. Jankowski*, HUDALJ 05- 93- 0517- 1 (September 7, 1995).

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Regarded as Having an Impairment

["Individuals who are regarded as having such an impairment"]

- Regarded as having an impairment means:
 - (1) Has a physical or mental impairment that does **not substantially limit** one or more major life activities but **that is treated by another person as constituting such a limitation**;
 - (2) Has a physical or mental impairment that substantially limits one or more major life activities only **as a result of the attitudes of other toward such impairment**; or
 - (3) Has none of the impairments defined in paragraph (a) of this definition but is **treated by another person as having such an impairment**.

See 24 CFR 100.201(d)

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Record of an impairment

["Individuals with a record of such an impairment."]

- "Has a record of such an impairment means:
 - has a **history of**, or has been **misclassified as** having, a mental or physical impairment that substantially limits one or more major life activities."

See 24 CFR 100.201(c)

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Questions: Disability

Do not ask for a diagnosis. Ask questions like this:

- Tell me how your disability **affects your day-to-day life**? Please describe the effect of your disability on the things you do every day. Does your disability affect:
 - Your ability to walk long distances, climb stairs, carry things?
 - Your ability to remember days of the month or other things?
 - Your ability to live by yourself?
- Is the effect on your daily life come and go, or is it **constant**?
- **How long** has your disability affected your daily activities?
- How does your disability **affect your ability to live in your apartment**, house or condominium or do things you need to do as a tenant?
- Do you consider yourself **disabled today**? If not, do you have times in the past when you have been disabled? Please describe.
- How would you say that **people perceive you**? Do they perceive you as having a disability? Why? What are some of the ways that you know this?

• **LISTEN TO THE ANSWERS**

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Reasonable Accommodation Steps

- Can you explain to me why you need the accommodation that you are asking for?
- How is the accommodation related to your disability?
- Tell me how the accommodation will improve things for you in your living situation.

- After talking to a person about disability and the requested accommodation the landlord should..... think. Take a minute, an hour, a day
 - Can the property approve this accommodation? Think yes first, not no
 - Would it cost a lot of money, more than you would have available over a year? Would it change things dramatically? Would it be an unbearable administrative hassle?
- It is not a good reason to turn down a requested accommodation because everyone will want whatever it is if you approve it for one person.
- It is a good reason to turn down a requested accommodation if it would be an undue financial and administrative hardship or a fundamental alteration of your operation.

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Whether The Disability is Obvious

- **If the disability is obvious:**
 - Landlords and others are generally expected to know that a person is disabled
 - Landlords **may not request supporting documentation**
- **If the disability is not obvious:**
 - Is there some other way that the landlord knew that the disability existed? Source of income is disability-related or it came up in conversation
- It is the **obligation of the landlord to inquire further** if the landlord doubts that the person has a disability.
 - Inquire by requesting back up confirmation or engaging in dialogue
 - If the housing provider didn't know about the disability or genuinely doubts it, don't reject the accommodation, ask for more information
- **The documentation does not have to come from a doctor or be sworn to.**

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Denying a Request for Accommodation

- After talking to a person about disability and the requested accommodation the landlord should..... think. Take a minute, an hour, a day
 - Can the property approve this accommodation?
 - Would it cost a lot of money? Would it change things dramatically. Would it be an unbearable hassle or just a minor hassle?
- It is not a good reason to turn down a requested accommodation because everyone will want whatever it is if you approve it for one person.
- It is a good reason to turn down a requested accommodation if it would be an undue financial and administrative hardship or a fundamental alteration of your operation.

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Interact

- Not every request for a reasonable accommodation has to be approved.
- No.
- No.
- No.
- But if a requested accommodation is going to be denied, an interaction is required.
- What is an interactive process?
- It is NOT "you can't have what you asked for, but I'll give you something else that you don't want."
- It IS "unfortunately, I can't give you what you want but let's talk about what I can do."
- It is an interaction where people discuss together what can be done to resolve the issue.
- Imagine.

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What Should I Do About?

