

No. 18-10053-AA

**In The United States Court of Appeals  
For The Eleventh Circuit**

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GEORGIA STATE CONFERENCE OF THE NAACP,  
TROUP COUNTY NAACP, PROJECT SOUTH, CHARLES BREWER,  
CALVIN MORLAND, APRIL WALTON, PAMELA WILLIAMS,  
JOHN DOES NUMBERS 1 TO 3,

*Plaintiffs-Appellants,*

v.

CITY OF LAGRANGE, GEORGIA,

*Defendant-Appellee.*

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On Appeal from the United States District Court  
Northern District of Georgia No. 3:17-cv-067-TCB  
The Honorable Timothy C. Batten, Sr.

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**BRIEF OF AMICI CURIAE  
Georgia Latino Alliance for Human Rights  
and Alabama Coalition for Immigrant Justice  
In Support Of Plaintiffs-Appellants And Reversal**

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et al.,  
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v.  
CITY OF LAGRANGE, GEORGIA,  
*Defendant-Appellee.*

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Amicus Curiae the **Georgia Latino Alliance for Human Rights** (GLAHR) is a non-profit, community-based organization. GLAHR has no parent corporation and issues no stock.

Amicus Curiae **Alabama Coalition for Immigrant Justice** (ACIJ) is a grassroots, statewide network of individuals and organizations that consists of seven non-profit organizations, 15 grassroots immigrant community organizations, and hundreds of individual members. ACIJ has no parent corporation and issues no stock.

Amici certify that the following persons and entities have an interest in the outcome of this case and/or appeal:

Alabama Coalition for Immigrant Justice (Amicus)

Atlanta Legal Aid Society (Amicus)

Atlanta Volunteer Lawyers Foundation (Amicus)

Bailey, Regan (Attorney for Amici)

Batten, Hon. Timothy C. (Trial Judge)

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## STATEMENT OF INTEREST<sup>1</sup>

Founded in 2001, Amicus Curiae the Georgia Latino Alliance for Human Rights (GLAHR) is a non-profit, community-based organization that educates, organizes, and empowers Latino immigrants across Georgia to defend and advance their civil and human rights. GLAHR has members who are directly affected by LaGrange's discriminatory policies and are unable to satisfy its requirements for accessing utilities.

Amicus Curiae Alabama Coalition for Immigrant Justice (ACIJ) is a grassroots, statewide network of individuals and organizations that works to advance and defend the rights of immigrants in Alabama.

## ISSUE STATEMENT

As explained in Appellants' Opening Brief, Defendant-Appellee City of LaGrange has a policy (the "Immigrant Utilities Policy") of withholding access to essential utility services, including water, electricity, and gas, from individuals who cannot provide both a valid social security number and a form of photo identification issued by the United States or by a state government. *Amici* submit this brief for three reasons.

First, *amici* further explain the forms of identification required by the Immigrant Utilities Policy, and why many immigrants are unable to

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation of this brief. The parties consented to the filing of this amicus brief.

obtain these specific forms of identification, but *are* able to obtain other forms that would satisfy the City's purported concerns.

Second, *amici* highlight the severe hardships the policy imposes on residents of LaGrange, and Latino residents in particular.

Third, *amici* analyze the plain language of the Fair Housing Act to show that it applies to post-acquisition conduct, and prohibits LaGrange from imposing these hardships on Latino residents.

### SUMMARY OF ARGUMENT

LaGrange's Immigrant Utilities Policy requires an individual seeking to obtain a utility account to provide both a social security number and an unexpired form of photo identification issued by the United States or a state government. These forms of identification are ones that lawful residents who are not authorized to work, as well as undocumented residents including those with citizen children, are categorically ineligible to obtain. Critically, the majority of those affected residents are Latinos, who comprise approximately 68% of the foreign-born, non-citizen population of LaGrange.

In general, the only individuals who can obtain the first required form of identification, a social security number, are United States citizens, and noncitizens authorized by the Department of Homeland Security to work in the United States. As a result, many Latino immigrants who are lawfully present in the U.S., including individuals

in a variety of visa categories, are not eligible to receive social security numbers, and neither are undocumented Latino immigrants.

