

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JUAN MIELES,

Plaintiff,

-against-

RONALD MCDONALD HOUSE OF THE
GREATER HUDSON VALLEY, and
RONALD MCDONALD HOUSE
CHARITIES, INC.,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. Plaintiff Juan Mieles (“Mr. Mieles”) brings this civil rights action to challenge Defendants Ronald McDonald House of the Greater Hudson Valley (“RMH”) and Ronald McDonald House Charities, Inc.’s (“RMHC”) (together, “Defendants”) blanket ban on housing individuals with a broad range of criminal convictions, a policy that reliably ensures that Latine individuals like Mr. Mieles and their families are disproportionately excluded from Defendants’ housing. Mr. Mieles, a Latino man and devoted father, sought housing for him and his family to be with his teenaged son during his son’s five weeks of intensive cancer treatment. Instead of receiving this critical housing, RMH rejected Mr. Mieles, in accordance with Defendants’ policy, solely because of a conviction stemming from conduct over a decade prior without considering any other relevant information or engaging in any individualized assessment. Because of Defendants’ policy, Mr. Mieles and his family could not consistently be at their son’s bedside and suffered significant hardship, traveling back and forth from the hospital with an infant while Mr. Mieles’s partner was pregnant. Defendants’ discrimination exacerbated an already profoundly difficult time in their lives. Defendants’ criminal conviction policy has an actual and predictable

disproportionate harm on Latine individuals, like Mr. Mieles. This unjustified and unnecessary discriminatory effect on the basis of race, color, and/or national origin violates the Fair Housing Act (“FHA”) and the New York Human Rights Law (“NYSHRL”).

2. In January 2022, Mr. Mieles’s 17-year-old son, Anthony, was scheduled to begin intensive inpatient treatment for a serious, aggressive cancer diagnosis. Eager to be with and provide support to their son as much as possible, Mr. Mieles and his partner, Karrimah Aly (“Ms. Aly”), applied for housing with Defendants, non-profit entities that provide families in this exact situation with housing close to the hospitals where their children are receiving care for life-threatening conditions. They expected their family would live at RMH for the duration of their son’s treatment and recovery, which was projected to require six to twelve weeks of hospitalization.

3. Instead of receiving this critical housing, RMH rejected Mr. Mieles and his family because of an assault conviction stemming from an incident more than a decade prior. Defendants’ criminal conviction policy rejects all applicants with certain convictions, regardless of the time since the offense or conviction. In accordance with Defendants’ policy, RMH refused to consider the nature, severity, recency, or other circumstances of Mr. Mieles’s conviction, or conduct any individualized assessment of Mr. Mieles’s circumstances, including mitigating information and evidence of rehabilitation since his offense. Contrary to Defendants’ mission of keeping families with ill children close to each other, RMH also refused to consider the extenuating circumstances and critical needs of Mr. Mieles’s family, including his child battling cancer.

4. Mr. Mieles has worked hard to put his past behind him over the 12 years since the incident that led to his conviction. During his incarceration, Mr. Mieles took a leadership role in programming that included helping others with parole hearing preparation and assisting with parenting classes, earning him an early release. Since returning home, he has devoted significant

time to caring for Anthony, in addition to working on film sets and managing a rental property. Mr. Mieleles has never had any issue as a tenant or landlord prior to or following his incarceration.

5. More importantly, Mr. Mieleles was and remains an essential contributor to his son's care, bringing him to appointments, sitting with him during radiation, and managing his at-home oral chemotherapy medication. Mr. Mieleles's partner was pregnant with and/or nursing their two youngest children during the majority of the first three years of their son's treatment, and as a result was unable to fully participate in certain aspects of Anthony's healthcare needs. Mr. Mieleles has thus filled a critical role in Anthony's cancer care.

6. RMH refused to consider any of this information, instead relying solely on Defendants' blanket policy of excluding people with certain criminal convictions from their housing and Mr. Mieleles's background check report to deny him and his family housing near the hospital treating his son.

7. Policies that categorically deny housing based on criminal convictions, like Defendants' criminal conviction policy, cause unjustified disproportionate harms to Latine people, like Mr. Mieleles. Latine people are disproportionately arrested, convicted, and incarcerated at higher rates than white people at the national, state, and local level.¹ The racial and ethnic disparities for New Yorkers are particularly severe in the areas surrounding RMH. For example, in New York City, where Mr. Mieleles was prosecuted, the conviction rate in 2019 was 3.5 times higher for Latine people than for white people.

¹ This Complaint uses "Latine" in place of "Hispanic," the term that is commonly used in the sources and data referenced. "Latine" is growing in use and preference as a Spanish-compatible and gender-neutral term to describe people of Latin American origin, background, or descent, while "Hispanic" is technically defined by use of the Spanish language. People currently use the terms "Hispanic," "Latine," "Latino/a," and "Latinx" interchangeably. Unless otherwise noted, the sources and data referenced herein define "Black" and "white" individuals as non-Latine or non-Hispanic, and this Complaint adopts those definitions.

8. Though the Plaintiff in this action is Latino, Defendants' policy, and criminal conviction policies like it, have a substantial racial impact that harms both Black and Latine people and their families. It is well-researched and established that Black and Latine people in the United States and in New York State are disproportionately impacted by the criminal legal system as compared to white people. For example, in 2019, nearly half of arrests in the country were of Black and Latine individuals, despite representing less than a third of the population.² As of 2017, Black and Latine people make up two-thirds of the formerly incarcerated population in the United States.³ The impact is also significant in New York State: a recent analysis found that three-quarters of the state's formerly incarcerated population are Black or Latine.⁴

9. These disparities do not reflect that these populations are more likely to commit a criminal offense or are otherwise in any way more disposed to criminal conduct than white people

² *Racial and Ethnic Diversity in the United States: 2010 Census and 2020 Census*, United States Census Bureau, <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html> [<https://perma.cc/5JYU-MQ8Z>] (last revised Oct. 11, 2023); *Table 43*, FBI: UCR, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-43#:~:text=In%202019%2C%2069.4%20percent%20of%20all%20individuals%20arrested,was%20reported%2C%2019.1%20percent%20were%20Hispanic%20or%20Latino> [<https://perma.cc/NTU8-EWDA>].

³ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice, tbl. 2 (Sept. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal> [<https://perma.cc/C77N-7Q5Z>]; see also *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*, The Sentencing Project (Apr. 19, 2018), <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/> [<https://perma.cc/8FR4-7WB8>] (showing that Black and Latine people comprise 29 percent of the U.S. population but 57 percent of the U.S. prison population).

