No. 10-12838

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

HIALEAH HOUSING AUTHORITY,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES AS APPELLANT

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Case No.: 10-12838
United States v. *Hialeah Housing Authority*

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, counsel for Appellant United States of America certifies that the following persons may have an interest in the outcome of this case:

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15) The Honorable Alan S. Gold, United States District Judge for the Southern District of Florida

16) The Honorable Chris M. McAliley, United States Magistrate Judge

17) The Honorable Peter R. Palermo, United States Magistrate Judge

18) Rodriguez, Miguel, Complainant

19) Rodriguez, Lazara, Complainant

s/ Thomas E. Chandler
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Attorney

Dated: August 9, 2010

STATEMENT REGARDING ORAL ARGUMENT

The United States believes that oral argument would be helpful to the Court, especially in light of the highly fact-based nature of the issue presented.

TABLE OF CONTENTS

PAGE

STATEMENT OF JURISDICTION.....1

STATEMENT OF THE ISSUE.....2

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS 4

1. Background 4

2. The Rodriguezes Reject Their Transfer To A New Apartment And Their Tenancy Is Terminated 6

3. State Court Eviction Action.....11

4. Federal Fair Housing Act Claim Of Failure To Reasonably Accommodate 13

5. Decision Below.....16

SUMMARY OF ARGUMENT 18

ARGUMENT

THE SUMMARY JUDGMENT RECORD WAS SUFFICIENT TO CREATE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER HHA KNEW OR SHOULD HAVE KNOWN THAT MR. RODRIGUEZ BOTH HAD A DISABILITY AND REQUESTED A REASONABLE ACCOMMODATION.....24

A. Standard Of Review.....25

B. Requests For Reasonable Accommodation And The Interactive Process Under The Fair Housing Act.....26

TABLE OF CONTENTS (continued): **PAGE**

C. The Evidence Was Sufficient To Establish That HHA Knew Or Should Have Known That Mr. Rodriguez Had A Disability And Was Requesting An Accommodation, And Therefore HHA Had An Obligation To Participate In The Interactive Process 37

CONCLUSION 48

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF CITATIONS

CASES: **PAGE**

Bonneville v. *Blue Cross and Blue Shield of Minnesota*,
No. 99-3241, 2000 WL 688226 (8th Cir. May 8, 2000) 35

City of Edmonds v. *Oxford House, Inc.*,
514 U.S. 725, 115 S. Ct. 1776 (1995) 44

**Colwell* v. *Rite Aid Corp.*, 602 F.3d 495 (3d Cir. 2010).....33, 47

Conneen v. *MBNA American Bank, N.A.*, 334 F.3d 318 (3d Cir. 2003) 42

Denney v. *City of Albany*, 247 F.3d 1172 (11th Cir. 2001).....25

**Douglas* v. *Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. App. 2005).....29, 34, 41, 47

Dubois v. *Association of Apartment Owners of 2987 Kalakaua*,
453 F.3d 1175 (9th Cir. 2006),
cert. denied, 549 U.S. 1216, 127 S. Ct. 1267 (2007).....26, 36

Earl v. *Mervyns, Inc.*, 207 F.3d 1361 (11th Cir. 2000) 30

Gaston v. *Bellingrath Gardens & Home, Inc.*,
167 F.3d 1361 (11th Cir. 1999) .....*passim*

Giebeler v. *M&B Assocs.*, 343 F.3d 1143 (9th Cir. 2003) 28

Havens Realty Corp. v. *Coleman*, 455 U.S. 363, 102 S. Ct. 1114 (1982) 26

Hawn v. *Shoreline Towers Phase I Condominium Ass'n, Inc.*,
No. 3:07-CV-97, 2009 WL 691378 (N.D. Fla. Mar. 12, 2009),
aff'd, 347 F. App'x 464 (11th Cir. 2009) 26, 35-36

**Jankowski Lee & Assocs.* v. *Cisneros*, 91 F.3d 891 (7th Cir. 1996) 29, 33-34

Keys Youth Serv. v. *City of Olathe*, 248 F.3d 1267 (10th Cir. 2001) 27

CASES (continued): **PAGE**

Lapid-Laurel v. *Zoning Bd. of Adjustment of the Twp. of Scotch Plains*, 284 F.3d 442 (3d Cir. 2002) 29

Loren v. *Sasser*, 309 F.3d 1296 (11th Cir. 2002), cert. denied, 538 U.S. 930, 123 S. Ct. 1589 and 538 U.S. 1057, 123 S. Ct. 2219 (2003).....25

**Lowe* v. *Independent Sch. Dist. No. 1*, 363 F. App'x 548 (10th Cir. 2010) (unpublished) 31

Oconomowoc Residential Programs, Inc. v. *City of Milwaukee*, 300 F.3d 775 (7th Cir. 2002) 28

Powers v. *Kalamazoo Breakthrough Consumer Hous. Cooperative*, No. 1:07cv1235, 2009 WL 2922309 (W.D. Mich. Sept. 9, 2009) 32, 35

Prindable v. *Ass'n of Apartment Owners of 2987 Kalalaua*, 304 F. Supp. 2d 1245 (D. Haw. 2003), aff'd sub nom. *Dubois* v. *Ass'n of Apartment Owners of 2987 Kalalaua*, 453 F.3d 1175 (9th Cir. 2005), cert. denied, 549 U.S. 1216, 127 S. Ct. 1267 (2007).....36

Reed v. *Lepage Bakeries, Inc.*, 244 F.3d 254 (1st Cir. 2001).....33

**Schwarz* v. *City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008) 27-28, 32

Smith v. *Midland Brake, Inc.*, 180 F.3d 1154 (10th Cir. 1999).....30, 32

**Taylor* v. *Phoenixville Sch. Dist.*, 184 F.3d 296 (3d Cir. 1999) 33, 37, 39

Tsombanidis v. *West Haven Fire Dep't*, 352 F.3d 565 (2d Cir. 2003).....27

United States v. *California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413 (9th Cir. 1994) 26

Webb v. *Donley*, 347 F. App'x 443 (11th Cir. 2009) (unpublished) 30

Wilkerson v. *Shinseki*, 606 F.3d 1256 (10th Cir. 2010).....29

CASES (continued): **PAGE**

Williams v. *Philadelphia Hous. Auth. Police Dep't*, 380 F.3d 751 (3d Cir. 2004), cert. denied, 544 U.S. 961, 125 S. Ct. 1725 (2005).....30

Willis v. *Conopco*, 108 F.3d 282 (11th Cir. 1997) 30

STATUTES:

Fair Housing Act, 42 U.S.C. 3601 *et seq*.....2
*42 U.S.C. 3604(f)(3)(B) 2, 3, 12, 26
42 USC 3612(o) 1, 3, 14

Fair Housing Amendments Act of 1988 (FHAA), 42 U.S.C. 3601 *et seq* 1

28 U.S.C. 1291 1

28 U.S.C. 1331 & 1345.....1

29 U.S.C. 701 *et seq*.....27

42 U.S.C. 12111 *et seq*.....27

REGULATIONS:

29 C.F.R. 1630.2(o)(3).....30

RULES:

Fed. R. Civ. P. 56(c).....25

LEGISLATIVE HISTORY:

H.R. Rep. No. 711, 100th Cong., 2d Sess. (1988).....16

MISCELLANEOUS: **PAGE**

*Joint Statement of HUD and DOJ on Reasonable Accommodation Under the FHA (May 14, 2004) at 7. Available at http://www.justice.gov/crt/housing/jointstatement_ra.php (last visited August 5, 2010).....28

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UNITED STATES OF AMERICA,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR THE UNITED STATES AS APPELLANT

STATEMENT OF JURISDICTION

The United States brought this suit pursuant to Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act, or FHA), as amended by the Fair Housing Amendments Act of 1988 (FHAA), 42 U.S.C. 3601 *et seq*. The district court had jurisdiction under 28 U.S.C. 1331 & 1345, and 42 USC 3612(o). The district court entered its final judgment on April 19, 2010. A notice of appeal was timely filed on June 16, 2010. This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUE

Whether the district court erred in concluding that the evidence, at the summary judgment stage, was insufficient to create a genuine issue of material fact as to whether the tenant put the public housing authority on notice that he had a disability and was requesting a reasonable accommodation.

