

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2084-cv-01344

MITCHELL MATORIN and LINDA
SMITH, et al.,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS
and its EXECUTIVE OFFICE OF HOUSING
AND ECONOMIC DEVELOPMENT, et al.,

Defendants.

**BRIEF OF AMICI CURIAE MATTHEW DESMOND, AMERICAN CIVIL LIBERTIES
UNION, WILLIAM BERMAN, JUSTIN STEIL, AND DAVID ROBINSON REGARDING
THE DISPROPORTIONATE ADVERSE EFFECT OF EVICTION ON BLACK
FAMILIES**

Eviction – the forced removal of a family from their home – is always tragic. But it is a tragedy that does not befall all families equally.¹ In the Commonwealth of Massachusetts, Black tenants face eviction more than twice as often as white tenants, even though they make up only 11% of the renting population. Black women are at particularly high risk, facing eviction 2.5 times as often as white women despite their much smaller population numbers. The racial disparities are so stark in Boston that the share of Black renters in a community is a greater predictor of the rate of eviction filings than poverty itself. The consequences of displacement are

¹ Eviction has an enormous impact on low-income families across all demographic groups, and the eviction moratorium at issue in this case serves the important purpose of protecting all of those families from the devastation of losing their homes during an extraordinary pandemic. The Amici submit this memo to raise particular concerns about the stark impact on Black families, who bear a disproportionate share of the burden following a long history of structural racism and de jure segregation.

also worse for Black families, who face discrimination in the rental market not only because they appear disproportionately in eviction case databases but also because of racial biases – conscious or unconscious – that cause them to be told about and shown less than half of the apartments that equally qualified white apartment hunters hear about and see.

By suspending evictions in a pandemic that itself has wreaked outsized havoc in Black communities, the Commonwealth’s eviction moratorium² serves the important public interest in reducing harms to Black families and advancing racial and gender equity. Enjoining the moratorium’s operation would adversely affect the public by undermining this racial and gender justice work and exacerbating the disproportionate harm suffered by Black families in the rental housing area. The Amici Curiae – Princeton University Professor Matthew Desmond, American Civil Liberties Union, Clinical Professor William Berman (Director of the Suffolk University Housing Discrimination Testing Program), Massachusetts Institute of Technology Associate Professor Justin Steil, and David Robinson – respectfully request that the Court consider the substantial empirical evidence of disparate racial harms – as well as intersectional racial and gender-based harms – presented below in connection with the Court’s analysis of the impact of enjoining the Moratorium on the public interest.

I. The Requested Injunction Should Not Issue Where It Would Adversely Affect the Public Interest in Advancing Racial Equity for Black Members of the Commonwealth.

To justify a preliminary injunction, Petitioners would have to demonstrate not only that they face a substantial risk of irreparable harm, but that the risk outweighs the risk of irreparable harm to the nonmoving party. *Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 617–18

² Chapter 65 of the Acts of 2020, An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency (the “Moratorium”)

(1980). Where, as here, a party seeks to enjoin governmental action, the Court “must determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” *Garcia v. Dep’t of Hous. & Cmty. Dev.*, 480 Mass. 736, 747 (2018); *see also Doe v. Worcester Pub. Sch.*, 484 Mass. 598, 601 (2020) (“risk of harm to the public interest” is a relevant factor where the nonmoving party is a governmental entity). The significant public interest in reducing racial and gender bias and inequity even in the absence of intentional discrimination is both evident in current events and enshrined in longstanding state and federal civil rights laws. *See, e.g., Burbank Apartments Tenant Ass’n v. Kargman*, 474 Mass. 107, 121–22 (2016) (affirming disparate impact theory of liability under both 42 U.S.C. § 3604 and G.L. c. 151B, which “refer[] to the consequences of actions and not just to the mindset of actors”); Dasia Moore and Milton Valencia, “Mayor Walsh Declares Racism a Public Health Crisis in Boston,” *The Boston Globe* (June 12, 2020).

II. In Recent Empirical Studies, Black Families Have Consistently Been Found to Face Eviction at Higher Rates than Other Demographic Groups.

Across the country, research has found time and again that eviction disproportionately burdens Black tenants and, in particular, Black women. These disturbing racial and gender disparities in eviction are just as stark in Massachusetts. Absent the Moratorium’s protections, the wave of mass evictions during the pandemic will further exacerbate and reproduce these racial and gender disparities and inflict lasting consequences on Black tenants and Black women renters for years to come.