⁴ Ames Grawert et al., *Poverty and Mass Incarceration in New York: An Agenda for Change*, Brennan Center for Justice (Feb. 23, 2021), <https://www.brennancenter.org/our-work/policy-solutions/poverty-and-mass-incarceration-new-york-agenda-change> [<https://perma.cc/5JAB-WFNV>] (citing Anne Carson, *Prisoner in 2019*, U.S. Department of Justice Bureau of Justice Statistics (Oct. 2020), <https://bjs.ojp.gov/content/pub/pdf/p19.pdf> [<https://perma.cc/CC32-Q6GJ>]).

or other racial and ethnic groups. Rather, these disparities reflect longstanding practices and biases in the criminal legal system targeting Black and Latine people, including over-policing, bias in prosecutorial discretion, mass incarceration, and severe sentencing.⁵

10. Because of this overrepresentation, policies that summarily deny housing opportunities based on a criminal conviction will predictably cause disproportionate harms to Black and Latine individuals as compared to white individuals. Moreover, there is no legally sufficient justification for broad blanket bans from housing based on criminal history. If such a policy fails to include an individualized assessment or another less discriminatory alternative to a blanket ban, it is unlawful under the FHA and NYSHRL. Defendants have just such a policy.

11. Recognizing the discriminatory effect of criminal conviction policies that reject applicants based solely on a conviction history, both federal and New York State regulators have

⁵ For example, Black and Latine drivers are searched more frequently during traffic stops, despite carrying drug-related paraphernalia at similar or lower rates to white drivers. *See* Susan Nembhard & Lily Robin, *Racial and Ethnic Disparities throughout the Criminal Legal System*, Urban Institute, at 3 (Aug. 2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf> [<https://perma.cc/6HUA-GFB2>]. Additionally, Black and Latine people are more likely than white people to be disciplined with solitary confinement while incarcerated and are less likely to be released at their first parole hearing. *Id.* at 6. Sentencing enhancements, habitual offender laws, and mandatory minimum sentencing laws are disproportionately enforced against Black and Latine people, contributing to harsher sentences and longer-lasting post-release consequences. *See One in Five: Racial Disparity in Imprisonment — Causes and Remedies*, The Sentencing Project, at 8 (Dec. 7, 2023), <https://www.sentencingproject.org/app/uploads/2023/12/One-in-Five-Racial-Disparity-in-Imprisonment-Causes-and-Remedies.pdf> [<https://perma.cc/46BB-MN7L>]; *see also* Memorandum from Demetria L. McCain, Principal Deputy Assistant Sec’y for Fair Hous. and Equal Opportunity, at 2 n.7 (Jun. 10, 2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf> [<https://perma.cc/A8GM-UTXY>] (citing studies that demonstrate the existing bias against Black and Latine people within the criminal legal system).

consistently issued warnings to housing providers that such unjustified and unnecessary blanket bans constitute unlawful discrimination.⁶

12. Over the last decade and before the periods relevant to this Complaint, this guidance and legal cases enforcing these requirements have garnered significant media attention, particularly within the housing industry.

13. Despite these well-publicized standards, Defendants maintain and implement a policy that excludes any applicant with certain criminal convictions without consideration of the nature, severity, or recency of the offense, and without any individualized review, including the individual's good conduct and evidence of rehabilitation since the conduct underlying the offense.

14. Adhering to Defendants' policy, RMH denied Mr. Mieles and his family housing without consideration of any facts beyond the conviction in his background check report. This denial meant depriving his family of precious time together during one of the worst periods of their lives—while their son battled cancer. In addition to suffering considerable emotional distress from the discrimination itself, the lost housing opportunity caused the family extraordinary emotional harm. Mr. Mieles and his partner were unable to stay by their son's bedside for crucial hours each day or to support him during his treatment as much as they wanted. Instead, they had to drive at least two hours round trip nearly every day for five weeks and trade off spending hours caring for

⁶ See *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, U.S. Department of Housing and Urban Development (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [<https://perma.cc/AF63-FLZR>]; Memorandum from Demetria L. McCain, *supra* note 5; Memorandum from Robert Damico, Dir. of Off. of Hous. Mgmt. to All Housing Companies Owners, Managing Agents and Site Managers (Apr. 20, 2016), <https://hcr.ny.gov/system/files/documents/2018/11/2016-b-04.pdf> [<https://perma.cc/A86Y-QQZJ>] (issued to state-financed housing providers); Memorandum from Robert Damico, Dir. of Off. of Hous. Mgmt. to All Housing Companies Owners, Managing Agents and Site Managers (Aug. 8, 2016), <https://hcr.ny.gov/system/files/documents/2018/11/2016-b-05.pdf> [<https://perma.cc/424K-KETP>] (same).

their baby from their car in the parking lot, who they feared keeping in the hospital lobby where he might contract an illness that would be disastrous for Anthony.

15. Mr. Mieles now seeks injunctive and declaratory relief to ensure that he and other parents with a past conviction will not be denied critical housing while caring for their seriously ill children, and compensatory damages for the significant harm caused to him and his family.

THE PARTIES

16. Plaintiff Juan Mieles is a Latino New York resident of Puerto Rican descent. He and his partner, their two young children, and his two teenaged stepchildren live in Newburgh, New York. He also maintains an apartment in Woodhaven, New York in Queens.

17. Defendant Ronald McDonald House of the Greater Hudson Valley is a not-for-profit organization registered with the State of New York that provides housing to families with seriously ill children receiving care in Westchester County, New York. RMH maintains its principal place of business at 80 Woods Road, Valhalla, New York, 10595. It is next door to the Maria Fareri Children's Hospital.

18. Defendant Ronald McDonald House Charities, Inc. is a not-for-profit organization registered with the State of New York that creates, finds, and supports Ronald McDonald houses, including RMH, in areas including operations, licensing and compliance, finance, risk management, communications, marketing, development, and non-profit management. RMHC maintains its principal place of business at 110 N. Carpenter Street, Chicago, Illinois, 60607.

19. In acting or omitting to act as alleged herein, each Defendant was acting through its employees and/or agents and is liable on the basis of the acts and omissions of its employees and/or agents.

20. In acting or omitting to act as alleged herein, each employee or officer of each Defendant was acting in the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employee or officer as agent were subsequently ratified and adopted by the employer Defendant as principal.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331 and 1343 because the Plaintiff's claims arise under federal law. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for Plaintiff's New York State Human Rights Law claims.

22. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in Valhalla, New York, within the Southern District of New York. Defendant RMH is a resident of the district. Defendants RMH and RMHC both conduct business in the district.

STATEMENT OF FACTS

I. RMH DENIED MR. MIELES AND HIS FAMILY HOUSING PURSUANT TO DEFENDANTS' DISCRIMINATORY CRIMINAL CONVICTION POLICY.

A. Mr. Miele's and His Family Needed Housing Close to Their Son.

23. Mr. Miele's household includes his partner, Ms. Aly, their two young children, and his teenaged stepchildren, Anthony and his sister.