STATEMENT OF THE CASE

In June 2006, Miguel Rodriguez filed a complaint with the Department of Housing and Urban Development (HUD) alleging that his landlord, the Hialeah Housing Authority (HHA), violated the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, by denying his request for a reasonable accommodation, *i.e.*, a dwelling with the bathroom on the same floor as the living quarters so that, given Mr. Rodriguez's disability, he would not have to use the stairs to reach the bathroom. R.E. 150 at 2, 8.[1] After an investigation, HUD determined that there was reasonable cause to believe that HHA discriminated against Mr. Rodriguez on the basis of his disability in violation of 42 U.S.C. 3604(f)(3)(B). R.E. 150 at 8. HUD found that its investigation showed that HHA knew or should have known about both Mr.

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[1] Citations to "R.E. __ at __" refer to documents in the district court record, as numbered on the district court's docket sheet, and page numbers within the documents, included in the Record Excerpts filed by the United States in this appeal. Citations to "R. __ at __" refer to documents in the district court record, as numbered on the district court's docket sheet, and page numbers within the documents, in those documents not included in the Record Excerpts.

Rodriguez's disability and his need for an accommodation (a bathroom that could be reached without climbing stairs). R. 127 Exh. MM at 6-10.

On September 26, 2008, the United States filed this "election" suit (see 42 U.S.C. 3612(o)) under the FHA on behalf of the Rodriguez family against HHA to enforce the FHA's reasonable accommodation provision, Section 3604(f)(3)(B). R.E. 1. The complaint alleged, *inter alia*, that HHA discriminated against the Rodriguezes by failing to provide Mr. Rodriguez a reasonable accommodation for a disability due to hip and back problems. R.E. 1. The complaint sought declaratory and injunctive relief, as well as monetary damages. R.E. 1 at 6-7.

On November 23, 2009, HHA filed a motion for summary judgment. R. 94, 95. HHA argued, *inter alia*, that Mr. Rodriguez did not have a disability and that, in any event, HHA did not refuse to offer him a reasonable accommodation because he did not provide medical documentation of his disability as requested, and unilaterally decided to abandon his public housing tenancy. R. 94 at 4, 12-13. The United States argued in opposition that Mr. Rodriguez was disabled under the FHA, he made a request for a reasonable accommodation, and HHA denied the request without engaging in an interactive process to discuss the disability-related need for an accommodation and possible resolutions. R. 129 at 2-3. On March 12, 2010, the court held a hearing on the motion. R. 147.

On April 19, 2010, the district court granted HHA's motion for summary judgment. R.E. 150. The court stated that, even assuming the plaintiff has a disability, "no reasonable jury could conclude that defendant knew or should have known that Mr. Rodriguez was disabled and that HHA knew the requested accommodation was necessary." R.E. 150 at 16. The court therefore concluded that "[b]ecause the evidence of Mr. Rodriguez's alleged disability was insufficient, HHA had no meaningful opportunity to consider whether Mr. Rodriguez was in fact disabled and to assess whether the requested accommodation was necessary. Accordingly, given that [p]laintiff has failed to create any genuine issues of material fact as to HHA's knowledge of Mr. Rodriguez's disability and the necessity of the requested accommodation, HHA is entitled to summary judgment." R.E. 150 at 19.

On June 16, 2010, the United States filed a timely notice of appeal. R. 161.

STATEMENT OF THE FACTS

1. Background

HHA is a HUD-funded housing provider that manages several public housing developments in Hialeah, Florida. R.E. 1 at 1. Mr. Rodriguez, his wife, and their children were public housing tenants of HHA from 1995 until August 2005. R.E. 150 at 2. During that time, they lived in a second floor apartment that

was reached by an outdoor "switch-back" style staircase, *i.e.*, a staircase with two flights of stairs with a landing in between. R.E. 150 at 2; R. 126 Exh. C.

Mr. Rodriguez was born in Cuba and went to school until the 8th grade. R. 126 Exh. A at ¶1. His primary language is Spanish. He married his wife, Lazara Rodriguez, in Cuba. R. 126 Exh. A at ¶ 2. Her primary language is also Spanish, and she went to school through the 6th grade. R. 126 Exh. G at 13. The Rodriguezes came to the United States in 1989 when he was age 43, and he applied for public housing with HHA a year later. R. 126 Exh. A at ¶¶ 1-3. Beginning in 1997, Mr. Rodriguez worked two jobs – as a laborer at a lumber supply company and as a part-time night manager with HHA at his apartment building. R. 126 Exh. A at ¶¶ 4-7.

In May 2001, Mr. Rodriguez suffered a work-related accident, injuring his shoulder and rotator cuff and causing shoulder, arm, and neck pain. R.E. 150 at 2-3. As a result, he had emergency shoulder surgery. R. 126 Exh. A at ¶ 8. He no longer worked after the accident, and received worker's compensation benefits. R.E. 150 at 2-3; R. 126 Exh. A at ¶¶ 7, 9. In 2003, the Social Security Administration determined that he was "disabled" and unable to work and, as a result, he receives monthly social security benefits. R.E. 150 at 2-3. HHA was notified of his disability determination and classified Mr. Rodriguez as "disabled" in its internal and official reports to HUD. R. 128 Exh. VV (dated June 25, 2004).

Further, as a result of the accident, Mr. Rodriguez could no longer work as a night manager for HHA, and his wife assumed those duties. R. 126 Exh. A at ¶ 6, Exh. B at 159. As a result of his reduced income, Mr. Rodriguez's subsidized income-based rent was reduced to $159.00 a month. R. 126 Exh. A at ¶ 12, Exh. B at 160-163. According to Mr. Rodriguez, he did not request a first floor unit after the accident because he liked his apartment, left the apartment infrequently (less than daily), and the design of the staircase allowed him to take his time and rest if necessary. R. 126 Exh. A at ¶ 18.

2. The Rodriguezes Reject Their Transfer To A New Apartment And Their Tenancy Is Terminated

In 2004, the Rodriguez family and another family were being harassed by one of their neighbors. R. 125 at ¶¶ 8-9. After an HHA area supervisor, Joel Bonilla, investigated, the HHA decided to terminate the tenancies of all three families. R.E. 150 at 3. The Rodriguez family requested an informal hearing to contest the lease termination. The hearing was held on January 20, 2005, before Chabela Aneiros, the hearing officer; Mr. Bonilla was also present. R.E. 150 at 3-4.

At the hearing, Mr. Bonilla addressed the reasons for the lease termination. R. 127 Exh. U at 71, 82. There was also discussion about Mr. Rodriguez's health, and Mr. Rodriguez provided the hearing officer with documentation showing that he was sick and that his health was not good due to an accident. R.E. 150 at 5 n.7;

R. 126 Exh. B at 163-164; R. 127 Exh. R, Exh. U at 87. Ms. Aneiros asked Mr. Bonilla if other units were available to which the Rodriguezes could be transferred. R. 127 Exh. U at 75-76. Mr. Bonilla responded that a two-story unit was available at a different housing development, Hoffman Gardens. R. 127 Exh. U at 75-77; R.E. 150 at 4. According to Mr. Rodriguez, he expressed his need for a unit with a bathroom on the first floor, R. 126 Exh. A at ¶ 21; according to HHA, there was no such discussion. R. 95 at ¶ 17. Also according to the Rodriguezes, they were told that the Hoffman Gardens unit had a half-bathroom on the main level. R. 125 at ¶ 16; R. 126 Exh. A at ¶ 23, Exh. B at 39, 59, Exh. G at 131-132; R. 127 Exh. V. The Rodriguezes were not permitted to see the unit before signing the transfer agreement, which they stated that they had no choice but to do. R.E. 150 at 4; R. 127 Exh. S; R. 125 at ¶ 17; R. 126 Exh. A at ¶ 16, Exh. B at 38, 164-165, Exh. G at 131-132, 137; R. 127 Exh. U at 79-80.

