



**FAIR
HOUSING
RIGHTS OF
IMMIGRANTS**

About the Artwork

The key on this cover represents the opportunity that a safe, stable home can unlock, and the promise of fair housing for all. Surrounding it, monarch butterflies reflect the journeys of immigrants across borders and generations, echoing the remarkable migrations of monarchs across North America. Together, these symbols reflect a shared pursuit of belonging and opportunity in inclusive, well-resourced, and resilient communities where all people can thrive.

Introduction

Access to safe, stable housing is a foundational right, yet immigrants in the United States frequently face barriers that undermine this principle. Although immigration status itself is not a protected class under federal fair housing law, the intersection between immigration-related practices and prohibited forms of discrimination, particularly national origin discrimination, has become an increasingly significant area of legal concern. Housing providers, policymakers, and advocates must navigate a complex legal landscape in which federal statutes such as the Fair Housing Act (“FHA”) and 42 U.S.C. § 1981, as well as evolving state and local protections, shape the rights of immigrant home seekers and residents.

This memorandum provides a detailed overview of the legal protections available to immigrants in housing, with particular emphasis on how immigration-related policies and practices may violate existing civil rights laws. It examines key doctrines under the FHA, including disparate treatment, disparate impact, and discriminatory statements, and analyzes how these theories have been applied in cases involving immigration status and related proxies such as language and citizenship. The memorandum also highlights leading case law, emerging statutory protections at the state and local level, and specific issues affecting individuals with limited English proficiency.

By situating these issues within both a legal and practical framework, the memorandum aims to equip advocates and stakeholders with the tools necessary to identify, challenge, and prevent unlawful discrimination against immigrant communities in housing.

The Fair Housing Act and Immigration Status

The Fair Housing Act applies to all persons in the United States, regardless of immigration status,¹ but such status is not itself protected under the Act.² The FHA protects against discrimination in the provision of housing-related services based on national origin, race, color, religion, sex, familial status and disability,³ but lawsuits challenging immigration-related housing practices have been successful by alleging discrimination based on national origin.⁴ National origin refers to the country where a person was born or the country from which his or her ancestors came.⁵

Violations of the FHA can be proven through both the disparate treatment and disparate impact methods of proof, and immigration-related discrimination has been challenged under both.⁶ To establish disparate treatment based on national origin, a plaintiff must establish that the defendant had a discriminatory intent or motive.⁷ A showing of animus or ill will based on a protected class is not necessary.⁸ To prove a violation of the FHA under the disparate impact method of

1 *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415, 431–32 (4th Cir. 2018) (noting that immigrants are not exempted from coverage under the FHA).

2 Rigel C. Oliveri, *Between A Rock and A Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination*, 62 Vand. L. Rev. 55, 83 (2009) (noting that the FHA covers national origin but not citizenship or immigration status).

3 42 U.S.C. § 3604(a).

4 See *Reyes*, 903 F.3d at 431–32.

5 *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 88 (1973).

6 See *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 533 (2015); *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir. 1997).

7 *Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 524 (2015) (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)).

8 See *Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124, 153 (2d Cir. 2025)(ill will is not required).

proof, plaintiffs must first show that a policy or practice caused a disparate impact based on a protected class.⁹ The burden then shifts to the defendant to prove that its policies serve a legitimate, non-discriminatory interest.¹⁰ If defendant makes this showing, the burden shifts back to plaintiffs to show the valid interest could be achieved by “less discriminatory alternatives.”¹¹

The FHA also bars discriminatory statements or advertisements. It makes it unlawful to make, print, or publish statements or advertisements that indicate any preference, limitation, or discrimination based on national origin or any of the other six protected classes.¹² A different method of proof applies to discriminatory statements or advertisements under the FHA. Courts analyze whether there has been a violation of the discriminatory statements or advertisement provision of the FHA using the ordinary listener or reader test, which asks whether a statement or advertisement indicates a preference, limitation or discrimination to an ordinary reader or listener.¹³

Examples of Discriminatory Housing Practices Based on National Origin or, Under Local Protections, Immigration Status

Examples of possible discriminatory housing practices based on national origin or immigration status include:

- Refusing to rent or evicting because a person is an immigrant
- Charging more rent or a higher security deposit because a person is an immigrant
- Requiring a co-signer because a person is an immigrant
- Enforcing rules against immigrants but not against non-immigrants