Additionally, non-citizens who are lawfully present, but are not authorized to work, are precluded from obtaining the forms of photo identification required by LaGrange. The sole exception is a Georgia driver's license. But to be issued one of those, an individual must first undertake the effort, incur the expense, and suffer the delay necessary to obtain a letter of ineligibility from the Social Security Administration and complete driving-related requirements, which include holding an Instructional Permit for a minimum of one year. And even if a lawful resident not authorized to work eventually obtains a license, he or she would still fail to qualify for utilities under LaGrange's policy because he or she would lack a social security number. Undocumented immigrants are not eligible to obtain a Georgia driver's license, or any of the other forms of accepted identification.

Latino immigrants' inability to obtain utility services in their own names has a significant negative impact on their lives. For example, many individuals are forced to rent from a landlord willing to put utilities in his or her name, which not only precludes the ability to purchase a home, but also severely limits the rental housing that is available. And available housing is often located in dangerous areas of LaGrange with poor living conditions. Additionally, tenants are forced to live in constant fear that their service will be interrupted for a

variety of reasons, and they lose the opportunity to build credit by timely paying utility bills themselves, among other issues. Tenants even experience difficulty registering their children—many of whom are U.S. citizens—for school, because they lack the required proof of residency. Alternative living arrangements are often even worse, and include living in overcrowded conditions with family, friends, or acquaintances, or even going without utilities altogether.

LaGrange can avoid imposing these hardships on Latino immigrants and still satisfy any legitimate interest in ensuring a utility holder's identity and credit history. Social security numbers are not necessary to verify an applicant's identity. Instead, LaGrange could accept Individual Taxpayer Identification Numbers, which are nine-digit numbers issued by the Internal Revenue Services to individuals who first must prove their identity using one or a combination of accepted forms of photo identification. To further verify identity, LaGrange could accept the IRS-approved forms of photo identification. Additionally, social security numbers are not necessary for verifying creditworthiness. Individuals can build credit, and third parties can perform a credit check, using other documents and information.

Finally, as a matter of law, LaGrange *must* avoid imposing the above-described hardships on Latino immigrants. Contrary to the District Court's holding, the Fair Housing Act protects residents from post-acquisition discrimination. This is evident from the plain language

of the statute, which prohibits discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith . . . .” 42 U.S.C. § 3604(b). Where a city discriminates against an owner or renter post-acquisition, it interferes with the “privileges of sale or rental” just as if it had discriminated prior to the sale or rental. *See Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 713 (9th Cir. 2009) (“The inclusion of the word ‘privileges’ implicates continuing rights, such as the privilege of quiet enjoyment of the dwelling.”). One of the “privileges” of buying or renting—indeed an essential component of purchase or rental—is the ability to live in a home or apartment that is habitable, which includes having access to basic utilities such as water, electricity, and gas. If the city denies such access to certain residents, then those residents cannot meaningfully buy or rent.

## ARGUMENT

### **I. The Immigrant Utilities Policy Requires Forms Of Identification That Latino Immigrants Overwhelmingly Cannot Obtain**

LaGrange is the sole provider of utilities to its residents. In its role as utilities provider, LaGrange has implemented the Immigrant Utilities Policy, which requires an individual seeking to obtain a utility account to provide both (1) a social security number (“SSN”), and (2) one of the following forms of photo identification:

- An unexpired driver's license or photo identification issued by a state government;
- An unexpired Georgia Voter ID card;
- An unexpired U.S. military identification;
- An unexpired U.S. passport; or
- An unexpired Permanent Resident Card (commonly known as a "Green Card") issued by the U.S. government.

(See JA-41 [Compl. ¶ 82], JA-83.)

Moreover, LaGrange prohibits third parties from opening utility accounts on behalf of individuals who cannot meet the requirements of the Immigrant Utilities Policy, by making it a crime to open or maintain a utility account for a property that one does not own or lease. See JA-83; LAGRANGE, GA., MUN. CODE § 20-1-11 (penalizing anyone who "obtain[s] or attempt[s] to obtain utility service . . . by providing false information during the application process"). Violation of this prohibition may result in a fine of up to \$1,000 and/or a sentence of either imprisonment or hard labor of up to six months. See LAGRANGE, GA., MUN. CODE § 1-1-6.