Later that day, the Rodriguezes visited the Hoffman Gardens unit and were shown one three-bedroom unit. R.E. 150 at 5; R. 126 Exh. B at 171. They discovered that it was not clean or painted, lacked air conditioning, and that the only bathroom was not on the main level but was on the second floor reachable by a single, straight staircase. R. 126 Exh. L. As a result, they rejected the transfer. R. 126 Exh. M at 331.

The next day, January 21, 2005, Mrs. Rodriguez went to see Mr. Bonilla to tell him the unit was not acceptable and to ask for a different apartment. R. 126 Exh. A at ¶ 26, Exh. G at 133. He told her she had to see Ms. Aneiros. R. 126 Exh. A at ¶ 26, Exh. G at 133. Because Ms. Aneiros was not available, Mrs. Rodriguez wrote her a letter "appealing" the transfer, which she left at Ms. Aneiros's office. R. 126 Exh. A at ¶ 26, Exh. G at 133-134; R. 127 Exh. V; R.E. 150 at 5-6. The January 21, 2005, letter stated, in relevant part (as translated from Spanish):

> [W]e need to talk to you the sooner the better, because we want to appeal the decision about the transfer, because we did not realize that we did not see the conditions of the place first. The place has no a/c at all and my husband with the a/c is not sleeping, for that reason he is under treatment for his nerves. There is no bathroom downstairs and he and I had surgery, we can not go upstairs each time we need to use the bathroom. Although the a/c is installed in that place, there is no half bathroom as they told me. I had no opportunity to see it first, I never visited the place before. My husband and I can bring you all the medical documents. * * * I hope you can contact me as soon as you can.

R. 127 Exh. V.

HHA did not respond to this letter. R.E. 150 at 6. Nor did it contact the Rodriguezes to address Mrs. Rodriguez's concern with the Hoffman Gardens apartment and their specific housing needs. R.E. 150 at 6; R. 95 at ¶ 20; R. 126 Exh. B. at 172, 174. During the course of this litigation, HHA acknowledged that the letter was hand-delivered to the hearing officer, Ms. Aneiros, but stated that she

put it in the file without reading it. R. 95 at ¶ 20; R. 127 Exh. V at 93, 96. Further, Crystal Coleman, the HHA's Director of Housing Operations, and Mr. Bonilla's supervisor, acknowledged in her deposition that the January 21, 2005, letter was sufficient to constitute a request for a reasonable accommodation and that, as a result, someone should have investigated and determined whether there was a reasonable basis for the request. R. 126 Exh. Q at 82-85, 90.[2]

Three days later, on January 24, 2005, Ms. Aneiros sent her final decision letter to Mr. Rodriguez, stating the decision to terminate his public housing tenancy was upheld. R.E. 150 at 6; R. 97 Exh. Y. Ms. Aneiros explained in her deposition that she upheld the termination because the Rodriguezes had agreed to transfer to a new unit. R. 127 Exh. V at 102. The letter advised Mr. Rodriguez that he had the right to appeal the decision by requesting a formal hearing. It did not address any of the concerns that were raised at the January 20, 2005, informal hearing about Mr. Rodriguez's health or Mrs. Rodriguez's January 21, 2005, letter. R. 97 Exh. Y; R. 126 Exh. Q at 90.

On January 28, 2005, HHA sent Mr. Rodriguez a "notice to cure," which notified him that he was in breach of the transfer agreement and had seven days to move out of his unit and into the Hoffman Gardens unit. R. 97 Exh. AA. On

[2] Ms. Coleman stated: "From the letter dated 1-21-05, as it's translated here, that would certainly suggest that, yes, that a reasonable accommodation request should have been reviewed." R. 126 Exh. Q at 90.

January 31, 2005, an attorney for Mr. Rodriguez sent a letter to HHA advising HHA that he was representing Mr. Rodriguez, requesting a formal hearing, and indicating that notice of the date and time of the hearing should be sent to his (the attorney's) address. R.E. 150 at 6; R. 97 Exh. AA.

On February 9, 2005, HHA sent a letter by certified mail to Mr. Rodriguez – but not to his attorney – granting the request for a formal hearing and noting that the hearing was set for March 9, 2005. R.E. 150 at 6 & n.11; R. 127 Exh. BB.[3] Mr. Rodriguez never received the letter, and therefore had no notice of the hearing. R. 127 Exh. EE; R. 126 Exh. Q at 97, 101-102. As a result, neither Mr. Rodriguez nor his attorney appeared at the hearing. Because Mr. Rodriguez failed to appear, on March 11, 2005, HHA sent a letter to Mr. Rodriguez advising him that the decision to terminate his tenancy was upheld. R.E. 150 at 6-7; R. 127 Exh. CC. That letter also denied the Rodriguezes' request for a new hearing date. R. 127 Exh. CC; see also R. 126 Exh. Q at 102-103. Therefore, Mr. Rodriguez was never afforded an opportunity to administratively appeal HHA's decision to terminate his tenancy.

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[3] Ms. Coleman acknowledged in her deposition that when HHA receives notice that an attorney is representing a tenant, correspondence regarding the tenant is supposed to be directed to the attorney. R. 126 Exh. Q at 94.

3. State Court Eviction Action

On May 4, 2005, HHA filed a state court action to evict the Rodriguezes. R.E. 150 at 7; R. 97 Exh. II. The complaint stated that Mr. Rodriguez was being evicted for altercations with a neighbor, and that he agreed to transfer to a different unit but refused to do so. R. 97 Exh. II. On May 17, 2005, Mr. Rodriguez, through his attorney, filed an answer. R. 97 Exh. JJ. As an affirmative defense, he asserted that he was "disabled due to hip and back problems and cannot constantly go up and down stairs to use a bathroom." R. 97 Exh. JJ at 6, ¶ 41. He further alleged that he advised HHA on January 21, 2005, that "he could not transfer to the unit due to his health problems"; HHA "refuses to transfer [him] to a single story unit or a unit with restroom facilities on each floor"; and HHA "violated its obligation of good faith by failing to offer [his family] a reasonable accommodation for his disability." R. 97 Exh. JJ at 6, ¶¶ 42-44; R.E. 150 at 7.

On June 30, 2005, the Rodriguezes attended a court-ordered mediation in the eviction case. Mr. Bonilla was present at the mediation, along with the Rodriguezes' attorney and an attorney for HHA. R.E. 150 at 7; R. 95 at ¶ 28. HHA acknowledges that at this hearing the Rodriguezes' attorney explained that Mr. Rodriguez had a medical condition and could not go up and down the stairs, and for that reason rejected the transfer to the Hoffman Gardens unit. R. 95 at ¶ 29; R. 126 Exh. M at 140, 333-334. Mr. Bonilla responded that Mr. Rodriguez

should make a request for an accommodation to HHA and provide supporting medical documentation. R. 95 at ¶ 29; R. 126 Exh. M at 142, 335. Also according to HHA, the area supervisor responded that in the event adequate documentation was provided, HHA would allow the Rodriguezes to stay in their dwelling and place them on a waiting list for an accessible unit. R. 95 at ¶ 29; see also R.E. 150 at 7.

According to the United States, Mr. Rodriguez did present medical documentation at the mediation, including a letter from Dr. Nunez, dated June 10, 2005, regarding his medical condition and diagnoses, R.E. 150 at 7 & n.14, and HHA insisted that the Rodriguezes had to move to Hoffman Gardens even if they were placed on a waiting list, R. 126 Exh. A at ¶ 28. The June 10, 2005, letter stated, in relevant part:

> This is to certify that [Mr. Rodriguez has been] my patient since May 1997. His diagnos[e]s are * * * 3) osteoarthritis; 4) depression; 5) chronic shoulder pain; and 6) chronic back pain. He is see[ing] a pain specialist also. He will benefit [from] a stable and relaxed environment.