The disparate impact of evictions on Black families first came into the spotlight with the publication of Amicus Matthew Desmond’s Pulitzer Prize-winning 2016 book *Evicted: Poverty and Profit in the American City*. After an analysis of thousands of eviction court records in Milwaukee, combined with hundreds of interviews with landlords and tenants and two years of

ethnographic field work, Desmond found that almost half of the city’s evictions took place in predominantly Black neighborhoods. In a typical month, three out of every four people in Milwaukee eviction court were Black; there were more Black women facing eviction in court than all other groups combined. *Evicted*, p. 98 and notes 8 and 9. In the city’s low-income Black neighborhoods, eviction was not a rare tragedy, but “commonplace,” particularly for women: 1 in 17 women renters was evicted through the court system each year – twice as often as men from the same neighborhoods and 9 times as often as women from the city’s poorest white areas. *Id.*³ Overall, women living in Black neighborhoods represented only 9 percent of the city’s population, but 30 percent of its evictions. *Id.*

Following the publication of *Evicted*, in 2018, Desmond founded the Eviction Lab at Princeton University.⁴ The Eviction Lab has collected millions of eviction court records from around the country and made them available to researchers, policymakers, and the public. With Desmond’s data and his methods⁵, researchers in cities around the country have begun to conduct rigorous studies of the race- and gender-based disparate impact of eviction.

In Massachusetts, the research findings have tracked what Desmond found in Milwaukee: **Black residents of the Commonwealth face eviction at much higher rates than anyone else.** In 2019, using data compiled by the Eviction Lab, Amicus American Civil Liberties Union, through its Women’s Rights Project and Data Analytics team, analyzed millions of eviction filings in 11 out of 14 counties in Massachusetts and found that **Black renters in Massachusetts**

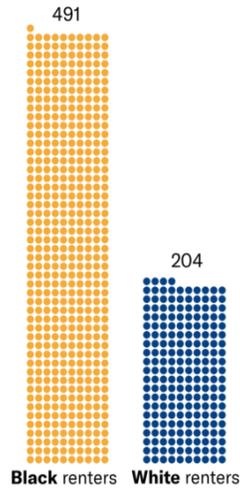
³ For a detailed explanation of the results and the methods used to reach them, see also Matthew Desmond, et al., “Eviction and the Reproduction of Urban Poverty,” *American Journal of Sociology* Vol. 118, No. 1 (July 2012): 88-133.

⁴ More information on the Lab’s research agenda and methods is available at <https://evictionlab.org/>.

⁵ Desmond was awarded numerous book prizes and a MacArthur Foundation “Genius” Award for his work.

had evictions filed against them at 2.4 times the rate of white renters.⁶ See Sophie Beiers, *et al.*, “Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color,” (January 10, 2020), available at https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/#_edn1.

