



July 21, 2014

The Honorable Gustavo F. Velasquez  
Assistant Secretary for Fair Housing and Equal Opportunity  
United States Department of Housing and *Urban* Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

**ADMINISTRATIVE COMPLAINT PURSUANT TO THE FAIR HOUSING ACT  
AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

TO THE HONORABLE GUSTAVO F. VELASQUEZ  
Assistant Secretary for Fair Housing and Equal Opportunity, United States Department of  
Housing and Urban Development

Pursuant to the Fair Housing Act (FHA) 42 U.S.C. §§3604, 3608, and 3610; Title VI of the Civil Rights Act of 1964, ("Title VI"), 42 U.S.C. §2000d, and its implementing regulations found at 24 C.F.R. Part I; Section 504 of the Rehabilitation Act of 1973 ("Sec. 504"), 29 U.S.C. §794 and its implementing regulations found at 24 C.F.R. Part 9; and Section 109 of the Housing and Community Development Act of 1974 ("Sec. 109"), 42 U.S.C. §5309 and its implementing regulations found at 24 C.F.R. Parts 6, 8, & 570, Texas Appleseed<sup>1</sup> and the Mexican American Legal Defense and Educational Fund<sup>2</sup> (MALDEF) lodge the following complaint alleging that the City of League City, Texas has: (1) made housing unavailable on the basis of race, color, religion, familial status, and national origin, in violation of 42 U.S.C. §3604(a); (2) discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, and in the provision of services or facilities in connection therewith, because of race, color, religion, familial status, and national origin, in violation of 42 U.S.C. §3604(b); and (3) made and published a notice that indicates a preference, limitation, or discrimination based on race, color, religion, familial status, and national

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<sup>1</sup> Texas Appleseed ([www.TexasAppleseed.net](http://www.TexasAppleseed.net)) is a nonprofit organization whose mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult, systemic problems.

<sup>2</sup> Founded in 1968, the Mexican American Legal Defense and Educational Fund (MALDEF) is the nation's leading Latino legal civil rights organization. MALDEF promotes social change through legal advocacy, communications, community education, and litigation in the areas of education, employment, immigrant rights, and political access.

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origin and an intention to make such preference, limitation or discrimination in violation of 42 U.S.C. §3604(c); represented that dwellings were not available on the basis of race, color, religion, familial status, and national origin when such dwellings are in fact available in violation of 42 USC §3604(d); (4) failed in its obligation to affirmatively further fair housing (“AFFH”) as required by 42 U.S.C. §3608 and related federal statutes and regulations; and (5) excluded protected classes from participation in, denied the benefits of, and subjected to discrimination under a program or activity receiving Federal financial assistance on the basis of race, color, and national origin in violation of 42 U.S.C. §2000d.

Through the acts and omissions detailed herein, and those to be discovered during the course of HUD’s investigation, League City has engaged in differential treatment of the ultimate beneficiaries of federal assistance, including housing and community development funds, on the basis of race, color, religion, familial status, and national origin.<sup>3</sup> Furthermore, League City has adopted Resolutions, rules, and policies that both facially and intentionally discriminate, and that perpetuate segregation on the basis of race, color, religion, familial status, and national origin.

League City has also openly disregarded its affirmative obligations to identify and analyze all existing impediments to fair housing choice experienced by its citizens, most notably those related to race, color, religion, familial status, and national origin, in violation of 42 U.S.C. §3608f.

For the foregoing reasons, Complainants ask HUD to:

1. Immediately initiate an investigation and community-wide compliance review;
2. Find that League City does not currently have an Analysis of Impediments to Fair Housing Choice (AI), that its most recent AI is substantially incomplete and that the City’s multiple, subsequent AFFH certifications based on that AI are inaccurate. Such findings would require HUD to disapprove the State’s Consolidated Plan (Con Plan); bar it from receiving funds under any of the housing and community development programs listed above, including Community Development Block Grant (CDBG) Disaster Recovery funds; determine whether the City is obligated to repay federal funds received using a false certification; and require the City to conduct a new, AFFH-compliant AI and submit a revised Con Plan and certifications to HUD;
3. Find that the City of League City has engaged in discriminatory conduct under the Fair Housing Act and Title VI of the Civil Rights Act and initiate voluntary compliance procedures, and,

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<sup>3</sup> For the purposes of this Complaint, “people of color” includes claims based on race, color, and national origin.

4. If voluntary compliance cannot be achieved or it is otherwise appropriate, refer this matter to the United States Department of Justice for appropriate proceedings.

### **Factual Background**

On July 8, 2014, the City of League City passed Resolution No. 2014-23 entitled “A Resolution of the City of League City, Texas to Protect the Health, Safety, and Security of our Citizens and Community; and Providing for Other Matters Related to the Subject” (Resolution). The Resolution bars all unauthorized<sup>4</sup> immigrants, particularly children, and refugees<sup>5</sup> from its jurisdiction. Despite extensive public comment opposing the Resolution and one council member’s objections that the Resolution was “illegal” and “embarrassing,” the League City Council approved the Resolution by a vote of 6 – 2.<sup>6</sup> League City’s Resolution bars the presence of refugees and “illegal aliens,” specifically minor children, for “processing, housing, or detaining” in the City.<sup>7</sup>

The Resolution also directs the use of the City’s police power “in any manner necessary” against refugees “in order to control the potential threat of communicable diseases reported to be prevalent among illegal aliens.”<sup>8</sup> The Resolution also claims that “members of dangerous transnational criminal organizations and radical Islamist terror groups” are among the minor child refugees.<sup>9</sup> Finally, the Resolution demands the abolition of education, anti-poverty, and health programs that might serve “illegal aliens,” and asks for state legislation that overrides local control over specific policy areas.<sup>10</sup>

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<sup>4</sup> The term “unauthorized immigrant” is used to describe individuals residing in the United States who do not have authorization by the U.S. government to reside in the United States.

<sup>5</sup> The Immigration and Nationality Act defines a refugee as “[a]ny person who is outside any country of that person’s nationality, or in the case of a person having no nationality, is outside any country in which such person habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 USCA §1101(a)(42)(A) (2014). Refugees are individuals fitting this definition who are granted refugee status before entering the United States. Thus, refugees enter the United States with legal status. In contrast, asylum seekers are those individuals who would otherwise fit the definition of refugee, but for whom refugee status has not been conferred. Thus, asylum seekers request asylum upon reaching US borders, but they are also required to meet the definition of refugee, as defined above, among other factors. If an asylum seeker is granted asylum, they are conferred legal status in the United States. Every child, or immigrant entering our borders without authorization, has the right to seek asylum.

<sup>6</sup> Robert Arnold, *League City votes to ban housing of undocumented children*, KPRC NBC TV- CLICK 2 HOUSTON, Jul. 8, 2014, available at <http://www.click2houston.com/news/league-city-votes-to-ban-housing-of-undocumented-children/26851804> (last visited Jul. 18, 2014).