The above practices may be a direct violation of a state or local law that prohibits discrimination based on immigration status in housing or evidence of national origin discrimination under the disparate treatment or disparate impact methods of proof under the FHA or other federal laws such as Section 1981.¹⁴

Case Example: Landlord Requiring Immigration Documentation - *Reyes v. Waples Mobile Home Park Ltd. P'ship*

In the leading case on immigration status and fair housing, *Reyes v. Waples Mobile Home Park Ltd. P'ship*, a mobile home park required all occupants to provide an original Social Security card (SSN) or certain documents that the mobile home company asserted are evidence of their legal immigration status.¹⁵ The plaintiffs included eighteen people—four couples and their children—and only the four women could not satisfy the documentation policy because of their immigration statuses.¹⁶ Plaintiffs were subsequently charged increased rent and fees, and at least three

⁹ See *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 543 (2015).

¹⁰ See *id.* at 541.

¹¹ See *id.* at 528.

¹² 42 U.S.C. § 3604(c).

¹³ *Jancik v. U.S. Dep't of Hous. & Urban Dev.*, 44 F.3d 553, 556 (7th Cir. 1995).

¹⁴ Section 1981 is a federal civil rights law that guarantees all people in the United States the same right to make and enforce contracts—including employment, housing, and business transactions—regardless of race or ethnicity, which includes ancestry. 42 U.S.C. § 1981.

¹⁵ *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415 (4th Cir. 2018).

¹⁶ *Id.* at 419-20.

of the couples moved out under threat of eviction.¹⁷

In their complaint, plaintiffs provided comprehensive statistical evidence that Latinos were disproportionately impacted by the policy including:

- Latinos represent 64.6% of the undocumented population in VA
- Latinos are ten times more likely to be adversely affected by the policy compared to non-Latinos
- Undocumented immigrants represent 36.4% of the Latino population compared to 3.6% of non-Latinos
- Latinos are nearly twice as likely to be undocumented compared to Asians, and twenty times more likely to be undocumented than other groups
- 60% of the tenants at the park are Latino
- 91.7% of the tenants at the park who were not in compliance with the policy were Latino.¹⁸

The case went up on appeal to the Fourth Circuit Court of Appeals twice. The Fourth Circuit first held that plaintiffs adequately pled a prima facie case of disparate impact by pleading that a policy requiring an SSN or immigration status documentation had a disparate impact on Latino residents compared to non-Latinos, satisfying the first prong of a disparate impact case.¹⁹

When the case reached the Fourth Circuit again, the court rejected the defendant's argument that the federal anti-harboring statute required it to check the immigration status of residents. The Fourth Circuit held that federal anti-harboring statute does not apply to landlords merely leasing housing to people who are undocumented.²⁰ It observed that landlords, unlike employers, have no obligation to verify citizenship or immigration status, and thus a landlord cannot offer such a purported requirement as a justification for checking immigration status documentation.²¹

Case Example: State Law Limiting Homeownership Based on National Origin and Citizenship – *HOPE v. Kelly*

In *HOPE v. Kelly*, plaintiffs challenged a Florida law, SB 264, that restricts home ownership based on national origin and alienage.²² SB 264 prohibits a member of the People's Republic of China, a member of any political party in China, or anyone domiciled in China from owning land in Florida, except US citizens or Lawful Permanent Residents (LPRs).²³ Another provision prohibits people from seven countries – China, Russia, Iran, North Korea, Cuba, Syria or Venezuela – from owning land within 10 miles of critical infrastructure, except for US citizens or LPRs.²⁴ SB 264 makes it a felony to violate the China-specific provisions and a misdemeanor to violate the restrictions applicable to the seven countries on land ownership.²⁵ Under the law, real property

¹⁷ *Id.*

¹⁸ Compl., para. 55-63 (May 23, 2016).

¹⁹ *Id.* at 429.

²⁰ *Reyes v. Waples Mobile Home Park Ltd. P'ship*, 91 F.4th 270, 277 (4th Cir. 2024).

²¹ *Id.* at 279.

²² Am. Compl., *Housing Opportunities Project for Excellence, Inc. v. Kelly*, No. 1:24-cv-21749 (July 7, 2025)

²³ Fla. Stat. Ann. § 692.204.

²⁴ Fla. Stat. Ann. § 692.203.