**Massachusetts
eviction filings per
10,000 renters, 2014-
2016**

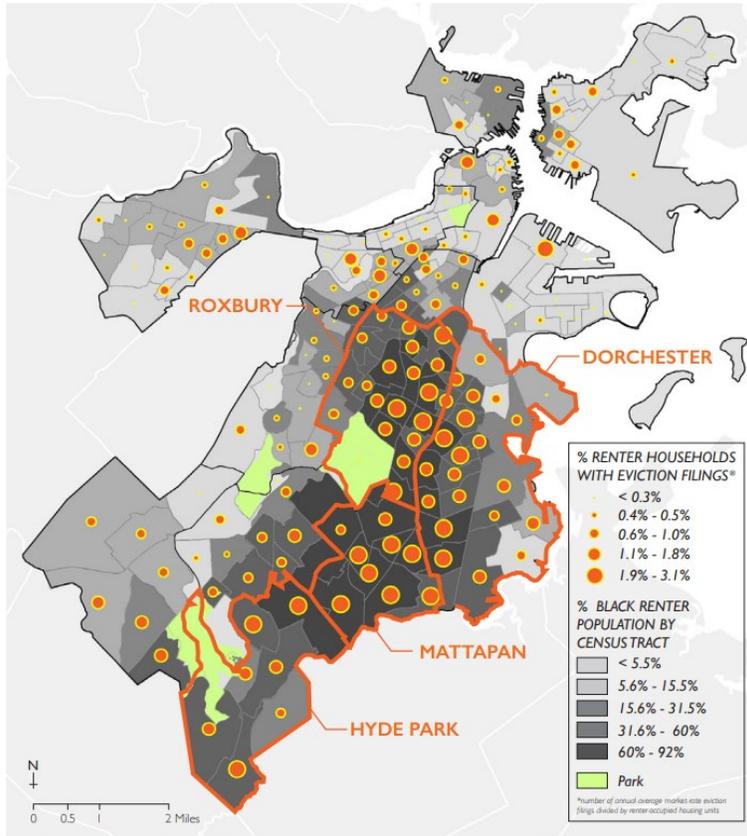


This disparity is particularly striking given that Black renters make up only 11% of all renters in the Commonwealth. *Id.* And as in Milwaukee, **Black women in Massachusetts face the greatest risk of having an eviction case filed against them:** Just under 500 of every 10,000 Black women renters here have an eviction filing as opposed to only 200 of every 10,000 white women renters. *Id.*

⁶ Data were drawn from Lexis Nexis eviction court records and compiled by the Eviction Lab. Data were available for all Massachusetts counties except Plymouth, Bristol, and Nantucket. Data span 2012 through 2016, but not all counties had all five years of data available. A detailed explanation of the results and methodology can be found on the ACLU’s website. See Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU News & Commentary (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

A 2020 report by MIT researchers and Amici Justin Steil and David Robinson, in collaboration with City Life/Vida Urbana, reached similar results for the City of Boston. David Robinson, et al., *Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color* (2020), available at <http://bostonevictions.org>. Using publicly available court records combined with census tract level demographic information,⁷ the MIT researchers looked at evictions filed in the Boston Housing Court between 2014 and 2016 and found that, as in the Commonwealth in general, **renters in predominantly Black neighborhoods in Boston were at much greater risk of having an eviction case filed against them than renters in predominantly white neighborhoods.** Though only 18% of Boston’s rental housing is located in neighborhoods in which a majority of residents are Black, 37% of market-rate eviction filings are in these neighborhoods. Moreover, eviction filings in market-rate units were more likely to occur in census tracts where there was a larger share of Black renters even when controlling for median household income and other variables. Indeed, **the share of Black renters in a community in the City of Boston is a greater predictor of the rate of eviction filings than poverty itself.** Below are a map illustrating the concentration of eviction filings in communities with large Black populations and a chart showing that the highest rates of market- rate eviction filings occur in the two Boston neighborhoods with majority Black populations, Roxbury and Mattapan.

⁷ Detailed data analysis and methodological information is available at Appendix B of the report.



Annual Market-Rate Housing Eviction Filing Rate Underlaid with Black Renter Population, 2014-2016

Author: David Robinson, 2020; Design: Patricia Cafferky
 Source: Boston Department of Neighborhood Development;
 American Community Survey 2013-2017 5-Year Estimate

AVERAGE ANNUAL EVICTION FILING RATES IN MARKET-RATE RENTAL HOUSING BY NEIGHBORHOOD (2014-2016)