As explained below, with one exception, the forms of identification required by the Immigrant Utilities Policy are ones that lawful residents who are not authorized to work, as well as undocumented residents, are categorically ineligible to obtain. Critically, the majority of those affected residents are Latinos, who comprise approximately 68% of the foreign-born, non-citizen population of LaGrange, according



to the 2011-2015 American Community Survey (“ACS”) data from the U.S. Census Bureau.<sup>2</sup> U.S. Census Bureau, *American FactFinder*, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_5YR\\_B05002&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_B05002&prodType=table) (last visited Mar. 1, 2018).

**A. Lawful Immigrants Not Authorized to Work, and Undocumented Immigrants, Are Precluded From Obtaining Social Security Numbers**

The first form of identification required by the policy is a social security number. The Social Security Administration uses SSNs to report wages to the government, track Social Security benefits, and for other identification purposes.<sup>3</sup> In general, the only individuals who can obtain a SSN are (1) United States citizens, and (2) noncitizens authorized by the Department of Homeland Security to work in the

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<sup>2</sup> Similarly, the foreign-born, non-citizen population of Troup County, which entirely encompasses LaGrange, is approximately 63% Latino. U.S. Census Bureau, *American FactFinder*, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_5YR\\_B05002&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_B05002&prodType=table) (last visited Mar. 1, 2018). And approximately three-quarters of all undocumented immigrants residing in Georgia are Latino. Migration Policy Institute, *Profile of the Unauthorized Population: Georgia*, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/GA> (last visited Feb. 28, 2018) (270,000 undocumented immigrants from Mexico and Central America, out of a total of 377,000).

<sup>3</sup> U.S. Department of Homeland Security, *Obtaining a Social Security Number*, <https://studyinthestates.dhs.gov/obtaining-a-social-security-number> (last visited Feb. 28, 2018).

United States. *Id.*<sup>4</sup> Non-citizen applicants must provide a current unexpired document issued by the Department of Homeland Security showing the individual's work-authorized immigration status. *Social Security Numbers for Noncitizens, supra.*

As a result, many Latino immigrants who are lawfully present are not eligible to receive SSNs. This includes individuals in a variety of visa categories. For example, foreign students at LaGrange College—which reportedly enrolls over 1,000 students, including students from five foreign countries<sup>5</sup>—may wish to obtain utility services for an apartment, but may lack the SSN necessary to do so. Lawful immigrants in the process of obtaining a work-authorized immigration status, some asylum seekers, and many other categories of lawful noncitizens also do not have SSNs. Additionally, Latino immigrants who are not lawfully present are ineligible for SSNs. Many of them have children who are U.S. citizens, and who are negatively impacted by these requirements.

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<sup>4</sup> See also Social Security Administration, *Social Security Numbers for Noncitizens*, <https://www.ssa.gov/pubs/EN-05-10096.pdf> (last visited Feb. 28, 2018); Social Security Administration, *Frequently Asked Questions*, <https://faq.ssa.gov/link/portal/34011/34019/Article/3782/If-I-am-not-a-U-S-citizen-can-I-get-a-Social-Security-number> (last visited Feb. 28, 2018) (“In general, only noncitizens with permission to work from the Department of Homeland Security can get a Social Security Number.”).

<sup>5</sup> See LaGrange College, *About Us*, <http://www.lagrangecollege.edu/about/index.html> (last visited Feb. 28, 2018).

**B. Lawful Immigrants Not Authorized to Work, and Undocumented Immigrants, Are Precluded From Obtaining the Required Forms of Photo Identification**

Undocumented residents are also precluded from obtaining the forms of photo identification required by LaGrange. The same is true for non-citizens who are lawfully present, but are not authorized to work, with one exception, as explained below.

**1. Georgia Driver's License or Other State-Issued Photo Identification**

The first category of photo identification accepted by LaGrange is an unexpired driver's license or other photo identification issued by a state government. To qualify for a Georgia driver's license,<sup>6</sup> an individual must be a United States citizen or have lawful status in the United States. Georgia Department of Driver Services, *Information for Non-US Citizens*, <https://dds.georgia.gov/information-non-us-citizens> (last visited Feb. 28, 2018). An applicant also must provide a SSN. If an applicant does not have one—for example, because he or she is a lawful resident who is not authorized to work—the applicant must obtain a letter of ineligibility from the Social Security Administration and

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<sup>6</sup> If a non-U.S. citizen establishes residency in Georgia and wants to utilize a driver's license, "he or she must obtain a Georgia driver's license within thirty (30) days." Georgia Department of Driver Services, *Information for Non-US Citizens*, <https://dds.georgia.gov/information-non-us-citizens> (last visited Feb. 28, 2018).