24. Anthony was diagnosed with stage IV rhabdomyosarcoma in July 2020, a rare cancer with frequent recurrences that become harder to treat each time. At the time of his diagnosis, he had recently turned 16 years old.

25. Mr. Miele and Ms. Aly selected the Maria Fareri Children's Hospital ("the Hospital") for Anthony's care because of the pediatric oncology team's reputation and

specializations, their flexible visitation policies, and because Anthony had seen other doctors affiliated with the Hospital before and he felt most comfortable there. Mr. Mieles and Ms. Aly made this decision to get the best care for their son even though their home in Newburgh is located approximately 50 miles and at least one hour's drive from the Hospital. Mr. Mieles's apartment in Queens is also approximately one hour's drive to the Hospital.

26. Mr. Mieles has served a critical role in Anthony's care since his diagnosis. He has frequently accompanied him to clinic visits, chemotherapy infusions, blood transfusions, and scans. Mr. Mieles has generally been responsible for dosing and dispensing Anthony's oral chemotherapy and other medications at home.

27. Between his diagnosis in July 2020 and the end of 2021, Anthony underwent various forms of treatment for his cancer, including radiation, chemotherapy, and surgery.

28. Unfortunately, by January 2022, Anthony's cancer had relapsed and metastasized into his bones and bone marrow. Anthony was 17 years old at the time. Because of Anthony's age and the location and stage of his cancer, he was considered to be in a high-risk group requiring intensive, aggressive treatment.

29. Anthony was admitted to the Hospital on or around January 27, 2022 to undergo several rounds of chemotherapy, a stem cell transplant, and radiation.

30. The family expected this course of treatment to keep Anthony in the Hospital for a minimum of six weeks and as long as three months or more, depending on his recovery.

31. At the time of Anthony's admission, his sister was 16 years old and a junior in high school. Due to Anthony's condition, she was attending school remotely to avoid any exposure that could get him sick. Their younger brother was eight months old. Ms. Aly was four months pregnant.

32. Because Ms. Aly was pregnant with and/or nursing during all time periods at issue in this action, she was restricted from handling or administering their son’s oral chemotherapy and from being with him for at least six to eight hours after he received radiation. Instead, only Mr. Mieleles or Anthony’s sister—only a teenager herself—could be there to provide him with emotional comfort and support immediately after these intensive treatment sessions.

33. Ms. Aly’s pregnancy and the age of their newborn at the time put them both at increased risk of severe illness if they contracted COVID-19, which they also feared spreading to Anthony. This made spending time in the Hospital and in doctors’ offices particularly risky. Given these significant health concerns, it was impossible for Ms. Aly to be Anthony’s primary caregiver, let alone handle their son’s cancer care herself.

34. Mr. Mieleles and Ms. Aly did not have family or a support network in the area that they could rely on for assistance. Given their circumstances, a member of Anthony’s care team referred the family to the local Ronald McDonald House, RMH.

B. Defendants Provide Housing to Families with Sick Children.

35. Ronald McDonald House Charities is a “children’s charity, enabling, supporting, and facilitating family-centered care.” It provides more than two million overnight stays to families each year.⁷

36. Recognizing that “[t]he needs of families dealing with sick children go far beyond medical care” and that “[f]amilies with sick children bear a lot of stress—long drives for treatment, additional hotel and meal costs, lost jobs and worried siblings,” RMHC describes its programs as “[m]ore than a place to stay.”⁸

⁷ *About Us*, Ronald McDonald House Charities, <https://rmhc.org/about-us> [<https://perma.cc/78AV-E67R>].

⁸ *Our Core Programs*, Ronald McDonald House Charities, <https://rmhc.org/our-core-programs> [<https://perma.cc/ULX6-RB8Q>].

37. RMHC has three core programs, one of which is the Ronald McDonald House.

38. At Ronald McDonald House, stays can be “as long as several months, and sometimes extend to a year or more, depending on the child’s illness and treatment.”⁹ RMHC’s website features testimonials from families who have lived in RMHC housing for as long as 291 days at a time or have returned for multiple stays when their child required a hospital stay. In one instance, a patient’s sibling transferred to a school close to the house. Similarly, RMH’s website features families who lived at RMH for as long as 99 days. Many families relocated to RMHC and RMH housing to avoid similar travel times to what Mr. Mieles and his family ultimately faced because they were denied housing.

39. RMH is a Ronald McDonald House program chapter and is linked through RMHC’s website.

40. Located directly on the Westchester Medical Center campus, just steps from the Hospital, RMH provides “a home-away-from-home for families of children requiring critical care.”¹⁰ RMH accommodates 12 families each night. Families residing with RMH enjoy the comforts of home, including a fully equipped shared kitchen, laundry facilities, a playroom, and private bedrooms and bathrooms. RMH requests only 15 dollars per night per family to stay at the house.

41. RMH lists only a few eligibility criteria for families. Applicants must have a child 21 years old or younger receiving care in Westchester County, be medically cleared of coronavirus or any other contagious illness, and allow the hospital to release information about the patient to

⁹ *Ronald McDonald House*, Ronald McDonald House Charities, <https://rmhc.org/our-core-programs/ronald-mcdonald-house-programs> [<https://perma.cc/NN58-XLHN>].

¹⁰ *Keeping Families Close: The Ronald McDonald House of the Greater Hudson Valley*, Ronald McDonald House of the Greater Hudson Valley, <https://rmh-ghv.org/> [<https://perma.cc/M6EB-F9DC>].

RMH. Applicants must also agree to a criminal background check, and RMH's website notes that it "reserves the right to refuse admittance to any potential guest applicant with a criminal conviction" and expressly states that its services are "contingent upon an acceptable background check." In public-facing materials, RMH does not specify how it defines an "acceptable background check."¹¹

C. RMH Denied Mr. Mieles Housing in Accordance with Defendants' Policy.

42. Mr. Mieles and Ms. Aly met with Brittany Moretti ("Ms. Moretti"), then the Director of Operations and now the Executive Director at RMH, to complete their RMH housing application on or around January 27, 2022.

43. During their initial conversation, Ms. Moretti stated that most residents leave for work in the morning and asked Mr. Mieles several times about whether he would be leaving for work every day. Mr. Mieles explained that, given Anthony's condition and needs, he had taken time off work to help care for his son.

44. Ms. Moretti also stated that RMH would perform background checks on all adults but did not provide any information about Defendants' criminal conviction policy or RMH's criteria for evaluating an applicant's background check.

45. Because the house was fully occupied at the time, RMH provided the family with a short-term voucher to their overflow housing, located in a nearby hotel. Ms. Moretti explained that they could stay in the overflow housing until space became available in the house.

46. Mr. Mieles and Ms. Aly were relieved to stay so close to Anthony's hospital. They purchased groceries for the upcoming week, spent time in the Hospital with Anthony, and checked into the overflow housing late in the evening of January 31, 2022.

