Appeal No. 10-35519

IN THE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERMOUNTAIN FAIR HOUSING COUNCIL; JANENE COWLES; RICHARD CHINN,

Appellants,

vs.

BOISE RESCUE MISSION MINISTRIES; BOISE RESCUE MISSION, INC.,

Respondents.

On Appeal From the United States District Court
for the District of Idaho
The Honorable Edward J. Lodge, Presiding
(Case No. CV-08-205-S-EJL)

BRIEF OF AMICI CURIAE AIDS LEGAL REFERRAL PANEL, BAY AREA LEGAL AID, CALIFORNIA RURAL ASSISTANCE, INC., FAIR HOUSING OF MARIN, HOUSING RIGHTS CENTER, THE LAW FOUNDATION OF SILICON VALLEY, THE NATIONAL FAIR HOUSING ALLIANCE, THE NATIONAL HOUSING LAW PROJECT, THE PUBLIC INTEREST LAW PROJECT, THE WESTERN CENTER ON LAW AND POVERTY, AND THE TENDERLOIN HOUSING CLINIC IN SUPPORT OF PLAINTIFFS-APPELLANTS

FAIR HOUSING LAW PROJECT
A PROGRAM OF THE LAW
FOUNDATION OF SILICON VALLEY
Kimberly Nicole Pederson
Kyra Ann Kazantzis
152 North Third Street, Third Floor
San Jose, California 95112

MORRISON & FOERSTER LLP
Darryl P. Rains
755 Page Mill Road
Palo Alto, California 94304-1018
Telephone: 650.813.5600
Attorney for The AIDS Legal Referral Panel et al.
(see signature page for complete list of parties)

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

All of the *amici* are tax-exempt nonprofit organizations. None of the *amici* has any corporate parent. None of the *amici* has any stock, and therefore no publicly held company owns 10 percent or more of the stock of any of the *amici*.

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REQUEST FOR ORAL ARGUMENT

Pursuant to Fed. R. App. P. 29(g) and 34(a)(1), *amici curiae* hereby request the opportunity to participate in the oral argument of this appeal.

INTEREST OF AMICI CURIAE

Amici curiae have litigated cases under the Fair Housing Act since its passage and represent experienced perspectives on the matters raised in this appeal. *Amici* participation would prove valuable to the Court's consideration of the merits.

Amicus **AIDS Legal Referral Panel** (ALRP) is a private nonprofit corporation that provides legal services to people living with HIV/AIDS in seven counties around the San Francisco Bay. For 27 years, ALRP has helped people living with HIV/AIDS address most areas of civil law, either through referral to one of its over 700 panel attorneys or through representation by one of its staff attorneys. ALRP has received numerous grants from HUD and the City and County of San Francisco to continue this important work.

In 1998, ALRP initiated the **AIDS Housing Advocacy Project** (AHAP), which provides direct representation to our clients with housing issues. Housing is the single biggest issue its clients face. One essential tool in asserting the rights of people with HIV/AIDS as they fight to retain their housing are protections afforded them under federal and state fair housing laws. ALRP works with a number of

community partners to educate consumers of services as well as housing and service providers about fair housing laws, especially as they apply to people with disabilities.

Amicus **Bay Area Legal Aid** (BayLegal) is the largest provider of free civil legal services in the San Francisco Bay Area, serving Alameda, Contra Costa, Marin, Napa, San Mateo, San Francisco and Santa Clara counties. Our mission is to provide high quality legal assistance to low-income people, regardless of their location, language or disability. Although grounded in local communities, our vision is to serve in the entire region. BayLegal assists clients primarily in housing, public benefits, health access, and family law/domestic violence. BayLegal also works to protect the fair housing rights of low-income clients throughout the Bay Area, including residents of homeless shelters and other transitional housing. Many of our clients are disabled, and they need these important laws in order to obtain an equal opportunity to benefit from their housing programs.

Amicus **California Rural Legal Assistance, Inc.** (CRLA) was created in 1966 as a statewide not-for-profit law firm to provide legal representation to rural low-income tenants, farmworkers and other rural poor throughout California. CRLA has enabled thousands of low income people and farmworkers to have access to justice in the civil legal system in California in substantive areas including housing and civil rights. Enforcement of their fundamental rights to

decent, affordable housing and fair access to housing is a priority for CRLA's twenty-one field offices throughout the state. CRLA clients also face the threat of homelessness or find themselves and their families without shelter and sometimes exploited by shelter providers. CRLA clients have faced discrimination by shelter providers based on race, disability familial status and sex. Discrimination is not limited by whether the dwelling or the landlord-tenant is traditional and CRLA clients depend on full and effective enforcement of broadly interpreted fair housing laws to protect their rights.