provide it to the Georgia Department of Driver Services in support of the application. *Id.*

To obtain the ineligibility letter, an individual must apply for a social security number, wait approximately ten to fourteen business days for the application to be processed (and denied), and then obtain the letter from his or her local Social Security Administration Office.<sup>7</sup> Moreover, the Social Security Administration Office in LaGrange is only open from 9:00 a.m. until 4:00 p.m. four days a week and from 9:00 a.m. until noon on Wednesdays, and it is closed on weekends.<sup>8</sup> Thus, if an applicant is required to visit the office in person to obtain the letter, he or she will likely need to take time off from work.

Additionally, even where an applicant is otherwise eligible, a Georgia driver's license is difficult and time-consuming to obtain. The applicant must pay a \$32 fee, and also must have: held an Instructional

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<sup>7</sup> See Georgia Department of Driver Services, *Drivers From Other Nations*, <https://dds.georgia.gov/drivers-other-nations> (last visited Mar. 1, 2018) (explaining process); University of Georgia, *How to Get a Georgia's Driver's License*, <https://isl.uga.edu/uploads/docs/How to Get a Georgia Drivers License e.pdf> (last visited Mar. 1, 2018) (same); Social Security Administration, *Frequently Asked Questions*, <https://faq.ssa.gov/link/portal/34011/34019/Article/3785/How-long-will-it-take-to-get-a-Social-Security-card> (last visited Mar. 1, 2018) (SSA typically takes 10-14 business days to process application).

<sup>8</sup> Social Security Administration, *Social Security Office Locator*, <https://secure.ssa.gov/ICON/main.jsp> (enter zip code 30240 or 30241) (last visited Mar. 1, 2018).

Permit for a minimum of one year; completed a minimum of 40 hours of supervised driving; passed a road skills test; and completed an Alcohol and Drug Awareness Program.<sup>9</sup> All documents throughout this process are required to be in English, which presents an added difficulty for many Latinos.

The primary form of Georgia-issued identification other than a driver's license is a Georgia State Identification Card. That card can only be obtained by providing a social security number along with proof of United States citizenship or lawful status in the United States.

Georgia Department of Driver Services, *Georgia State ID Card*, <https://dds.georgia.gov/georgia-state-id-card> (last visited Feb. 28, 2018).

As a result, undocumented residents are categorically ineligible to obtain either of these forms of identification. While lawful residents without a SSN can obtain a Georgia driver's license, they must first undertake the effort, incur the expense, and suffer the delay necessary to obtain a letter of ineligibility from the Social Security Administration and complete driving-related requirements for the license. And even if they were to successfully obtain a license, they would still fail to qualify for utilities under LaGrange's policy because they do not have a SSN.

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<sup>9</sup> Georgia Department of Driver Services, *Provisional Driver's License (Class D)*, <https://dds.georgia.gov/provisional-drivers-license-class-d> (last visited Feb. 28, 2018); Georgia Department of Driver Services, *Non-Commerical License Fees*, <https://dds.georgia.gov/non-commercial-license-fees> (last visited Feb. 28, 2018).

## 2. Other Permitted Forms of Photo Identification

Lawful residents who are not authorized to work, and undocumented residents, are ineligible to obtain the other forms of identification accepted by LaGrange. **First**, to obtain a Georgia Voter ID card, an individual must be a U.S. citizen and registered voter.

Georgia Department of Driver Services, *Voter ID*, <https://dds.georgia.gov/voter-id> (last visited Feb. 28, 2018).

**Second**, U.S. military identification for active-duty members is limited to U.S. citizens and Green Card holders, who are the only people eligible to join the U.S. military. USA.gov, *Join the Military*, <https://www.usa.gov/join-military> (last visited Feb. 28, 2018).

Uniformed Services ID Cards are also available, but they are only issued to a reserve or retired service member or sponsored dependent. Department of Defense, *Getting Your Uniformed Services ID (USID) Card*, <http://www.cac.mil/Uniformed-Services-ID-Card/Getting-Your-ID-Card/> (last visited Feb. 28, 2018).