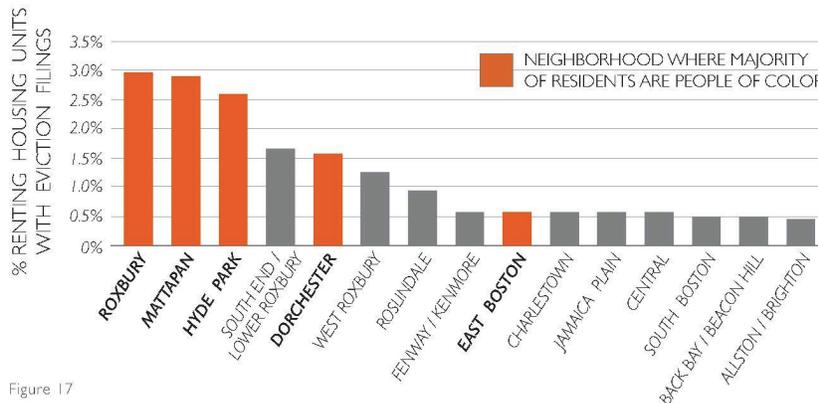


Figure 17

Unfortunately, the racial and gender disparities in Massachusetts are consistent with those found in other areas of the country where eviction records have been analyzed since the publication of *Evicted*. In 2019, researchers from the University of Washington discovered a “huge racial disparity of Black adults who faced eviction filings” in the Seattle metropolitan area. Timothy Thomas, et al., “The State of Evictions: Results from the University of Washington Evictions Project” (Feb 17, 2019), accessible at <https://evictions.study/washington/results.html#race-of-the-evicted>. University of Michigan researchers found that in urban areas in Michigan, the percentage of Black people living in an area is a predictive factor in the number of eviction filings in the area. See Robert Godspeed and Elizabeth Benton, “Michigan Evictions: Trends, Data Sources, and Neighborhood Determinants” (May 2020), accessible at: <https://poverty.umich.edu/files/2020/06/Michigan-Eviction-Project-working-paper.pdf>. In New York City, the NYU Furman Center found a “striking” disparity in 2019 eviction filings against Black renters: In the areas with large Black populations, eviction cases were filed at a rate of 22.7 per 100 renters, while they were filed against only 1 of 100 renters in the areas with low Black populations. See “State of the City 2019: Eviction Filings” (June 16, 2020), accessible at: <https://furmancenter.org/stateofthecity/view/eviction-filings>.⁸ In Richmond, Virginia, a neighborhood’s share of evictions increases with its Black population and decreases with its white population; as elsewhere, the disparities are not explained by neighborhood differences in median income or poverty rates. Benjamin Theresa, “The Geographies of Eviction in Richmond: Beyond Poverty, accessible at <https://cura.vcu.edu/media/cura/pdfs/cura-documents/>

⁸ In the same study, the Furman Center discovered that while Black people made up 22% of the New York City population, they made up 40% of the population in the areas with the highest eviction filing rates, and only 4% of the population in the areas with the lowest eviction filing rates.

[GeographiesofEviction.pdf](#). See also Joint Center for Housing Studies of Harvard University, “America’s Rental Housing 2020” (2020), pp. 34-35, accessible at: https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf (according to the 2017 American Housing Survey, 1.9% of U.S. renters were threatened with eviction in the last 3 months, with the share highest among Black households at every income level). These studies echo the Massachusetts research and are a stark reminder that eviction laws – including but not limited to eviction moratoria – have, inevitably, an intersectional racial and gender justice dimension.

III. Housing Stability for Black Families is Further Threatened by Discrimination in the Rental Market, Making the Consequences of Displacement Even Greater for Black Renters.

Black families who are evicted or threatened with eviction must look for new housing. But their search for housing is much harder than it is for white families. Black families are disproportionately burdened with a freely available eviction record, which makes it significantly more difficult to find a landlord to rent to them. Black women disproportionately face this burden even when the cases against them have been dismissed. These barriers to housing are also compounded by a rental market that discriminates against Black families based on their race, as well as existing patterns of residential segregation. Many Black families will not even get to see many of the available apartments, much less rent them. Securing housing stability in the face of these hurdles – among the many other economic challenges that Black families more often face in Massachusetts’s expensive rental market – is an outsized challenge and one that enjoining the Moratorium will exacerbate in the midst of the pandemic.

Because Black renters are twice as likely as white renters to have an eviction case filed against them, they are also more than twice as likely to have an “eviction record.” Prospective landlords can and do use the courts’ online case management database, MassCourts.org, as a

“free tool for tenant screening.” Richard Vetstein, “Massachusetts Housing Court and Tenant Eviction History Now Online,” *The Massachusetts Real Estate Law Blog* (Apr, 24, 2013) (calling public access to MassCourts.org a victory resulting from “years of lobbying from rental housing groups”). And as the Supreme Judicial Court has acknowledged, citing Amicus Matthew Desmond’s work:

[T]he mere record of an eviction proceeding can serve as a long-term barrier to a tenant when he or she seeks future housing, regardless of the legal outcome. *See* Desmond & Bell, *Housing, Poverty, and the Law*, 11 *Ann. Rev. L. & Soc. Sci.* 15, 19 (2015) (even dismissed eviction actions can result in rejection of housing applications by landlords).