²⁵ Fla. Stat. Ann. § 692.204(8) & (9); Fla. Stat. Ann. § 692.203(8) & (9).

purchased in violation of the law can be forfeited to the state.²⁶

The plaintiffs – two Florida fair housing organizations, the Asian Real Estate Association of America, an Asian owned real estate business, and an individual – filed a lawsuit alleging that SB 264 violates the Fair Housing Act by making dwellings unavailable based on national origin.²⁷ The plaintiffs also allege that sellers and real estate professionals are forced to choose between compliance with the FHA and compliance with SB 264.²⁸ The case is pending in a Florida district court.

Case Example: Immigration Related Discriminatory Statements Made By Apartment Complex - *Hous. Rts. Ctr. v. Donald Sterling Corp.*²⁹

In *Hous. Rts. Ctr. v. Donald Sterling Corp.*, the Housing Rights Center, a fair housing organization, brought a lawsuit challenging an apartment complex's practice of requesting information about place of birth, citizenship, and date of naturalization on the application for a parking space in the apartment complex's garage.³⁰ The district court held that the questions were discriminatory statements within the meaning of the FHA and preliminarily enjoined the apartment complex from asking them. The court found there was no rational relationship between garage access and the information requested in the questionnaire, and the questions reflected an impermissible preference in the provision of housing services.³¹

The district court also preliminarily enjoined the owner of the apartment complex from using "Korean" in the name of the apartments. The court found that the "use of the word 'Korean' in the names of residential apartment buildings would indicate to the 'ordinary reader' that the owner prefers tenants of Korean national origin."³²

Section 1981 and Immigration Status

Another federal law that can be used to challenge immigration-related housing practices is Section 1981. Section 1981 prohibits discrimination in the making and enforcing of contracts based on race.³³ It states:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory **to make and enforce contracts**, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property **as is enjoyed by white citizens**, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.³⁴

²⁶ Fla. Stat. Ann. § 692.203(7)(e); Fla. Stat. Ann. § 692.204(7)(a).

²⁷ Am. Compl., para. 1.

²⁸ Am. Compl., para 10.

²⁹ 274 F. Supp. 2d 1129 (C.D. Cal. 2003).

³⁰ *Id.* at 1141.

³¹ *Id.* at 1141–42.

³² *Id.* at 1139.

³³ 42 U.S.C. § 1981; *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419–20 (1948) ("Consequently [Section 1981 and the Fourteenth Amendment on which it rests in part protect 'all persons' against state legislation bearing unequally upon them either because of alienage or color."] (emphasis added); *Anderson v. Conboy*, 156 F.3d 167, 180 (2d Cir. 1998) ("42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991, provides a claim against private discrimination on the basis of alienage."); *Rajaram v. Meta Platforms, Inc.*, 105 F.4th 1179, 1186 (9th Cir. 2024) ("[T]here has long been a prohibition in section 1981 against at least some forms of discrimination based on citizenship status.").

³⁴ 42 U.S.C. § 1981(a) (emphasis added).

Section 1981 covers discrimination in the making, performance or termination of contracts including housing contracts. Section 1981 covers both private and public entity discrimination.³⁵ Section 1981 claims can only be proven using the disparate treatment method of proof.³⁶

Case Example: Denying Housing Based on Citizenship - *Espinoza v. Hillwood Square Mut. Ass'n*³⁷

In *Espinoza v. Hillwood Square Mut. Ass'n*, the plaintiffs alleged that a private cooperative housing association denied them housing in a townhouse community because plaintiffs were not citizens of the United States.³⁸ The court held that restrictions based on citizenship could violate both § 1981 and the FHA. The court first held that a jury could find that the denial of plaintiffs' application for housing was a result of discrimination based on citizenship in violation of § 1981.³⁹ The court also explained that although "alienage discrimination is not a per se violation of [the FHA]," a jury could find that the requirement acted as a "pretext for national-origin discrimination," or could have a discriminatory effect.⁴⁰

States and Local Laws Prohibiting Immigration Status Discrimination

Several states and localities—including California,⁴¹ Colorado,⁴² Illinois,⁴³ New York City,⁴⁴ and Oregon⁴⁵—have passed immigrant tenant protection statutes that include citizenship and/or immigration status as a protected class and provide for specific protections for immigrants.