**Third**, to obtain a U.S. passport, a person must be either a U.S. citizen or a non-citizen national of the United States. Nationals are those who owe “permanent allegiance to the United States,” 8 U.S.C. § 1101(22), such as those born in American Samoa and the Swains Islands, which are “outlying possessions of the United States.” See 8 U.S.C. § 1408; *id.* at § 1101(29); U.S. Department of State – Bureau of Consular Affairs, *Certificates of Non Citizen Nationality*,

<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Certificates-Non-Citizen-Nationality.html> (last visited Feb. 28, 2018). They do not include the Latino immigrants primarily affected by the Immigrant Utilities Policy.

*Finally*, a Permanent Resident Card issued by the U.S. government, which is commonly known as a “green card,” allows its holder to both live and work permanently in the United States. U.S. Citizenship and Immigration Services, *Green Card*, <https://www.uscis.gov/greencard> (last visited Feb. 28, 2018). By definition, lawful residents who are not authorized to work in the U.S., and undocumented residents, are not eligible to possess Green Cards.

## **II. The Immigrant Utilities Policy Has Significant Negative Effects On The Lives Of Latinos**

Latino immigrants’ inability to obtain utility services in their own names has a significant negative impact on their lives, as shown by the Complaint’s allegations and further discussed in the declarations of John Does #1 through #3 in support of Plaintiffs’ Motion for Leave to Proceed Under Pseudonyms (Dkt. No. 3), which the District Court granted. (*See* Dkt. No. 15.)

### **A. Renting from a landlord willing to put utilities in his or her own name**

In order to live on their own and obtain utilities, individuals who cannot meet LaGrange’s Immigrant Utilities Policy must either rent

from a landlord who is willing to put the utilities in his or her own name, or find some other third party who is willing to do so. If an individual is unable to find a third party (other than a landlord) willing to put utilities in his or her name, or does not try to find such a third party for fear of prosecution, the individual must choose the former option of renting from a landlord. This option not only means that the individual is unable to purchase a home, but it also severely limits the rental housing that is available.<sup>10</sup> (*See* Dkt. No. 3-1, Decl. of Doe #1 ¶ 14 (“[T]here are a limited number of places to rent in LaGrange where . . . landlords are willing to put utilities in their names”).) Moreover, the available housing is often located in dangerous places in LaGrange, where there are higher crime rates, as well as deplorable living conditions. (*Id.* at ¶¶ 10-14.) For example, before Mr. Doe #1 began renting his current home, he lived in a mobile home where the utilities were under the landlord’s name and were included in the rent. (*Id.* at ¶ 10.) The mobile home was dilapidated, infested with rodents and cockroaches, and the heater and air conditioner rarely worked. (*Id.* at ¶ 13.) Most of the individuals living in the mobile home park were Latinos. (*Id.* at ¶ 12.)

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<sup>10</sup> The Immigrant Utility Policy’s effect of restricting many Latinos to renting rather than buying, and to renting housing that is often substandard and dangerous (as further explained below), clearly qualifies as a pre-acquisition effect.



Once an individual affected by the policy finds a place to rent, obtaining utilities in the landlord's name causes additional hardships. The tenant is forced to live in constant fear that his or her service will be interrupted or cut off, because, for example, the landlord may no longer choose to keep utilities in his or her name, or the landlord may sell the property to a buyer who is not willing to do so. (*See id.* at ¶¶ 19, 23; Dkt. No. 3-2, Decl. of Doe #2 ¶ 11.) For example, Mr. Doe #1's landlord is considering moving out of LaGrange, and Mr. Doe #1 is worried that he will have to find some other way of getting and paying for utilities. (Doe #1 Decl. ¶ 23.) The tenant also is at the mercy of the landlord for timely payment of the utilities bills (*id.* ¶ 13 ("If the landlord forgets or is late to pay the bill, then it is my family who is affected.")), loses the opportunity to build credit by timely paying those bills him- or herself (*id.* ¶ 19; Doe #2 Decl. ¶ 12), may have difficulty confirming that the landlord is charging the correct amounts, and sacrifices privacy regarding his or her utilities usage. (Doe #2 Decl. ¶ 14.)

