No. 09-1717

In the

Appellate Court of Illinois

First Judicial District

Keith Landers,
Plaintiff-Appellee

v.

Chicago Housing Authority, a municipal corporation,
Defendant-Appellant.

Appeal from the Circuit Court of Cook County, Illinois,
First Municipal District, No. 09 CH 11724
The Honorable William O. Maki, Judge Presiding.

MOTION OF THE

Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School,
Uptown People's Law Center,
Chicago Area Fair Housing Alliance,
Chicago Coalition for the Homeless,
Legal Action Center,
National Law Center on Homelessness and Poverty,
Cabrini Green Legal Aid,
and the Sargent Shriver National Center on Poverty Law

FOR LEAVE TO APPEAR AS AMICI CURIAE AND TO FILE A BRIEF INSTANTER IN SUPPORT OF PLAINTIFF-APPELLEE

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Pursuant to Illinois Supreme Court Rule 345(a), the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School, Uptown Peoples' Law Center, Chicago Area Fair Housing Alliance, Chicago Coalition for the Homeless, Legal Action Center, National Law Center on Homelessness and Poverty, Cabrini Green Legal Aid, and the Sargent Shriver National Center on Poverty Law (collectively "*Amici*") respectfully move the Court for leave to file instanter their brief *amici curiae* in support of the responsive brief filed on behalf of the Plaintiff-Appellee Keith Landers.

Mr. Landers is responding to the Chicago Housing Authority's ("CHA") appeal of the circuit court's decision that the CHA could not use the record of his arrests that never led to convictions to deny Mr. Landers' application to reside in the CHA's public housing. *Amici* are seeking to file their brief to demonstrate to this Court that the CHA's use of arrest records to exclude individuals from its housing developments violates the Fair Housing Act and goes against the spirit of international human rights treaties to which the United States is a party. In further support of Mr. Landers' responsive brief, *Amici* state as follows:

1. As described in more detail in the proposed brief, the CHA's admission policy disparately and unjustifiably impacts African-Americans and ignores the CHA's federal duty not to discriminate on the basis of race under the Fair Housing Act. The CHA discriminated against Mr. Landers when it denied his public housing application on the basis of arrests that did not result in convictions. It blatantly ignored its policy's effect of excluding a disproportionate number of African-Americans from public housing. Though the CHA argues that the consideration of arrest records furthers its interest in increasing the safety of public housing developments, studies have shown that

arrest records alone are not reliable indicators of the actual criminal activity that a tenant screening process is designed to root out. In fact, a number of public housing authorities around the country have abandoned using arrest records in their screening process. Moreover, the CHA ignored outright Mr. Landers's request that the CHA evaluate his public housing application based on his stellar financial history and not on interactions with law enforcement officers that arose from the state of his homelessness rather than commission of any criminal activity. It failed to consider that in the United States, there is a substantial racial disparity in rates of arrest as well as homelessness, disproportionately impacting African-Americans. In addition, the CHA's sole reliance on arrest records to deny Mr. Landers admission to public housing violates its duty to affirmatively further fair housing under the Fair Housing Act. Furthermore, it flies in the face of commitments that the U.S. has made under international human rights treaties which provide protections for minorities and poor persons, including homeless persons.

2. *Amici* have a strong and unique interest in the CHA's appeal of the circuit court's decision that makes them well-situated to assist the Court. Each of the *Amici* advocates for low-income individuals who are either experiencing homelessness or otherwise are in need of decent affordable and fair housing, representing them in policy and legal matters concerning housing fair housing, discrimination, homelessness, and criminal law.

- **The Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School (the "Mandel Clinic")** is one of the nation's oldest law school clinics. Established in 1957, the Mandel Clinic's mission is to teach students effective advocacy skills, professional ethics, and the effect of legal institutions on the

poor; to examine and apply legal theory while serving as advocates for people typically denied access to justice; and to reform legal education and the legal system to be more responsive to the interests of the poor. The Mandel Clinic renders assistance to indigent clients. Students assume responsibility, under the guidance of the full-time clinical faculty, for all aspects of the work.

Over the last decade, the Mandel Clinic pioneered its Civil Rights and Police Accountability Project, the first law school clinic of its kind in the nation. The Project's goals are to improve police service and accountability. While its work has a national orientation, it is grounded in Chicago's South Side. The Project has three primary components: litigation and advocacy; policy reform; and community service and education. The Project provides legal services to victims of police abuse. It takes on cases that would not ordinarily be brought by the private bar, focusing on those that have potential to raise public consciousness and to facilitate reform. The community component is given equal emphasis.

University of Chicago law students partner with public housing residents, neighborhood organizations, and law enforcement groups to improve public safety, police accountability, and the legal institutions. The centerpiece of the Project's community work was its seven-year collaboration with Chicago public housing residents to document and report on police practices and abuse as experienced from the ground. The Mandel Clinic's sustained work provides a deeper understanding of the nature of police abuse in public housing, the lack of adequate mechanisms to curb such abuse, and the profound need for the exclusionary rule in the context of "one-strike" eviction proceedings to deter unconstitutional police practices that cause Chicago's

poorest and most vulnerable families to be rendered homeless.

- **Uptown People's Law Center (the "Law Center")** is a not-for-profit legal clinic, serving poor and working people on Chicago's northside. One of the Law Center's main areas of work is defending tenants facing evictions from private housing, from units subsidized through the federal Section 8 program, and from scattered site public housing. The Law Center also represents prisoners seeking to challenge the way they are treated in prison. Significantly, the Law Center frequently works with homeless people to access public benefits and also to defend themselves against criminal charges.

- **Cabrini Green Legal Aid ("CGLA")** provides high-impact, free legal services to low-income Chicagoans in four areas of law: family, housing, criminal records, and criminal defense. CGLA integrates legal and social services in order to improve legal outcomes and extend its impact beyond crisis support. At its start, CGLA operated as a general purpose law firm for residents of Cabrini Green, one of Chicago's largest and most impoverished housing projects. Its staff represented clients across a broad range of issues while advocating for tenants' rights and alternatives to gangs for youth. In 1996, the CHA started to tear down Cabrini Green buildings and relocate residents to the south and west sides of Chicago. At that time, CGLA responded by expanding its geographic requirements to the whole city of Chicago.