<sup>7</sup> See Attachment 1, City of League City Resolution 2014-23, Section 1 (Jul. 8, 2014).

<sup>8</sup> *Id.* at Section 2.

<sup>9</sup> *Id.* (“WHEREAS, members of dangerous transnational criminal organizations and radical Islamic terror groups continue to exploit the situation to infiltrate the United States for the purpose of establishing criminal activity, terror cells, and training operations within our homeland.”).

<sup>10</sup> *Id.* at Section 3.

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In spite of the Resolution's extremely broad language, the Resolution was adopted as a direct response to a refugee crisis that has unfolded in recent years in Texas and other border states. Immigrant children, mostly from Central America, are fleeing their home countries in record numbers.<sup>11</sup> Most of these children are fleeing Honduras, Guatemala, and El Salvador,<sup>12</sup> with a large percentage fleeing from Honduras alone.<sup>13</sup> Recent studies show that they are fleeing unspeakable violence, which is increasingly targeted at children<sup>14</sup> and runs rampant with impunity in their home countries.<sup>15</sup> These children are fleeing murder, forced recruitment into gangs (similar to the forced conscription of child soldiers in African countries),<sup>16</sup> rape, and torture.<sup>17</sup> "[B]etween 2009 and 2012 a civilian was more likely to be killed by violence in Guatemala, Honduras, or El Salvador than killed in Iraq at the height of the insurgency."<sup>18</sup> Honduras, Guatemala, and El Salvador each have cities included in the top fifty most dangerous cities in the world.<sup>19</sup> San Salvador, El Salvador is ranked as the 44<sup>th</sup> most dangerous city in the world and Guatemala City, Guatemala is the 12<sup>th</sup> most dangerous city in the world. Furthermore, Honduras, a country that covers only about forty-three square miles, has two of the top five most dangerous cities in the world. Honduras' Central District, which includes the capital city of Tegucigalpa, is ranked as the fourth most dangerous city in the world. San Pedro Sula, with 169.3 homicides per 100,000 people, is ranked as the most dangerous city in the world – for the second year in a row.<sup>20</sup>

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<sup>11</sup> P. J. Tobia, *No Country for Lost Kids*, PBS NEWSHOUR, Jun. 20, 2014, available at <http://www.pbs.org/newshour/updates/country-lost-kids/> (last visited Jul. 18, 2014).

<sup>12</sup> Terrence McCoy, *The Horrors Driving Thousands of Central American Kids To Take The Dangerous Journey To The U.S.*, WASH. POST, Jul. 9, 2014, available at <http://www.washingtonpost.com/news/morning-mix/wp/2014/07/09/the-horrors-driving-thousands-of-central-american-kids-to-take-the-dangerous-journey-to-the-u-s/> (last visited Jul. 18, 2014).

<sup>13</sup> Frances Robles, *Fleeing Gangs, Children Head to the U.S. Border*, N.Y. TIMES, Jul. 9, 2014, available at [http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?\\_r=0](http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?_r=0) (last visited Jul. 17, 2014).

<sup>14</sup> Terrence McCoy, *The Horrors Driving Thousands of Central American Kids To Take The Dangerous Journey To The U.S.*, WASH. POST, Jul. 9, 2014, available at <http://www.washingtonpost.com/news/morning-mix/wp/2014/07/09/the-horrors-driving-thousands-of-central-american-kids-to-take-the-dangerous-journey-to-the-u-s/> (last visited Jul. 15, 2014).

<sup>15</sup> UNHCR—The UN Refugee Agency, *Children On The Run: Unaccompanied Children Leaving Central America and Mexico and The Need For International Protection*, March 12, 2014, available at [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf) (hereinafter *Children on the Run*); Frances Robles, *Fleeing Gangs, Children Head to the U.S. Border*, N.Y. TIMES, Jul. 9, 2014, available at [http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?\\_r=0](http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?_r=0).

<sup>16</sup> Tobia, *supra* note 11.

<sup>17</sup> Women's Refugee Commission, *Forced From Home: The Lost Boys and Girls of Central America* (October 2012), available at <http://bit.ly/WfEzOc> (last visited Jul. 18, 2014) (hereinafter *Forced from Home*).

<sup>18</sup> Vox.com, *America's child migrant crisis, explained in 2 minutes*, July 9 2014, available at <http://www.vox.com/2014/7/9/5884077/americas-child-migrant-crisis-explained-in-two-minutes/in/5577523> (last visited Jul. 18, 2014).

<sup>19</sup> Pamela Engel, Christina Sterbenz & Gus Lubin, *The 50 Most Dangerous Cities In The World*, BUS. INSIDER, Nov. 27, 2013, available at <http://www.businessinsider.com/the-most-violent-cities-in-the-world-2013-11?op=1> (last visited Jul. 18, 2014).

<sup>20</sup> *Id.*

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The governments of these children's home countries are unable or unwilling to offer effective protection.<sup>21</sup> As a result of these documented dangers, children are fleeing to surrounding countries, including the United States. The number of children seeking asylum in the United States has been on the rise since at least 2009,<sup>22</sup> but it is only now that these numbers have made headlines.<sup>23</sup> As one child stated, "if you stay you will die, if you leave, you might ... either way it's better to try."<sup>24</sup>

The City of League City is an entitlement jurisdiction for purposes of the annual CDBG program and also receives more than \$11 million dollars in federal CDBG Disaster Recovery funds. According to the City's FY 2013 Single Audit dated February 2014, examples of additional federal financial assistance the City has received, include: \$353,276 from the US Department of Homeland Security, \$41,506 from the US Department of Energy, \$83,247 from the US Department of Justice, and \$250,318 from the US Environmental Protection Agency. The City also receives nonmonetary assistance; for example, in 2013 the City received a Mine Resistant Ambush Protected (MRAP) vehicle, valued at \$658,000.<sup>25</sup>

The Resolution is only the most recent incident in League City's history of discrimination and exclusion on the basis of national origin, race, color, and other protected class status, as detailed below.

### **HUD Enforcement Authority**

HUD has the authority and an obligation to enforce compliance with the Fair Housing Act and related authorities. 42 U.S.C. §3608(e)(5); Executive Order 12892, §2-202; Executive Order 11063, Nov. 20, 1962, §102; Executive Order 12259, Dec. 31, 1980, §1-202.

Under the Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. §5301 *et. seq.*, and its implementing regulations, the Secretary has authority to make grants "only if" grantees make certain submissions and certifications. 42 U.S.C. §5304(b)(2); 24 CFR §§91.325(a)(1), 570.601(a)(2). CDBG and other federal housing and community development grant funds are expressly conditioned on a jurisdiction's certification that it will affirmatively further fair housing. "The AFFH certification [is] not mere boilerplate

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<sup>21</sup> *Children on the Run*, *supra* note 15; Robles, *supra* note 13; McCoy, *supra* note 12.

<sup>22</sup> U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, (citing statistics current as of Jun. 30, 2014), available at <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children> (last visited Jul. 18, 2014).