The Immigrant Utilities Policy also complicates and hampers routine aspects of life in LaGrange, including school enrollment for immigrants' children. Many of these children are U.S. citizens, and in fact all of the Doe appellants have children who are U.S. citizens. (Doe #1 Decl. ¶ 2; Doe #2 Decl. ¶ 2; Dkt. No. 3-3, Decl. of Doe #3 ¶ 2.) To register children, schools in LaGrange require proof of residency in the

form of a bill with the parents' names and in-district address. (Doe #1 Decl. ¶ 18.) Where utilities are in the landlord's name, the tenant is unable to provide this proof of residency, and must attempt to provide an alternate form of proof that the school will accept. (*Id.*) For example, Mr. Doe #1 has had to rely on his landlord to write a letter to the school each year to explain the situation, which is stressful and embarrassing. (*Id.*) Mr. Doe #1 knows many other Latino families who have had this same problem. (*Id.*)

**B. Obtaining utilities under a third party's name**

Individuals who are able to find a third party willing to put the utility account in his or her name still face many of the same hardships as those whose account is in their landlord's name, such as decreased security and privacy, inability to build credit, and difficulty with school enrollment. Additionally, this arrangement puts both the tenant (or home owner) and the named account holder at risk of prosecution under LaGrange Municipal Code Section 20-1-11. And it is also difficult and risky for the tenant to request repairs when he or she encounters problems such as water and gas leaks or power outages, since the City may discover in the process of performing the repairs that the tenant or owner is not the account holder. (*See Doe #3 Decl. ¶ 12* (“I had a water leak at home a few years ago and was afraid to call the city and report the situation.”).)

**C. Living with a third party who has access to utilities**

A third option for some people in LaGrange who cannot meet the City's Immigrant Utilities Policy is to live with a relative, friend, or acquaintance who can satisfy the policy and access utilities. However, this option is only available to those who know someone willing to agree to this arrangement, and it often leads to overcrowded and substandard living conditions. This in turn has a number of detrimental effects on residents. For example, studies indicate that overcrowding in the home has a particularly negative effect on children, including in the areas of math and reading achievement, external behavioral problems, and physical health. *See, e.g., Claudia D. Solari & Robert D. Mare, Housing Crowding Effects on Children's Wellbeing*, 41 SOCIAL SCIENCE RESEARCH 464, 473-74 (2012). As noted above, all of the Doe Appellants have children, many of whom are U.S. citizens.

**D. Living without utilities**

Individuals who are unable to access any of the above housing options may be forced to live without utilities. This poses a host of well-documented issues related to habitability, health, and basic human dignity. As the United Nations Office of the High Commissioner for Human Rights observed after visiting Detroit, Michigan in October 2014 to learn more about the impact of water disconnections on residents' living conditions, "[h]ouses without water and sanitation are unsafe and uninhabitable. They expose residents to disease, exacerbate

existing health conditions, and threaten the security of the tenure of residents.” United Nations Office of the High Commissioner for Human Rights, *Joint Press Statement by Special Rapporteur* (Oct. 20, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188&LangID=E>. A recent study found that energy insecurity and the loss of utilities led to “significantly compromised resident health and environmental quality as well as exacerbated conditions of social disadvantage.” Diana Hernández, *Understanding ‘energy insecurity’ and why it matters to health*, 167 SOCIAL SCIENCE MED. 1, 6-7, 9-10 (2016).

The dangers even include death, for example when alternative means of producing light and heat, such as space heaters, stoves, candles, and generators, cause fires. See Marcus Franklin & Caroline Kurtz, *Lights Out In the Cold: Reforming Utility Shut-Off Policies As If Human Rights Matter* 3-5, 14 (2017), [http://www.naacp.org/wp-content/uploads/2017/04/lights\\_out.pdf](http://www.naacp.org/wp-content/uploads/2017/04/lights_out.pdf); Hernández, *supra* at 7 (“[T]he use of stoves for heat was a common strategy for seeking thermal comfort yet doing so induces harmful exposures shown to jeopardize health and safety . . .”).

### **E. Leaving LaGrange**

Finally, when confronted with the above options, some Latino immigrants may feel compelled to leave LaGrange entirely. This could mean, among other things, moving away from family and friends, uprooting children from school, and losing their job or other means of

financial support. At least one individual made a similar decision to leave Alabama, where she had lived for eighteen years, in 2011 along with her two daughters after the state began implementing a law targeting undocumented immigrants. She made her decision after her apartment building announced that residents would need to provide a social security number to receive utilities. *See* Human Rights Watch, *No Way to Live: Alabama's Immigrant Law 15* (2011), [https://www.hrw.org/sites/default/files/reports/us1211ForUpload\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us1211ForUpload_1.pdf).