CGLA is uniquely positioned to speak to the issues in this brief for several reasons. First, CGLA was created primarily to address the legal problems of residents of public housing and, therefore, is historically attuned to the plight

of those who, like Mr. Landers in this case, seek to reside in for public housing. Secondly, CGLA is the only non-profit legal organization which employs criminal defense attorneys, housing attorneys and criminal records attorneys, all working under one roof. This diversity of practice gives CGLA a unique perspective on how criminal and civil law interact in the lives of low-income people. In particular, as the statewide leader in Illinois with regard to criminal records issues, CGLA has extensive experience representing low-income Chicagoans who suffer numerous collateral consequences because of criminal records, including discrimination in applications for employment, licensing and public housing.

- **Chicago Area Fair Housing Alliance ("CAFHA")** is an association of over twenty private fair housing organizations, governmental bodies, and other concerned groups in the Chicago metropolitan area. The purposes of CAFHA are to develop and support programs that further fair housing rights and opportunities; develop strategies to promote long-term racial diversity; take steps to combat discrimination and harassment based on race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, familial status, military discharge status, source of income or housing status.

- **Chicago Coalition for the Homeless ("CCH")** is a well-recognized 30 year old not-for-profit corporation which organizes and advocates to prevent and end homelessness in Chicago and throughout Illinois. CCH believes that housing is a human right in a just society and works with public officials, community-based organizations, civil rights advocates and other entities that construct and provide housing to fulfill that goal.

A foremost concern for CCH is ensuring full and fair access to safe, decent, and affordable housing for all persons experiencing poverty, especially extreme poverty. To that end, CCH has a long history of working with persons experiencing homelessness and together advocating for policies, programs, practices and laws at every level of government which promote full and fair access to housing resources. CCH understands the grave dangers and indignities suffered by persons who lack safe, decent, affordable housing including the loss of civil rights and the impact of racial discrimination in barring access to housing. Accordingly, eliminating any policy or practice by the CHA which operates to bar access to housing for persons experiencing homelessness and which has a racially discriminatory effect are at the heart of CCH's mission.

- **Legal Action Center ("LAC")** is a national public interest law firm founded in 1972, that performs legal and policy work to fight discrimination against and promote the privacy rights of individuals with criminal records, alcohol/drug histories, and/or HIV/AIDS. LAC has a multi-faceted approach that involves direct client legal services and impact litigation, technical assistance and training to agencies that serve LAC's clientele, and policy advocacy to create systemic changes that will benefit our constituency. For example, LAC's National HIRE (Helping Individuals Reenter through Employment) Network works with policy makers and advocates nationwide to promote employment and other opportunities for individuals with criminal records.

With respect to criminal record-based housing discrimination, LAC has worked to effect policy changes, has written publications, and has represented

many individuals who have been denied federally funded Section 8 assistance and public housing because of a criminal record. The question posed in this case is of vital concern to LAC's constituency across the country, who are trying to better their lives despite past involvement with the criminal justice system. Through the amicus process, LAC can provide the experience and voice of its clients to the Court.

- **National Law Center on Homelessness and Poverty's ("NLCHP")** mission is to prevent and end homelessness by serving as the legal arm of the nationwide movement to end homelessness. To achieve its mission, the organization pursues three main strategies: impact litigation, policy advocacy, and public education. NLCHP strives to place homelessness in the larger context of poverty. By taking this approach, the organization aims to address homelessness as a very visible manifestation of deeper causes, including: the shortage of affordable housing, insufficient income, and inadequate social services. NLCHP addresses the causes of homelessness, not just its symptoms. The organization was established in 1989 by Maria Foscarinis, a lawyer who has been working to end homelessness at the national level since 1985.

NLCHP is particularly concerned with improving access to affordable housing options as a means for preventing and addressing homelessness. NLCHP works with communities to create constructive alternatives to the criminalization of homelessness, rather than unfairly penalizing homeless persons for conducting their basic life function in public when they have no alternative. NLCHP believes housing is a basic human right, and works both

internationally and domestically to promote a rights-based approach to housing.

- **Sargent Shriver National Center on Poverty Law (the "Shriver Center")** uses a unique, proven approach of blending grassroots advocacy and innovative legal theory to promote economic and social justice for low-income people on national, state and local levels. Through its housing department, the Shriver Center advocates to preserve low-income housing and protect residents of public and subsidized housing throughout Illinois. It plays a pivotal role in overseeing and documenting the CHA's Plan for Transformation, defending low-income renters through impact litigation, advancing innovative housing polices at the state and local levels, and providing professional support to housing advocates nationwide.

3. *Amici* believes that the proposed brief will assist the Court in this case because they are uniquely situated to provide the Court with broad spectrum of advocacy on behalf of low-income individuals who are either experiencing homelessness or otherwise are in need of decent affordable and fair housing. *Amici* also have extensive expertise in the representation of residents of public and subsidized housing as well as low-income, typically minority individuals in need of public housing, many of whom are adversely affected by admissions policies that factor arrests that did not result in convictions. *Amici* have seen firsthand how arrest records, in this and in other contexts, are unfairly used against African-Americans to deny them access to employment and housing. Based on these collective experiences, *Amici* can highlight for the Court the ideas and significant insights not raised by the litigants as to why the Court should reject the CHA's use of Mr. Landers' arrest record as a basis

to deny admission to his public housing application.

4. The proposed brief is only 25 pages, and *Amici* believe that it will not unduly burden the Court.

5. A proposed order and proposed brief are submitted herewith for filing, in the event this Court allows the Motion. See Exhibit A.

WHEREFORE, *Amici* respectfully request this Honorable Court to grant its Motion for Leave to Appear As *Amici Curiae* and To File a Brief *Instanter* in Support of the Plaintiff-Appellee Keith Landers.

Dated: March 8, 2010

Respectfully submitted,

By: _____

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EXHIBIT A

No. 09-1717

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BRIEF OF AMICI IN SUPPORT OF PLAINTFF-APPELLEE

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POINTS AND AUTHORITIES

INTRODUCTION

Amici curaie the Edwin F. Mandel Legal Aid Clinic of the University of Chicago Law School, Uptown Peoples' Law Center, Chicago Area Fair Housing Alliance, Chicago Coalition for the Homeless, Legal Action Center, National Law Center on Homelessness and Poverty, and the Sargent Shriver National Center on Poverty Law (collectively "*Amici*"), pursuant to leave of the Court and Illinois Supreme Court Rule 345, respectfully submit this memorandum in support of the responsive brief filed on behalf of Plaintiff-Appellee Keith Landers. Mr. Landers is responding to the Chicago Housing Authority's appeal of the circuit court's decision that the Chicago Housing Authority (CHA) could not use the record of his arrests that do not result in convictions to deny Mr. Landers' application to reside in the CHA's public housing.