R. 127 Exh. FF-1.

At this point, the matter ended. During the mediation, Mr. Rodriguez, after consulting with his attorney, decided to no longer contest the eviction action. R.E. 150 at 7-8. He did not proceed to trial because he did not have the money to keep paying his lawyer. R. 125 at ¶ 29; R. 126 Exh. B at 109-110, 120, 181. He was

also frustrated with "HHA's unreasonableness and the unfairness of the internal grievance process" and therefore, "rather than risk immediate eviction," entered into an agreement that would allow him more time to stay in his unit while he looked for another place to live. R. 126 Exh. A at ¶ 29. Under the settlement agreement, HHA agreed to dismiss the eviction claim and allow the Rodriguez family to remain in their original dwelling until August 31, 2005. R. 97 Exh. KK. On that date, the family vacated the apartment they had lived in for ten years. R.E. 150 at 8. At the time of the mediation, HHA had several three-bedroom apartments available that would have met Mr. Rodriguez's needs and request. R. 126 Exh. M at 106-108, Exh. Q at 26-41. The Rodriguezes ultimately moved into a one-level mobile home purchased with the financial help of their daughter. R. 126 Exh. B at 142-144, Exh. G at 186.

4. Federal Fair Housing Act Claim Of Failure To Reasonably Accommodate

In June 2006, Mr. Rodriguez filed a complaint with HUD alleging that HHA violated the FHA by denying his request for a reasonable accommodation. R.E. 150 at 8; R. 127 Exh. KK. After an investigation, HUD determined that there was reasonable cause to believe that HHA discriminated against Mr. Rodriguez on the basis of his disability in violation of 42 U.S.C. 3604(f)(3)(B). HUD found that its investigation showed that HHA knew or should have known about both Mr.

Rodriguez's disability and his need for an accommodation (a bathroom that could be reached without climbing stairs). R. 127 Exh. MM at 6-10.

On September 26, 2008, the United States filed this "election" suit (see 42 U.S.C. 3612(o)) on behalf of the Rodriguez family against HHA for failure to provide Mr. Rodriguez with a reasonable accommodation for a disability due to hip and back problems. R.E. 1. The complaint sought declaratory and injunctive relief, as well as monetary damages. R.E. 1 at 6-7.

On November 23, 2009, HHA filed a motion for summary judgment. R. 94, 95. HHA argued, *inter alia*, that Mr. Rodriguez did not have a disability and that, in any event, HHA did not refuse to offer him a reasonable accommodation because he did not provide medical documentation of his disability as requested, and unilaterally decided to abandon his public housing tenancy. R. 94 at 12-13. The United States argued in opposition that Mr. Rodriguez was disabled under the FHA, made a request for a reasonable accommodation, and HHA denied the request without engaging in an interactive process to discuss the disability-related need for an accommodation and possible resolutions. R. 129 at 9-10. Specifically, the United States asserted that HHA was provided sufficient notice that Mr. Rodriguez was disabled and requested an accommodation, first, during the January 20, 2005, informal hearing contesting his lease termination; second, in the January 21, 2005, letter from Mrs. Rodriguez to HHA; and third, in statements and

documents provided at the June 30, 2005, mediation of the action to evict the Rodriguezes from their dwelling. R. 129 at 10.

On March 12, 2010, the court held a hearing on the motion. R. 147. HHA acknowledged that Mrs. Rodriguez's January 21, 2005, letter constituted a request for an accommodation. R. 147 at 6. HHA also stated that at the June 30, 2005, mediation HHA was advised "for the first time" that Mr. Rodriguez "cannot traverse steps on a regular basis," and HHA responded that if it received "medical evidence of a disability and a nexus between that disability and the request" it would find the Rodriguezes an accessible unit. R. 147 at 7-8. In addition, HHA argued that the June 10, 2005, letter from Dr. Nunez did not say that Mr. Rodriguez had a disability, but only that he had chronic back pain, R. 147 at 9-10, and that, in any event, a back injury is not the same as being disabled, and there was no evidence that Mr. Rodriguez was disabled, R. 147 at 20-21. The United States argued, *inter alia*, that the facts showed that HHA knew or should have known that Mr. Rodriguez had a disability and therefore did not want to live in a unit that required him to use stairs to reach the bathroom and that, at a minimum, HHA had enough information to trigger its obligation to engage Mr. Rodriguez on the issue whether he needed an accommodation before allowing Mr. Rodriguez to settle the eviction action and agree to move out. R. 147 at 16-18, 25-27.

5. Decision Below

On April 19, 2010, the district court granted HHA's motion for summary judgment. R.E. 150. The court stated that, even assuming the plaintiff has a disability, the defendant cannot be held liable for failing to provide a reasonable accommodation unless it knew, or could reasonably have been expected to know, of both the existence of the disability and the necessity of the accommodation. R.E. 150 at 15-16. The court concluded that, here, "no reasonable jury could conclude that defendant knew or should have known Mr. Rodriguez was disabled and that HHA knew the requested accommodation was necessary." R.E. 150 at 16.

First, with respect to the January 20, 2005, informal hearing, the court stated that although Mr. Rodriguez asserted in his deposition that he provided documentation showing he was "sick," there is no evidence in the record "supporting the contention that Mr. Rodriguez had difficulty climbing stairs due to a disability in 2005." R.E. 150 at 17 n.24. The court therefore concluded that "no reasonable jury could find that unspecific documentation showing Mr. Rodriguez 'was sick' is sufficient to establish that he was disabled and that the requested accommodation was necessary." R.E. 150 at 17 n.24.

Second, the court rejected the United States' argument that Mrs. Rodriguez's January 21, 2005, letter gave HHA sufficient notice. R.E. 150 at 16. The court stated that although it is undisputed that HHA did not respond to the letter, even

assuming HHA had read it, the letter was insufficient because it did not indicate whether Mr. Rodriguez's limitations were temporary or permanent or "describe the nature and extent of his disability"; rather, it contained only a "vague reference" to his surgery, which at that time could only have referred to his shoulder surgery for his work-related accident. R.E. 150 at 16-17. The court stated that "[c]learly, a reference to Mr. Rodriguez's shoulder surgery is insufficient to establish that the requested accommodation – a bathroom on the first floor – was necessary." R.E. 150 at 17.

Finally, the court rejected the United States' argument that HHA received adequate notice at the June 30, 2005, mediation when Mr. Rodriguez stated he had a disability and provided medical documentation substantiating his claim. R.E. 150 at 18-19. Although the court stated that there was no evidence in the record supporting the United States' assertion that a letter dated June 10, 2010, from Dr. Nunez was given to HHA at the mediation, R.E. 150 at 18 n.25, the court concluded that, even if the letter was given to HHA, it was not sufficient to substantiate the alleged disability in response to HHA's request for medical documentation, R.E. 150 at 19. The court stated that the "letter lacked any explanation as to the extent and nature of Mr. Rodriguez's diagnoses and was devoid of any reference to his alleged limited ability to climb stairs. As such, it did not provide a basis from which HHA could determine whether Mr. Rodriguez was

disabled and actually needed the requested accommodation." R.E. 150 at 18-19 (footnotes omitted). The court concluded that "[b]ecause the evidence of Mr. Rodriguez's alleged disability was insufficient HHA had no meaningful opportunity to consider whether Mr. Rodriguez was in fact disabled and to assess whether the requested accommodation was necessary. Accordingly, given that [p]laintiff has failed to create any genuine issues of material fact as to HHA's knowledge of Mr. Rodriguez's disability and the necessity of the requested accommodation, HHA is entitled to summary judgment." R.E. 150 at 19.

SUMMARY OF ARGUMENT

This case presents an important issue concerning the burden placed on a person with a disability requesting a reasonable accommodation under the FHA. As set forth below, the district court erred in concluding that, as a matter of law, the evidence was insufficient at the summary judgment stage to create a genuine issue of material fact as to whether HHA knew or should have known that Mr. Rodriguez both had a disability and requested a reasonable accommodation.

For purposes of this appeal, this Court must assume – as the district court did – that Mr. Rodriguez has a disability. See R.E. 150 at 15-16. In this context, the threshold question is what constitutes sufficient notice to HHA that Mr. Rodriguez has a disability and desires an accommodation. Caselaw makes clear that the tenant is not required to utter any particular words or make a request for an

accommodation in a particular manner or at a particular time. Rather, the tenant must convey to the landlord enough information so that, under the circumstances, the landlord – or a reasonable person in the landlord's position – should know of both the disability and desire for an accommodation.