Amicus **Fair Housing of Marin** is a private, non-profit fair housing organization operating in Marin County, California, with contract work in neighboring counties. Our mission is to ensure equal housing opportunity and to educate the community on the value of diversity in our neighborhoods. Our programs include counseling and investigation for victims of discrimination, legal information and seminars for property owners and managers, education and outreach to school children to prevent the development of prejudice and foreclosure prevention counseling.

Amicus **Housing Rights Center** (HRC) is a nonprofit corporation based in Los Angeles, California. HRC's purpose is to actively support and promote equal opportunity and freedom of residence to all persons without regard to race, color, religion, gender, sexual orientation, national origin, familial status, disability,

marital status, ancestry, age, source of income, or other characteristics protected by law. HRC engages in activities—including outreach/education, investigation/testing and legal advocacy—to identify barriers to fair housing in the Los Angeles and Ventura Counties and to help counteract and eliminate discriminatory housing practices.

HRC deals frequently with complaints from individuals who have experienced discrimination when trying to access services and programs offered by local homeless shelters. The Los Angeles region is thought to have the largest concentration of homeless individuals in the country, and has frequently been referred to as the homeless capital of the United States. HRC often relies upon the provisions of the Fair Housing Act to remedy that discrimination due to shortcomings in the coverage and/or remedies available under other anti-discrimination laws.

Amicus **Law Foundation of Silicon Valley** is a private nonprofit corporation based in San Jose, California, that sponsors five free legal services and advocacy programs, four of which — **Fair Housing Law Project** (FHLP), **Health Legal Services** (HLS), **Mental Health Advocacy Project** (MHAP), and **Public Interest Law Firm** (PILF) — have a strong interest in the outcome of this matter. FHLP's mission is to ensure equal opportunity in housing for all people through legal enforcement of fair housing laws and education of the public. Over the past

decade, FHLP has engaged in litigation and other advocacy to ensure the fair housing rights of people who experience discrimination in a variety of housing types, including homeless shelters.

HLS and MHAP are direct services programs that provide housing-related legal services to people in Santa Clara County who live with mental health disabilities, HIV/AIDS, and diabetes. Many of MHAP's and HLS's clients reside, and have resided, or will reside in homeless shelters. As such, MHAP and HLS have a strong interest in guaranteeing that shelter residents are protected from discrimination on the basis of their disabilities, or for any other reason.

Finally, PILF's mission is to protect the civil rights of individuals and groups who are underrepresented in the civil justice system through class action and impact litigation. PILF focuses its efforts on behalf of individuals with disabilities, youth, elders, people who are frequent victims of illegal discrimination and people who have low incomes. In an effort to further its mission, PILF has undertaken strategic litigation to ensure that low-income people have equal rights to acquire and maintain safe, decent and affordable housing.

Amicus **Public Interest Law Project** is a California nonprofit corporation providing litigation support and technical assistance on issues related to public benefits, housing, health, civil rights, redevelopment and community reinvestment to local legal services offices throughout California. The Project sponsors the

California Affordable Housing Law Project of the Public Interest Law Project (CAHLP). CAHLP offers assistance to local programs on a wide range of housing issues, but concentrates primarily on matters in the areas of residential displacement, fair housing and exclusionary land use practices. PILP/CAHLP is funded in part by the Legal Services Trust Fund of the State Bar.

Over the years CAHLP has continued to receive requests for assistance from local legal services and public interest programs regarding the application of state and federal fair housing law to types of housing that have emerged to address the chronic lack of sufficient affordable housing in America and systemic homelessness. Two of those are emergency shelters and transitional housing, which now form the core last resort housing for too many families in this country. CAHLP's experience provides it with a unique perspective on the factors underlying the determination of whether a dwelling, particularly a homeless shelter, falls within the category of dwellings Congress intended to cover in the Fair Housing Act.