For example, the California Immigrant Tenant Protection Act bars a wide range of immigration-related practices in housing including:

- Banning evictions based on immigration status or citizenship.⁴⁶
- Barring landlords from threatening to disclose or disclosing immigration status or citizenship.⁴⁷
- Prohibiting attorneys from threatening to report or reporting the immigration status of persons in housing cases.⁴⁸
- Providing that the immigration status or citizenship status of any person is generally irrelevant to liability or damages in any case involving a tenant's housing rights.⁴⁹

Since the passage of these immigration-specific protections, state courts have used them to provide meaningful protections and remedies for immigrants. For example, a Colorado court enjoined a landlord from threatening to call immigration authorities on a Venezuelan family as a

35 *Anderson v. Conboy*, 156 F.3d 167, 170 (2d Cir. 1998) (citing *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989); *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 609 (1987); *Runyon v. McCrary*, 427 U.S. 160, 170-71 (1976)).

36 See *Patterson v. McLean Credit Union*, 491 U.S. 164, 186 (1989) (holding that discriminatory intent is required under § 1981).

37 522 F. Supp. 559 (E.D. Va. 1981).

38 *Id.* at 560–61.

39 *Id.* at 564.

40 *Id.* at 567–68.

41 Immigrant Tenant Protection Act, AB-291 (2019) (codified at CA Civ Code § 1940.3).

42 Immigrant Tenant Protection Act, S.B. 20-224 (2020) (codified at Colo. Rev. Stat. § 38-12-1201 et seq.).

43 Immigrant Tenant Protection Act, Pub. Act 101-0439 (2019) (codified at 765 ILCS 755/1 et seq.).

44 N.Y.C. Admin. Code § 8-107(5).

45 S.B. 599 (2025) (codified at Or. Rev. Stat. §§ 90.303, 90.390).

46 Cal. Code Civ. § 1161.4(a).

47 Cal. Civ. Code § 1940.2 (a)(5) and § 1940.3(b)(3).

48 Cal. Bus. & Prof. Code § 6103.7.

49 Cal. Civ. Code § 3339.10(a).

result of a dispute over rent.⁵⁰ The court found that the family was likely to succeed on its claim that the landlord's actions violated Colorado law prohibiting landlords from disclosing or threatening to disclose anything about plaintiffs' immigration status.⁵¹ Tenants brought a similar case in California,⁵² accusing their landlord of inquiring about immigration status and threatening to call ICE in an attempt to get tenants to move out.⁵³ In New York City, a judge fined a landlord \$55,000 because he encouraged tenants to make reports to Immigration and Customs Enforcement (ICE) and "threatened tenants who cooperated with Division [of Human Rights] investigators with immigration raids."⁵⁴

Limited English Proficiency and Fair Housing

Limited English Proficiency (LEP) refers to a person's limited ability to read, write, speak, or understand English.⁵⁵ LEP is not a protected class under the FHA.⁵⁶ The FHA, however, prohibits housing providers from using LEP as a pretext for discrimination because of national origin or other protected classes or imposing language requirements selectively based on a protected class like national origin.⁵⁷ The FHA also prohibits housing providers from using language requirements in a way that causes an unjustified discriminatory effect based on national origin or other protected class.⁵⁸

Although recently withdrawn by HUD under the Trump Administration, HUD's *Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency* ("HUD LEP Guidance") is the definitive guide to LEP and fair housing.⁵⁹ It contains a comprehensive discussion on proving FHA violations for people who are LEP. HUD's LEP Guidance makes several critical observations regarding proving disparate treatment including:

- Limitations imposed based on LEP may be a proxy for national origin discrimination.⁶⁰
- Treating people who speak a specific language (like Spanish, for example) differently is likely national origin discrimination.⁶¹
- Treating someone differently because they have an accent or have a specific accent likely violates the FHA.⁶²
- Failure to provide language assistance when required to provide it may be intentional

50 Amended Complaint, *Doe & Roe v. Schwalb*, 2025-cv-30241 (Dist. Ct. Arapahoe Cnty., Co. 2025), <https://www.aclu-co.org/cases/john-doe-et-al-v-schwalb-et-al/?document=2025-03-07-Amended-Complaintpdf#documents>.

51 Order Granting Preliminary Injunction, *id.*, <https://www.aclu-co.org/cases/john-doe-et-al-v-schwalb-et-al/?document=2025-02-12-Order-Granting-Preliminary-Injunctionpdf#documents>.