<sup>23</sup> The United States is not the only country experiencing a substantial increase in the number of immigrants seeking refuge within its borders. Mexico, Panama, Nicaragua, Costa Rica, and Belize together saw a 712% increase in the number of individuals filing for asylum between 2008 and 2013. *Children on the Run*, *supra* note 15.

<sup>24</sup> *Forced from Home*, *supra* note 17.

<sup>25</sup> Christopher Smith Gonzalez, *League City, Galveston, attain free vehicles from military to help guard first responders*, GALVESTON DAILY NEWS, Sept. 23, 2013.

formality, but rather a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the [jurisdiction] to conduct an AI, take appropriate actions in response, and to document its analysis and actions.” *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc., v. Westchester County*, 668 F.Supp.2d 548, 569 (S.D.N.Y. Feb. 24, 2009).<sup>26</sup> The Secretary cannot obligate funds when a grantee has failed to make a certification that is material to its eligibility to receive CDBG or other federal housing and community development funds.

Under Title VI, recipients of federal assistance that are found to have discriminated on the basis of race, color, or national origin are also subject to remedies including the termination of federal funds and legal action by the Department of Justice. Title VI’s coverage is not limited to HUD administered funds. Any agency providing “federal financial assistance,” including direct and indirect awards of grants and money and nonmonetary assistance.<sup>27</sup>

**The City of League City Actively Discriminates Against Classes of Persons Protected Under the Fair Housing Act and Title VI of the Civil Rights Act**

Through its policies and practices, the City of League City denies access to and makes housing unavailable to, actively discourages people of color and from other protected classes from settling in certain communities or tends to segregate them in less desirable parts of those communities, in violation of 42 U.S.C. §3604(a), §3604(b) and §3608. These policies and practices also exclude persons from participation in, deny them the benefits of, or subject them to discrimination under a program or activity receiving Federal financial assistance on the basis of race, color, and national origin in violation of 42 U.S.C. §2000d. Representative examples include:

**1. League City’s July 8, 2014 Resolution is discriminatory on its face.**

The Resolution specifically mentions “illegal alien minors” and is a clear response to the influx of children seeking asylum at the Texas Border.<sup>28</sup> Through the Resolution, the City bars the presence of unauthorized immigrants, including refugees, for “processing, housing, or detaining” in the City by directing City agencies to refuse “requests or

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<sup>26</sup> “[A]n individual government employee’s decision to approve or continue such funding, even with full access to all relevant information or knowledge of the falsity of the applicants certification does not demonstrate that the falsity was not material . . . the assertion that certain HUD bureaucrats reviewed the County’s submissions and continued to grant the County funding cannot somehow make the false AFFH certifications immaterial, where the funding was explicitly conditioned on the certifications.” *ADC v. Westchester County* at 570.

<sup>27</sup>As President John F. Kennedy said in 1963, “[s]imple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.” See H.R. Misc. Doc. No. 124, 88th Cong. (1963).

<sup>28</sup> See Attachment 1 (“It is estimated that more than 90,000 minors will arrive in the United States during the 2014 fiscal year and an additional 145, 000 illegal alien minors in 2015 fiscal year, with most expected to remain in Texas cities and communities.”).

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directives” from federal agencies regarding the establishment of such facilities.<sup>29</sup> The Resolution also directs “all appropriate agencies of the City of League City” to use the “City’s police power “in “any manner necessary” against immigrants “to control the potential threat of communicable diseases reported to be prevalent among illegal aliens.”<sup>30</sup> Finally, it demands the abolition of education, anti-poverty, and health programs that might serve unauthorized immigrants and refugees, and asks for state legislation to override local control in specific policy areas.<sup>31</sup>

This Resolution is not facially neutral and was passed with the clear intent to deny and make housing unavailable in the City to persons protected by the Fair Housing Act on the basis of their protected class status.

A. The Resolution is discriminatory on its face.

- i. The Resolution makes housing unavailable, including in the provisions of services or facilities in connection therewith, to any person with a national origin other than the United States, and is targeted specifically at refugees from Honduras, Guatemala, and El Salvador in violation of 42 USC §3604(a) and (b).
- ii. The Resolution makes housing unavailable to refugees, who are by definition persons with national origins other than the United States and who may have legal status in the United States, facially discriminating against them on the basis of their national origin in violation of 42 USC §3604(a) and (b).
- iii. The Resolution is clear that the “illegal aliens” it targets are minor children, violating the Fair Housing Act’s prohibition of discrimination based on familial status.
- iv. The City’s reference to “radical Islamist terror groups” who “infiltrate the United States for the purpose of establishing criminal activity, terror cells, and training operations within our homeland” demonstrates animus towards a protected class and discrimination on the basis of religion that implies that housing is not available in the City of League City to Muslims in violation of 42 USC §3604(d).<sup>32</sup>
- v. The Resolution directs City agencies to target persons based on their race, color, and national origin for the “exercise [of] the City’s police power.” Agencies, including the City’s police department, receive federal financial assistance and such discrimination violates Title VI of the Civil Rights Act of 1964.

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<sup>29</sup> *Id.* at Section 1.

<sup>30</sup> *Id.* at Section 2.

<sup>31</sup> *Id.* at Section 3.

<sup>32</sup> *Id.* (“Members of dangerous transnational criminal organizations and radical Islamist terror groups continue to exploit the situation to infiltrate the United States for the purpose of establishing criminal activity, terror cells, and training operations within our homeland.”).

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- vi. The Resolution is a statement and notice that the City imposes preferences, limitations, and discrimination based on race, color, religion, familial status, and national origin, and notice that the City intends to discriminate against members of those protected classes in violation of 42 USC §3604(c).
- vii. The Resolution also indicates intent to exclude persons from participation in, deny the benefits of, or subject to discrimination under a program or activity receiving Federal financial assistance, including housing, education, and healthcare, on the basis of race, color, and national origin in violation of 42 U.S.C. §2000d.

B. The language of the Resolution and public statements surrounding its passage reveal a deep animus towards members of protected classes and demonstrate discriminatory intent.

- i. The Resolution specifically refers to current refugees from three countries in Latin America, and refers more broadly to “illegal aliens” entering Texas, the majority of whom are from Mexico.<sup>33</sup> These refugees and immigrants not only have a national origin other than the United States, but they are overwhelmingly Hispanic, demonstrating animus on the basis of race and color, as well as national origin.
- ii. The Resolution refers to immigrants “suffering from diseases endemic to their countries of origin being released into our communities,” the “threat of communicable diseases reported to be prevalent among illegal aliens,” and the risk that school-age asylum seekers will pose a threat to “health safety for our children.” This claim is unsupported and demonstrably false. By law, unaccompanied minors, and all immigrants in the custody of Immigration and Customs Enforcement (ICE) officials, receive health screenings.<sup>34</sup> According to the Immunization Summary published by UNICEF and the World Health Organization (WHO), Guatemala, Honduras, and El Salvador have measles vaccination rates equal to or higher

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<sup>33</sup> DHS Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012* (March 2013), available at [http://www.dhs.gov/sites/default/files/publications/ois\\_ill\\_pe\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf) (last visited Jul. 18, 2014).