- What should you do about those on-line registration or certification forms for ESA (also known as an assistive animal)
 - If you're a person with a disability, **don't bother getting one**
 - If you're a landlord and a tenant or applicant gives you one when asking for an accommodation, say **thank you. Keep it. Interview the person about their disability and need for an accommodation.**
- **A landlord is not entitled to ask for additional documentation** if the disability and the need for accommodation is obvious.
- If the disability or the need for an accommodation is not obvious, HUD has said that these on-line certifications are not enough to support a claim that someone has a non-obvious disability or someone needs a reasonable accommodation. HUD suggests that someone with personal knowledge, like a health care or other professional, can provide that backup.

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What Should I Do About?

- What should you do about late rent payments?
 - If you're a person with a disability, or a landlord with a tenant who is chronically late with rent, identify the root causes. If the root cause is that a social security disability check comes on the second Wednesday of the month, an alternative payment date can be a reasonable accommodation.
 - If the root cause is COVID-related, work together for housing assistance coverage through the CARES Act or the American Rescue Act or other sources.
 - Think about a repayment plan instead of eviction. Eviction in today's COVID world is not a good plan.
- More examples of reasonable accommodations
 - Acceptance of **late rent** payments. *Anast v. Commonwealth Apartments*, 956 F. Supp. 792 (ND IL 1997); **Paying rent late** due to Social Security disbursement date. *Fair Housing Rights Center v. Morgan Properties Management Company*, 2:18-cv-04677 (E.D. Pa.)
 - **Waiver of a fee** otherwise charged for **parking space**. *Hubbard v. Samson Management*, 944 F. Supp. 187 (S.D. NY 1998)
 - Threatening conduct by disabled resident **requires landlord to demonstrate that no reasonable accommodation will minimize** the risk to others before eviction. *Roe v. Sugar River Mills Associates*, 820 F. Supp. 636 (D. NH 1993), *Roe v. Housing Authority of Boulder*, 909 F. Supp. 814 (D. CO 1995).

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And, in today's news...
 "Recently built CNY senior housing complexes sued over upcharges for people with disabilities"



From Syracuse.com

Recently built CNY senior housing complexes sued over upcharges for people with disabilities

Syracuse, NY — A rapidly growing company building suburban senior living facilities across Central New York is being sued over accusations that it illegally upcharges tenants with breathing issues, arthritis and other common disabilities.

Rents are \$1,000 or so a month. But the company adds charges for amenities that the elderly disabled often require: a reserved parking space (up to one-time \$350 fee) or in-building amenities like being near an elevator or having grab handles (a \$25 to \$35-a-month upcharge), according to a federal lawsuit filed Tuesday.

Those types of services should not cost the disabled elderly more, under longstanding "reasonable accommodations" law, the lawsuit states.

"Nickel and diming residents because of their disability needs is egregious in any situation," said Sally Santangelo, executive director of CNY Fair Housing, which filed the lawsuit along with housing advocates in two other states.

While a parking space may seem like a small issue, it has kept residents from attending church, going shopping or visiting friends and family, Santangelo said. Some feel a prisoner inside their own homes, she said.....

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Criminal Background Screening



Criminal Background Screening

- Why is screening out people based on the fact that they have had an interaction with the criminal justice system shown by an arrest or conviction record a fair housing issue?
 - Because
 - Landlords often do not apply the criminal background screen consistently and they favor white applicants over applicants of color
 - AND, because an overly broad criminal background screen disqualifies applicants of color disproportionately without substantial justification

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Wilder Research

- A study by Wilder Research in Minnesota commissioned by four nonprofit landlords asked how much a criminal background really mattered in terms of housing success
- The research shows that for the most part, **a criminal background had little effect on housing success**

• Wilder Research, "Success in Housing: How Much Does Criminal Background Matter?" available at https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf

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Wilder Research Outcomes

- The effect of a prior criminal offense on a resident's housing outcome declines over time.
 - The effect of a misdemeanor conviction declines after 2 years
 - The effect of a felony conviction declines after 5 years
- Criminal offenses that occurred more than 5 years prior to move-in have no significant effect on housing outcomes.