52 Complaint, *Arroyo et al. v. Chavis et al.* (Sup. Ct., Alameda Cnty., Ca.), <https://oaklandside.org/wp-content/uploads/2025/11/25.11.12-PF-Complaint.pdf>

53 *Id.*; see also Natalie Orenstein, *Fruitvale renters sue landlord over immigration threats, eviction attempts*, The Oaklandside (Nov. 17, 2025), <https://oaklandside.org/2025/11/17/oakland-tenants-lawsuit-darrick-chavis/>.

54 See Ben Mitchell, *NYC housing provider fined \$55K for anti-immigrant signage*, PIX11 (Oct. 22, 2025), <https://pix11.com/news/local-news/nyc-housing-provider-fined-55k-for-anti-immigrant-signage/>.

55 HUD Office of General Counsel, *Guidance on Fair Housing Act Protections for Persons of Limited English Proficiency* (Sept. 1, 2016) at 1, available at <https://www.fairhousingnc.org/wp-content/uploads/2016/11/OCG-LEP-Guidance-9-15-2016.pdf>.

56 *Id.*

57 *Id.*

58 *Id.*

59 Though this memorandum has been withdrawn by the Trump Administration, the document details analysis based on underlying laws and case law interpreting those laws that remain in place, such that it remains a helpful point of reference as a guide on the law.

60 *Id.* at 3 (citing *Aghazadeh v. Me. Med. Ctr.*, No. 98-421-P-C, 1999 U.S. Dist. LEXIS 23538, at *12 (D. Me. July 8, 1999)).

61 *Id.* at 4.

62 *Id.* at 5 (citing *Gold v. FedEx Freight E., Inc.*, 487 F.3d 1001, 1008 (6th Cir. 2007)).

discrimination.⁶³

HUD's LEP Guidance likewise sets forth many important points regarding proving disparate impact cases including:

- LEP policies may have a disparate impact on more than one national origin but still be actionable under the FHA.⁶⁴
- Housing providers often do not have the same legitimate need for tenants to speak English as employers, because the interactions between housing providers and tenants are more limited.⁶⁵
- Less discriminatory alternatives to LEP limitations include using family members or translation services.⁶⁶

Housing providers who receive federal funding and are covered under Title VI have additional obligations to LEP individuals.⁶⁷ In 2025, the Trump Administration issued an Executive Order that designates English as the official language of the United States.⁶⁸ The Trump Administration's Executive Order also revokes a previous Executive Order signed by President Clinton that ensured that federal agencies implemented policies to eliminate discrimination against LEP individuals. After the Clinton Executive Order, HUD issued enforcement guidance stating that it will "prioritize enforcement actions where language has been used as a proxy for national origin or a vehicle for intentional discrimination."⁶⁹ The effects of the Trump Administration's Executive Order and HUD's enforcement guidance remain to be seen. Title VI and the FHA continue to be good law.

In addition to the federal protections, California and some local governments prohibit discrimination based on language under their fair housing laws.⁷⁰

Case Example: Failing to Offer Translation Services and Biased Statements

In *Cabrera v. Alvarez*,⁷¹ a resident of public housing who was LEP filed a lawsuit against the housing authority for failing to provide translation services despite repeated requests. The plaintiff alleged that, as a result of the housing authority's failure to provide translation services, she was forced to live in an apartment with rodent, bedbug and cockroach infestations, mold, leaky faucets, a leaking toilet, raw sewage backup in the sinks, toilets and outside the unit, broken plaster, tiles and nails protruding from the stairs, and a defective shower.⁷² The district court found that the failure to provide translation services, combined with statements by the manager that the plaintiff should "learn English now that she was in America" and that she did not

63 *Id.* at 6 (citing *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003)).

64 *Id.* at 7 (citing *Faith Action for Cmty. Equity v. Hawaii*, No. 13-00450 SOM/RLP, 2014 U.S. Dist. LEXIS 58817 at *33 (D. Haw. Apr. 28, 2014)).

65 *Id.* at 8.

66 *Id.* at 8.

67 HUD LEP Guidance at 1, n.2; Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 C.F.R. 2732 (2007).

68 Exec. Order No. 14224, 90 Fed. Reg. 11363 (Mar. 1, 2025).

69 John Gibbs, Principal Deputy Assistant Sec'y for Fair Hous., Enforcement Guidance – National Origin Discrimination based on Limited English Proficiency Under the Fair Housing Act and Title VI (Sept. 19, 2025), available at <https://www.hud.gov/sites/default/files/hudclips/documents/LEP-Enforcement-Memo.pdf>.