Rental Property Management Services v. Hatcher, 479 Mass. 542, 554 (2018). *See also* Paula A. Franzese, “A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity,” 45 *Fordham Urb. L.J.* 661 (2018) (documenting blacklisting of tenants even after baseless eviction lawsuits).

Discrimination against renters with eviction filings regardless of outcome is particularly harmful to the Commonwealth’s Black women, who are more than three times as likely as white women to have a prior eviction filing that was ultimately dismissed. Beiers *et al.*, “Clearing the Record,” *supra*. Nearly 300 in 10,000 Black women renters had evictions filed against them that were dismissed, as compared to less than 100 in 10,000 white renters. *Id.* In other words, Black women in Massachusetts are more likely to be impacted by the lasting stigma of a prior eviction filing, despite defeating the cases against them, making their search for affordable housing unfairly more difficult.

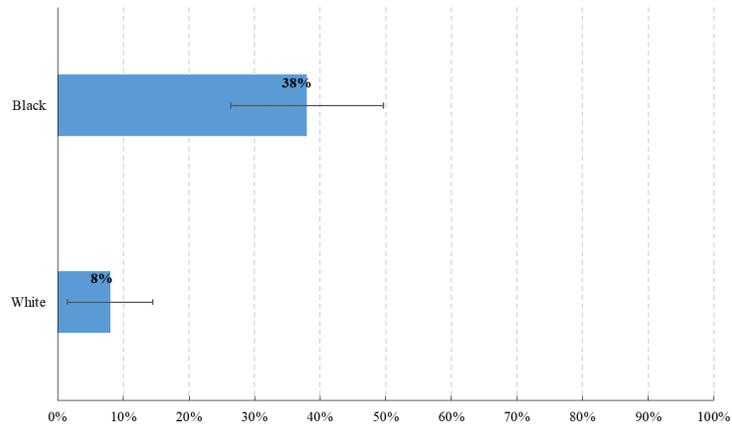
And Black families face yet another race-based barrier when they look for new housing – racial bias in the rental market. In a 2020 study funded by the Boston Foundation, the Suffolk University Law School Housing Discrimination Testing Program and the Analysis Group, Inc. found that **equally qualified Black renters are told about and shown less than half the**

apartments that their White counterparts hear about and see. See Jamie Langowski, et al., “Qualified Renters Need Not Apply: Race and Voucher Discrimination in the Metro Boston Rental Housing Market,” (July 1, 2020), accessible at <https://www.tbf.org/-/media/tbf/reports-and-covers/2020/housing-voucher-report-20200701.pdf>. The study sent equally qualified testers with “race-associated” names⁹ to 50 randomly selected apartments in the Boston area.¹⁰ The results were striking and disturbing: housing providers screened out Black renters based upon their names 11% of the time without ever communicating with them. *Id.* at 15. Providers ceased all communication with Black market-rate renters 18% of the time, versus only 4% of the time for similarly situated white renters seeking the same apartments. *Id.* Black market-rate renters were able to visit only 48% of the apartments they sought, compared to white market-rate renters, who were able to visit 80% of the same apartments. *Id.* The following charts illustrate the differential treatment of Black and white testers inquiring about market-rate apartments.

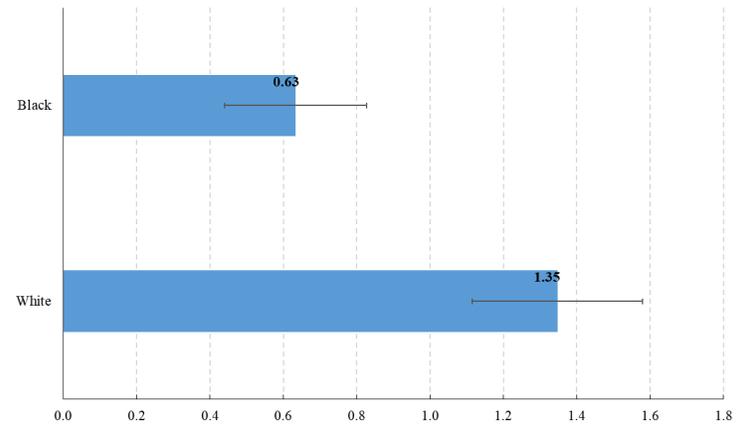
⁹ The researchers assigned the testers “race-associated” names based on prior research and trained testers to give their name in their first interaction with housing providers, whether by phone, text or email. See Langowski. *et al.*, at 12; Marianne Bertrand & Sendhil Mullainathan, “Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination” (National Bureau of Economic Research July 2003), accessible at <https://www.nber.org/papers/w9873.pdf>.