Amicus **National Fair Housing Alliance** (NFHA) is a consortium of private, non-profit fair housing organizations, state and local civil rights groups, and individuals that was formed in 1988 to lead the fight against housing discrimination in this country. In conjunction with its members, NFHA strives to eliminate housing discrimination and ensure equal housing opportunities for all

people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. As part of its enforcement activities, NFHA assists its members and participates itself in federal and state court litigation brought under the Fair Housing Act and state and local fair housing laws. The legal issue presented in this appeal, whether the homeless shelter in this case constitutes a "dwelling" under the Fair Housing Act, is of great import to NFHA and its members.

Amicus **National Housing Law Project** (NHLP), established in 1968, is a national nonprofit housing law and advocacy center based in Oakland, California. The goal of NHLP is to advance housing justice for the poor by increasing and preserving the supply of decent, affordable housing, improving existing housing conditions, including physical conditions and management practices, expanding and enforcing low-income tenants' and homeowners' rights, and increasing opportunities for underserved communities. NHLP works to achieve that goal by providing legal assistance, advocacy advice and housing expertise to legal services and other attorneys, low-income housing advocacy groups, and others who serve the poor.

NHLP has extensive knowledge of federal fair housing laws and has engaged in regular education and advocacy around fair housing issues. Moreover, NHLP has worked to ensure that survivors of domestic violence, people with

disabilities, formerly incarcerated individuals, and others who face particular barriers to obtaining or remaining in housing, have access to emergency shelters. NHLP maintains an active interest in ensuring that provisions of the Fair Housing Act are applied as the legislature intended, to ensure that marginalized groups have full and equal access to all housing resources, such as emergency shelters.

Amicus **Western Center on Law and Poverty** is California's oldest and largest state support center for legal services and tenant advocates. Western Center advances and enforces the rights of Californians to the basic necessities of life, including access to and maintenance of shelter, by providing technical assistance to legal services providers, engaging in impact litigation and working on legislative and administrative solutions.

Western Center's clients include low-income individuals and families in need of housing. Western Center's client representation involves the continuum of housing opportunities, moving clients from homeless to permanent housing and enforcing the rights of tenants. Western Center represents clients in affirmative litigation involving fair housing and land use issues, due process and access to courts as well as ensuring through legislation and administrative advocacy that the poorest of Californians receive equitable access to housing.

Amicus **Tenderloin Housing Clinic** (THC), established over 25 years ago, provides legal assistance, housing referrals and rental housing for tenants in San

Francisco's lowest-income neighborhoods. THC has taken the lead in providing legal representation to low-income tenants in San Francisco in all aspects of landlord-tenant and housing law. THC represents seniors, the disabled, and minority and immigrant families, often as defendants in unlawful detainer actions and in affirmative lawsuits for wrongful eviction, and to address substandard housing conditions.

INTRODUCTION

In the decision below, the District Court improperly held that a homeless shelter is not covered under the Fair Housing Act. *Amici* urge the Court to reverse the decision of the District Court that homeless shelters are not "dwellings" for purposes of the Fair Housing Act.[1]

Congress intended the Fair Housing Act to ensure that all people, regardless of their protected status, have the right to live in housing of their choice. Homeless shelters are often the housing choice of last resort for vulnerable people whose housing choices are already limited by poverty or other life circumstances. Data taken from October 2006 through September 2007 indicated that over 1.5 million persons nationwide accessed an emergency shelter and/or transitional housing residential facility at some point during that time. (A70, A78.)[2] This data does not account for *unsheltered* homeless persons who accessed only nonresidential services, such as a food pantry or outpatient services. (A77.) Homeless people are highly likely to be families with children, racial and ethnic minorities and people

[1] This brief addresses only that portion of the District Court's order holding that the River of Life homeless shelter is not a "dwelling" for purposes of the Fair Housing Act. Defendants-Respondents conceded below that their City Light Discipleship Recovery Program is a "dwelling" under the act.

[2] All references to "A" have been attached to the supporting appendix of this brief.

with disabilities—all of which are groups protected by the Fair Housing Act, and intended by Congress to have the freedom of housing choice. (A81-A85.)

Should this Court uphold the District of Idaho's holding that the emergency shelter component of the River of Life shelter is not a "dwelling" for purposes of coverage by the Fair Housing Act, it will leave millions of homeless Americans excluded from the Act's broad protections. Such a result would be contrary to the broad remedial intent of Congress, and would open the door for homeless shelters to refuse to follow the Fair Housing Act and in doing so, exclude vulnerable populations from housing of last resort.