**F. Alternative Methods for Verifying Identity and Credit**

LaGrange can avoid imposing the hardships described above and still satisfy any legitimate interest in ensuring a utility account holder's identity and/or credit history. SSNs are not necessary to verify an applicant's identity. Instead, the City could accept Individual Tax Identification Numbers ("ITINs"). ITINs are nine-digit tax processing numbers issued by the Internal Revenue Service to individuals who are required to have a U.S. taxpayer identification number, but who are not eligible to obtain a SSN. IRS, *General ITIN Information*, <https://www.irs.gov/individuals/international-taxpayers/general-itin-information> (last visited Mar. 1, 2018). "ITINs are issued regardless of immigration status" because both lawfully-present and undocumented

residents “may have a U.S. filing or reporting requirement under the Internal Revenue Code.”<sup>11</sup> (*Id.*)

Importantly, applicants for ITINs are required to prove their identity to the IRS using one, or sometimes a combination, of thirteen accepted documents, each of which must show the applicant’s name and photograph. IRS, *Revised Application Standards for ITINs*, <https://www.irs.gov/individuals/revised-application-standards-for-itins> (last visited Mar. 1, 2018). Those documents include ones that many immigrants possess, such as the following foreign documents: passports, national identification cards, driver’s licenses, voter registration cards, and military identification cards. (*Id.*) As a result, ITINs can be used to verify identity, and are in fact accepted by utility companies across Georgia and the country for that purpose.<sup>12</sup>

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<sup>11</sup> One report estimates that in 2014, immigrant-led households in Georgia paid approximately \$4.7 billion in federal taxes, over \$965 million of which came from Hispanic households. New American Economy, *The Contributions of New Americans in Georgia 6-7* (2016), <http://research.newamericaneconomy.org/wp-content/uploads/2017/02/nae-ga-report.pdf>.

<sup>12</sup> See, e.g., City of Hampton, Georgia, *Application for Water, Sewage, Electricity and/or Garbage Service*, <https://hamptonga.gov/DocumentCenter/View/182> (last visited Feb. 28, 2018); City of Cornelia, Georgia, *Application for Utility Service*, <http://www.corneliageorgia.org/DocumentCenter/View/182> (last visited Feb. 28, 2018); City of Garden City, Georgia, *Application for Services*, <http://www.gardencity-ga.gov/home/showdocument?id=2105> (last visited Feb. 28, 2018); SoCalGas, *Identification Verification and Documents*, <https://www.socalgas.com/help-center/identification-verification-and->

To further verify identity, the City could also accept alternative forms of secondary photo identification, including the forms accepted by the IRS as proof of identity. Many immigrants have those forms of identification. (*See, e.g.*, Doe #1 Decl. ¶ 9 (has Mexican passport and consular identification card); Doe #2 Decl. ¶ 9 (has Mexican passport and Mexican-issued voter identification card); Doe #3 Decl. ¶ 9 (has Mexican passport).)

SSNs are not necessary for verifying creditworthiness, either. Individuals can build credit, and third parties can perform a credit check, using other documents and information. *See, e.g.*, Stacy Smith, Experian.com, *Is a Social Security Number the Only Way to Build Credit?* (April 21, 2016), <https://www.experian.com/blogs/ask-experian/social-security-number-way-build-credit/> (last visited Feb. 28, 2018) (“A Social Security number is just one of many identifying elements Experian uses to compile your credit report.”);

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documents (last visited Feb. 28, 2018) (applicants may provide an “Individual Tax Identification Number (ITIN) Document or Card” along with one other alternative form of identification when applying for utilities services); Final Order, Penn. Public Utility Comm’n, Apr. 4, 2013, Dkt. No. M-2012-2290911, at 38, [http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=M-2012-2290911](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=M-2012-2290911) (under “Public Documents,” click on “Final Order PECO USECP 2013-2015”) (after public comment, PECO Energy Company began accepting Individual Tax Identification Numbers (ITINs) in addition to social security numbers).

AnnualCreditReport.com,<sup>13</sup> *Frequently Asked Questions*, <https://www.annualcreditreport.com/generalQuestions.action> (last visited Feb. 28, 2018) (“[S]ince the ITIN has a similar format [to a social security number], you can use your ITIN [to request a free annual credit report] if you submit your request to one of the three nationwide consumer reporting companies by mail.”).