What information the tenant must convey also depends on the context of the case and what the landlord may already know. If it appears to the landlord that a tenant may need an accommodation but does not know how to ask for it, or if the landlord is skeptical about an alleged disability, the landlord should open a dialogue, request additional information, or otherwise do what it can to help. This is particularly true where, as here, the tenant may be an immigrant who does not speak English, works as a day laborer, and is generally poorly educated. Otherwise, those in need of the protections of the FHA may be shut out from housing by a landlord's refusal to acknowledge that the tenant may have a disability and is requesting, however inartfully, an accommodation.

Once a request for an accommodation has been conveyed, the parties are expected to engage in an "interactive process," through which they discuss the need for the requested accommodation and possible alternatives. Although there is no cause of action for failure to engage in the process if, in fact, no reasonable accommodation could have been made, where that is not the case a landlord's

failure to engage in the interactive process is also a failure to make a reasonable accommodation. That is the situation here.

In this case, the district court committed two primary errors. First, the court held the Rodriguezes' attempts to request an accommodation to a standard of precision and detail that is inconsistent with the broad remedial purposes of the FHA and the reality that initial requests for accommodation are going to be made by laypeople. As Mr. Rodriguez's interaction with HHA progressed from the time of his work-related injury until the June 30, 2005, mediation, HHA was apprised of his condition and desire for an accommodation on numerous occasions and in numerous ways; often, in response, HHA's own action or inaction contributed to its failure to properly address and resolve his needs.

At the January 20, 2005, informal hearing addressing the lease termination, Mr. Rodriguez provided the hearing officer with documentation showing that he was sick and that his health was not good due to an accident. In his affidavit, Mr. Rodriguez asserted that, when offered a transfer to a different unit, he also expressed his need for a unit with a bathroom that was accessible without climbing stairs. This statement, together with HHA's prior knowledge that Mr. Rodriguez had a disability and could not work, put HHA on notice that Mr. Rodriguez, because of his physical limitations, needed a living unit with a bathroom on the same floor as the living quarters. Indeed, according to Mr. Rodriguez, HHA

responded that the unit had such a bathroom, indicating it knew at that time the nature of Mr. Rodriguez's disability and that he needed a unit with a bathroom on the main level as an accommodation.

Next, Mrs. Rodriguez's January 21, 2005, letter "appealing" the transfer decision stated that there was no bathroom on the main living level as they were told; she and her husband had surgery; and they could not go upstairs each time they needed to use the bathroom. She also offered to "bring you all the medical documents." This letter, given HHA's prior knowledge of Mr. Rodriguez's disability, also put HHA on notice of Mr. Rodriguez's need for a unit with a bathroom on the main level as an accommodation. In fact, Ms. Coleman, HHA's Director of Housing Operations, acknowledged in her deposition that the letter was sufficient to constitute a request for a reasonable accommodation and that, as a result, someone should have investigated and determined whether there was a reasonable basis for the request. Therefore, HHA could not reasonably have done the one thing it did – ignore the letter entirely. HHA's failure in this regard, along with its failure to properly notify Mr. Rodriguez's attorney of the formal hearing at which Mr. Rodriguez intended to contest the transfer decision, effectively denied Mr. Rodriguez administrative review of the transfer decision and precipitated the events that ultimately resulted in Mr. Rodriguez's abandoning his tenancy.

In addition, in his May 17, 2005, answer to HHA's eviction action, Mr. Rodriguez expressly asserted that he was disabled due to hip and back problems and could not constantly go up and down the stairs to use the bathroom; he had previously advised HHA of that in the January 21, 2005, letter; and HHA had failed to offer a reasonable accommodation for his disability. This document squarely put HHA on notice that, because of his disability, Mr. Rodriguez could not live in a unit that required him to use the stairs to reach the bathroom, and that therefore he was requesting an accommodation.

Finally, HHA admits that it was told at the June 30, 2005, state court mediation that Mr. Rodriguez had an alleged disability that prevented him from climbing stairs. HHA responded, for the first time, that Mr. Rodriguez should provide HHA with supporting medical documentation. According to the United States, Mr. Rodriguez did present medical documentation to HHA at the mediation, including a letter from Dr. Nunez stating that Mr. Rodriguez suffered from osteoarthritis, chronic back and shoulder pain, and was seeing a pain specialist. That matter was not further addressed because, during the hearing, Mr. Rodriguez decided to settle the eviction case and abandon his request for housing. He did so because he could not afford to keep paying his lawyer to challenge the eviction, and he received in exchange a two-month delay in the eviction so that he could find new housing. Nevertheless, because HHA was directly told at the

mediation that Mr. Rodriguez was disabled and could not climb stairs to use the bathroom, HHA could have stayed or dismissed the eviction action and worked with Mr. Rodriguez to try to address his needs. That HHA did not do so, and instead allowed Mr. Rodriguez to abandon his tenancy, does not mean that HHA should be relieved of liability for failing to engage in the interactive process, thereby effectively denying him an accommodation, particularly given that HHA had previously ignored Mrs. Rodriguez's January 21, 2005, letter and failed to give Mr. Rodriguez proper notice of the formal hearing at which he intended to challenge his lease termination. The district court erroneously found none of this evidence sufficient to create a genuine issue of material fact as to whether Mr. Rodriguez sufficiently put HHA on notice that he desired an accommodation because of his disability.

The district court's second primary error was reviewing, and rejecting, *in isolation*, each instance where HHA was made aware that Mr. Rodriguez had a disability and that his physical condition affected his ability to use stairs. Looking at the totality of the information available to HHA, the evidence was sufficient to establish that, at least at the time of the June 30, 2005, mediation, a reasonable person would have been aware, or should have been aware, that Mr. Rodriguez had a disability that prevented him from climbing stairs and therefore sought a unit with a bathroom on same level as the living quarters – the type of unit HHA had

readily available. As a result, a reasonable jury could find that, rather than allowing Mr. Rodriguez to abandon his tenancy, HHA had an obligation to engage in the interactive process and seek a resolution of the matter. HHA's failure to do so constituted a denial of his request for a reasonable accommodation under the FHA. Summary judgment for the defendant, therefore, was reversible error.

ARGUMENT

THE SUMMARY JUDGMENT RECORD WAS SUFFICIENT TO CREATE A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER HHA KNEW OR SHOULD HAVE KNOWN THAT MR. RODRIGUEZ BOTH HAD A DISABILITY AND REQUESTED A REASONABLE ACCOMMODATION

The district court erred in concluding that, as a matter of law, the evidence at the summary judgment stage was insufficient to create a genuine issue of material fact concerning whether HHA knew or should have known that Mr. Rodriguez both had a disability and requested a reasonable accommodation, *i.e.*, a dwelling with a bathroom on the same floor as the living quarters so he would not have to frequently use the stairs. The district court's decision places an inappropriately high threshold on plaintiffs seeking a reasonable accommodation. It also runs counter to the broad remedial goals of the FHA of ensuring that persons with disabilities have equal access to housing; reasonable accommodation issues are resolved through an interactive and cooperative process; and persons with disabilities are not shut out from the FHA's protections because they failed to utter

the right words in requesting an accommodation. Moreover, in granting summary judgment to the defendant, the district court failed in its obligation to "view the evidence * * * in the light most favorable to the party opposing the motion and [to resolve] all reasonable doubts about facts * * * in favor of the non-movant." *Denney* v. *City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001) (internal quotation marks and citation omitted).

A. Standard Of Review

This Court reviews a grant of summary judgment *de novo*, "applying the same legal standard employed by the district court." See, *e.g.*, *Gaston* v. *Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999). Under this standard, the Court "must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment." *Loren* v. *Sasser*, 309 F.3d 1296, 1301-1302 (11th Cir. 2002) (internal citation omitted), cert. denied, 538 U.S. 930, 123 S. Ct. 1589 and 538 U.S. 1057, 123 S. Ct. 2219 (2003). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also *Loren*, 309 F.3d at 1301.