In addition, the District Court overlooked genuine issues of material fact, which made its grant of summary judgment in favor of defendants-respondents inappropriate. Accordingly, the District Court's entry of judgment against Plaintiffs-Appellants should be reversed and these claims should be remanded to the District Court for a trial on the merits.

ARGUMENT

I. THE FAIR HOUSING ACT MUST BE AFFORDED A "GENEROUS CONSTRUCTION."

For forty years, the Fair Housing Act has enforced "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. "The purpose, or 'end,' of the Federal Fair

Housing Act is to remove the walls of discrimination . . . so that [minorities] may live wherever their means permit and be better able to secure the equal benefits of government and the other rewards of life." 114 Cong. Rec. 9563 (1968). As the Supreme Court has declared, this policy is "of the highest priority." *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972).

Because of its broad sweep, the Fair Housing Act's provisions must be afforded a "generous construction." *Trafficante*, *supra*, 409 U.S. at 212; *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995); *United States v. Gilbert*, 813 F.2d 1523, 1526-27 (9th Cir. 1987) (the Fair Housing Act requires an "expansive approach").

Narrow constructions of the act must be rejected in favor of interpretations that advance Congress's intent to provide for fair housing subject only to "constitutional limitations." *See, e.g.*, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 804 (9th Cir. 1994), *affirmed by City of Edmonds v. Oxford House*, 514 U.S. 725 (1995) ("[a]s a broad remedial statute, [the Fair Housing Act's] exemptions must be read narrowly") (citations omitted); *Coleman*, 455 U.S. at 380 (a "wooden application" of the FHA would "undermine[] the broad remedial intent of Congress embodied in the Act").

The District Court did not employ an "expansive approach" to interpreting the Fair Housing Act in this case. *Gilbert*, 813 F.2d at 1526-27. Instead, it used an erroneous, and overly narrow, reading of the term "dwelling" that focused only on (i) a resident's length of stay, and (ii) a resident's opportunity to "return" to the dwelling consistently enough so as to make his occupancy there something more than a "temporary sojourn or transient visit." (A45.) The District Court erred, as a matter of law, in applying this narrow reading of the statute.

II. THE DISTRICT COURT ERRONEOUSLY CONCLUDED THAT THE RIVER OF LIFE SHELTER IS NOT A "DWELLING."

The Fair Housing Act prohibits discrimination in the provision of a "dwelling." 42 U.S.C. § 3604(b). The District Court erroneously concluded that the River of Life shelter is not a dwelling and therefore falls outside the Fair Housing Act's protections against illegal discrimination. (A45-A46.) The court below reached this conclusion even though for the people who reside at the facility and, in the case of plaintiff-appellant Chinn, the facility is the only place he could call "home."

On two occasions, the Ninth Circuit has assumed, without explicitly deciding, that homeless shelters are dwellings for purposes of the Fair Housing Act. In *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 942 (9th Cir. 1996), this Court affirmed a ruling that the City of Caldwell had violated section 3604(f)

of the Fair Housing Act when it adopted a discriminatory zoning ordinance targeted at certain "24-hour emergency shelters for the homeless." But, while the city contested various aspects of the District Court's ruling, it did "not appeal the ruling that it violated" section 3604(f). *Id*. at 945.

Later, in *Cmty House, Inc. v. City of Boise*, 490 F.3d 1041 (9th Cir. 2007), this Court had "little trouble concluding that at least part of" a homeless facility was "'occupied as, or designed or intended for occupancy as, a residence by one or more families,' and thus qualifies as a 'dwelling' under section 3602(b)." 490 F.3d at 1048 n.2. That part of the facility, however, provided "more than transient overnight housing," and the Court declined to decide "whether all temporary shelters fit within the Act's definition of 'dwelling.'" *Id*.

The Fair Housing Act defines "dwelling" as:

> [A]ny building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

42 U.S.C. § 3602(b). This statutory definition accords with common understanding and usage. The word "dwelling" is commonly used to refer to a building or structure that one occupies as a "place of residence" or "dwelling-

place, habitation, [or home]." (A63-A64; A65 ("dwelling" is "a shelter (as a house) in which people live").)

The River of Life shelter easily falls within these definitions. It is a building occupied as a residence where people "live, "dwell" or "reside," and it is a place that people consider their usual "dwelling-place [or home]."