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HUD Interpretation of the FHAct

- A landlord cannot rely only on the fact of an arrest to refuse an applicant or evict a tenant
 - "[T]he fact of an arrest does not establish that criminal conduct occurred."
 - It's not illegal to ask, but why?
 - However, if the landlord looks beyond an arrest to the underlying conduct and investigates that conduct, the conduct may be a reason for adverse action
 - Unless the conduct is confirmed (by more than arrest record), it's not a justification for adverse action

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HUD Interpretation of the FHAct

- A landlord cannot have a blanket ban of all convictions, or a blanket ban on all felony convictions, or even a blanket ban on some convictions, felonies or misdemeanors
- A landlord cannot have long look back periods for past criminal activities
- A landlord must be able to show that its policy serves a substantial, legitimate, nondiscriminatory interest (and that there is not a less discriminatory alternative). Essentially that means that the history of criminal conduct indicates a demonstrable risk to resident safety and/or property. That means having a policy that distinguishes between different types of crimes and how long ago they occurred
- A landlord must offer an individualized assessment that considers mitigating information beyond what's in the criminal record
 - Facts of the criminal conduct
 - Age of the individual when the conduct occurred
 - Tenant history
 - Rehabilitation efforts

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Assisted Housing Exceptions

- Federal statutes and regulations permit certain exclusions by PHAs and other federally assisted housing.
 - For three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity
- People who are subject to a lifetime registration requirement under a State sex offender registration program, 24 CFR 960.204, 24 CFR 962.553
- People who have ever been convicted of drug-related criminal activity for manufacture of methamphetamine on the premises of federally assisted housing.
- When drug-related criminal activity is engaged in on or near the premises by any tenant, household member, or guest
- People when there is evidence of current use of an illegal drug
- People whose conduct threatens the health or safety of other tenants.

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Summary of Takeaways

- Don't rely on the fact of an arrest to make an adverse decision
 - This applies to applicants or current tenants; if a current tenant, make a decision based on conduct, not arrest
 - Recommend that landlords don't ask about arrests on the application; it's not illegal to ask about arrests but someone is going to want to know why. What's your answer?
- Don't use a blanket ban based on any type of conviction
 - This criteria sweeps too broadly, it will likely disqualify qualified applicants and possibly draw a civil rights complaint
- Don't use an unreasonably long look back period
 - No to a 99 year look back period
 - No to a 20 year look back period
 - No to having the same look back period for felonies/misdemeanors/some misdemeanors
 - The conduct varies on the severity of the crime
 - The conduct varies based on the nature of the conduct

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Summary of Takeaways

- Don't evict a successful tenant because a conviction on her or his record was found after admission (or after years of tenancy)
- Don't forget to think about reasonable accommodations if the applicant or tenant has a disability
- Don't forget to offer an "individualized assessment"

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Case Example

- Fair Housing Act lawsuit alleging racial discrimination resulting from application of a criminal background policy
- Settled in 2019
- Resulted in adoption of a policy that is now being used by other landlords
- The criminal background policy was on the property's application.
- Information about the lawsuit, the settlement, the policy and HUD guidance is provided here: <https://www.relmanlaw.com/cases-sterling-glen>

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Federal Court Lawsuit

<ul style="list-style-type: none"> Sterling Glen Apartments, Chesterfield Virginia 300 units 	Criminal background policy alleged in the federal lawsuit prohibited rental for: <ul style="list-style-type: none"> Any felony conviction, Any terrorist related conviction Any illegal drug related conviction Any prostitution related conviction Any sex related 	conviction <ul style="list-style-type: none"> Any cruelty to animals related conviction Any of the above related charges resulting in "Adjudication Withheld and/or "Deferred Adjudication" Active status on probation or parole resulting from any of the above
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Federal Court Lawsuit

<ul style="list-style-type: none"> Sterling Glen Apartments, Chesterfield Virginia 300 units 	Criminal background policy alleged in the federal lawsuit prohibited rental for: <ul style="list-style-type: none"> Any felony conviction, Any terrorist related conviction Any illegal drug related conviction Any prostitution related conviction Any sex related 	conviction <ul style="list-style-type: none"> Any cruelty to animals related conviction Any of the above related charges resulting in "Adjudication Withheld and/or "Deferred Adjudication" Active status on probation or parole resulting from any of the above
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What Was the Argument?