Amici are not addressing the particulars of Mr. Landers' case. Rather, *Amici* are uniquely positioned to inform the Court of how using an individual's arrest information to deny admission to public housing, especially where those arrests did not result in a conviction, disparately and unjustifiably impact African-Americans and therefore violates the Fair Housing Act. *Amici* can also advise the Court of how the CHA has failed to comply with its duty to affirmatively further fair housing under the Fair Housing Act, by failing to consider the fair housing impediments resulting from its practice of using arrest records to deny admission. *Amici* can also advise the court of the frequency by which homeless individuals, like Mr. Landers, interact with and are arrested by the police. Finally, *Amici* will inform the Court about how the CHA's admission policy violates U.S. obligations under international human rights law.

STATEMENT OF INTEREST OF *AMICI*

Amici have a strong and unique interest in this petition for rehearing and certificate of importance that makes them well-situated to assist the Court. *Amici* advocate for low-income individuals who are either experiencing homelessness or otherwise are in need of decent, affordable and fair housing, representing them in policy and legal matters concerning housing, discrimination, homelessness, and criminal law. In particular, *Amici* have advocated on behalf of low-income, typically minority individuals in need of public housing, many of whom are adversely affected by admissions policies that consider arrests that did not result in convictions. *Amici* have seen firsthand how arrest records, in this and in other contexts, are unfairly used against African-Americans to deny them access to employment and housing. Only by rejecting the CHA's use of Mr. Landers' arrest record as a basis to deny admission to his public housing application will the purposes of the Fair Housing Act and applicable international human rights law be served.

STATEMENT OF FACTS

Amici accepts the facts as stated by Plaintiff-Appellee Keith Landers.

ARGUMENT

Nine years have passed since the Chicago Housing Authority closed its waiting list for public housing applicants. In that time, old buildings have been torn down, and new ones have gone up. Many of the once struggling neighborhoods containing public housing have become thriving communities with a mix of public and market rate housing. In the meantime, people like Keith Landers have spent the better part of a decade waiting patiently for their opportunity to access safe and decent public housing. For them, their opportunity comes this year when the CHA finally opens its public housing waiting list.

CHICAGO HOUS. AUTH., FY2010 MOVING TO WORK ANNUAL PLAN 11 (2009), *available at* http://www.thecha.org/filebin/pdf/mapDocs/FY2010_MTW_Annual_Plan_FINAL_with_Board_Resolution.pdf.

If the past is any indication, the response will be overwhelming. In the spring of 2008, when the CHA opened its wait list for the the Housing Choice Voucher (HCV) program, it received 230,000 applications. *Id.* at 35. In the end, only 40,000 households, or 15% of the applications, were randomly selected to the HCV waiting list. That list is now closed indefinitely. *Id.* This response reflects the fact that there is simply not enough HCVs to meet housing needs in Chicago and across the state. HEARTLAND ALLIANCE MID-AMERICA INST. ON POVERTY, NOT EVEN A PLACE IN LINE 2 (2007), *available at* http://www.heartlandalliance.org/whatwedo/advocacy/reports/notevenaplaceinline2007.pdf.

The shortage of public housing is even more severe. For every unit of existing public housing in Illinois, there were at least two households in need of assistance. *Id.* In the Chicago region, federal affordable housing programs only have the capacity to assist 29% of eligible households, leaving nearly 385,000 households without vital housing assistance. HEARTLAND ALLIANCE MID-AMERICA INST. ON POVERTY, 2009 REPORT ON CHICAGO REGION POVERTY 6 (2009), *available at* http://www.heartlandalliance.org/whatwedo/advocacy/reports/chicago-poverty-report-2009-final.pdf.

The current recession has only exacerbated the need for affordable housing in Chicago, especially among minorities who have been disproportionately affected by unemployment and nationally have experienced increases in unemployment at higher percentages than whites. OHIO STATE UNIV., KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, RACE-RECOVERY INDEX 3 (2010), *available at* http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/publications/race-recovery_feb2010.pdf. Additionally, according to analysis from the Chicago Reporter, unemployment is especially high in a large portion of the predominately African-American south side of Chicago, with an unemployment rate second only to an area in Detroit. Alden Loury, tcrBLOG: Chicago's South Side Has the Nation's Second-highest Unemployment Rate, http://chicagoreporter.typepad.com/chicago_reporter/2009/11/chicagos-south-side-has-the-nations-secondhighest-unemployment-rate.html (Nov. 18, 2009). Loss of employment is a critical factor that can push a household into poverty. AMY RYNELL, HEARTLAND ALLIANCE MID-AMERICA INST. ON POVERTY, CAUSES OF POVERTY: FINDINGS FROM RECENT RESEARCH (2008), *available at* http://www.heartlandalliance.org/whatwedo/advocacy/reports/causes-of-poverty.pdf.

African Americans also disproportionately experience poverty in Chicago, representing more than half of Chicago's poor, and 20% are African American children. U.S. Census Bureau, 2008 American Community Survey 1-Year Estimates at Tables B17001 and B17020B.

The dwindling supply of affordable housing, coupled with the worsening economic conditions of Chicago's low-income population, makes the opening of the

CHA's public housing waiting list all the more momentous. The lack of a rational, well-balanced policy on the use of arrests that do not result in convictions, however, threatens to deprive many people not only of their opportunity to access public housing, but also their rights under the Fair Housing Act and the United States' obligations under international human rights law.

I. THE CHA VIOLATES THE FAIR HOUSING ACT WHEN IT CONSIDERS PUBLIC HOUSING APPLICANTS' ARRESTS THAT DID NOT RESULT IN CONVICTIONS.