¹⁰ The researchers in the study used matched paired testing, which allowed them to compare data gleaned from the interactions of multiple individuals who were similarly situated but for their protected class status (i.e., race and voucher status) with the same housing provider. The researchers sent 200 testers, four at a time, to 50 randomly selected 1 bedroom or studio apartments, two testers with a voucher and two without (one Black tester with a voucher and one without, and one White tester with a voucher and one without). All four testers were equally qualified for the apartments and were as similar as possible in all respects except for the protected class (i.e., race and voucher). Langowski *et al.* at 12.

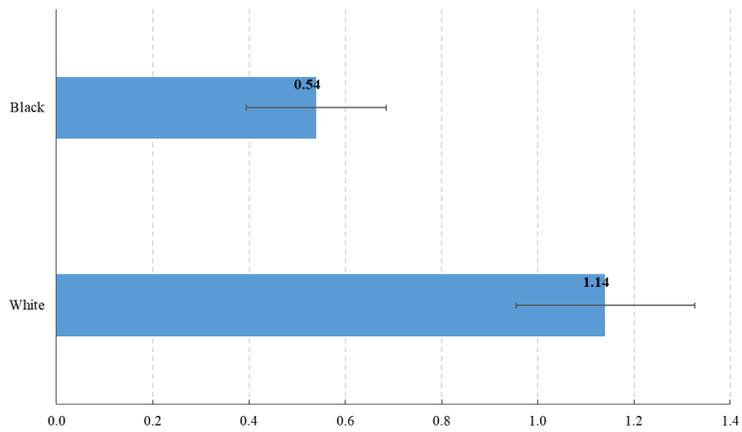
Percentage of Testers that Housing Provider Did Not Contact or Ghosted



Average Number of Units Housing Providers Said Were Available to Testers



Average Number of Units Shown to Testers



Housing providers also offered white market-rate renters more financial and non-financial incentives (40% of the time for white market-rate renters versus 8% for Black renters), made more positive comments to them about the unit or neighborhood (58% of the time for white market-rate renters versus 33% for Black market-rate renters), and offered applications to a higher percentage of white renters (41% of the time for white market-rate renters versus 24% for Black renters). *Id.* at 18-19, 52. For Massachusetts's Black renters, race-based barriers to finding rental housing make avoiding eviction that much more critical.

CONCLUSION

Enjoining the Moratorium's temporary ban on eviction filings and execution of judgments for possession would have a disproportionate negative impact on Black families, especially Black women, who face eviction at higher rates and race-based discrimination in the rental market. As is well known and likely explored in detail in other amicus briefs, these same Black families have been hardest hit by the COVID-19 pandemic. The public has an urgent and compelling interest in advancing racial and gender justice for Black Americans and undermining the vestiges of slavery and *de jure* segregation that manifest in today's rental market. For these reasons among others, the Amici Curiae submit that granting the injunction sought in this case would harm, rather than promote, the public interest and urge the Court to deny the request.

Dated: July 24, 2020

Respectfully Submitted,

AMICI CURIAE MATTHEW DESMOND,
AMERICAN CIVIL LIBERTIES UNION,
WILLIAM L. BERMAN, JUSTIN STEIL,
AND DAVID ROBINSON

By their counsel,

/s/ Linda S. Morris

Linda S. Morris

Motion for admission pro hac vice pending

Sandra S. Park

Motion for admission pro hac vice pending

ACLU Women's Rights Project

125 Broad Street – 18th Floor

New York, NY 10004

(212) 284-7394

lindam@aclu.org

/s/ Esme Caramello

Esme Caramello, BBO# 600896

Nicole Summers, BBO# 691582

Eryn Mascia, SJC Rule 3:03 Counsel

Harvard Legal Aid Bureau

23 Everett Street, First Floor

Cambridge, MA 02138

(617) 495-4408

ecaramello@law.harvard.edu

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief was served on counsel of record for all parties on July 24, 2020, by electronic mail.

/s/ Esme Caramello