¹¹ *Overnight Accommodations*, Ronald McDonald House of the Greater Hudson Valley, <https://rmh-ghv.org/be-our-guest/overnight-accommodations/> [<https://perma.cc/A5NT-ZZSU>].

47. Early the next morning, Mr. Mieles and Ms. Aly received a phone call from Celeste Reeves, an RMH employee, informing them that Mr. Mieles would need to vacate the hotel immediately because his criminal background check report had been returned and disqualified him from staying in RMH housing. She further informed them that RMH would let the hotel know that Mr. Mieles was instructed to vacate.

48. Ms. Reeves indicated that the decision to deny Mr. Mieles, or the rules requiring his denial, came from “global.” Upon information and belief, “global” refers to RMHC.

49. Mr. Mieles was shocked to learn that they were being forced to leave RMH housing and denied the ability to stay close to their son because of a conviction related to an incident from more than a decade ago.

50. Ms. Moretti subsequently explained that Defendants’ criminal conviction policy did not allow individuals with certain convictions, “regardless of time periods,” into their housing. She shared some of the convictions requiring exclusion from their housing: felony assault and battery, arson, weapons, domestic violence, or multiple drug-related misdemeanors.

51. Of the offenses Ms. Moretti identified, Mr. Mieles’s background check report showed a 2014 felony assault conviction.

52. Mr. Mieles told Ms. Moretti that he believed Defendants’ policy regarding background checks was discriminatory and illegal. Ms. Moretti offered to bring his concerns to the board of directors to see if any waiver was possible.

53. When Mr. Mieles and Ms. Aly followed up, Ms. Moretti stated that she did not recall offering to seek a waiver, but instead said she would discuss the matter with the Executive Director of RMH.

54. On February 4, 2022, RMH sent Mr. Mieles a letter signed by Ms. Moretti stating that he was ineligible for RMH housing and that RMH's decision was made based on information in his background check report.

55. Mr. Mieles and Ms. Aly asked others for help persuading RMH to allow them to stay. A nurse on Anthony's care team submitted a letter describing the support Mr. Mieles provided to Anthony since he started receiving care from the Hospital. An advocate from the Fortune Society, an organization that provides services and resources to people returning home from incarceration, also contacted RMH on the family's behalf further explaining the family's exceptional circumstances. The advocate noted that Mr. Mieles had excelled as a participant in the organization's programs and services and explained that a nearly-decade old criminal conviction is not predictive of future behavior.

56. This information was disregarded. On March 4, 2022, Christina Riley, then Executive Director of RMH, emailed the Fortune Society stating that the denial would stand. She explained that the "background check policy states that any individual convicted of a crime against another person will be denied services, regardless of the duration of time since the conviction." Citing Mr. Mieles's assault conviction, she went on to explain that RMH's decision to deny him housing "was made solely on the facts returned to us in the report and the policy we have in place."

D. RMH's Denial of Housing Significantly Harmed Mr. Mieles and His Family.

57. RMH's housing denial was devastating to Mr. Mieles and his family.

58. Mr. Mieles felt upset, belittled, and degraded by the discrimination he experienced. He immediately wondered if his appearance and the fact that he is Latino contributed to the denial. He was shocked that RMH would consider only the fact of his conviction and not his commitment to caring for his son and the rest of his family through a traumatic time. He could not understand

how RMH saw any connection between an incident from more than ten years prior and how he would conduct himself in RMH housing.

59. RMH's housing denial created extraordinary challenges for Mr. Mieles and his family during Anthony's hospitalization. After being required to leave RMH overflow housing, Mr. Mieles and his family—his pregnant partner, their eight-month-old son, and sometimes their sixteen-year-old daughter—ultimately drove over 100 miles and two hours round trip between the Hospital and their home almost every day for the duration of Anthony's five-week hospitalization. Mr. Mieles and Ms. Aly were often exhausted from constant driving and limited sleep. The trip back and forth was particularly hard on Mr. Mieles, who handled much of the driving because Ms. Aly has epilepsy and should not drive after dark.

60. Mr. Mieles felt like his family lived out of their car during this time. Because of COVID-19 restrictions and their heightened concerns about any of them getting sick while Anthony's immune system was so fragile, Mr. Mieles and Ms. Aly would trade off caring for their baby from their car, keeping the car running in the parking lot to stay warm.

61. An added challenge was trying to maintain healthy eating habits. Mr. Mieles has diabetes and the family had additional dietary concerns because of Ms. Aly's pregnancy and their baby's young age. While they frequently ate nutritionally poor food at the Hospital or on the road, they sometimes took time from being with Anthony to prepare meals at home that were more balanced or that Anthony liked.

62. Emotionally, having the critical opportunity to live close to the Hospital offered and then withdrawn only added to their existing emotional distress over their son's health. Being unable to be together consistently as a family was difficult for each member of the family. Mr. Mieles and Ms. Aly felt distraught over not being able to have a family member with Anthony at all hours

permitted by the Hospital. Anthony sometimes woke up in his hospital room alone and wondered where his family was when they were caught in traffic and running late.

63. As Defendants know from their own research, “[s]eparation during hospitalization is traumatic for children and families—with long-term adverse outcomes for both.”¹² RMHC has sponsored research on a variety of relevant topics, including how housing accommodations close to a child can help reduce stress for families, the psychological benefits of family proximity to the hospital, and factors that help strengthen family resilience. Yet despite this knowledge, Defendants contributed to and exacerbated the trauma of separation with their blanket criminal conviction policy.

64. Anthony was ultimately discharged on March 3, 2022 after five weeks of inpatient care.

65. In September 2022, Anthony was admitted to the Hospital for health conditions complicated by his cancer and immunocompromised status. Not knowing how long he would require hospitalization, Mr. Mieles and Ms. Aly again applied to RMH housing and received only an automated response to their application stating that they would be placed on the wait list. Anthony was discharged after 11 days. Mr. Mieles and Ms. Aly never heard more from RMH about their application.

66. Unfortunately, Anthony’s cancer has spread again, and he recently started a new treatment plan, which will include another stem cell transplant during the summer or fall of 2024. The transplant will require another extended hospital stay of six to twelve weeks, depending on his recovery time, and Mr. Mieles and his family will need RMH housing again. If RMH denies Mr. Mieles and his family again, in accordance with Defendants’ criminal conviction policy, they

¹² *Driving the future of family-centered care through research*, Ronald McDonald House Charities, <https://rmhc.org/about-us/research> [<https://perma.cc/XU8U-8Z67>].

will go through the same hardship of sacrificing precious time with their son and driving back and forth to and from the Hospital every day—this time with two children currently under three years old, and without the added assistance of their older daughter, who is now working and in college.