- Sterling Glen Apartments made no secret of its policy.
- It openly maintained a written policy of barring applicants who have any felony (or selected misdemeanor) conviction.
- Sterling Glen's policy allowed no exceptions based on how long ago the conduct occurred, whether the crime bore any relationship to what sort of tenant the resident might be, whether there was evidence of rehabilitation, or whether the applicant had been a good tenant elsewhere.
- In the county where the case was filed, a black resident is three times more likely than a white resident to have a felony or misdemeanor conviction.

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Federal Court Lawsuit

- Pine Ridge Apartments, Louisa, Virginia
 - 27 Apartments
 - Mother attempted to add her son to her lease.
 - Son had a misdemeanor conviction for exposure that resulted from his mental disability.
 - Landlord refused to accept the son on the lease.
- Court decision says reasonable accommodation exception to the property's criminal background policy should have been made:
- Indecent exposure is not a crime that poses a direct threat to the health or safety of others
 - The son had received treatment, he had no subsequent episodes, and his condition had stabilized

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Core Issues to Remember

1. The issue is not really criminal conviction, it is about bad conduct by a person which makes him or her an unsuitable tenant
2. "One Strike" should not be used based only on an arrest; likely to be challenged as having a disparate impact unless additional evidence is gathered.
3. The "bad conduct" concern exists whether or not there is an arrest, a conviction, a past bad experience with another landlord, or other current or past bad behavior.
4. A policy should focus on conduct, not on arrests or convictions.
5. The conduct should relate to unsuitability to be a tenant, including whether the conduct presents a risk to the health or safety of others or the property of others

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Core Issues to Remember

6. How long ago counts: A single policy should focus on exclusions for recent bad conduct, with longer time frames for exclusion for worse conduct
7. Some conduct may be so bad that it can be the basis for lifetime exclusion absent consideration of reasonable accommodations or mitigating circumstances (but should it be?)
8. A second look (and a second chance) should be available, considering mitigating circumstances and reasonable accommodations, and that decision should be made, to the extent possible, by a single person, to help ensure uniformity of application
9. Landlords should provide notice and an opportunity for a second look.
10. Landlords should use strategies that exclude the bad actor, not her or his whole family

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Sexual Harassment in housing



Sexual Harassment

- Sexual harassment includes any unwanted sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature.
- Sexual harassment can occur to any person, male or female, and can be committed by someone of the same sex or someone of the opposite sex.
- Harassment based on sex can also include harassment of someone because of their sexual orientation (homosexuality or bisexuality), gender identity/gender expression (how individuals perceive themselves and present themselves through external appearance), or harassment of a person who is transgender (who presents to others a different gender than the gender assigned at birth)

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Housing-Related Sexual Harassment

- Housing-related sexual harassment can violate multiple provisions of the Fair Housing Act
 - Discriminate in the terms and conditions of housing
 - Making housing unavailable
 - Discriminatory statements communicating harassment
 - Coercion or interference with their enjoyment of housing because of sex

Quid Pro Quo

Two types of claims

- Quid pro quo**-involves employee/owner/agent, someone with power over a term or condition of housing
 - An unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to:
 - Sales
 - Rentals
 - Terms of rental
 - Real estate-related transactions like applying for a loan
 - And may include interference or intimidation

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Hostile Environment

- Hostile environment**-may involve employee/owner/agent or may involve a neighbor or visitor
 - Conduct was unwelcome
 - Conduct was based on the sex of the individual being harassed
 - Conduct was sufficiently severe or pervasive to alter the conditions of housing
 - Landlord knew or should have known of the harassment and failed to take appropriate action to end the harassment

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Federal Court Lawsuit

- Central New York Fair Housing et al. v. D. Waterbury Oswego, NY**
 - Over 50 units
 - Individual plaintiffs were women who were victimized by their landlord told by Waterbury that they could pay for their units through sexual trades and favors
 - Pattern was long-standing and pervasive
 - And documented by text messages, emails, audio recordings
 - Case was settled for more than \$400,000
 - The landlord agreed to hire someone else to manage the property

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Discrimination Based on National Origin

Discrimination Based on National Origin

- In 2018, Pew Research reported that "overall, four-in-ten Latinos say they have experienced discrimination in the past year, such as being criticized for speaking Spanish or being told to go back to their home country."