<sup>34</sup> U.S. Immigration and Customs Enforcement (ICE), *Fact Sheet: ERO – Detainee Health Care FY 2012*, available at <https://www.ice.gov/doclib/news/library/factsheets/pdf/dhc-fy12.pdf> (“Each ICE detainee undergoes a health screening within the first 12 hours of admission to an ICE detention facility. This screening includes an evaluation of the detainee’s medical, dental and mental health status. A more detailed health history and physical examination is also provided to ICE detainees within 14 days of admission to a facility.”)



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than the United States,<sup>35</sup> and dramatically higher vaccination rates for tuberculosis.<sup>36</sup> Using the supposed threat of disease to whip up anti-immigrant sentiment has long been used as a pretext to discriminate against individuals on the basis of race, color, and national origin in the United States.<sup>37</sup>

- iii. The Resolution also equates refugees with “members of dangerous transactional criminal organizations” and “radical Islamist terror groups.” Again, these assertions are demonstrably false,<sup>38</sup> and in the case of minor children from Central America, ludicrous. Further the automatic association of people of color, people who practice a specific religion, and people with specific national origins with crime or criminal activity is discriminatory.<sup>39</sup>

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<sup>35</sup> UNICEF Statistics and Monitoring Division and WHO, *Immunization Summary: A statistical reference containing data through 2010* (January 2012), available at [http://www.childinfo.org/files/immunization\\_summary\\_en.pdf](http://www.childinfo.org/files/immunization_summary_en.pdf) (last visited Jul. 18, 2014); see also Paul A. Gastañaduy et al., *CDC Morbidity and Mortality Weekly Report: Measles — United States, January 1–May 23, 2014* (Jun. 6, 2014), available at [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6322a4.htm?s\\_cid=mm6322a4\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6322a4.htm?s_cid=mm6322a4_w) (“Neither Honduras, Guatemala, El Salvador, nor Mexico are associated with any imported measles case in 2014.”).

<sup>36</sup> *Id.*

<sup>37</sup> Howard Markel & Alexandra Minna Stern, *The Foreignness of Germs: The Persistent Association of Immigrants and Disease in American Society*, MILBANK QUARTERLY 80-4 (Dec 2002). (“[E]ven as the political and social currents shifted, a series of interrelated factors shaped immigrant health and health care in American society. First, the social perception of the threat of the infected immigrant was typically far greater than the actual danger. Indeed, the number of “diseased” immigrants has always been infinitesimal when compared with the number of newcomers admitted to this country. Second, Americans have tended to view illness among immigrants already settled in the United States as an imported phenomenon. Third, policymakers have employed strikingly protean medical labels of exclusion. If authorities and anti-immigration advocates found that one classification failed to reject the “most objectionable,” they soon created a new one that emphasized contagion, mental disorder, chronic disability, or even a questionable physique. Although such labels never became the primary reason for debarring specific immigrant groups, their widespread use contributed to durable biological metaphors that explained, usually in catastrophic terms, the potential risks of unrestricted immigration to the nation’s social health.”); see also Rachel Pearson, *Disease Threat from Immigrant Children Wildly Overstated*, THE TEXAS OBSERVER (Jul. 10, 2014).

<sup>38</sup> See, e.g., Eunice Moscoso, *Study: Immigrants don’t raise U.S. crime rate*, ARIZONA DAILY STAR (Feb. 27, 2007), available at <http://www.azstarnet.com/news/171109>; Rubén G. Rumbaut & Walter A. Ewing, *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men*, Immigration Policy Center, American Immigration Law Foundation, Spring 2007, available at <http://www.immigrationpolicy.org/special-reports/myth-immigrant-criminality-and-paradox-assimilation>; Richard D. Alba, et al, *Open Letter on Immigration and Crime*, *The American Immigration Law Foundation*, July 2, 2007, available at [http://www.aifl.org/ipc/ipc\\_openletter0507.shtml](http://www.aifl.org/ipc/ipc_openletter0507.shtml).

<sup>39</sup> A Muslim opponent of the Resolution, who spoke at the July 8, 2014 council meeting stated, “We feel disgraced (by the language). There’s many, many other terrorist groups. Terrorists have no religion.” T.J. Aulds, *League City council approves controversial immigration Resolution*, GALVESTON DAILY NEWS (Jul. 8, 2014); see also Ruth Nasrullah, CAIR Texas, *Guest Column: League City Resolution Unfairly Singles Out Muslims*, GALVESTON DAILY NEWS (Jul. 12, 2014), available at <http://cairtexas.com/league-city-resolution-unfairly-singles-out-muslims/> (“Specifically identifying ‘radical Islamic terror groups’ gives the false and unfair impression that Muslims constitute a particular threat. The ‘transnational criminal organizations’ named in the clause were not described as members of any particular religion or nationality. Why is Islam

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- iv. Proponents of the Resolution provided public comment at the July 8, 2014 Council meeting alleging that refugee children would “cause chaos in our schools” and would “bring Third World problems into our community.”<sup>40</sup> In an appearance on CNN, League City Councilwoman Heidi Theiss, who authored the Resolution, said that housing for child refugees would be “government funded stash houses” and “[w]e know exactly what happens inside stash houses.”<sup>41</sup>
- v. Federal courts have stated clearly that coded language indicates discriminatory intent. For example, in a fair housing case involving the majority white St. Bernard Parish’s attempts to exclude minority renters, including those displaced by Hurricane Katrina, one federal District Court in the Eastern District of Louisiana stated:

The references to “ghetto,” “crime,” “blight,” and “shared values” are similar to the types of expressions that courts in similar situations have found to be nothing more than “camouflaged racial expressions.” *Smith v. Town of Clarkton*, 682 F.2d 1055, 1066 (4th Cir. 1982) (affirming that statements about “undesirables,” and concerns about personal safety due to “new” people are “camouflaged racial expressions”); *Atkins v. Robinson*, 545 F. Supp. 852, 871-72 (E.D. Va. 1982) (finding statement that she “feared the projects ‘would degenerate to slum-like conditions, with an abundance of crime’ to be a veiled reference to race.”)<sup>42</sup>

The language in the Resolution, including references to crime, the threat to health and safety from new people, and the repeated contrasting of “school-age illegal minors” with “our children” (in a majority white city with an overwhelmingly white City Council) is exactly the type of coded language that indicates discriminatory intent, including against unauthorized immigrants who already attend public schools in League City.

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singled out? The resolution bolsters the false perception that all Muslims are a threat to this country. . . . [U]nfortunately, substituting the word ‘Islamic’ with ‘Islamist’ didn’t erase the implication that Islam is specifically associated with terrorism. ‘Islamist’ is a troubling term, which has no concrete definition but serves to associate the religion of Islam with political ideologies.”)