B. Requests For Reasonable Accommodation And The Interactive Process Under The Fair Housing Act

1. In 1988, the FHA was amended to prohibit discrimination on the basis of disability. Such discrimination includes the failure to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford * * * equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). Therefore, as part of its "broad remedial intent," *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 380, 102 S. Ct. 1114, 1125 (1982), the FHA "imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons." *United States* v. *California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994).

To prevail on a failure to accommodate claim, the plaintiff must establish that: (1) she has a disability; (2) she requested a reasonable accommodation; (3) such an accommodation was necessary to afford her equal opportunity to use and enjoy the dwelling; and (4) the defendant refused to make the requested accommodation. See, *e.g.*, *Hawn* v. *Shoreline Towers Phase I Condominium Ass'n, Inc.*, 347 F. App'x 464, 467 (11th Cir. 2009) (unpublished); *Dubois* v. *Association of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006), cert. denied, 549 U.S. 1216, 127 S. Ct. 1267 (2007). In addition, the plaintiff must establish that the defendant knew or should have known both of the

disability and that an accommodation was necessary to afford equal use of the dwelling. See *Schwarz* v. *City of Treasure Island*, 544 F.3d 1201, 1219 (11th Cir. 2008); see also R. 127 Exh. MM at 6 (HUD Determination of Reasonable Cause (Aug. 6, 2008)).

In this regard, this Court, and other courts of appeals, have made clear that a defendant cannot be liable for failing to grant a reasonable accommodation if the defendant did not know, or have reason to know, of the need for the accommodation. See, *e.g.*, *Schwarz*, 544 F.3d at 1219 (citing cases). This is common sense; before liability can attach, the defendant must be afforded an opportunity to decide whether it will grant an accommodation. *Ibid.*; see also *Tsombanidis* v. *West Haven Fire Dep't*, 352 F.3d 565, 579 (2d Cir. 2003) ("A governmental entity must know what a plaintiff seeks prior to incurring liability for failing to affirmatively grant a reasonable accommodation."); *Keys Youth Serv.* v. *City of Olathe*, 248 F.3d 1267, 1275 (10th Cir. 2001). These principles also apply to reasonable accommodation claims under, *e.g.*, Title I of the Americans with Disabilities Act (42 U.S.C. 12111 *et seq.*) and the Rehabilitation Act (29 U.S.C. 701 *et seq.*). See generally *Gaston* v. *Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363-1364 (11th Cir. 1999) (Title I case).[4] Indeed, most of the law in this

[4] Cases cited herein addressing the reasonable accommodation analysis are FHA cases, unless otherwise noted.

area comes from Title I cases, but courts generally recognize that the reasonable accommodation requirement and analysis under the FHA, ADA, and the Rehabilitation Act are the same. See, *e.g.*, *Schwarz*, 544 F.3d at 1220; *Giebeler* v. *M&B Assocs.*, 343 F.3d 1143, 1148-1149 (9th Cir. 2003) (noting that the House Committee Report on the 1988 amendments to the FHA states that the interpretation of "reasonable accommodation" in the Rehabilitation Act regulations and case law should be applied to the FHA); *Oconomowoc Residential Programs, Inc.* v. *City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) ("The requirements for reasonable accommodation under the ADA are the same as those under the FHAA.").

As a general matter, once the plaintiff has requested an accommodation, if the housing provider does not agree, the parties engage in an "interactive process" in which "the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations." Joint Statement of HUD and DOJ on Reasonable Accommodation Under the FHA (May 14, 2004) at 7 (Joint Statement).[5] This process ensures that the parties explore whether an effective reasonable accommodation is available that will not pose an undue financial or administrative

[5] Available at http://www.justice.gov/crt/housing/jointstatement_ra.php (last visited August 5, 2010).

burden for the housing provider. *Ibid.* It is also consistent with the remedial nature of the FHA – ensuring that persons with disabilities have equal access to housing. If no agreement is reached, the request for an accommodation is effectively denied.

Although neither the FHA nor its implementing regulations expressly require an "interactive process," courts have found it implicit in the FHA. See, *e.g.*, *Jankowski Lee & Assocs.* v. *Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996) (en banc); see also *Douglas* v. *Kriegsfeld Corp.*, 884 A.2d 1109, 1122 n.22 (D.C. App. 2005) (discussing the interactive process and the FHA, and citing cases); *Wilkerson* v. *Shinseki*, 606 F.3d 1256, 1266 (10th Cir. 2010) (the Rehabilitation Act requires an interactive process, which is "inherent in the statutory obligation" to provide a reasonable accommodation); cf. *Lapid-Laurel* v. *Zoning Bd. of Adjustment of the Twp. of Scotch Plains*, 284 F.3d 442, 455-456 (3d Cir. 2002) (interactive process requirement not applicable to FHA claims against local zoning boards because zoning decisions are governed by their own procedural rules). The Title I regulations do address the interactive process: "To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation * * * [so that the parties can] identify the precise limitations resulting from the disability and potential reasonable

accommodations that could overcome those limitations." 29 C.F.R. 1630.2(o)(3); see generally *Williams* v. *Philadelphia Hous. Auth. Police Dep't*, 380 F.3d 751, 771 (3d Cir. 2004) (Title I case) ("an employer has a duty under the ADA to engage in an 'interactive process' of communication with an employee requesting an accommodation so that the employer will be able to ascertain whether there is in fact a disability and, if so, * * * assist in identifying reasonable accommodations"), cert. denied, 544 U.S. 961, 125 S. Ct. 1725 (2005); *Smith* v. *Midland Brake, Inc.*, 180 F.3d 1154, 1171-1172 (10th Cir. 1999) (Title I case).

The duty to engage in the interactive process, like the ultimate duty to provide a reasonable accommodation, is triggered by notice of a disability and its resulting limitations and a request for an accommodation. See, *e.g.*, *Webb* v. *Donley*, 347 F. App'x 443, 446 (11th Cir. 2009) (unpublished) (Rehabilitation Act case); *Gaston*, 167 F.3d at 1363-1364 (Title I case); *Willis* v. *Conopco*, 108 F.3d 282, 285 (11th Cir. 1997) (Title I case). There is, however, no cause of action for failure to engage in the process if there was no possible way the employer could accommodate the disability. *Willis*, 108 F.3d at 285; see also *Earl* v. *Mervyns, Inc.*, 207 F.3d 1361, 1366-1367 (11th Cir. 2000) (Title I case). In other words, the disability discrimination laws are "not intended to punish employers for behaving callously if, in fact, no accommodation * * * could reasonably have been made." *Willis*, 108 F.3d at 285. Ultimately, if the plaintiff has notified the defendant that

she has a disability, and suggests a reasonable accommodation, a determination that a defendant failed to engage in the interactive process is a determination that the defendant failed to reasonably accommodate. See, *e.g.*, *Lowe* v. *Independent Sch. Dist. No. 1*, 363 F. App'x 548 (10th Cir. 2010) (unpublished) (Title I case). The district court erred in failing to recognize that, on this record, a reasonable jury could have reached this conclusion.

2. Given that the burden is on the plaintiff to make a request for an accommodation, and that a housing provider cannot be liable for failure to make a reasonable accommodation if the defendant never knew or had reason to know that an accommodation was requested, the threshold question is this: What constitutes sufficient notice to the housing provider that the plaintiff has a disability and desires an accommodation? The Joint Statement provides guidance:

> [A] resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability. * * * [T]he Fair Housing Act does not require that a request be made in a particular manner or at a particular time. * * * An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Joint Statement at 12.