By rejecting Mr. Lander's public housing application because of arrests that did not result in convictions, the CHA ignored its federal duty not to discriminate on the basis of race under the Fair Housing Act. 42 U.S.C. § 3601 *et seq*. The FHA prohibits the CHA from "refus[ing] to sell or rent ... or otherwise make unavailable or deny, a dwelling to a person because of race." 42 U.S.C. § 3604(a). It also bars the CHA from "discriminat[ing] against any person in the terms, conditions, or privileges of sale or rental of a dwelling ... because of race." 42 U.S.C. § 3604(b).

Although the policy of considering the arrest records of public housing applicants is facially neutral, it disparately impacts African-Americans in violation of the FHA. The federal circuits overwhelmingly agree that racial minorities like Mr. Landers have a right to challenge facially neutral housing policies with a disparate impact as a violation of the FHA, just as they can challenge facially neutral employment policies with a disparate impact under Title VII of the Civil Rights Act of 1964. *See, e.g., Simms v. First Gibraltar Bank*, 83 F.3d 1546, 1555 (5th Cir. 1996); *Mountain Side Mobile Estates P'ship v. HUD*, 56 F.3d 1243, 1250-51 (10th Cir. 1995); *Jackson v. Okaloosa County*, 21 F.3d 1531, 1543 (11th Cir. 1994); *Casa Marie, Inc. v. Superior Court of Puerto Rico*, 988

F.2d 252, 269 n.20 (1st Cir. 1993); *United States v. Starrett City Assocs.*, 840 F.2d 1096, 1100 (2d Cir. 1988); *Keith v. Volpe*, 858 F.2d 467, 482-84 (9th Cir. 1988); *Arthur v. City of Toledo*, 782 F.2d 565, 575 (6th Cir. 1986); *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982); *United States v. Mitchell*, 580 F.2d 789, 791-92 (5th Cir. 1978); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 147-48 (3d Cir. 1977); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977); *United States v. City of Black Jack*, 508 F.2d 1179, 1184 (8th Cir. 1974). Indeed, in analyzing FHA disparate impact claims, the federal circuits draw heavily from Title VII case law – its burden-shifting analysis being the prime example – since the statutes share identical language prohibiting actions taken "because of race." *See* 42 U.S.C. § 3604(a); 42 U.S.C. § 2000e-2(a). The circuits have also stressed the necessity of interpreting Title VIII and Title VII expansively since they function as "part of a coordinated scheme of federal civil rights laws enacted to end discrimination." *Huntington Branch, NAACP v. Huntington*, 844 F.2d 926, 935 (2d Cir. 1988).

In analyzing disparate impact claims under the FHA, the Seventh Circuit balances four factors: "(1) the strength of the plaintiff's showing of discriminatory effect; (2) whether there is some (though not much is required) evidence of discriminatory intent; (3) the defendant's interest in taking the action; and (4) whether the plaintiff seeks to compel affirmative conduct or to restrain interference with individual property owners." Metropolitan Housing Dev. Corp. v. Village of Arlington Heights ("Arlington Heights II"), 558 F.2d 1283, 1290 (7th Cir. 1977). Under this analysis, the CHA's policy of considering arrests (that never led to a conviction) stands out as precisely the type of discrimination that that the FHA is designed to end. Not only does it prevent a

disproportionate number of African-Americans from admission to public housing, it also fails to advance any legitimate goal the CHA may have in using this information, such as increased public safety of the CHA's existing public housing residents. To avoid the taint of race discrimination in its admission practices the CHA should not consider Mr. Landers' arrest record when evaluating his public housing application.

A. In Denying Mr. Landers' Public Housing Application on the Basis of Arrests that Did Not Result In Convictions, the CHA Discriminated Against Him on the Basis of His Race in Violation of the Fair Housing Act.

1. CHA's consideration of these arrests excludes a disproportionate number of African-Americans from public housing.

The CHA's practice of denying individuals admission to public housing because of arrests (without convictions) will disproportionately harm African-Americans and result in just the kind of discriminatory effect the first *Arlington Heights II* factor concerned.

This discriminatory effect arises from the fact that far more African-Americans in Chicago are in need of federally-assisted housing. Although they make up only one-third of the City of Chicago's population, African Americans account for 60% of applicants on the wait list for family public housing, and 82% of applicants for Housing Choice "Section 8" Vouchers. Chicago Housing Authority, Public Housing Waitlist Demographics, March 31, 2009, *available at* http://www.thecha.org/pages/waitlist_demographics/100.php; Chicago Housing Authority, FY2008 Moving to Work Annual Report, December 31, 2008, at 118, *available at* http://www.thecha.org/pages/waitlist_demographics/100.php. Compared to white households, African-American households are also three times more likely to be

eligible for Chicago's public housing.[1] Moreover, forty-five percent of black households experience severe housing problems such as cost burdens, a lack of basic facilities, and overcrowding, in comparison to 30% of white households.[2]

African-Americans are also subject to starkly higher rates of arrest by the Chicago Police Department. Although they comprise one-third of the city's population, 75% of all arrestees in 2008 were African-American. See Chicago Police Department, 2008 Annual Report, at 49, *available at* https://portal.chicagopolice.org/portal/page/portal/ClearPath/News/Statistical%20Reports/Annual%20Reports/2008%20Annual%20Reports/08AR.pdf. Eighty percent of the people arrested for drug-related offenses were also African-American. Alden Loury, Drug Arrests Nab Minorities, Chicago Reporter, *available at* http://www.chicagoreporter.com/index.php/c/Inside_Stories/d/Drug_Arrests_Nab_Minorities (last visited Jan. 25, 2010).

A significant number of these arrests of African Americans are dismissed, thereby undermining their value as a measure of past criminal activity. For example, a 2004

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[1] 61% of black families and 22% of Non-Hispanic white families had annual incomes less than $50,000 in 2008. *See* U.S. Census Bureau, 2008 American Community Survey 1-Year Estimates, Tables B19001B and B19001H for Chicago, IL. Average household size for CHA public housing is 1.8. *See* HUD's A Picture of Subsidized Housing-2008 for the Chicago Housing Authority, people per unit, *available at* http://www.huduser.org/portal/picture2008/index.html. To be eligible for public housing in Chicago-Naperville-Joliet, IL HUD Metro FMR Area, a family of two's annual income must not exceed $48,250. *See* FY2008 Income Limits Documentation System, *available at* http://www.huduser.org/datasets/il/il2008/2008summary.odn?inputname=METRO16980M16980*Chicago-Naperville-Joliet%2C+IL+HUD+Metro+FMR+Area&selection_type=hmfa&year=2008.