### **III. The Plain Language of 42 U.S.C. § 3604(b) Applies To Post-Acquisition Conduct**

Contrary to the District Court’s holding, the Fair Housing Act (“FHA”), 42 U.S.C. § 3604(b), protects residents from post-acquisition discrimination. This is evident from the plain language of the statute, which prohibits discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith . . . .” Where a city discriminates against an owner or renter in the provision of essential utilities required to enjoy use of the property, it interferes with the “privileges of sale or rental” just as if it had discriminated prior to the sale or rental. The Ninth Circuit recognized this in *Committee Concerning Community Improvement v. City of Modesto*, 583 F.3d 690 (9th Cir. 2009), where it found that “[t]he

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<sup>13</sup> The Federal Trade Commission directs individuals to obtain their free yearly credit report through [annualcreditreport.com](https://www.annualcreditreport.com). Federal Trade Commission, *Consumer Information – Free Credit Reports*, <https://www.consumer.ftc.gov/articles/0155-free-credit-reports> (last visited Feb. 28, 2018).



inclusion of the word ‘privileges’ implicates continuing rights, such as the privilege of quiet enjoyment of the dwelling.” *Id.* at 713.

One of the “privileges” of buying or renting is the ability to live in a home or apartment that is habitable, which includes having access to basic utilities such as water, electricity, and gas. If the city denies such access to certain residents, then those residents cannot meaningfully buy or rent. For example, if LaGrange were to enact a law that expressly stated that the City would not supply utilities to *any* Latino residents, that would clearly affect the sale and rental of properties to the Latino population in LaGrange, and there would be no serious question that the FHA would apply to such a law. The right to buy or rent a house is meaningless if one cannot buy or rent a dwelling that has basic utilities. From an analytic standpoint, there is no difference between that hypothetical scenario and the one at issue in this case. The point is this: post-acquisition discriminatory governmental conduct absolutely can impact the privileges of sale or rental, and it does so here. Indeed, in this Court’s *Hunt* opinion, which the District Court opinion references, the Court stated that a “defendant need not make it impossible for a person to occupy a dwelling to make housing unavailable.” *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1223 (11th Cir. 2016).

The District Court did not expressly analyze the plain language of 42 U.S.C. § 3604(b). In explaining why it believed a “narrower” reading

of that section is the “proper” one, it distinguished *Hunt* and another Eleventh Circuit case, *Wells v. Willow Lake Estates, Inc.*, 390 F. App’x 956 (11th Cir. 2010), on the ground that they “involve § 3604(f), which, unlike § 3604(b), explicitly covers post-acquisition behavior.” (JA-91.) The District Court selectively—and misleadingly—quoted only a portion of subsection (f)(1)(B) to bolster its reasoning, asserting that it applies to discrimination against “a person residing in or intending to reside in that dwelling after it is so sold, rented or made available.” (JA-91.) In fact, however, if one examines the complete text of that provision, subsection (f)(1)(B) applies to *pre-acquisition efforts* to “deny[] a dwelling to any buyer or renter” based on a handicap of “a person residing in or intending to reside in that dwelling after it is so sold, rented or made available.” Thus, the District Court’s reasoning is flawed.

Subsection (f), just like subsection (b), broadly prohibits discrimination in “the terms, conditions, or privileges of sale or rental of a dwelling,” or in “the provision of services or facilities in connection” with a dwelling. Both sections prohibit all discriminatory efforts, whenever undertaken. It would be myopic and contrary to sensible public policy to limit prohibited discriminatory conduct to pre-acquisition conduct when post-sale or rental discrimination can interfere with the privileges of sale or rental, or the provision of services or facilities to a dwelling, every bit as much.

## CONCLUSION

*Amici* respectfully request that the Court reverse the District Court's dismissal of Appellants' claims. The District Court's decision is wrong as a matter of law, and leaves in place a utilities policy that inflicts significant and disproportionate harm on Latino immigrants without any justification.

March 6, 2018

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## CERTIFICATE OF COMPLIANCE

This amicus brief complies with this Court's length limitation because it contains **5,426** words, excluding exempted parts of the brief. This brief also complies with this Court's typeface and typestyle requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

March 6, 2018

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