In requesting an accommodation, the plaintiff need not utter any "magic words" or follow any formal mechanism as long as she conveys to the housing provider that she has a disability and seeks a reasonable accommodation. See, *e.g.*, *Smith*, 180 F.3d at 1172 (Title I case). The request need not be in writing, nor must the plaintiff comply with a landlord's rules in submitting an accommodation request. *Powers* v. *Kalamazoo Breakthrough Consumer Hous. Cooperative*, No. 1:07cv1235, 2009 WL 2922309 (W.D. Mich. Sept. 9, 2009) (unpublished); Joint Statement at 12-13.[6] Therefore, although this Court has explained that the "plaintiff must actually request an accommodation and be refused in order to bring a reasonable accommodation claim under the FHA," *Schwarz*, 544 F.3d at 1219, or make a "specific demand," *Gaston*, 167 F.3d at 1363 (Title I case), "[w]hat matters * * * are not formalisms about the manner of the request, but whether the [plaintiff] * * * provides the [defendant] enough information that, under the circumstances, the [defendant] can be fairly said to know of both the disability and

[6] At the same time, as the Joint Statement notes, "it is usually helpful for both the resident and the housing provider if the request is made in writing," as this will "prevent misunderstandings regarding what is being requested, or whether the request was made." Joint Statement at 12. But "housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests." *Ibid.* In this case, HHA did not have an official form tenants could use to request an accommodation. R. 126 Exh. Q at 32.

desire for an accommodation," *Taylor* v. *Phoenixville Sch. Dist.*, 184 F.3d 296, 313 (3d Cir. 1999) (Title I case). In other words, the defendant must have "enough information to know of both the disability and desire for an accommodation, or circumstances must at least be sufficient to cause a reasonable [person] to make appropriate inquiries about the possible need for an accommodation." *Colwell* v. *Rite Aid Corp.*, 602 F.3d 495, 506 (3d Cir. 2010) (internal quotation marks and citation omitted) (Title I case).

Moreover, "[w]hat information the [plaintiff's] initial notice must include depends on what the [defendant] knows," *Taylor*, 184 F.3d at 313, and the context of the case, *Reed* v. *Lepage Bakeries, Inc.*, 244 F.3d 254, 261 (1st Cir. 2001) (Title I case). "[I]f it appears that the [plaintiff] may need an accommodation but does not know how to ask for it, the [defendant] should do what it can to help." *Colwell*, 602 F.3d at 507 (citation omitted). Further, "[i]f a landlord is skeptical of tenant's alleged disability, * * * it is incumbent upon the landlord to request documentation or open a dialogue." *Jankowski Lee & Assocs.*, 91 F.3d at 895. The housing provider has an obligation "to meet the [plaintiff] half-way." *Taylor*, 184 F.3d at 314 (citation omitted).

To summarize, one court has explained the parties' respective obligations this way. First,

> [a] tenant who requests a reasonable accommodation * * * should make clear to the landlord that she is requesting an exception, change,

> or adjustment to a rule, policy, practice, or service because of her disability. And she should explain what type of accommodation she is requesting. On the other hand, the Fair Housing Act does not require that a request be made in a particular manner.

Douglas, 884 A.2d at 1122 (internal quotation marks and footnotes omitted).

Second,

> [e]ven more importantly, the tenant's failure to make clear in her initial request what type of accommodation she is requesting is not fatal. * * * [O]nce the tenant requests a reasonable accommodation (or without using those exact words, requests an accommodation for a disability) the landlord is obliged under the Fair Housing Act to respond promptly. If the request is not sufficiently detailed to reveal the nature of the request, the Act – as properly interpreted – requires the landlord to open a dialogue with the tenant, eliciting more information as needed, to determine what specifics the tenant has in mind and whether such accommodation would, in fact, be reasonable under the circumstances. Any delay from the landlord's failure to respond promptly to the tenant's request may become the landlord's responsibility.

Id. at 1122-1123 (internal quotation marks and footnotes omitted).

3. Whether adequate notice was given is a highly fact-specific inquiry.

In some cases, the defendant argued that it did not make an accommodation because it did not know that the plaintiff was disabled and needed an accommodation, but the court rejected that argument and concluded that the facts showed otherwise. See, *e.g.*, *Jankowski Lee & Assocs.*, 91 F.3d at 894-895 (rejecting defendant's claim that, although it knew the plaintiff had multiple sclerosis, it did not know that it affected his mobility to such an extent that plaintiff needed an assigned parking place, and noting that the defendant could have asked

for more information); see also *Powers*, 2009 WL 2922309, at *8 ("[v]iewing the evidence in the light most favorable to plaintiff, a jury could reasonably find that she verbally requested an accommodation [a ground level unit] for her knee condition"). In other cases, the court found that plaintiff's claim failed because she simply never requested an accommodation (even if the defendant may have been aware of a disability). See, *e.g.*, *Gaston*, 167 F.3d at 1364 (Title I case); *Bonneville* v. *Blue Cross and Blue Shield of Minnesota*, No. 99-3241, 2000 WL 688226 (8th Cir. May 8, 2000) (unpublished) (Title I case). Finally, in some cases the plaintiff's claim failed because the defendant did not know or could not have reasonably been expected to know that the plaintiff had a disability and was seeking an accommodation.

The district court relied on the latter cases, principally the lower court's decision in *Hawn*, which rejected a unit owner's FHA action against a condominium association for denying his request to have a dog as a service animal. *Hawn* v. *Shoreline Towers Phase I Condominium Ass'n, Inc.*, No. 3:07-CV-97, 2009 WL 691378 (N.D. Fla. Mar. 12, 2009), aff'd, 347 F. App'x 464 (11th Cir. 2009) (unpublished). In *Hawn*, the court assumed the plaintiff had a disability, but concluded that no reasonable jury could have found that defendant knew or should have known of that fact. 2009 WL 691378, at *4-5. The court found that, although plaintiff sent defendant a letter asking to keep the dog as a service animal

because he had a disability, a year earlier he had asked to keep the dog as a pet, and therefore the defendant had reason to be suspicious of his disability claims. *Ibid.* The court also found that the two doctor's letters plaintiff submitted provided little information about his alleged disability; did not indicate whether his limitations were temporary or permanent; and did not indicate that the dog was necessary to afford the plaintiff equal use of the dwelling. *Ibid.* Further, the court noted that the defendant twice asked for additional information, but none was provided. *Ibid.* In these circumstances, the court concluded that there was no evidence that the defendants would have refused the accommodation if the plaintiff had provided adequate documentation that he was disabled and needed a service animal. *Id.* at *7. In affirming, this Court emphasized that plaintiff's letter noting his disability was unclear and inconsistent with the reasons he previously had given for wanting the dog, and he did not respond to defendant's request for other documentation. *Hawn*, 347 F. App'x at 468.

In *Hawn*, both the district court and this Court relied upon a similar case, *Prindable* v. *Association of Apartment Owners of 2987 Kalalaua*, 304 F. Supp. 2d 1245 (D. Haw. 2003), aff'd sub nom. *Dubois* v. *Association of Apartment Owners of 2987 Kalalaua*, 453 F.3d 1175, 1179 (9th Cir. 2005), cert. denied, 549 U.S. 1216, 127 S. Ct. 1267 (2007). In that case, condominium residents sought permission to keep a dog as a reasonable accommodation for their alleged

disabilities. The court granted summary judgment for the defendants, concluding that there was no evidence that the defendants ever denied the request for a service animal. *Id.* at 1260. The court also noted, with regard to one of the plaintiffs, that he had not provided sufficient documentation addressing the nature of the alleged disability and the manner in which a service dog could ameliorate the effects of the disability. *Id.* at 1258-1260. The court found that notes and letters from plaintiff's doctors were insufficient to establish that a service animal was necessary to afford plaintiff equal use of his dwelling. *Ibid.* These cases do not compel the conclusion that, in the instant case, HHA properly responded to Mr. Rodriguez's repeated requests for an accommodation.