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National Origin Discrimination

- "National origin" refers to the country a person was born in or where their ancestors lived.
- This means people cannot be denied housing opportunities because they or their family are from another country, because they have a name or accent associated with a national origin group, because they participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.
- Discrimination in housing because of national origin violates the Fair Housing Act

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Forms of Discrimination

- National origin discrimination includes discrimination because an individual has the physical, cultural, or linguistic characteristics of persons from a foreign geographic area which might be a country or a region.
- Areas where national origin may come into play in housing:
 - Discrimination based on name or accent
 - Adverse action toward "refugees" or immigrants which by definition are people who come here from another country

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Forms of Discrimination

- Citizenship requirements can be unlawful
 - For market rate housing, a citizenship requirement may be proxy for national origin discrimination; requiring tenants or applicants to be citizens or to have a particular lawful status is direct evidence of discrimination
 - For HUD assisted housing, persons who are not citizens or who do not hold certain lawful resident statuses may be excluded from housing. Under HUD's "mixed family" rule, non citizens may live in housing where there are one or more citizens, often a child born in this country, with prorated rent. .
 - Unequal terms or conditions such as extra deposits ("because you might be deported")
 - Unequal maintenance of housing occupied by persons from other countries

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National Origin Discrimination

- Here's an example: Nashville, Tennessee
 - New landlord engaged in a campaign of intimidation and harassment toward Latino tenants and threatened to report them to immigration authorities as part of an effort to vacate the property.
 - HUD settlement resulted in \$150,000 payable to residents and former residents and \$10,000 to each of two organizations who located and paid the residents.

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National Origin Discrimination

- Here's an example: Lancaster, Pennsylvania
- A landlord states in an email that he won't accept any more refugees as tenants: direct evidence of illegal national origin discrimination, as refugees are defined as people who have left another country under duress to come to this county

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National Origin and Identifiers

- Requirements for social security numbers and ITINs; requirement of a passport
- A policy by a landlord that all applicants, or all adult applicants, have a social security number can disproportionately exclude families who come from another country. In a common scenario, one spouse has a social security number, and a job, and is qualified for the rental but the second spouse does not have a social security number.
- Both the requirement of a SSN and the requirement that all adults have a SSN disproportionately exclude persons who have come from other countries, including lawful residents in the US.
- *De Reyes et al v. Waples*, ___ F. 3rd ___ (4th Cir. 2019), landlord policy required all occupants above the age of eighteen to provide SSN and provide documentation evidencing legal status; failure to comply results in eviction, has a disparate impact based on national origin.

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National Origin and Identifiers

- Why do landlords ask for SSNs or ITINs?
 - They may say it is for a credit report
 - They may say it is for a criminal background report
- Why would a landlord ask for a birth certificate?
- The better solution is to look for alternative ways to qualify the household and re-examine the landlord's policy.

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Language and National Origin

- Direct evidence of national origin discrimination
 - "All residents must speak English;" "you should learn English now that you live here"
 - "English only"
 - "You can't speak my language" when said to someone of a different national origin
 - Singling out someone because they don't speak a particular language
- Charging an unreasonable fee for language translation
- HUD charged a case in Minnesota in 2015 against a landlord who refused to rent to a Hmong family, made discriminatory statements about a family member's language proficiency, and claimed that translation of a lease would be required and would be too expensive.

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Language and National Origin

- Landlords with customers who do not speak or read English well or at all should consider providing information in language
 - Failure to provide translated information
 - Failure to provide interpreters
- Marketing information in Spanish can help increase your market in many communities
- Partnering with community based organizations can increase outreach, provide assistance with tenant communications and management, increase customers

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Language Targeting

- Targeting potential borrowers for predatory loan modification products by using Spanish speaking employees, advertising only in Spanish and only using Spanish media are indicators of intentional discrimination based on national origin. *U.S. v. Home Loan Auditors* (N.D. CA 2019).