[2] HUD User, State of the Cities Data Systems: Comprehensive Housing Affordability Strategy (CHAS) Data, housing problems for Chicago, IL in 2000, available at http://socds.huduser.org/CHAS/CHAS_java.htm.

study of the seventy-five largest counties nationally found that over twenty percent of all felony cases were dismissed. Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics, "Adjudication outcome for felony defendants in the 75 largest counties, by arrest charge, United States, 2004," http://www.albany.edu/sourcebook/tost_5.html#5_w (last visited Feb. 24, 2010). More importantly, a recent study analyzing federal felony arrests found that they were more likely to result in dismissed charges for black arrestees than white arrestees where the police officer had more discretion in his decision to arrest. The study also found that these higher dismissal rates arose from higher rates of false arrests amongst African-Americans. Aleksander Tomic & Jahn K. Hakes, *Case Dismissed: Police Discretion and Racial Differences in Dismissals of Felony Charges*, 10 AM. L. ECON. REV. 110, 111 (2008).

In light of the substantial racial disparities in arrest rates, the likelihood that many of those arrests of minorities will not result in a conviction and that many of those individuals never actually committed a crime, the effect of CHA's consideration of arrest records will be to deny public housing to far more African-Americans than whites. This distinct discriminatory effect establishes a prima facie case of disparate impact discrimination under the FHA. *See Arlington Heights II*, 558 F.2d at 1290 (holding that a facially neutral housing policy has a racially discriminatory effect if the policy has "a greater adverse impact on one racial group than another"); *Wallace v. Chicago Housing Authority*, 312 F. Supp. 968, 973 (N.D. Ill. 2004) ("Plaintiffs can establish a prima facie disparate impact case under the FHA simply by showing that Defendants' actions had discriminatory effects upon a protected class."); *see also Hispanics United of DuPage County v. Village of Addison*, 988 F. Supp 1130, 1155 (N.D. Ill. 1997) (finding that the

village's plan to demolish multifamily housing within two districts created a discriminatory effect where Latinos represented over 49% of the districts and only 13.4% of the village's overall population).

Illinois courts have endorsed a similar analysis in the employment context. As the Illinois Appellate Court in *Board of Trustees of Southern Illinois University v. Knight* declared, "[t]he courts of this State have long recognized that arrest-record hiring criteria have an inherently discriminatory impact upon black job applicants." 163 Ill. App. 3d 289, 299 (5th Dist. 1987); see also *Cairo v. Fair Employment Practices Commission*, 21 Ill. App. 3d 358, 365 (5th Dist. 1974) (holding the city's policy of barring police officer applicants based on arrest records was racially discriminatory under the Illinois Fair Employment Practices Act, whose language was substantially similar to that of Title VII). This endorsement reflects a consensus among courts and enforcement agencies that reliance on records of arrests violates Title VII because of its adverse disparate impact on African-Americans. *See Gregory v. Litton Systems*, 316 F. Supp. 401 (C.D. Cal. 1970); *see also* EEOC Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964 (1982). Because of the intertwined nature of Title VII and Title VIII jurisprudence, reliance on arrest records in the housing sector must be similarly suspect. *See generally* Note, Rebecca Oyama, Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act, 15 Mich. J. Race & L. 181 (2009). Consequently, the CHA should not be allowed to enact admission policies that "operate as 'built-in headwinds' for minority groups" – and are unrelated to measuring a person's ability to be a good tenant or

conversely, a potential threat to the health or safety of other residents. *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).

2. The exclusion of a disproportionate number of African-Americans from public housing due to records of arrests without conviction evinces CHA's discriminatory intent.

The second factor balanced under *Arlington Heights II* is whether there is some evidence of discriminatory intent. 558 F.2d at 1292. The Seventh Circuit has cautioned, however, that "a strict focus on intent permits racial discrimination to go unpunished in the absence of evidence of overt bigotry. As overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find." *Id.* at 1290. As such, courts balancing the intent factor must consider that it is the "least important of the four," *Id.* at 1292, and that "a violation of section 3604(a) can be established by a showing of discriminatory effect without a showing of discriminatory intent." *Id.* at 1290.

Recognizing that intent is not required, but rather considered under *Arlington Heights II*, courts have established that merely suggestive indications of discriminatory intent can argue in favor of the intent factor. *Hispanics United*, 998 F. Supp. at 1157 (quoting *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 190 (7th Cir. 1982). *Hispanics United* further instructed that discriminatory intent could be gleaned from such sources as the extent of discriminatory impact, historical background, and the sequence of events at issue. *Id.* at 1157. Therefore, in light of evidence already presented by *Amici* regarding the discriminatory correlation between African-Americans with arrest records and statistical reliance on public housing, this aspect of the *Arlington Heights II* balancing test is satisfied.

3. CHA's consideration of arrests records does nothing to further its interest in the safety of public housing developments.

An examination of the third *Arlington Heights II* factor – the CHA's interest in considering arrest records – compels this court to find CHA's arrest record policy unjustifiable and completely at odds with the FHA. See *Hispanics United*, 988 F. Supp. at 1130 (holding that the government defendant bears the burden of establishing legitimate reasons for taking actions that have discriminatory effect).

In its opening brief, CHA touts its goal of providing safe housing to low-income families. Its use of arrests that do not lead to a conviction however serve as a crude screening device entirely unrelated to public safety goal. Arrest records are not reliable indicators of the type of actual criminal activity that the tenant screening process is designed to root out. See 42 U.S.C. § 13661(c) (authorizing PHAs to screen tenants who engage in "drug-related or violent criminal *activity* or other criminal *activity* which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents"). Rather, arrest records measure law enforcement's response to potential criminal activity, not criminal activity itself. *See generally* Delbert S. Elliott, Center for the Study and Prevention of Violence, Lies, Damn Lies, and Arrest Statistics, The Edwin R. Sutherland Award Lecture at the American Society of Criminology Meetings (1995) (criticizing criminological studies that derive crime rates from arrest rates because arrest records do not accurately reflect criminal behavior), *available at* http://www.colorado.edu/cspv/publications/papers/CSPV-015.pdf. Furthermore, the broad discretion afforded to law enforcement officers permits racial prejudices to influence arrest decisions, further decreasing the likelihood that arrests actually indicate criminal activity. *See* Angela Davis, Prosecution and Race: The Power and Privilege of

Discretion, 67 Fordham L. Rev. 13, 26-27 (1998). Therefore, the CHA's public safety goal cannot possibly justify its policy.