70 California Unruh Civil Rights Act, Cal. Civ. Code 51(b)

71 977 F. Supp. 2d 969 (N.D. Cal. 2013).

72 *Id.* at 973.

have the right to live in the apartment because she was undocumented, were sufficient for the plaintiff to state intentional discrimination claims under the FHA and Title VI based on national origin.⁷³

Case Example: English Only Rules - *CNY Fair Hous., Inc. v. Swiss Vill.*

In *CNY Fair Hous., Inc. v. Swiss Vill., LLC*, a fair housing organization challenged a housing provider's policy of refusing to rent to individuals who are LEP unless they had a household member who was proficient in English.⁷⁴ After learning of the policy from a community organization, CNY Fair Housing conducted fair housing testing which confirmed that the housing provider had a policy of requiring that all tenants have at least one household member who speaks English.⁷⁵ CNY Fair Housing filed a lawsuit. The defendants moved to dismiss, arguing that people who are LEP are not a protected class under the FHA. The district court denied the motion to dismiss and allowed the case to move forward. The court found that the policy of refusing to rent to people who are LEP could be a proxy for discrimination based on national origin.⁷⁶

Citizenship and Fair Housing

As noted above, Section 1981 explicitly prohibits intentional citizenship discrimination. States such as California and New York specifically prohibit discrimination in housing based on citizenship.⁷⁷

All persons in the United States regardless of citizenship are protected by the provisions of the FHA. However, citizenship -- like immigration status and people with Limited English Proficiency -- is not a protected class under the FHA.⁷⁸ Conduct or practices restricting housing based on citizenship could be evidence of intentional discrimination because of national origin or may have a disparate impact based on national origin.⁷⁹

Anti-Immigrant Ordinances

Several years ago, anti-immigrant statutes and ordinances were passed across the country that included restrictions on housing. The statutes included several common prohibitions including making it unlawful to rent a dwelling unit to undocumented persons, allowing an undocumented person to occupy a dwelling unit, or failing to provide data verifying immigration status of an occupant to government officials.⁸⁰

Lawsuits were filed challenging these laws under the FHA and Section 1981. The plaintiffs alleged that the anti-immigrant laws amounted to intentional discrimination based on national origin and had a disparate impact based on national origin. The plaintiffs argued that the anti-immigrant laws create incentives for landlords to discriminate and that housing providers may

⁷³ *Id.* at 977.

⁷⁴ *CNY Fair Hous., Inc. v. Swiss Vill., LLC*, No. 5:21-CV-1217 (MAD/ML), 2022 U.S. Dist. LEXIS 120385, at *1 (N.D.N.Y. July 8, 2022).

⁷⁵ *Id.* at *3.

⁷⁶ *Id.* at *20.

⁷⁷ See, e.g., California Immigrant Tenant Protection Act, Cal. Code Civ. P. § 1161.4(a); California Unruh Civil Rights Act, Cal. Civ. Code 51(b); New York State Human Rights Law, N.Y. Exec. Law § 29(5).

⁷⁸ *Martinez v. Partch*, No. CIV.A 07-CV-01237-RE, 2008 WL 113907, at *2 (D. Colo. Jan. 9, 2008) (granting motion to dismiss because the FHA does not cover citizenship as a protected class); see *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 88, 92 (1973) (holding in the analogous Title VII context that "national origin" did not embrace citizenship" but "[c]ertainly Tit. VII prohibits discrimination on the basis of citizenship whenever it has the purpose or effect of discriminating on the basis of national origin.").

⁷⁹ See *Espinoza v. Hillwood Square Mut. Ass'n*, 522 F. Supp. 559, 567-8 (E.D. Va. 1981).

⁸⁰ See *Lozano v. City of Hazleton*, 724 F.3d 297, 313 (3d Cir. 2013); *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 526 (5th Cir. 2013); *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1048 (S.D. Cal. 2006).

avoid renting to persons who appear or sound foreign because of the local anti-immigrant laws.