Courts have held that the term "dwelling" is broad enough to encompass all manner of temporary and transitional housing, including hospices, summer bungalows, homeless shelters, migrant worker cabins, timeshare units, group homes for children, and recovery facilities for recovering alcoholics and addicts.[3]

Similarly, regulations issued by the United States Department of Housing and Urban Development (HUD), which is responsible for enforcement of the Fair Housing Act, provide that the term "dwelling" applies to a wide variety of

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[3] *See, e.g., Cmty. House, Inc.*, 490 F.3d 1041 (homeless shelter); *Lakeside Resort Enters., LP v. Bd. of Supervisors*, 455 F.3d 154, 157 (3d Cir. 2006) (drug rehabilitation facility); *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1102 (3d Cir. 1996) (nursing home); *City of Caldwell*, 74 F.3d 941 (homeless shelter); *Walker v. Todd Vill., LLC*, 419 F. Supp. 2d 743, 748 (D. Md. 2006) (pad in trailer park); *Cohen v. Twp. of Cheltenham*, 174 F. Supp. 2d 307 (E.D. Pa. 2001) (group home for children); *Lauer Farms, Inc. v. Waushara County Bd. of Adjustment*, 986 F. Supp. 544, 559-60 (E.D. Wis. 1997) (housing for migrant farm workers); *Louisiana Acorn Fair Hous. v. Quarter House*, 952 F. Supp. 352 (E.D. La.1997) (timeshare unit); *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324 (D. Or. 1996) (migrant farm worker cabins); *Hernandez v. Ever Fresh Co.*, 923 F. Supp. 1305 (D. Or. 1996) (temporary farm labor camp); *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995) (shelter for homeless women and their children); *Baxter v. City of Belleville*, 720 F. Supp. 720 (S.D. Ill. 1989) (hospice); *United States v. Hughes Memorial Home*, 396 F. Supp. 544 (W.D. Va. 1975) (group home for children).

temporary housing facilities, including dormitory rooms and "sleeping accommodations in shelters intended for occupancy as a residence for homeless persons." 24 C.F.R. § 100.201. This agency interpretation is entitled to "great deference." *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984); *Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1480 (11th Cir. 1993).

In contrast to the expansive interpretations of other courts and HUD, the District Court here applied an exceedingly narrow construction of the term "dwelling" and concluded that the River of Life shelter is not a dwelling because it is not, in the court's view, a residence. The court went on to conclude, erroneously, that the word "residence" can be boiled down to just two characteristics — length of stay and intent to return. (A39-A40.**)** The court's two-factor approach was an overly narrow application of the term "dwelling." Rather, as stated in section 3602(b), and as illustrated in the many cases and regulations cited above, the term "dwelling" must be read expansively to reach any building or structure that is used as temporary shelter and considered by its residents as their home or usual dwelling place.

Thus, under section 3602(b), length of stay is not dispositive in determining whether or not a particular facility is a "dwelling." *See Woods*, 884 F. Supp. at 1173 ("[T]he length of time one expects to live in a particular place does is [sic]

not the exclusive factor in determining whether the place is a residence or a 'dwelling.'") (*citing Hughes*, 396 F. Supp. at 548-49; *Baxter*, 720 F. Supp. at 731; *Lakeside Resort*, 455 F.3d at 158 ("the short, funding-limited average stay is not dispositive here")). A person could stay in a hotel for weeks without turning it into a "dwelling," while a migrant workers' labor camp would remain a "dwelling" even though some laborers might stay only a few days before moving on. Similarly, "intent to return" is not a way to meaningfully distinguish between, for example, motels, which are not dwellings[4] but may be returned to often, and a migrant worker camp,[5] which is a dwelling but to which a worker may not intend to return.

The District Court therefore erred when it read "dwelling" to mean only a building at which residents remain for some significant period of time and to which they intend to return. (*See* A45.) Moreover, as shown in the following sections, the court applied an overly restrictive view of "length of stay" and "intent to return."

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[4] *See Patel v. Holley House Motels*, 483 F. Supp. 374, 381 (S.D. Ala. 1979).

[5] *See Lauer Farms*, 986 F. Supp. at 558; *Hernandez*, 923 F. Supp. at 1308.

A. Residents May Stay At the River of Life Shelter for a "Significant Amount of Time."

The District Court found "that the shelter is neither intended nor designed for occupants who intend to remain there for any significant period of time." (A45.) The Court erroneously interpreted the phrase "significant period of time" to require some unstated level of permanency that cannot be squared with other cases.