Recognizing the limited value of an arrest record, other large public housing authorities, including New York City, Los Angeles, and Baltimore, have stopped screening applicants for arrests. Though they are not using arrests, they have found that they are still "combat[ting] crime just as effectively with their policies as PHAs with far harsher ones" without compromising their residents' safety. Housing Authority of the City of Los Angeles: Year 2009 Agency Plan Final 44 (2008), *available at* http://www.hacla.org/attachments/wysiwyg/36/Response_to_Comments_2009_Agency_Plan.pdf. See also Legal Action Center, Safe at Home: A Reference Guide for Public Housing Officials on the Federal Housing Laws Regarding Admission and Eviction Standards for People with Criminal Records 15 (2004), *available at* http://www.lac.org/doc_library/lac/publications/Safe@Home.pdf; National Housing Law Project, An Affordable Home on Reentry: Federally Assisted Housing and Previously Incarcerated Individuals 100 (2008). Human Rights Watch, No Second Chance: People with Criminal Records Denied Access to Public Housing 37 (2004). Thus, the glaring disconnect between the use of arrest records and public safety require the CHA to abandon its policy, especially in light of its discriminatory effect on African-Americans. Cf. Board of Trustees of Southern Illinois University v. Knight, 163 Ill. App. 3d 289, 295 (5th Dist. 1987) ("If the legitimate ends of safety and efficiency can be served by a

reasonably available alternative system with less discriminatory effects, then the challenged practice will be found unlawful.") (employment context).[3]

Even if the CHA's reliance on arrest records themselves furthered the goal of safe and affordable low-income housing, this policy would not survive a challenge under the FHA. Although one of policies of the United States Housing Act of 1937 is to increase access to decent, safe, and affordable housing for low-income families (though, as noted above, this policy has nothing to do with actually increasing public safety), this policy still does not trump the FHA, which governs nearly every aspect of a public housing authority's responsibilities. *See Langlois v. Abington Housing Authority*, 234 F. Supp. 33, 67 (D. Mass. 2002) (holding that even if federal law endorsed a housing preferences for local residents, the public housing authority did not have carte blanche to implement preferences that infringed upon civil rights guaranteed by federal law). Indeed, the FHA is to be liberally construed and in even in close cases (not here), the courts are to find in favor of furthering the goals of the FHA. *See U.S. v. Housing Authority of Chickasaw,* 504 F. Supp. 716, 732 (S.D. AL. 1980); *Arlington Heights II*, 558 F.2d at 1294; *See, e.g. Haves Realty Corp. v. Colman*, 455 U.S. 363, 380 (1982) (recognizing "the broad remedial intent of Congress" embodied in the Act); *Linmark Assocs., Inc. v. Township of Willingboro*, 431 U.S. 85, 95 (1977) (emphasizing the Act's "strong national commitment" to promoting the goals of the FHA). Thus, even if the use of arrest records

[3] The Illinois Civil Rights Act ("ICRA"), in fact, prohibits the CHA from utilizing "criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national original, or gender." 740 ILCS 23/5(a)(2). ICRA applies to all units of State, county, and local governments, which include the CHA because it is an agency of state government under the Illinois Public Housing Act. 310 ILCS 10/8. Under ICRA, therefore, the CHA is prohibited from utilizing arrest records to deny individuals housing because it has an effect of subjecting persons like Mr. Landers to discrimination because of their race.

in the CHA's admission policy may possibly increase the safety of public housing developments (it does not), such a speculative possibility would never not justify the substantial disparate impact it has on African-Americans. The CHA's use of arrest records obstructs rather than promotes the Fair Housing Act's goals. The only way it can comply with the FHA is stop looking at the arrest histories (that did not result in convictions) of public housing applicants and instead rely only on convictions.

4. Mr. Landers is not seeking intrusive relief from the CHA.

Finally, the last *Arlington Heights II* factor – how intrusive the relief requested is on the defendant – weighs in Mr. Landers' favor. He is not asking the CHA to construct new housing or similar affirmative actions. He is simply requesting that the CHA evaluate his public housing application based on his stellar financial history, compliance with all other admission criteria, and not on his interactions with law enforcement. Because Mr. Landers' arrest record does not indicate a history of criminal activity, the relief he seeks will not intrude upon the CHA's public safety efforts. Therefore, the CHA's consideration of arrests (that never led to a conviction) must end.

B. The CHA's Reliance on Arrest Records To Deny Applicants Admission to Public Housing Also Violates its Duty to Affirmatively Further Fair Housing under the FHA.

In addition to its duty not to intentionally racially discriminate or to engage in those practices that have an adverse disparate impact on minorities, the CHA has a duty to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5). Section 3608(e)(5) has long been recognized to impose binding obligations on agencies like the CHA who administer federal housing programs with federal dollars and in turn certify their compliance with §3608's duty to affirmatively further fair housing. 24 C.F.R. §

983.53(b)-(c)(PHAs must submit a signed certification to HUD that commits the PHAs to administer their programs in conformity with the Fair Housing Act and to affirmatively further fair housing). *See, e.g., Otero v. New York City Housing Authority*, 484 F.2d 1122, 1133-34 (2d Cir. 1973) (finding that "the affirmative duty placed on … HUD by §3608(e)(5)" also extends to "other agencies administering federal assisted housing programs"); *Langlois*, 234 F. Supp. 2d at 73 (declining to "construe the boundary of the duty to affirmatively further fair housing as ending with [HUD]"); *Wallace v. Chi. Housing Auth.*, 298 F. Supp. 2d 710, 719 (N.D. Ill. 2003) (recognizing that recipients of HUD funding have an obligation to HUD to affirmatively further fair housing). *See also* 24 C.F.R. § 570.601(a)(2) ("In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act…").