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For Federally Funded Housing

- There are more requirements for federally funded housing and other programs under Executive Order 13166 and Title VI:
 - Translate vital documents
 - Applications, leases, notices of recertification,
 - Interpret important meetings and transactions for larger populations of non-English speakers
 - Provides for safe harbors
 - Preparation of a language assistance plan
- Failure to translate and interpret can make housing unavailable under multiple civil rights laws
- Access to information in language on websites, including applications

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Code Words

- Evidence of intentional discrimination
 - "[R]acially charged code words may provide evidence of discriminatory intent by sending a clear message and carrying the distinct tone of racial motivations and implications." *Smith v. Fairview Ridges Hosp.*, [625 F.3d 1076](#), 1085 (8th Cir.2010)
- National origin code words:
 - Telling people, including long time residents, to go back where they came from
 - Concerns about large families or overcrowding
 - Using single family homes as multifamily dwellings, failure to maintain property
 - Letting children roam the streets "which some may call letting children play in the neighborhood"
 - Creation of a low cost, high crime neighborhood. *Avenue 6E Investments, LLC et al. v. City of Yuma, Arizona*, 818 F. 3rd 493 (9th Cir. 2016)

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Hate Crimes Based on National Origin

- In 2018, agencies reported 7,120 hate crime incidents involving 8,496 offenses in the U.S.
 - 25.7 percent of hate crime incidents happened in or near residences/homes
 - 57.5 percent were motivated by a race/ethnicity/ancestry bias
 - 65.5 percent were crimes against persons.
 - 31.1 percent were crimes against property.
 - The remaining offenses were crimes against society
- The F.B.I. said 485 hate crimes against Latinos were reported nationally in 2018, up from 430 in 2017.
- Housing-related hate crimes are actionable under the Fair Housing Act if the perpetrator can be identified**

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National Origin Hate Crimes

- Threatening and intimidating behavior may be combined with language
 - "go back to where you came from"
 - "Chinese flu"
 - "terrorist," generally referring to criminal activities by persons outside the US



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What are your tough issues?



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Resources on Criminal History

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF
- FAQs: Excluding the Use of Arrest Records in Housing Decisions, https://www.hud.gov/sites/documents/FAQ_EXCLUDE_ARREST_RECORDS.PDF
- PIH 2015-19 / H 2015-10, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, <https://www.hud.gov/sites/documents/PIH2015-19.PDF>
- Simmons v. T. M. Associates Management, Inc., 287 F. Supp. 3d 600 (W.D. Va 2018)

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Resources on Harassment

- HUD harassment rule: <https://www.federalregister.gov/documents/2016/09/14/2016-21868/quid-pro-quo-and-hostile-environment-harassment-and-liability-for-discriminatory-housing-practices>
- Sexual Harassment of Low-Income Women in Housing: Pilot Study Results: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3118665
- A New Look at Sexual Harassment under the Fair Housing Act: The Forgotten Role of §3604(c): https://uknowledge.uky.edu/law_facpub/325/

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Harassment Cases

- Quigley v. Winter, 598 F. 3d 938 (8th Cir. 2010)
- Shellhammer v. Llewellyn, Fair Hous. Fair Lending Rep., para 15742 (W.D. Ohio 1983) aff'd 770 F. 2nd 167 (6th Cir. 1985)
- Dicenso v. Cisneros, 96 F. 3rd 1004 (7th Cir. 1996), review of HUD ALJ decision
- Krueger v. Cuomo, 115 F. 3rd 487 (7th Cir. 1997), review of HUD ALJ decision
- Honce v. Vigil, (1 F.3rd 1085 (10th Cir. 1993)
- Henson v. City of Dundee, 682 F. 2d 897(11th Cir. 1982)
- Williams v. Poretsky Mgmt., 995 F. Supp. 490 (D. MD 1996)
- Reeves v. Carrollsburg Condominium Unit Owners Ass'n., 1997 U.S. Dist. LEXIS 21762, No. CIV.A. 96-2495 RMU, 1997 WL 1877201, *7 (Dec. 18, 1997 D.D.C.)
- But see Francis v. Kings Park Manor, Inc. reversed *en banc* March 25, 2021

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Resources on Language Access

- Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, September 15, 2016, *available at* <https://archives.hud.gov/news/2016/pr16-135-lepmemo091516.pdf>
- Title VI LEP Guidance for federally funded agencies, *available at* <https://www.federalregister.gov/documents/2007/01/22/07-217/final-guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against>
- HUD LEP translated documents, https://www.hud.gov/program_offices/fair_housing_equal_opp/17lep
- Federal guidance on LEP, includes documents, I speak cards, mapping tool, assistance on language assistance plans for federal recipients, <https://www.lep.gov/>