Courts largely struck down the anti-immigrant statutes and ordinances on preemption grounds. An anti-immigrant statute or ordinance may be preempted by federal immigration law. As one district court explained,

In the immigration context, there are three ways in which a state or local law may be preempted by federal law: “(1) where the local law attempts to regulate immigration” (a form of “express” preemption); (2) where implementation of the local law is an obstacle to or conflicts in any manner with any federal laws or treaties (“conflict” preemption); and (3) “where the local law attempts to operate in an area occupied by federal law” (“field” preemption).⁸¹

For example, in *Lozano v. City of Hazleton*,⁸² the Third Circuit held that the City’s law was both field preempted and conflict preempted.⁸³ As to field preemption, the court held that the law was preempted because they aim to “regulate residency based on immigration status” and “[s]tates and localities have no power” to do that on their own.⁸⁴ The court also found conflict preemption invalidated the statutes “because they interfere with the federal government’s discretion in, and control over, the removal process. . . . [and] are inconsistent with federal anti-harboring law.” Several courts of appeals reached the same conclusion regarding anti-immigrant statutes and ordinances.⁸⁵

Verification of Citizenship and Immigration Status in HUD-Assisted Housing & Grant Programs Developments

During the second Trump Administration, HUD has taken several actions aimed at imposing new requirements on HUD-assisted housing providers and grantees to verify the citizenship and immigration status of tenants and grant beneficiaries. Advocates have called the legality of these actions into question. Overbroad or unnecessary verification practices, misinformation about legal obligations, and fear-driven compliance may expose housing providers and agencies to liability while deterring eligible individuals from accessing housing. It is important for housing providers and grantees to understand that they have fair housing obligations that require them to ensure that their actions to carry out these directives are narrowly tailored and do not give rise to discrimination based on national origin.

On December 16, 2025, HUD issued guidance to Public Housing Authority (PHA) executive directors—generally restating existing statutory and regulatory obligations—telling them they must verify citizenship and immigration status for all family members applying to live in public housing or participate in the Housing Choice Voucher (HCV) program (hereinafter “PHA Immigration Letter”).⁸⁶ The request to verify immigration status was not new.⁸⁷ However, the guidance ordered PHAs to undertake verification procedures for all applicants within 30 days of receiving

⁸¹ *Cent. Al. Fair Hous. Ctr. v. Magee*, 835 F. Supp. 2d 1165, 1175 (M.D. Ala. 2011), *vacated as moot*, *Cent. Ala. Fair Hous. Ctr. v. Comm’r, Al. Dep’t of Revenue*, No. 11-16114-CC, 2013 WL 2372302 (11th Cir. May 17, 2013).

⁸² 724 F.3d 297 (3d Cir. 2013).

⁸³ *Id.* at 315-22.

⁸⁴ *Id.* at 315.

⁸⁵ See, e.g., *Ga. Latino Alliance for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1263–65 (11th Cir.2012); *United States v. Alabama*, 691 F.3d 1269, 1285–87 (11th Cir.2012), *cert. denied*, 569 U.S. 968 (2013); *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 529 (5th Cir. 2013) (en banc).

⁸⁶ HUD Letter to PHA Executive Directors, December 16, 2025, available at: <https://www.hud.gov/sites/dfiles/PIH/documents/PHA-Letter-on-Citizenship-and-Immigration-Status-Verification.pdf>.

⁸⁷ 24 CFR §5.500 *et seq.*

the letter. Thereafter, HUD again notified PHAs of their obligation to verify immigration status and, in a problematic manner, informed them of their need to use the SAVE program to verify eligibility for housing assistance.⁸⁸

Advocates have questions and concerns about the scope of immigration status verification requirements applicable to Community Development Block Grant (“CDBG”) recipients and sub-recipients, with particular focus on how those obligations vary based on the nature of funded activities under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), 8 U.S.C. §§ 1601–1646, and implementing regulations.

The National Housing Law Project (“NHLP”) issued a memorandum on **Immigration Requirements: Assistance Programs for Housing and Homelessness, Energy, Disaster and Water** (ESG, CoC, CDBG, HOME, FEMA, RUSH, LIHEAP) (the “NHLP Memo”), which provides a comprehensive framework for understanding when federally funded programs must verify eligibility based on immigration status and when they need not do so.⁸⁹ The National Association of Housing and Redevelopment Officials (NAHRO) and others sent a letter to HUD outlining the problems with HUD’s recent reporting guidance.⁹⁰

When PHAs and owners are asked to verify status, it is important that they are mindful of the limits to when and how often they can request verification of status of existing family members—both because they could be acting outside the scope of their authority and also because overbroad requests may constitute discrimination on the basis of national origin. For example, an important limit is that housing providers can only verify immigration status once, and they are not authorized to verify citizenship status through SAVE. On a practical level, housing providers and grantees do not want to collect more information than they need to about a household’s immigration status in the event immigration enforcement tries to seek this information from them, especially in the case of mixed status families.