The duty contained in § 3608 (e)(5) is substantively different from the duty not to discriminate provisions of §3604 under the FHA. Rather, §3608(e)(5) is fundamentally concerned with, and aimed at, affirmatively promoting the right to fair housing. *Langlois,* 234 F. Supp. 2d at 71(noting "a substantial difference between a statute exhorting officials not to discriminate in effect (a negative obligation) and one that exhorts them to take steps to promote fair housing (an affirmative obligation)" ; *see also NAACP v. Secretary of Housing and Urban Development,* 817 F.2d 149, 154 (1st Cir. 1987) (3608 "requires something more of [a grantee] than simply to refrain from discriminating itself or purposely aiding the discrimination of others…, [rather, it] reflects the desire to have [HUD] grant programs … assist in ending discrimination and

segregation, to the point where the supply of genuinely open housing increases"). Thus, the AFFH obligation **requires** the CHA to consider the impact of proposed housing policies or programs on racial minorities. *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973); *Langlois,* 234 F. Supp. 2d at 73 (holding that a housing authority violated its certified duty to affirmatively further fair housing when it maintained a local residency preference in spite of a disparate racial impact). Indeed, HUD regulations spell out specific ways in which a local housing authority is supposed to affirmatively further fair housing, describing how a housing authority should monitor the impact of proposed programs on the groups the provision was intended to serve:

A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA .... :

(i) Examines its programs or proposed programs;

(ii) Identifies any impediments to fair housing choice within those programs;

(iii) Addresses those impediments in a reasonable fashion in view of the resources available;

(iv) Works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and

(v) Maintains records reflecting these analyses and actions.

24 C.F.R. § 903.7(o)(3).

The CHA, therefore, has a mandatory duty not only to *certify* its compliance with the fair housing laws, but to actually *comply*. *Langlois*, 234 F. Supp. 2d at 75. In this context, the CHA must affirmatively consider how its admission policies – including

denying admission to applicants with arrest records without an investigation of the underlying circumstances surrounding those arrests - adversely disparately impact racial minorities. As set forth in Section I., A., African-Americans are severely disparately impacted by the CHA's arrest policy, as African-Americans account for three out of every four arrests in Chicago and the majority of applicants to public housing. And yet it appears that the CHA has taken no steps to examine its admissions policy to determine if it impedes fair housing choices for African-Americans. Once identified, the CHA could have addressed this impediment in a reasonable fashion by adopting the policy of the New York City, Baltimore, and Los Angeles Housing Authorities to not use impediments of its admissions policies, the CHA certainly could not have kept any records reflecting that analysis or action steps taken to overcome it. *Id.* at 78. Thus, the CHA's policy to deny admission to applicants with arrest records (that do not result in convictions) and its related failure to identify any impediments to fair housing choice for racial minorities caused by that policy, violates its duty to affirmatively further fair housing.

II. THE CHA MUST NOT CONSIDER ARRESTS RESULTING FROM CHRONIC HOMELESSNESS.

Should this court allow the CHA to use Mr. Landers' arrest record here, the CHA must consider the fact that Mr. Landers experienced chronic homelessness. Arrests of homeless individuals are strongly correlated with the duration and the harshness of the circumstances of homelessness. Richard Speigman and Rex Green, *Homeless and Non-Homeless Arrestees: Distinctions in Prevalence and in Sociodemographic, Drug Use, and Arrest*, published by National Criminal Justice Reference Service (2002). Without a place of residence, homeless individuals cannot help but perform certain acts in public that would otherwise be done in private. In 32% of cities across America, homeless

individuals may have to spend their daytime hours outside the shelter used at night. U.S. Conference of Mayors, *Report on Hunger and Homelessness in American Cities* (2002). Many are forced to carry all their personal possessions with them. Their conduct, belongings, and even their looks may give rise to a suspicion of criminal activities or violations of public nuisance laws. Civil Rights Bureau, Office of the Attorney Gen. of the State of N.Y., *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General,* (Dec. 1, 1999). See also National Law Center on Homelessness and Poverty and National Coalition for the Homeless, Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities (2009). Indeed, up to two-thirds of homeless persons report having been arrested at least once since becoming an adult, but most were generally charged with non-violent crimes. *Id.*

In May 2007, the Greater Cincinnati Coalition for the Homeless examined homeless individuals' interaction with the criminal justice system and found that during the warmer months when individuals are more visible in public, the number of homeless arrests spiked while the number of arrests of the rest of the population remained the same. Greater Cincinnati Coalition for the Homeless, *Criminalization of Homeless Individuals in Cincinnati,* 3 (2007). However, most of the crimes charged against homeless individuals were misdemeanors, including loitering, trespassing, and disorderly conduct. *Id.* Because the harsh conditions of their life make homeless individuals particularly vulnerable to police stops and arrests, the CHA should not consider those arrests. Otherwise, the CHA's existing denial of public housing due to arrest history will likely

make it extremely difficult for homeless individuals to secure this affordable housing and permanently move out of homelessness.

Even more so, the CHA must consider the fact that homeless individuals in Chicago are disproportionately African-American. 75% of homeless individuals are African American, while only 18% are white, and 5% Hispanic. City of Chicago, *Homeless in Chicago: 2007 Numbers and Demographics, Point-in-Time Count Report* (2007). As well, Chicago's unsheltered homeless individuals overwhelmingly consist of single African-American men. This population is also disproportionately male (82%) and African American (74%). *Id.* Homeless individuals who are unsheltered live in public places, including on the street (50%), on the Chicago Transit Authority (29%), on CHA grounds (15%), and in other public and semi-public places like parks, abandoned buildings, and airports (6%). *Id.* Maneuvering and living within these kind of public settings only heightens their interaction with law enforcement. There again, the CHA's policy to deny admission to applicants on the basis of arrest records (but no convictions) fails to consider these facts and runs afoul of the Fair Housing Act by disproportionately impacting African-Americans.

III. THE CHA'S PRACTICE OF DENYING ADMISSION TO PUBLIC HOUSING BASED SOLELY ON ARREST RECORDS GOES AGAINST THE SPIRIT OF U.S. COMMITMENTS UNDER INTERNATIONAL HUMAN RIGHTS TREATIES.