<sup>40</sup> Aulds, *supra* note 39.

<sup>41</sup> *Legal View with Ashleigh Banfield* (CNN Television Broadcast Jul. 10, 2014), transcript *available at* <http://transcripts.cnn.com/TRANSCRIPTS/140710/lyab.01.html> (last visited Jul. 18, 2014). “Stash house” is a term for a house used by distributors to temporarily store illegal drugs. It has recently also been used to describe a building that smugglers and human traffickers to hold immigrants, often using threats of violence. Councilwoman Theiss’ use of the term again associates immigrants and people of color with crime.

<sup>42</sup> *Greater New Orleans Fair Housing Action Center, et. al. v. St. Bernard Parish, et. al.*, Civil Action No: 06-7185, (E.D. LA., 2006), Order Granting Plaintiff’s Motion to Enforce Consent Order and Reasons, filed March 25, 2009 at 12-13.

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C. The City of League City has a recent history of discrimination on the basis of race, color, national origin, and disability status:

In 2009, the League City Police Department (LCPD) began an aggressive campaign of targeting, fining, and arresting Latino day laborers under the Texas anti-solicitation law. Former League City Police Chief Michael Jez issued Special Order 09-07 the “Special Order” or the “Policy”) on September 2, 2009. The Special Order directed officers to aggressively monitor, fine, and arrest day laborers who were soliciting work in public. It was effective immediately and applied to all LCPD employees.<sup>43</sup> Leading up to 2009, League City had seen exponential growth, including a construction boom, which brought many day laborers to League City. Most, if not all, day laborers in League City are Latino men.<sup>44</sup>

After implementing the policy, then-Chief Jez gave interviews to the local press, regarding the “crackdown” on day laborers. At a September 9, 2009 city council meeting, in reference to the Policy, then-Councilman (and current Mayor) Tim Paulissen stood up to give “kudos,” to the LCPD for dealing with “illegal aliens.”

In accordance with the policy, police officers began monitoring known day laborer gathering locations, regardless of whether day laborers were present at those locations. Officers began warning, citing and arresting day laborers for violations of the Texas Transportation Code § 552.007(a) (the state anti-solicitation statute) and Texas Penal Code § 30.05(a) (the state criminal trespass statute), even when they were not soliciting or trespassing under those provisions. They also conducted arrests without receiving complaints about solicitation or trespass from business owners. Officers prohibited day laborers not only from soliciting in public, but also for simply walking outside in public. Officers repeatedly warned day laborers that they were not allowed to solicit work anywhere in town.<sup>45</sup>

On July 21, 2011, a group of Latino day laborers called “Jornaleros de las Palmas” filed a lawsuit in federal district court challenging League City’s local policy and practice of targeting day laborers.

The trial court conducted a five-day bench trial from September 24 to September 28, 2012. On May 17, 2013, a United States federal district court judge ruled that the Policy violated the day laborer’s right to free speech under the First Amendment.<sup>46</sup>

In its Findings of Fact and Conclusions of Law, the federal court found that the City’s defenses for targeting day laborers were pretextual. For example, the City argued that it

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<sup>43</sup> See Attachment 2 at 6 (Findings of Fact and Conclusions of Law).

<sup>44</sup> See *id.* at 2.

<sup>45</sup> See *id.* at 7, 9.

<sup>46</sup> See *Jornaleros de las Palmas v. League City* (S.D. Tex), Cause No. 4:11-cv-02703; Attachment2; Attachment3 (Final Judgment).

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had to implement the Special Order because of “calls for service” related to alleged concerns over property damage, trespass, etc., caused by day laborers. Those same calls, however, reflected that local property owners had actually given permission to day laborers permission to be on the property because they “contributed to sales.”<sup>47</sup> The calls were also largely “self reported” not by property owners, but instead by either League City police officers themselves or other unknown individuals who often complained of “Hispanics” as opposed to specific unlawful activities requiring police attention.<sup>48</sup>

Although “property damage,” “injury or loss of life,” and deterioration of “quality of life,” were listed as bases for the Special Order, the Court found that there was no evidence showing any specific property damage, injury, or loss of life attributed to any day laborers.<sup>49</sup>

The City also argued that the Policy was necessary to combat traffic congestion. Yet again, the Court found no evidence that day laborers were in any way contributing to traffic problems in the City.<sup>50</sup> Moreover, solicitors *other* than day laborers were not targeted by the Policy – firemen, policemen, students, newspaper vendors, and church organizations were freely permitted to solicit in public, including roadways, without citation or arrest.<sup>51</sup>

Even though the Court ultimately ordered that their immigration status was not relevant to the case, the City constantly attempted to inject the immigration status of Plaintiffs’ members into the lawsuit. The City’s own Amended Answer to the lawsuit made unfounded assumptions about Plaintiffs’ immigration status, alleging that Plaintiffs had “illegal unauthorized presence.” The City also alleged in its Amended Answer, without evidence, that Plaintiffs were “uneducated, often illiterate males with limited to no understanding of the English language or the ability to converse in English [sic] virtually never participate in any actual ‘speech’ in the sense of the exchange of ideas or the discussion of intellectual issues and concepts.”<sup>52</sup> Ultimately, Plaintiffs were forced to file a motion for protection from the City’s relentless attempts to access membership information and immigration status from the Plaintiff group, which the Court granted.

The Court filed its Final Judgment on June 19, 2013, entering a permanent injunction against the City’s enforcement of its policy and the Texas anti-solicitation law.

In April 2012, the City of League City council, by a 6-1 vote, rejected a request for \$8,500 (out of a FY 2012 annual budget of \$91.92 million), which was its share of local funds that

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<sup>47</sup> See Attachment 2 at 8.

<sup>48</sup> See, e.g., Attachment 4 at 65.3 (Defendants’ Trial Ex. 16); Attachment 5 at 106.2 (Defendants’ Ex. 17) (“Citizen just wanted to know why the illegals can stand around in the parking lot and be eye sores.”); see *id.* at 97.1 (“Store owner of Lucky Chief allows hispanics to stay on property; I cannot remove them from property by request of citizen”).

<sup>49</sup> See Attachment 2 at 8.

<sup>50</sup> See *id.* at 8.

<sup>51</sup> See *id.* at 12.

<sup>52</sup> See Attachment 6 at 6-7 (Defendants’ Amended Answer).