E. RMHC Controls the Criminal Conviction Policies of Its Chapters.

67. RMHC’s mission is to “create, find and support programs that directly improve the health and well-being of children and their families.”

68. To further this mission, RMHC directs and oversees a network of chapters, like RMH, that operate and maintain housing for seriously ill children and their families. RMHC connects families seeking housing to its local chapters, including RMH, located near their child’s hospital care.

69. As part of this relationship, RMHC has the right to control, and indeed maintains and exercises considerable control over, the policies, procedures, operations, and other aspects of chapters’ provision of housing, including with respect to RMH.

70. RMHC, in its sole discretion, may terminate its relationship with a chapter, including for a chapter’s failure to adhere to its standards.

71. RMHC has the right to control, and indeed maintains and exercises considerable control over, the criminal conviction policies of its chapters, including RMH.

72. For chapters of RMHC that conduct background checks, like RMH, RMHC mandates that certain requirements are met.

73. RMHC requires that the chapter maintain a written background check policy that identifies the types of crimes for which a person could be denied a room at a house. Despite this requirement, RMHC fails to require that chapters restrict their consideration of those types of crimes in any way, such as by limiting the time frame of assessing an individual’s past criminal history. RMHC also fails to require that chapters engage in individualized assessment of an

applicant seeking housing that may have one of the types of convictions identified by a chapter's policy.

74. Indeed, similar to RMH, many of RMHC's chapters summarily exclude applicants with a broad range of criminal convictions from housing without individualized consideration. For example, RMHC of Northeast Ohio, Tampa Bay, Maryland, Southern Arizona, Kansas City, and Houston all maintain similar policies.¹³

75. RMHC also mandates that the background check policy be approved by the chapter's board of directors, be compliant with all applicable laws and regulations, and be reviewed regularly to ensure compliance.

76. These requirements illustrate the control that RMHC has over RMH's criminal conviction policy.

77. Relevant to these requirements, RMHC provides "robust" support to its chapters, including RMH, in "operations, licensing and compliance, finance, and risk management, communications, marketing, and development."

¹³ See *Criminal History Background Report*, Ronald McDonald House Charities Northeast Ohio, <https://www.rmhcneo.org/programs/at-the-house/cleveland-criminal-background-check/> [https://perma.cc/GJD7-FKTC]; *2018 Ronald McDonald House - Background Check Authorization*, Ronald McDonald House Charities Tampa Bay, <https://www.surveymonkey.com/r/2018rmhbackground> [https://perma.cc/3V6K-3UAD]; *Guest Agreement*, Ronald McDonald House Charities Maryland, <https://rmhcmaryland.org/wp-content/uploads/2021/11/2021-Complete-Guest-Policies-and-Agreement.pdf> [https://perma.cc/Y34G-KLNZ]; *ADDITIONAL CRITERIA FOR STAY*, Ronald McDonald House Charities Southern Arizona, <https://rmhctucson.org/what-we-do-2/stay-with-us/additional-criteria-for-stay/> [https://perma.cc/RP6V-ZEG6]; *Felony conviction exception request*, Ronald McDonald House Charities Kansas City, https://request.lushersolutions.com/Simple/Page1/Kansas-City_Felony-Exception-23 [https://perma.cc/6QUS-BNDX]; *Family of cancer patient says they were victims of discrimination by charity group*, ABC7 Eyewitness News (Oct. 1, 2015), <https://abc7chicago.com/ronald-mcdonald-house-cancer-treatment-charity/1011420/> [https://perma.cc/M98S-GQAH].

78. RMHC provides ongoing education to chapter board, staff, and volunteers in the chapters' programs.

79. RMHC spends money on program services for chapters, including RMH, for "Chapter capacity building," and general operating support, as well as fundraising and grantmaking for chapters.

80. RMH receives more than 20 percent of its annual operating costs from RMHC, McDonald's Corporation, and owners and operators of local McDonald's restaurants.

81. RMHC employs Field Operations Resource Team Managers, who "[p]ropose, develop, and collaborate with the Field Operations team and other stakeholders to drive the process for ensuring ongoing review, evolution, and roll out of [c]hapter-facing policies and protocols" including house manuals. On information and belief, these policies include criminal conviction policies.

82. Defendant RMHC supervises chapters, including RMH, to ensure that policies comply with RMHC's high standards for operating and maintaining housing for seriously ill children and their families.

83. As part of this supervision, RMHC employs Field Operations Associate Directors, who work with local chapters, including RMH, "on all aspects of nonprofit management, program development, and operations" including responsibility for chapter compliance. In this role, the Associate Directors offer assessment and guidance to the chapters' leadership and boards of directors, and "assure . . . compliance with RMHC Operating Standards through [c]hapter reporting, ongoing communication, [and] site visits[.]"

84. Through its role in the proposal and development of chapter policies, and collaboration with chapters to ensure ongoing review, evolution, and roll out of those policies, on

information and belief, RMHC maintains and exercises control over chapter policies, including criminal convictions policies.

II. DEFENDANTS' CRIMINAL CONVICTION POLICY IS DISCRIMINATORY.

A. Defendants' Criminal Conviction Policy Categorically Excludes People with a Broad Range of Criminal Convictions Regardless of Circumstances.

85. Defendants maintain a blanket criminal conviction policy that denies housing to anyone with a broad range of criminal convictions, regardless of when an offense or conviction occurred, or the nature, severity, or other circumstances of an offense. Defendants' blanket policy does not include any individualized assessment, including mitigating factors and rehabilitation efforts since an offense or conviction.

86. RMH has represented that Defendants' policy excludes from their housing any applicant convicted of a crime against another person.

87. On information and belief, crimes against another person encompass a broad array of conduct, including misdemeanors such as simple assault.¹⁴

88. RMH provided Mr. Miele with examples of convictions for crimes against another person that Defendants' criminal conviction policy categorically excludes, including felony assault and battery. RMH also provided examples that indicate that the criminal conviction policy excludes people with convictions for weapons charges and multiple misdemeanor drug-related offenses.

¹⁴ Although it is not clear exactly which offenses Defendants consider "crimes against another person," a term that is not used in New York's criminal law, a recent study analyzing convictions in New York City defines "person-related charges" as "offenses that involve physical harm to an identifiable victim or victims," which "include offenses such as murder, rape, robbery, and assault (e.g., aggravated assault, a felony, and simple assault, a misdemeanor)." Becca Cadoff et al., *Criminal Conviction Records in New York City (1980-2019)*, Data Collaborative for Justice, at 11 (Apr. 2021), https://datacollaborativeforjustice.org/wp-content/uploads/2021/04/2021_04_07_Conviction_Record_Report.pdf [<https://perma.cc/Q8W6-VMW7>]. We assume for the purposes of the Complaint that these convictions are encompassed by Defendants' policy.