Fair Housing and Civil Rights Considerations

Immigration-related screening or documentation requirements may give rise to claims of discrimination based on national origin under the Fair Housing Act and other civil rights laws, even though immigration status itself is not a protected class under the FHA.⁹¹ Policies requiring immigration documentation may have a disparate impact on protected groups or constitute evidence of intentional discrimination where not legally required. Accordingly, CDBG recipients and subrecipients must ensure that any immigration-related eligibility practices are:

- Required by law or program rules;
- Applied consistently; and
- No broader than necessary to achieve compliance.

88 HUD Letter to PHA Executive Directors, EIV-SAVE Reporting Guidance, Undated, available at: <https://www.hud.gov/sites/default/files/PIH/documents/PHA-Letter-on-EIV-Report.pdf>.

89 National Housing Law Project, *Immigration Requirements: Assistance Programs for Housing and Homelessness, Energy, Disaster and Water* (ESG, CoC, CDBG, HOME, FEMA, RUSH, LIHEAP) (Dec. 12, 2025) (explaining scope of PRWORA application to federally funded programs).

90 National Assoc. of Housing and Redevelopment Officials, et al., Letter to HUD re. EIV-SAVE Reporting Guidance, February 13, 2026, available at: <https://www.nahro.org/wp-content/uploads/2026/02/EIV-SAVE-Letter-to-HUD-2-13-2026-final.pdf>.

91 See, e.g., 42 U.S.C. § 3604; *Espinoza v. Hillwood Square Mut. Ass’n*, 522 F. Supp. 559, 567–68 (E.D. Va. 1981) (citizenship requirements may serve as proxy for national origin discrimination).

The NHLP Memo demonstrates that immigration status verification under PRWORA is narrowly circumscribed and dependent on the specific nature of the funded activity. For CDBG programs, most activities, particularly those involving infrastructure, services, and community development, do not require verification of immigration status. Only where CDBG funds are used to provide individualized federal public benefits, and no exception applies, may PRWORA impose eligibility restrictions.

CDBG recipients and subrecipients must therefore conduct a careful, activity-specific analysis before requesting immigration documentation. Overbroad verification practices are inconsistent with PRWORA and may create significant fair housing and civil rights risks.

Conclusion

Although immigration status is not explicitly protected under the Fair Housing Act, the legal framework governing housing discrimination claims under the Act provides significant avenues for challenging immigration-related practices that disproportionately harm protected groups. As this memorandum demonstrates, policies targeting immigrants—whether through documentation requirements, language restrictions, or citizenship-based exclusions—often can be evidence of national origin discrimination and may violate the FHA and Title VI. Case law across jurisdictions confirms that courts are receptive to both disparate treatment and disparate impact claims under the FHA in this context, particularly where plaintiffs can show that immigration-related policies disproportionately affect certain national origin groups or lack a legitimate, non-discriminatory justification.

In addition, Section 1981 prohibits intentional discrimination (disparate treatment) on the basis of immigration status in the context of contractual arrangements applicable to housing. There is also an expanding body of state and local laws that provide additional protections, in some cases explicitly prohibiting discrimination based on immigration status or citizenship and offering enhanced remedies for affected individuals.

Importantly, the evolving policy landscape, including increased immigration enforcement activity and recent federal guidance affecting housing programs, creates both new risks and new opportunities for advocacy. Overbroad or unnecessary verification practices, misinformation about legal obligations, and fear-driven compliance may expose housing providers and agencies to liability while deterring eligible individuals from accessing housing.

Fair housing organizations, advocates, and housing providers must remain vigilant in ensuring that immigration-related practices are narrowly tailored, legally required, and applied in a nondiscriminatory manner. Careful adherence to statutory and regulatory requirements, combined with proactive advocacy and education, is essential to protecting the rights of immigrant communities and preserving equal access to housing. Ultimately, enforcing these protections not only safeguards individual home seekers and residents but also advances the broader goal of fair and inclusive housing for all.