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would secure over \$200,000 in federal funds for a transportation service that provided elderly and disabled persons rides to medical appointments and low-income persons with rides to work.<sup>53</sup> The City lacks a public transit system. City Council member Andy Mann stated that “[i]f you need those other services, then you go to Galveston. That’s where you live because that community has already made the choice; ‘We want to build public housing; we want people to have free rides everywhere’ and that ‘League City is not wanting to become some sort of entitlement community,’” asserting that the City should concentrate on services like public safety and “nice parks.”<sup>54</sup> Council Member Dennis O’Keefe also stated that he did not want League City to become an “entitlement” city.<sup>55</sup> The assertions that low-income families, the majority of whom are people of color,<sup>56</sup> do not share the community’s values and the recommendation that they move to the City of Galveston, where people of color are the minority, demonstrate discriminatory intent and the desire to exclude persons based on their race, color, and national origin.<sup>57</sup>

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<sup>53</sup> The Council subsequently reversed itself, after a round of publicity highlighting a 93-year old World War II veteran who would lose access to the dialysis necessary to keep him alive. By contrast, in January 2014, the City voted 7-1 to spend \$15,000 to \$20,000 to promote and support a concert by Ted Nugent. Nugent has reportedly referred to African-Americans as “subhuman mongrels” and “dope smoking, racist gangsta wannabe[s];” asserted that African-Americans could fix “the black problem” if they just put their “heart and soul into being honest,[and] law-abiding” and that African-Americans have a “mindless tendency to violence;” asserted that immigrants are “bloodsuckers” who should be treated like “Indentured servants;” called female political leaders “dirty whores” and “worthless bitch[es];” and said that “Killing more Muslim terror punks would make the world a more peaceful place to live.” See Eric Hanaoki and Timothy Johnson, “Here are 13 other repugnant remarks Ted Nugent should apologize for,” Blog post, February 21, 2013, 2:12 pm EST, available at <http://mediamatters.org/blog/2014/02/21/here-are-13-other-repugnant-comments-ted-nugent/198174>; Timothy Johnson, “Ted Nugent Proposes Treating Undocumented Immigrants ‘Like Indentured Servants’” blog post May 13, 2013, 12:54 PM EDT, available at <http://mediamatters.org/blog/2013/05/13/ted-nugent-proposes-treating-undocumented-immig/194035>; Timothy Johnson, “10 Misogynist Attacks from Ted Nugent,” blog post February 14, 2014, 1:16 PM EST, available at <http://mediamatters.org/research/2014/02/14/10-misogynist-attacks-from-ted-nugent-greg-abbo/198061>

<sup>54</sup> League City is in fact an entitlement city for purposes of the receipt of federal housing and community development block grant funds.

<sup>55</sup> See, e.g., Christopher Smith Gonzalez, *LC says no to funding transit for poor, disabled*, GALVESTON DAILY NEWS, Apr. 26, 2010.

<sup>56</sup> Texas Department of Housing and Community Affairs, *2014 State of Texas Low Income Housing Plan & Annual Report 13*, available at <https://www.tdhca.state.tx.us/housing-center/docs/14-SLIHP.pdf>. In Texas, White (non-Hispanic) had a poverty rate of 8.7 percent; Blacks or African Americans had a poverty rate of 23.6 percent; the Hispanic population had a poverty rate of 25.9 percent; and Asians had a poverty rate of 11.8 percent. See *id.*

<sup>57</sup> At the time, the City of Galveston was also attempting to exclude low-income Black and Hispanic residents by halting the rebuilding of public and affordable housing that was destroyed by Hurricane Ike. The State of Texas and HUD made clear that the City’s actions would result in enforcement, including freezing and possible repayment of funds. Harvey Rice, *Galveston defies state over public housing*, HOUSTON CHRON., Apr. 12, 2013, available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/Galveston-defies-state-over-public-housing-4431228.php>; Harvey Rice, *HUD threatens Galveston with loss of funds*, HOUSTON CHRON., Jul. 3, 2012, available at <http://www.chron.com/news/houston-texas/article/HUD-threatens-Galveston-with-loss-of-funds-3682674.php>; Harvey Rice, *Galveston ends defiance on housing*, HOUSTON CHRON., Apr. 17, 2013, available

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	League City	City of Galveston	State of Texas
White, non-Hispanic	68.2%	45.0%	45.3%
Hispanic	17.3%	31.3%	37.6%
Black	7.1%	19.2%	11.8%
% below poverty	4.7%	22.5%	17.4%

United States Census Bureau, 2010 Census

The City of League City’s Fair Housing Activities Statement-Texas (FHA Form) <sup>58</sup> states that “[t]he City of League City does not provide any publicly financed housing;” “does not have public housing;” and that its Comprehensive Plan “has a clear emphasis on maintaining and enhancing desired community character” including “discouragement of large scale multifamily structures.” The Galveston Daily News reports that as of June 24, 2014, three “luxury” apartment complexes were planned in League City, consisting of 368, 347, and 416 units respectively. <sup>59</sup> In contrast, the City states that it rejected the majority of tax credit applications for multifamily projects located in the City because they were “inappropriately located or out of context with surrounding character.” <sup>60</sup>

**The City of League City Cannot Truthfully Certify That It Will Affirmatively Further Fair Housing**

Before receiving any federal housing or community development funding, an entitlement jurisdiction must certify that it “will affirmatively further fair housing.” <sup>61</sup> In order to be eligible for federal funds, the City of League City must truthfully certify that it (a) has or will conduct an analysis to identify impediments to fair housing choice, (b) take appropriate actions to overcome the effects of any impediments identified through that analysis, and (c) maintain records reflecting the analysis and actions in this regard. See 24 CFR §570.303 and 24 CFR §91.225(a)(1).

A fair housing certification “is not satisfactory to the Secretary” when HUD reviews applicable documents and data and concludes that “(1) the jurisdiction does not have an AI, (2) an AI was substantially incomplete, (3) no actions were taken, (4) the actions taken were plainly inappropriate to address identified impediments, or (5) the jurisdiction has no

at [www.chron.com/news/houston-texas/houston/article/Galveston-ends-defiance-on-housing-4443137.php?t=a654edb68b](http://www.chron.com/news/houston-texas/houston/article/Galveston-ends-defiance-on-housing-4443137.php?t=a654edb68b).

<sup>58</sup> This form is required under the State of Texas Phase 1 as a precondition for eligibility of Round 2. CDBG-DR funds, *2020 Analysis of Impediments: Phase 1*, available at <http://www.tdhca.state.tx.us/housing-center/fair-housing/analysis-impediments-2010-1.htm>

<sup>59</sup> Laura Elder, *Luxury complex planned for League City*, GALVESTON DAILY NEWS, Jun. 24, 2014.

<sup>60</sup> There are currently two LIHTC funded projects in League City: Bay Colony Apartments (2000) and The Village at Hobbs Road (2004), which is elderly-only. The City has not supported a tax credit application in ten years.

<sup>61</sup> 74 Fed. Reg. 7254 citing 24 C.F.R. §570.487(b)(2).

records.”<sup>62</sup> In reviewing certifications, “HUD will consider whether a program participant has made appropriate revisions to update the AI.”<sup>63</sup> HUD’s guidance reminds grantees that “each jurisdiction . . . should update, where appropriate, its Analysis of Impediments to Fair Housing Choice,” and “it is appropriate to update their AIs to reflect the current fair housing situation in their communities.”<sup>64</sup>

### **Specific Allegations Related to the City’s Certification**

The City of League City cannot truthfully certify that it is affirmatively furthering fair housing for the reasons set out below.