The undisputed evidence showed that, under the shelter's operating rules, shelter residents "are generally allowed to stay in the shelter for up to seventeen consecutive nights." (A30.) There is no limit on the number of stays. Moreover, during the five-month-long winter period, "there is no firm limit on number of consecutive nights that a guest may stay in the shelter." (*Id*.) Defendants-Respondents conceded, below, that "it is possible for a guest to stay in the shelter program every night during the five cold months (November through March)." (A6.)

Compare these facts — 17 consecutive days at one time, and 150 consecutive days in the winter — to other cases. In *Lakeside Resort*, 455 F.3d at 155, the court held that a proposed drug and alcohol treatment facility where "residents of the facility would stay there for slightly more than two weeks on average" was a "dwelling" under section 3602(b). In so holding, the court

specifically concluded that 14.8 days is "a significant period of time." *Id.* at 159. It wrote:

> While 14.8 days is much shorter than the five months we have previously held to have been a 'significant period of time,' it is certainly longer than the typical stay in a motel, or a bed and breakfast, which have been held not to be dwellings.

Id. Consider also *United States v. Columbus Country Club*, 915 F.2d 877 (3rd Cir. 1990), in which the Third Circuit held that summer bungalows, which might be occupied for only several days or weeks during the summer months, and were only open for five months of the year, "fall within the ordinary meaning of 'residence' and must be considered dwellings for purposes of the Fair Housing Act." *Id*. at 881.

In *Woods*, the court held that a Chicago-based church-sponsored homeless shelter was a "dwelling" under section 3602(b). 884 F. Supp. at 1173. The shelter required that "persons living in the Shelter may not stay more than 120 days and may not return to the Shelter after leaving," although these rules were "subject to exceptions in 'extraordinary circumstances.'" *Id*. at 1174. But the court did not find these limits to be controlling: "the length of time one expects to live in a particular place is not the exclusive factor in determining whether the place is a residence or a 'dwelling.'" *Id*. at 1173. The court noted:

> Because the people who live in the Shelter have nowhere else to 'return to,' the Shelter is their residence in the sense that they live there and not in any other place.

Id. at 1174. Instead of focusing on length of stay, the *Woods* court contrasted "visitors," "in the sense of motel guests," "transients," and "hotel guests," with "inhabitants, those who reside in a particular place, although the length of the residence may vary." *Id*.

The District Court in this case considered, and rejected, *Woods* because, in its view, "the guests in *Woods* were allowed to stay for a much longer period of time (up to one-hundred-twenty days)." (A45.) This argument ignores the fact that, at the River of Life shelter, residents may stay for 150 days each winter, and that other cases, including *Lakeside*, *Columbus Country Club*, and *Woods*, involved much shorter time periods. *See generally Lakeside Resort*, 455 F.3d 154; *Columbus Country Club*, 915 F.2d 877; *Woods*, 884 F. Supp. 1169.

B. Residents "Expect to Return" to the River of Life Shelter.

The District Court also found that the River of Life shelter is not "a temporary or permanent dwelling place, abode or habitation to which one intends to return." (A45 (quotation marks omitted).) The court made this finding even though, as it conceded, "shelter guests may have the subjective intent of returning to the shelter." (*Id*.) The court below, in other words, ignored the intent of the

shelter's residents, and relied entirely upon evidence provided by the shelter's owners and managers. (*Id.*)

There is no basis in law for the District Court's decision to ignore evidence of the residents' intent and expectations. Section 3602(b), after all, sweeps into its definition both buildings that are "occupied as" residences, and buildings that are "designed or intended for occupancy as" residences. 42 U.S.C. § 3602(b). This definition covers both the intent of residents and the intent and purposes of owners.

For this reason, courts have often looked to the intent of residents in finding that temporary housing is a "dwelling" under section 3602(b). *Lauer Farms*, 986 F. Supp. at 559 (migrant workers considered their temporary housing a place to "return to" during the course of the summer); *Lakeside Resort*, 455 F.3d at 160 (residents of a center considered it their home and returned to it on a daily basis); *Hughes*, 396 F. Supp. at 549 (children's home a dwelling because "the Home is far more than a place of temporary sojourn to the children who live there"); *Hovsons*, 89 F.3d at 1102 (nursing home a dwelling because "[t]o the handicapped elderly persons who would reside there, Holiday Village would be their home, very often for the rest of their lives"). By contrast, hotel guests do not normally consider a hotel to be their residence or dwelling, whether or not they intend to return the next day or at some point in the future. *See Patel*, 483 F. Supp. at 381 (hotel not a dwelling because no visitors intended to use the hotel as a residence).