The CHA's practice here also goes against the spirit and intent of international human rights law. Specifically, the United States has signed and ratified two international treaties that provide protections for minorities and poor persons, including homeless persons: the International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); 660 U.N.T.S. 195,

212 [hereinafter ICERD] and the International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Doc. E, 95-2 (1978); 999 U.N.T.S. 171 [hereinafter ICCPR]. Among their pertinent sections are: Article 5 of the ICERD (requiring signees to eliminate racial discrimination in all its forms and to guarantee the right to housing for everyone); Article 12 of the ICCPR (protecting the right to liberty of movement and the freedom to choose one's residence); and Article 26 of the ICCPR (calling for laws to guarantee effective protection against discrimination). It is clear that laws disparately impacting homeless African Americans violate the spirit of these provisions.

In its testimony to the U.N., the U.S. government has affirmed that both federal and local government plays an important role in implementing this country's human rights treaty obligations. In February 2008, at the 72nd Session of the Committee on the Elimination of Racial Discrimination, the Permanent Representative of the United States to the United Nations stated that "many agencies of the U.S. government ... have responsibilities for implementing the International Convention on the Elimination of Racial Discrimination." Going on to speak of the importance of state level action, the Ambassador noted that "our delegation includes a representative of one of our fifty states – the State of Illinois. The states of the United States, as well as other government entities such as its cities and countries, are critical partners in taking action against discrimination." Ambassador Warren W. Tichenor, Opening Statement to the Committee on the Elimination of Racial Discrimination (Feb. 21, 2008), http://www.ltgusa.us/statement_14.html.

Several international bodies have also recently expressed concern about U.S. treatment of homeless persons, particularly African-Americans, and the failure of

government in protecting their right to housing. Just like Title VII of the Civil Rights Act of 1964 and the Fair Housing Act, international human rights law considers laws that have a disparate racial impact, regardless of intent, to be discriminatory. Indeed, the Special Rapporteur on Adequate Housing and the United Nations Independent Expert on Minority Issues recognized that U.S. policies that are not intentionally discriminatory but have a disproportionate impact on African-Americans run afoul of international human rights law generally as well as regarding "relevant provisions of the International Convention on the Elimination of Racial Discrimination, [which] clearly prohibits actions that result in a discriminatory impact denying individuals or group's equal enjoyment of human rights because of their race, ethnicity, social or other status." Press Release, United Nations Special Rappoteur and Independent Expert on Minority Issues, U.N. Experts Call on U.S. Government to Halt Ongoing Evictions and to Take Immediate Steps to Protect the Human Rights of African-Americans Affected by Hurricane Katrina and the Demolition of Public Housing in New Orleans, Louisiana (Feb. 28, 2008).

Additionally, the racially disparate treatment of homeless persons by U.S. police has drawn international attention and criticism. In June 2009, the UN Special Rapporteur on Racism, Mr. Githu Muigai, introduced his report to the United Nations Human Rights Council regarding his visit to the United States in May and June of 2008, condemning the disparate law enforcement efforts against African American homeless persons in Los Angeles. The report, issued by the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, drew special attention to the Skid Row area of Los Angeles where "relations between law enforcement and homeless persons were highlighted as an important problem, particularly with regard

to the enforcement of minor law enforcement violations which often take a disproportionately high number of African American homeless persons to the criminal justice system." United National Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, ¶ 64, U.N. Doc. A/HRC/11/35/Add.3 (Apr. 28, 2009).

Similarly, in 2006, regarding adherence to the ICCPR, the Human Rights Committee expressed its concern that "some 50% of homeless people are African American although they constitute only 12% of the U.S. population," and directed our government to take "measures, including adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination." United Nations Human Rights Committee, Concluding Observations of the Human Rights Committee: United States of America, ¶ 22, U.N. Doc. CCPR/C/USA/CO/3 (July 28, 2006). Regrettably, the U.S.'s failure to subsequently deal with this issue was spotlighted again this year in the Report of the Special Rapporteur on Adequate Housing. In the Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, U.N. Doc. A/HRC/13/20/Add 4 (Feb. 12, 2010), it was observed that not only did homelessness in the U.S. disproportionately impact African-Americans but that "many cities that do not provide enough affordable housing . . . are resorting to the criminal justice system to punish people living on the streets." *Id.* at ¶ 21. The report further emphasized that adequate affordable housing must be accessible to all, including homeless individuals. *Id.* at ¶ 56.

As such, the CHA's policy of barring public housing applicants with arrest records only exacerbates the problem of homelessness in Chicago and results in de facto race discrimination. Such a policy goes against the intent and spirit of international human rights law, including treaties to which the United States is a party, and must be ended.

In 2006, the Human Rights Committee similarly expressed its concern that nationally "some 50 % of homeless people are African American although they constitute only 12 % of the U.S. population," and directed our government to "take measures, including adequate and adequately implemented policies, to ensure the cessation of this form of de facto and historically generated racial discrimination." Concluding Observations of the Human Rights Committee: United States of America, U.N. Doc. CCPR/C/USA/Q/3/CRP.4, (2006), para. 22. Regrettably, the U.S.'s failure to deal with this issue was spotlighted once again this year in the Report of the Special Rapporteur on Adequate Housing. *See* Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, on her Mission to the United States of America, U.N. Doc. A/HRC/13/20/Add 4 (Feb. 12, 2010). Not only did the Special Rapporteur note that the homelessness in the U.S. disproportionately impacts African-Americans but that many cities are in fact "resorting to the criminal justice system to punish people living on the streets." See id, at 21. The report emphasized that adequate housing must be accessible to all, including homeless individuals. Id. The CHA's policy of barring public housing applicants with arrest records only exacerbates the problem of homelessness in Chicago

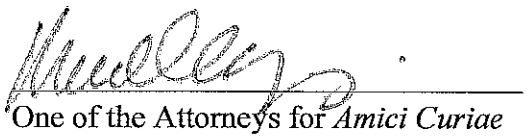
and results in de facto race discrimination. Only by barring such a policy will the discriminatory impact of its admissions policies end.

CONCLUSION

For the reasons set forth above, *Amici* respectfully urge this Honorable Court to overturn the CHA's administrative decision denying Mr. Landers' public housing application.

Dated: March 5, 2010

Respectfully submitted,



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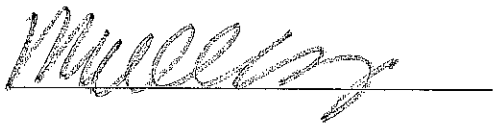
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 25 pages.



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