1. **The City of League City’s AFFH Certification should be deemed “unsatisfactory” to the Secretary because the City has engaged in a pattern and practice of unlawful discrimination:** As set forth above, the City has engaged in unlawful discriminatory conduct and stated its intent to discriminate against classes of persons protected under the Fair Housing Act and Title VI of the Civil Rights Act of 1964. These facts constitute “evidence, not directly involving the grantee’s past performance under this program, that tends to challenge in a substantial manner the grantee’s certification of future performance” sufficient to support a determination that the City of League City has not made a certification that it will affirmatively further fair housing satisfactory to the Secretary. 24 C.F.R §570.304 (2008).
2. **The City of League City’s AFFH Certification Should be Deemed “Unsatisfactory” to the Secretary Because the City does not have an AI:** The City’s most recent Fair Housing Plan and AI was prepared in September 2009, and explicitly states that it is intended to cover “2009-2011 to correspond with the City’s 3-year Consolidated Plan.”<sup>65</sup> The City’s “Third Program Year Action Plan” states that “during PY 2011, the City will develop a 5-year Consolidated Plan and complementary Fair Housing Plan with the Analysis of Impediments to Fair Housing Choice to become effective in PY 2012.”<sup>66</sup> This was clearly not done, as the City’s 2012 Action Plan states that “during PY 2012, the City will complete its Fair Housing Plan with the Analysis of Impediments to Fair Housing Choice as a complement to the PY 2012-Py 2017 Consolidated Plan.” There is no indication

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<sup>62</sup> HUD, Guidance Memorandum: Analysis of Impediments to Fair Housing Choice Reissuance, (September 2, 2004).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> City of League City Planning and Development Department, *Fair Housing Plan Including Analysis of Impediments to Fair Housing Choice PY 2009-2011* (September, 2009) at 1.

<sup>66</sup> City of League City Third Program Year Action Plan at 1, available at <http://tx-leaguecity.civicplus.com/documentcenter/view/4336> (last visited Jul. 18, 2014).

the City has done so.<sup>67</sup> The City of League City does not have an AI, therefore, its certifications are by definition, unsatisfactory to the Secretary.

The City's 2009-2011 AI states that League City conducted its first Analysis of Impediments to Fair Housing Choice and Fair Housing Plan in 2005.<sup>68</sup> The City has been an entitlement jurisdiction receiving CDBG and other federal housing and community development funds since at least 2001. The City has not made a truthful certification that it is affirmatively furthering fair housing for any year before 2005 and was ineligible for housing and community development funds for those years.

3. **The City of League City's September 2009 AI is Substantially Incomplete:**

Even assuming that the September 2009 AI remains in effect past 2011, the 2009 AI was substantially incomplete at the time it was adopted because it failed to conduct a thorough identification and analysis of impediments existing in the City. It failed to design, set forth, and carry out specific appropriate actions to overcome the effects of fair housing impediments and to identify parties responsible for carrying out those actions and timelines for their completion. While the specific failures are numerous, the most significant involve:

- a. **The AI Fails to Identify, Analyze and Take Actions to Overcome Choice-Limiting Public Policies:** The City's AI found that no city Resolution, policy, code, zoning regulation, or other land use policy was an impediment to fair housing choice. However, the City acknowledges that it has a commonly identified impediment to fair housing—minimum lot size requirements—but does not consider whether those requirements are barriers to fair housing choice because “the Resolution is in keeping with general planning practices throughout Texas.”<sup>69</sup> The City also appears to have reviewed its zoning regulations and land use policies only for their effect on the availability of affordable housing. In its virtual disregard for the effect of local zoning and land use policies on the availability of housing for people of color, the 2009-2011 AI is strong evidence of the City's troublesome “[p]ublic policies, practices, and procedures involving housing and housing-related activities” and “[z]oning and land use policies, tax assessment/abatement practices.” *Fair Housing Planning Guide*, at 2-9.
- b. **The AI Fails to Identify, Analyze and Take Appropriate Actions to Overcome Choice-Limiting Private Conditions:** The HDMA data cited in

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<sup>67</sup> The City's 2012 Action Plan is the most recent Action Plan made available online by the City. City of League City 2012 Action Plan, available at <http://www.leaguecity.com/index.aspx?NID=255> (last visited Jul. 11, 2014). This is also the site to which HUD's approved state and local Consolidated Plan portal is linked. The 2012-2017 Consolidated Plan does not refer to an Analysis of Impediments or Fair Housing Action Plan.

<sup>68</sup> *Supra* note 65 at 17.

<sup>69</sup> *Id.* at 1.



the City's AI showed that African-Americans had higher mortgage loan denial rates than other racial and ethnic groups. Without evidentiary support, the AI summarily dismisses this difference as a credit history issue. HDMA data included in the AI, however, shows that the primary reason for denying a loan to an African-American was "other," not credit history.<sup>70</sup>

- c. AI Confuses "Fair Housing" and "Affordable Housing" and Fails to Consider Protected Class-Based Impediments Other than Affordability: The City's AI impermissibly conflates fair housing with affordable housing and attributes identifiable segregation based on race, national origin, and disability to affordability issues alone. "Controlling for income, the minority population and disabled do not have any greater barriers to fair or affordable housing than those unprotected classes."<sup>71</sup> In the very next sentence, however, the City acknowledges that housing affordable to low- and moderate-income families is not accessible to persons with disabilities, clearly a protected-class based impediment to fair housing choice.<sup>72</sup> The City makes the same mistake as Westchester County in *U.S. ex rel. Anti-Discrimination Center v. Westchester County*, ignoring two critical fair housing issues: the geographic location of the affordable housing and the barriers experienced by members of the FHA protected classes. As the Court recognized in its summary judgment decision in the case:

"The HUD Guide explains that while it is often the case that minorities are disproportionately represented among the low-income population, simply providing affordable housing for the low-income population "is not in and of itself sufficient to affirmatively further fair housing." This unsurprising statement is grounded in the statutory and regulatory framework behind the obligation to AFFH, which as already discussed, is concerned with addressing whether there are independent barriers to protected classes exercising fair housing choice. As a matter of logic, providing more affordable housing for a low income racial minority will improve its housing stock but may do little to change any pattern of discrimination or segregation. Addressing that pattern would at a minimum necessitate an analysis of where the additional housing is placed."

*U.S. ex rel. Anti-Discrimination Center v. Westchester County*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009), at \*15.

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<sup>70</sup> *Id.* at 12-14.

<sup>71</sup> *Id.* at 17.

<sup>72</sup> *Id.* at 17.

The City's assessment of impediments to fair housing choice for racial and ethnic minorities and persons with disabilities was stunningly inadequate. In addition, the City completely failed to assess any impediments to fair housing choice for families with children, or for any other protected class under the FHA.