Plaintiff-Appellant Chinn considered the River of Life shelter to be his residence or usual dwelling place. (A23 ¶ 3.) And, as a practical matter, he had no other home, as was the case with the other residents at the River of Life shelter. (A22-A23 ¶¶ 2-3.) The absence of a residence elsewhere – the fact of having nowhere else to go – is one of the key indicators that a homeless shelter like River of Life is, indeed, a dwelling. *Woods*, 884 F. Supp. at 1173; *see also Baxter*, 720 F. Supp. at 731 (holding that a hospice for individuals living with HIV/AIDS is "a home for HIV victims in need of a place to live. Although the length of the residence may vary, the persons who will reside at Our Place will not be living there as mere transients.").

The District Court erroneously failed to give consideration to the intent of the plaintiffs-appellants to use the River of Life shelter as their residences and as the place to which they returned as their usual dwelling place.

III. DISPUTED ISSUES OF MATERIAL FACT REGARDING LENGTH OF STAY AND INTENT TO RETURN MADE SUMMARY JUDGMENT INAPPROPRIATE.

The District Court also erred in concluding that the evidence did not create a disputed issue of triable fact as to whether the River of Life shelter is a "dwelling" under the Fair Housing Act. In deciding the shelter is not a "dwelling," the District Court ignored evidence regarding the length of residents' stays at the facility and evidence regarding the residents' intent to return to the River of Life shelter as

their usual dwelling places. Because the record contained facts that would support a finding that the River of Life shelter was a dwelling, summary judgment was inappropriate.

Summary judgment cannot be granted if a genuine issue exists as to any material fact. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004). Determinations regarding the weight and credibility of evidence "are within the province of the factfinder at trial." *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)); *see also Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1221 (9th Cir. 1999) (the court "must not weigh the evidence or determine the truth of the matter"). Instead, the court must review the evidence "in the light most favorable to the nonmoving party to determine whether there exist any disputed genuine issues of material fact that would preclude summary judgment." *Braunling v. Countrywide Home Loans, Inc.*, 220 F.3d 1154, 1156 (9th Cir. 2000). As discussed above, the record contained ample evidence that residents stayed at the River of Life shelter for as long as 150 consecutive days and that those residents – including plaintiff-appellant Chinn – intended for the River of Life shelter to be their residence to which they returned. By presenting this evidence, plaintiffs-appellants presented genuine issues of material fact, and

summary judgment that the River of Life shelter was not a dwelling was wholly inappropriate.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court reverse the District Court's entry of judgment against plaintiffs-appellants on their claim that the River of Life homeless shelter is a "dwelling" under § 3604(b) of the Fair Housing Act and remand the claim to the District Court for a trial on the merits.

Dated: October 6, 2010

MORRISON & FOERSTER LLP
DARRYL P. RAINS

By: s/ Darryl P. Rains
Darryl P. Rains
Attorney for Amici Curiae AIDS Legal Referral Panel, Bay Area Legal Aid, California Rural Assistance, Inc., Fair Housing of Marin, Housing Rights Center, The Law Foundation of Silicon Valley, The National Fair Housing Alliance, The National Housing Law Project, The Public Interest Law Project, The Western Center on Law and Poverty, and The Tenderloin Housing Clinic.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204, subdivision (c)(1), I certify that the attached brief was produced on a computer and, according to the word count of the computer program used to prepare the brief, contains 5,239 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of October, 2010, at Palo Alto, California.

MORRISON & FOERSTER LLP
DARRYL P. RAINS

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Attorney for Amici Curiae AIDS Legal Referral Panel, Bay Area Legal Aid, California Rural Assistance, Inc., Fair Housing of Marin, Housing Rights Center, The Law Foundation of Silicon Valley, The National Fair Housing Alliance, The National Housing Law Project, The Public Interest Law Project, The Western Center on Law and Poverty, and The Tenderloin Housing Clinic.

9th Circuit Case No. 10-35519

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 6, 2010.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Darryl P. Rains

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