89. In addition to imposing broad categories for automatic exclusion, Defendants' policy ignores the time elapsed since an offense or conviction. RMH emphasized to Mr. Mieles that the policy rejects individuals with certain convictions from its housing "regardless of time periods." Accordingly, RMH refused to consider that Mr. Mieles's offense occurred more than a decade prior to his application for RMH housing.

90. Nor do Defendants consider the nature, severity, or other circumstances surrounding a conviction before denying an applicant housing. In fact, upon receipt of the background check, RMH immediately informed Mr. Mieles that he would need to vacate its overflow housing.

91. Moreover, Defendants' policy does not allow for individualized assessment, including mitigating and extenuating circumstances since the underlying conduct at issue. RMH refused to consider the support Mr. Mieles provided to Anthony since he started receiving care from the Hospital, Mr. Mieles's exceptional participation in rehabilitative programming during his incarceration and with the Fortune Society following his release, and other information relevant to his requested stay at RMH. Indeed, representatives made clear that RMH's decision was made *solely* on the information in the background report and Defendants' policy.

92. Finally, on information and belief, Defendants' policy and practices deter would-be applicants with any criminal history from seeking accommodations at RMH. RMH's website states that it "reserves the right to refuse admittance to any potential guest applicant with a criminal conviction," and that "[a]cceptance or continuation of [its] services are contingent upon an acceptable background check." The wording of RMH's admission criteria and warnings is broad and ambiguous, and provides no definitions or explanations for terms like "criminal conviction" and "acceptable background check." This maximizes the policy's deterrent effect, such as by

dissuading would-be applicants with arrest records, juvenile records, sealed criminal records, or other records that should not be considered, from applying to stay at RMH.

93. On information and belief, the number of applicants RMH has formally denied under Defendants' criminal conviction policy represents a fraction of the potential applicants with prior criminal convictions who may need RMH's housing but never apply because they are deterred by RMH's public-facing descriptions of Defendants' policy.

94. Federal and state regulators have long sounded the alarm that blanket criminal record screening practices like Defendants' policy of rigid exclusion and broad statements that deter people with criminal history from applying for housing violate the law and raise substantial fair housing concerns.

95. In April of 2016, the U.S. Department of Housing and Urban Development ("HUD") issued nationwide guidance clarifying how the FHA applies to the use of criminal history by providers or operators of housing. Citing well-researched and long-standing disproportionate rates in arrests, convictions, and incarceration across the United States for Black and Latine individuals, HUD explained that "criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers." HUD emphasized that "where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class," such policy is "unlawful under the [FHA] if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest . . . , or if such interest could be served by another practice that has a less discriminatory effect." HUD warned that a "blanket prohibition on any person with any conviction record" without accounting for "when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then" can never be necessary to serve such an interest. Instead,

HUD instructs that any policy or practice with respect to criminal record screening should at the very least consider the nature, severity, and recency of a conviction, and provide for an individualized assessment of relevant mitigating information.¹⁵

96. In 2022, HUD issued a memorandum reiterating its 2016 guidance and citing the well-established and persistent disparities throughout the United States' criminal legal system, including the disparities that exist with respect to incarceration rates for Latine individuals compared to white individuals in state prisons. HUD again stressed that "policies or practices that fail to consider the nature, severity, and recency of an individual's conduct are unlikely to be necessary to serve a substantial, legitimate, nondiscriminatory interest," and therefore violate the FHA. HUD also noted that housing providers that inform potential tenants that they do not rent to persons with "criminal records" often deter those with any criminal legal system involvement from applying.¹⁶

97. Despite this clear, repeated nationwide guidance from HUD, Defendants maintain and implement a policy of broad exclusion that fails to consider the nature, severity, and recency of an offense or conviction, and omits any individualized assessment, including consideration of what a person has done since the conduct underlying their conviction and their current circumstances. Defendants' policy and practices also deter applicants with any criminal legal history from applying for its housing.

¹⁵ *Office of General Counsel Guidance on Application of Fair Housing Act Standards*, *supra* note 6, at 1–2, 6–7.

¹⁶ Memorandum from Demetria L. McCain, *supra* note 5, at 2, 7.

B. Defendants' Criminal Conviction Policy Disproportionately Harms Latine Individuals and Their Families.

98. Defendants' criminal conviction policy denies housing to anyone with certain criminal convictions, regardless of nature, severity, or recency of the offense or conviction, and without any individualized assessment.

99. Consistent with HUD's warnings, Defendants' criminal conviction policy disproportionately harms Latine applicants and potential applicants for housing.

100. Applicants to RMH must have a child under 21 receiving care in Westchester County. Priority for housing is given "based on the critical nature of the patient and distance from the family's home to the hospital."¹⁷

101. On information and belief, RMH attracts applicants from anywhere in the state or country, and potential residents are more likely to live close enough to consider Westchester County for care but far enough that Defendants' housing would be beneficial. Thus, national, New York State, and New York City (the closest major metropolitan area to RMH) data related to criminal convictions are relevant to analyzing the disproportionate effect of Defendants' policy by race and ethnicity.

102. Additionally, Mr. Miele's conviction is from New York City, making the racial and ethnic context of the City's criminal legal system highly relevant.

103. Latine people are disproportionately arrested, convicted, and incarcerated at higher rates than white people at the national, state, and local level.¹⁸

¹⁷ *Overnight Accommodations*, *supra* note 11.

¹⁸ Arrest and incarceration rates can be expected to closely track conviction rates and thus can be used to identify disparities and trends in the criminal legal system.

104. These racial and ethnic disparities in convictions are stark among the populations surrounding RMH, the populations most likely to seek residence at RMH and be subject to Defendants' exclusionary criminal conviction policy.

105. In New York City, where Mr. Miele was prosecuted, the conviction rate per 100,000 people in 2019 was 3.5 times higher for Latine people than for white people.¹⁹

106. These disparities are longstanding: Between 1990 and 2019, Latine people in New York City were 3.3 times more likely than white people in New York City to receive a conviction.²⁰

107. Between 1990 and 2019, Latine people in New York City represented a disproportionate share of conviction charges covered by Defendants' criminal conviction policy, as compared to white people with convictions:

	Latine	White
Population	24-29%	32-44%
Felony Person-Related Only	40.5%	10.2%
Misdemeanor Person-Related Only	38%	17%
Felony Weapon Only	31.7%	7.6%
Misdemeanor Drug Only (Sale and/or Possession)	32.7%	20.5%

*New York City, 1990-2019*²¹

108. These racial and ethnic disparities are particularly severe in the counties closest to RMH. State data show that the conviction rate per 100,000 people was 3.1 times higher for Latine

¹⁹ Becca Cadoff et al., *Criminal Convictions in New York State 1980 – 2021*, Data Collaborative for Justice (May 2023), <https://datacollaborativeforjustice.org/wp-content/uploads/2023/04/ConvictionsReport-2.pdf> [<https://perma.cc/4E8H-WHF8>]. Because criminal legal system data and trends were significantly impacted by the COVID-19 pandemic starting in 2020, unless otherwise noted this Complaint cites to 2019 data, which is closest in time to the events at issue but prior to the pandemic.