- d. The AI Fails to Identify and Take Appropriate and Meaningful Action Steps to Overcome Impediments to Fair Housing Choice: The 2009 AI lists eight actions the City will take to overcome identified impediments and affirmatively further fair housing. Six of the eight action steps are almost purely informational, including public service announcements; workshops for landlords and real estate agents; placing HUD-provided fair housing materials at City Hall and in libraries; and placing fair housing information on the City's website.<sup>73</sup> While education and information on fair housing are helpful, they do absolutely nothing to address even the few impediments identified by the City's AI, principally housing costs and the unavailability of affordable housing. It is unclear how the City's seventh action step, "expand[ing] code enforcement in residential rental properties" as "[d]ilapidated or unsound rental housing are not issues within League City," will address impediments to fair housing, as this increase in code enforcement will specifically target areas immediately outside the City, where, according to the AI, the majority of affordable housing and the highest concentration of minorities are located.<sup>74</sup> Code enforcement targeting a particular racial or ethnic group has frequently been found to be unlawful discrimination.<sup>75</sup>

The City's final action step, the expenditure of non-housing funds to bring infrastructure in a "low-income, predominately minority community up to the standards of the balance of the City" is a meaningful and appropriate action step.<sup>76</sup> However, it, like the other action steps, does nothing to address concentration of affordable housing in historically minority concentrated, low-income communities with substandard public

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<sup>73</sup> *Id.* at 17.

<sup>74</sup> *Id.* at 3.

<sup>75</sup> *See, e.g.: Hispanics United of DuPage County v. Village of Addison*, 988 F. Supp. 1130 (N.D. Ill. 1997) (FHA case alleging that the Village of Addison's proposed and initiated redevelopment two areas in the Village discriminated on the basis of national origin against Hispanic residents of those areas); *HOPE Fair Housing Center et. al. v. City of Elgin, Illinois* (HUD No. 05-00-1465) (administrative class fair housing complaint on behalf of Hispanic residents of the City of Elgin, alleging discriminatory enforcement of the Village Property Maintenance Code on the basis of national origin.); *2922 Sherman Avenue Tenant's Association et al. v. District of Columbia*, 444 F.3d 673 (U.S. Court of Appeals, D.C. Cir. 2006) (FHA case charging that the District of Columbia targeted Hispanic neighborhoods when it decided to close certain apartment buildings for housing code violations).

<sup>76</sup> *Supra* note 65 at 17.

infrastructure and services; the lack and exclusion of affordable housing that disproportionately affects racial and ethnic minorities, families with children, and persons with disabilities; and the lack of housing opportunities in higher opportunity areas of the City.

- e. The AI Fails to Organize Included Action Steps Appropriately: The City has failed to organize the eight inadequate action steps included in the AI “into a prioritized list of specific actions [w]ith milestones, timetables, and measurable results [t]o be undertaken by the jurisdiction in each of the 4 years following completion/update of the AI.” *Fair Housing Planning Guide*, at 2-6.<sup>77</sup> Having a plan of action to combat impediments, with specific goals and time frames, is an essential component of fair housing planning. Without such an analysis and planning effort, HUD cannot hold League City accountable for its AFFH certification. An AI without definitive goals, strategies, time frames and actions, coupled with definitive dates by which to accomplish tasks designed to address, reduce or eliminate fair housing impediments does not comply with the statutory and regulatory requirements to AFFH.

## **Conclusion**

The Resolution excluding refugees and unauthorized immigrants, specifically children, from the City of League City is facially discriminatory on the basis of race, color, familial status, religion, and national origin, and demonstrates not only disparate impact, but clear discriminatory intent. The Resolution is part of a pattern of discrimination against members of protected classes by the City of League City, documented above, in violation of the Fair Housing Act (FHA) 42 U.S.C. §§3604, 3608, and 3610; Title VI of the Civil Rights Act of 1964, (“Title VI”), 42 U.S.C. §2000d, and its implementing regulations found at 24 C.F.R. Part I; Section 504 of the Rehabilitation Act of 1973 (“Sec. 504”), 29 U.S.C. §794 and its implementing regulations found at 24 C.F.R. Part 9; and Section 109 of the Housing and Community Development Act of 1974 (“Sec. 109”), 42 U.S.C. §5309 and its implementing regulations found at 24 C.F.R. Parts 6, 8, & 570.

In addition, because of its failure to conduct an Analysis of Impediments to Fair Housing Choice (AI) and to take appropriate actions to overcome impediments, as well as its current and past discriminatory conduct, the City of League City cannot make an AFFH certification that is “satisfactory to the Secretary.” The City’s failure to conduct the AI necessary to make a fair housing certification is particularly troubling considering the City’s most recent history of housing and other discrimination based on national origin, race, color, familial status, disability, and religion. In addition to demonstrating the insufficiency of the City’s procedures and requirements, these facts constitute “evidence,

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<sup>77</sup> The City is clearly aware of this requirement, as it includes a list of how the Action plan should be organized in its AI. *Id.* at 16.

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not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance," and are sufficient to support a determination that the City of League City has not made a certification that it will affirmatively further fair housing satisfactory to the Secretary. 24 C.F.R §570.304 (2008).

Under all applicable laws and regulations, the Secretary has the authority, obligation and responsibility to review the City of League City's submissions and certifications in application for all federal housing and community development funds, to assess whether the City has violated Title VI, and to enforce compliance with federal laws and regulations, program requirements, and the intent of Congress.

**Request for Relief**

For the reasons set out above and in accordance with applicable federal laws and regulations, Complainants respectfully request that HUD:

1. Immediately initiate an investigation and community-wide compliance review;
- 2 Find that League City does not currently have an Analysis of Impediments to Fair Housing Choice (AI), and that its most recent AI is substantially incomplete and that the City's multiple, subsequent AFFH certifications based on that AI are inaccurate. Such findings would require HUD to disapprove the City's Consolidated Plan (Con Plan), bar it from receiving funds under any other housing and community development programs, including CDBG Disaster Recovery funds, determine whether the City is obligated to repay federal funds received using a false certification, and require the City to conduct a new, AFFH-compliant AI and submit a revised Con Plan and certifications to HUD;
- 3 Find that the City of League City has engaged in discriminatory conduct under the Fair Housing Act and Title VI of the Civil Rights Act and initiate voluntary compliance procedures; and,
- 4 If voluntary compliance cannot be achieved, refer this matter to the United States Department of Justice for appropriate proceedings.

Respectfully submitted,

*/s/ M. Madison Sloan*  
TEXAS APPLESEED  
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Texas Appleseed and MALDEF v. League City  
ADMINISTRATIVE COMPLAINT PURSUANT TO THE FAIR HOUSING ACT AND  
TITLE VI OF THE CIVIL RIGHT ACT OF 1964  
July 21, 2014

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APPENDIX:

Attachment 1 – July 8, 2014 City of League City Resolution

Attachment 2 - Findings of Fact and Conclusions of Law

Attachment 3 - Final Judgment

Attachment 4 - Defendants Trial Exhibit 15

Attachment 5 - Defendants Trial Exhibit 16

Attachment 6 - Defendants' Amended Answer