²⁰ Cadoff, *supra* note 14, at 20, 61.

²¹ *Id.* at 32, 34.

than white people in Westchester County, where RMH is located, 4.4 times higher in Rockland County, 1.9 times higher in Orange County, and 2.5 times higher in Putnam County.²²

109. In these four counties in 2019, state data show that the conviction rate per 100,000 people for person-related felonies was 5.7 times higher for Latine people than for white people.

110. Racial and ethnic disparities in convictions that reveal the disproportionate harm that Defendants' criminal conviction policy has on Latine people are found throughout New York State.

111. Statewide, state data show that Latine people were 2.2 times more likely than white people to receive a misdemeanor conviction, and 2.4 times more likely than white people to receive a felony conviction between 2002 and 2019.

112. Latine New Yorkers are also overrepresented in arrests compared to white New Yorkers, including arrests for offenses that would disqualify them for RMH housing under Defendants' criminal conviction policy. Latine adults were arrested 2.3 times more than white adults in New York State in 2019. They were arrested 5.1 times more than white adults for person-related felony charges and 2.1 times more for drug-related felony and misdemeanors.²³

113. Disparities are also considerable at the national level. Studies show that Latine adults, and men in particular, are disproportionately represented in arrests and in prisons nationwide. For example:

²² Jesse Barber & Simon McCormack, *A Racial Disparity Across New York that is Truly Jarring*, NYCLU ACLU of New York (Dec. 16, 2022), <https://www.nyclu.org/en/news/racial-disparity-across-new-york-truly-jarring> [<https://perma.cc/K39H-4QUX>].

²³ *NYS Adult Arrests and Prison Sentences by Race/Ethnicity in 2019*, New York Division of Criminal Justice Services, <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2019%20Population%20Arrests%20Prison%20by%20Race.pdf> [perma.cc/6h8B-DFV3]; *Adult Arrest Demographics by County and Region: 2019*, New York Division of Criminal Justice Services, <https://www.criminaljustice.ny.gov/crimnet/ojsa/adult-arrest-demographics/2019/index.html> [<https://perma.cc/B4QU-X5PG>].

a. By age 23, 44 percent of Latino men in the country have been arrested, compared to 38 percent of white men.²⁴

b. As of 2016, more than one in eight Latino men in the United States could expect to go to prison in his lifetime, compared to an estimated one in 17 white men.²⁵

114. At the end of 2014, the year in which Mr. Miele was convicted, 903 of every 100,000 Latino men were serving a sentence of at least one year compared to 290 of every 100,000 white men, which made Latino men over three times more likely than their white counterparts to serve a sentence of a year or more.²⁶

115. These racial disparities persist: In 2019, 763 out of every 100,000 Latino men were incarcerated for a year or more compared to 263 out of every 100,000 white men, making Latino men nearly three times more likely to be incarcerated than their white counterparts.

116. Disparities also exist at the national level for the types of convictions that Defendants' criminal conviction policy automatically deems disqualifying for applicants to their housing. For example, in 2019, about 66 percent of Latine individuals in state prison were serving time for a violent offense (including aggravated and simple assault among other crimes against persons excluded by Defendants' criminal conviction policy), compared to 50 percent of white

²⁴ Robert Brame et al., *Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23*, 60 *Crime and Delinq.* 471, 475 (2014).

²⁵ Alexander F. Roehrkaase et al., *Lifetime risk of imprisonment remains high and starkly unequal*, 8 *Sci. Advances* 1, 5 fig. 2 (2022) (data based on people serving prison sentences longer than one year).

²⁶ Ann Carson, *Prisoners in 2022 – Statistical Tables*, U.S. Department of Justice Bureau of Justice Statistics, at 14 tbl. 6 (Nov. 2023), <https://bjs.ojp.gov/document/p22st.pdf> [<https://perma.cc/7HY6-86UY>].

incarcerated individuals. Latine people incarcerated in state prisons were 1.65 times more likely to be serving a sentence for a weapons charge than white people.²⁷

117. The impact of the criminal legal system on families—the population that would require Defendants’ housing—is also racially and ethnically disproportionate. Latine children are three times more likely than white children to have a parent incarcerated at some point in their lives.²⁸ A 2018 survey on the impact of incarceration on families found that Latine adults are 70 percent more likely than white adults to have had an immediate family member incarcerated for more than one year.²⁹

118. Because of these racial and ethnic disparities, Latine applicants for RMH housing are far more likely than white applicants to have a criminal record, including a conviction that triggers automatic rejection under Defendants’ policy and that would otherwise deter would-be applicants to RMH. As a result, Defendants’ policy predictably and actually results in the disproportionate denial of housing opportunities to Latine individuals and their families.

C. Defendants’ Criminal Conviction Policy Is an Arbitrary and Unnecessary Barrier to Housing and Is Not Necessary to Achieve a Substantial, Legitimate, Non-Discriminatory Interest.

119. Policies that categorically deny housing based on past criminal convictions, like Defendants’ criminal conviction policy, disproportionately hurt Latine people, and violate the FHA and NYSHRL unless they are necessary to achieve a substantial, legitimate, nondiscriminatory

²⁷ Ann Carson, *Prisoners in 2020 – Statistical Tables*, U.S. Department of Justice Bureau of Justice Statistics, at 28 tbl. 14, <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf> [<https://perma.cc/H285-QTAR>].

²⁸ Bruce Western et al., *Reducing Racial Inequality in Crime and Justice* 178 (2023) (ebook).

²⁹ Brian Elderbroom et al., *Every Second: The Impact of Incarceration on America’s Families*, Fwd.us, at 17 (Dec. 2018), <https://everysecond.fwd.us/downloads/everysecond.fwd.us.pdf> [<https://perma.cc/4JBT-LXSU>]; see also Peter K. Enns et al., *What Percentage of Americans have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey*, 5 *Socius* 1 (2019).

interest, and such interest could not be served by another practice that has a less discriminatory effect. But Defendants' criminal conviction policy is not necessary to achieve any such interest. Any valid interest Defendants may have for their policy could be served by another practice with a less discriminatory effect.

120. Defendants' criminal conviction policy does not promote the safety of residents and exacerbates the trauma and harm to Latine applicants at a vulnerable time when dealing with the care of a sick child. Research shows that a past criminal conviction is not a reliable predictor of a person's qualities as a neighbor or tenant.³⁰ A 2019 study, for example, found that eleven of fifteen criminal conviction categories had no effect on housing outcomes when controlling for other factors.³¹

121. That same study found that any limited risk decreased significantly over time, with misdemeanors having no effect on housing outcomes after two years and felonies having no effect after five years.³² Indeed, studies have found that the older an offense, the less likely the person is

³⁰ See Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?*, Wilder Research (Jan. 2019), https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf [<https://perma.cc/ZV5Z-P65F>]; Valerie Schneider, *Racism Knocking at the Door: The Use of Criminal Background Checks in Rental Housing*, 53 U. Rich. L. Rev. 923, 933 (2019) ("There is little empirical evidence that excluding individuals from housing opportunities solely because of a criminal record increases public safety."); *Tenant Screening With Criminal Background Checks: Predictions And Perceptions Are Not Causality*, Office of Policy Development and Research (May 17, 2022), <https://www.huduser.gov/portal/pdredge/pdr-edge-firm-asst-sec-051722.html> [<https://perma.cc/T8TB-ZE45>]; Ava Pittman, *Housing for All: Reducing Barriers to Housing for People with Criminal Records*, Tacoma Housing, at 21, https://www.tacomahousing.org/wp-content/uploads/2022/10/housing_for_all_-_reducing_barriers_to_housing_for_people_with_criminal_records_-_tacoma_housing_authority_2021-5-14.pdf [<https://perma.cc/K5U2-5GWK>] (last revised May 14, 2021) (finding no meaningful relationship between criminal record history and negative housing outcomes).

³¹ Warren, *supra* note 30, at 15 (even convictions that increased the risk of negative housing outcomes [e.g., lease violations for behavior and things not at issue here like non-payment of rent] do so by only three to nine percent).

³² *Id.* at 20.

to re-engage in that conduct.³³ At the time RMH denied housing to Mr. Miele and his family, more than 10 years had passed since the incident leading to his conviction, and nearly eight years since his conviction date; therefore, the research indicates his conviction would have no bearing on his success in Defendants' housing. This is also particularly significant because among individuals with a criminal conviction record in New York City from 1980 to 2019, 63.9 percent have not had a conviction in over 10 years, 36 percent have not had a conviction in over 20 years, and 20.3 percent of people have been convicted in the last five years. Yet, under Defendants' criminal conviction policy, all individuals with any conviction regarding a crime against a person would be excluded from housing regardless of the time since that conviction or the offense.

122. Moreover, the likelihood of negative housing outcomes is significantly reduced in households with one or more children—in other words, households that would apply for RMH housing.

123. Furthermore, automatic denials without any additional consideration are not necessary to serve any purported interest that Defendants may have. Individualized review of an applicant offers an obvious, less discriminatory alternative that could serve any purported interests Defendants may have more accurately than their current policy of automatic rejection. Indeed, individualized review has been identified and reiterated by HUD, and is required by New York's Department of Homes and Community Renewal (for state-financed housing providers) and various other state and local statutes as a less discriminatory alternative to categorical exclusions. Defendants have failed to allow for any individualized review and their policy is unlawful.

³³ Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology & Pub. Pol'y* 483, 488–90 (2006) (within seven years, the risk of future arrest for someone with a past conviction is equal to that risk for someone without one); see also Alfred Blumstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, 47 *Criminology* 327, 339 (2009).

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
THE FAIR HOUSING ACT (42 U.S.C. § 3604)**

124. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 123 above.

125. Defendants' acts, policies, and practices of denying housing to anyone with a broad range of convictions discriminate on the basis of race, color, and national origin. Defendants make their housing unavailable because they categorically refuse to house anyone with a broad range of convictions with no consideration of the nature, severity, recency, or other circumstances of the conviction, or any assessment of individual circumstances, and deter would-be applicants from applying for their housing. This policy and Defendants' related acts and practices have an adverse and unjustified disproportionate impact on Latine individuals as compared to similarly situated white people.

126. This policy and Defendants' related acts and practices are not necessary to serve any substantial, legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice—like providing individualized consideration—that would have a less discriminatory effect.

127. Defendants' acts, policies, and practices constitute discrimination and violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604, and its implementing regulations, in that Defendants' acts, policies, and practices have made and continue to make housing unavailable because of race, color, and/or national origin, in violation of 42 U.S.C. § 3604(a).

128. Defendants' conduct has harmed and continues to harm Plaintiff, a Latino New York resident, and his family, by denying him housing during his son's hospitalization for cancer treatment.

SECOND CAUSE OF ACTION
THE NEW YORK STATE HUMAN RIGHTS LAW (N.Y. EXEC. LAW § 296(5))

129. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 123 above.

130. Defendants' acts, policies, and practices of denying housing to anyone with a broad range of convictions discriminate on the basis of race, color, and national origin. Defendants deny and withhold their housing because they categorically refuse to house anyone with a broad range of convictions with no consideration of the nature, severity, recency, or other circumstances of the conviction, or any assessment of individual circumstances, and deter would-be applicants from applying for their housing. This policy and Defendants' related acts and practices have an adverse and unjustified disproportionate impact on Latine individuals as compared to similarly situated white people.

131. This policy and Defendants' related acts and practices are not necessary to serve any substantial, legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice—like providing individualized consideration—that would have a less discriminatory effect.

132. Defendants' acts, policies, and practices constitute discrimination and violate New York Executive Law § 296(5), and its implementing regulations, in that Defendants' acts, policies, and practices have made and continue to make housing unavailable because of race, color, and/or national origin, in violation of N.Y. Exec. Law § 296(5).

133. Defendants' conduct has harmed and continues to harm Plaintiff, a Latino New York resident, and his family, by denying him housing during his son's hospitalization for cancer treatment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. Enter a declaratory judgment finding that the foregoing actions of Defendants violate 42 U.S.C. § 3604 and New York Executive Law § 296(5);
- B. Enjoin Defendants and their directors, officers, agents and employees from continuing to publish, implement, and enforce the illegal, discriminatory conduct described herein and directing Defendants and their directors, officers, agents and employees to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future;
- C. Award compensatory damages to Plaintiff in an amount to be determined by the jury that would fully compensate Plaintiff for his injuries caused by the conduct of Defendants alleged herein;
- D. Award punitive damages to Plaintiff in an amount to be determined by the jury that would punish Defendants for the willful, malicious, and reckless conduct alleged herein and that would effectively deter similar conduct in the future;
- E. Award Plaintiff his reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 3613(c)(2) and N.Y. Executive Law § 297(10);
- F. Such other and further relief that this Court dees just and proper.

JURY DEMAND

134. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury for all issues a jury may properly decide and for all the requested relief that a jury may award.

Dated: January 31, 2024
New York, NY

Respectfully submitted,

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* *SDNY admission pending*

** *Pro Hac Vice application forthcoming*

On the complaint: Ruben Danberg Biggs