C. The Evidence Was Sufficient To Establish That HHA Knew Or Should Have Known That Mr. Rodriguez Had A Disability And Was Requesting An Accommodation, And Therefore HHA Had An Obligation To Participate In The Interactive Process

In contrast to *Hawn* and *Prindable*, the facts in this case are sufficient to establish that HHA knew or should have known that Mr. Rodriguez had a disability and desired a reasonable accommodation of a unit with a bathroom on the same floor as the living quarters, and that therefore HHA had an obligation to participate in the interactive process. The district court's narrow application of the FHA to this case ignores the context of this case and HHA's duty to meet Mr. Rodriguez "half-way." *Taylor*, 184 F.3d at 314. Indeed, in this case, the nature of Mr. Rodriguez's disability, and the accommodation he desired, are hardly

remarkable and should not have been difficult to discern – *i.e.*, because of his injury and back condition, he wanted to continue to live, as he had for the prior ten years, in an HHA unit that had a bathroom on the same floor as the living unit.[7] Moreover, unlike in *Hawn*, HHA had no reason to be suspicious of Mr. Rodriguez's desire to live in a unit with a bathroom on the main living level and, unlike in *Prindable*, the information supporting Mr. Rodriguez's need and desire for an accommodation did not come principally from medical providers, but rather chiefly from Mr. Rodriguez himself and his wife.[8]

As Mr. Rodriguez's interaction with HHA progressed from the time of his work-related injury until the June 30, 2005, mediation in the eviction action, HHA

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[7] Although the Rodriguezes' original single-floor unit was on the second floor and required the use of stairs to reach it, the need to use a "switch-back" style staircase to leave or return to the apartment, which Mr. Rodriguez did not do on a daily basis, did not place nearly the burden on Mr. Rodriguez as would have the frequent use of a steeper, straight staircase each time he needed to use the bathroom. Compare R. 126 Exh. C (photographs of outside switch-back stairs used to reach original apartment) with R. 126 Exh. L (photographs of straight staircase inside the two-story Hoffman Gardens unit). Therefore, the fact that Mr. Rodriguez did not seek a new apartment without a staircase after his accident does not mean that HHA could have reasonably ignored his request to not be transferred to an apartment that required the use of stairs to reach the bathroom.

[8] In this regard, we note that there is no requirement that the information necessary to support a request for a reasonable accommodation must come from medical providers. Although medical providers may provide information relevant to the nature of the disability and to how an accommodation would enable the enjoyment and use of a dwelling, this information may also be provided by the tenant, including his disability-based limitations and the best way to address them.

was apprised of Mr. Rodriguez's condition and desire for an accommodation on numerous occasions and in numerous ways; often, in response, HHA's own action or inaction contributed to its failure to properly address and resolve his needs. As an initial matter, HHA knew that Mr. Rodriguez suffered a work-related injury and that, as a result, he received social security disability benefits. HHA also knew that his injuries prevented him from continuing his part-time job as a night manager for HHA, and that his wife took over that job. Further, at least by June 2004, HHA classified Mr. Rodriguez as "disabled" in their internal and official reports to HUD. See R. 128 Exh. VV. Therefore, at the time the Rodriguezes were offered a transfer to the Hoffman Gardens unit, and rejected it because a bathroom was not on the same floor as the living quarters, HHA knew that Mr. Rodriguez had a disability and that the disability prevented him working. As in *Taylor*, *supra*, that information makes it "especially inappropriate to insist that [Mr. Rodriguez] must have specifically invoked the [FHA] or used the words 'reasonable accommodation' when he requested [an] accommodation[]." *Taylor*, 184 F.3d at 314 (Title I case) (school secretary sought a reasonable accommodation for her mental illness; because school knew of her serious psychiatric problems and hospitalization, "it hardly should have come as a surprise that Taylor would want some accommodations," and therefore the school had an obligation to engage in the interactive process).

At the January 20, 2005, informal hearing addressing the lease termination, Mr. Rodriguez provided the hearing officer with documentation showing that he was sick and that his health was not good due to an accident (as reflected in the hearing officer's notes). R.E. 150 at 5 n.7. In his affidavit, Mr. Rodriguez asserted that, when offered a transfer to a different unit, he also expressed his need for a unit with a bathroom that was accessible without climbing stairs, and was told the unit had a half-bathroom on the first level. R. 126 Exh. A at ¶¶ 21, 23. Although according to HHA there was no such discussion, for purposes of appeal of the court's grant of summary judgment, Mr. Rodriguez's assertion must be accepted as true. Therefore, together with HHA's prior knowledge that Mr. Rodriguez had a disability and could not work, his statement that, if he was going to be transferred to a new unit he needed one with the bathroom on the same floor as the living quarters, put HHA on notice that Mr. Rodriguez, because of his physical limitations, needed a living unit with a bathroom on the same floor as the living quarters. Indeed, HHA's Director of Housing Operations acknowledged in her deposition that the letter was sufficient to constitute a request for a reasonable accommodation and that, as a result, someone should have investigated and determined whether there was a reasonable basis for the request. Moreover, HHA's representation that the unit had such a bathroom suggests that at this time HHA understood Mr. Rodriguez's limitations and need for an accommodation.

Next, on January 21, 2005, the day after the informal hearing and after the Rodriguezes visited the new unit, Mrs. Rodriguez wrote a letter to the hearing officer "appealing" the transfer decision and requesting to talk to the hearing officer. R.E. 150 at 16; R. 127 Exh. V. As quoted above, in this letter Mrs. Rodriguez stated that although they were told the unit had a half bathroom on the main living level, there was no such bathroom; she and her husband had surgery; and they could not go upstairs each time they needed to use the bathroom. She also offered to "bring [HHA] all the medical documents." This letter, again given HHA's prior knowledge of Mr. Rodriguez's disability, also put HHA on notice of Mr. Rodriguez's need for a unit with a bathroom on the main level as an accommodation. Moreover, given that the letter requests that the hearing officer contact Mrs. Rodriguez "as soon as you can," HHA could not reasonably have done the one thing it did in response – ignore the letter entirely and not attempt to contact the Rodriguezes about the concerns expressed in the letter. HHA's failure in this regard, along with its subsequent failure to properly notify Mr. Rodriguez's attorney of the formal hearing at which Mr. Rodriguez intended to contest the transfer decision, effectively denied Mr. Rodriguez administrative review of the transfer decision and precipitated the events that ultimately resulted in Mr. Rodriguez's abandoning his tenancy. Cf. *Douglas*, 884 A.2d at 1124 (although counsel "should have stated the request for accommodation with greater specificity

in his letter," request for accommodation was implicit and landlord should have responded).

Third, in his May 17, 2005, answer to HHA's eviction action, Mr. Rodriguez asserted that he was disabled due to hip and back problems, could not constantly go up and down the stairs to use the bathroom, and had previously advised HHA of that in the January 21, 2005, letter. At this point, again, HHA should have recognized that, because of his disability, Mr. Rodriguez could not live in a unit that required him to use the stairs to reach the bathroom, and that therefore he was requesting an accommodation, albeit perhaps inartfully. At a minimum, it should have appeared to HHA that Mr. Rodriguez "may need an accommodation but doesn't know how to ask for it," and therefore HHA "should do what it can to help." *Conneen* v. *MBNA American Bank, N.A.*, 334 F.3d 318, 332 (3d Cir. 2003) (citation omitted).

Finally, HHA admits that at the June 30, 2005, state court mediation in the eviction case, HHA was told that Mr. Rodriguez had an alleged disability that prevented him from climbing stairs. At this point, HHA responded that Mr. Rodriguez should provide HHA with medical documentation to support the alleged disability and request for accommodation.[9] According to the United States, Mr.

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[9] Ironically, as noted above, Mrs. Rodriguez had offered to provide medical evidence in her January 21, 2005, letter, but HHA never responded, and the

(continued…)

Rodriguez did present medical documentation to HHA at the mediation, including a letter from Dr. Nunez, dated June 10, 2005, stating that Mr. Rodriguez suffered from chronic back and shoulder pain and was seeing a pain specialist. See R. 127 Exh. FF-1. For purposes of this appeal, the Court must accept that fact as true. That matter was not further addressed, however, because during the hearing Mr. Rodriguez decided to settle the eviction case and abandon his request for housing, because he could not continue to pay his attorney, HHA agreed that he could remain in his apartment for two more months while he looked for a new place to live, and otherwise he would have had to move to the unit Hoffman Gardens that was inaccessible to him.

In any event, there is no dispute that, in addition to the discussions at the January 20, 2005, informal hearing; Mrs. Rodriguez's January 21, 2005, letter; and the May 17, 2005, answer to the eviction action, HHA was directly told at the mediation that Mr. Rodriguez was disabled and could not climb stairs to use the bathroom. At that time, HHA could have stayed or dismissed the eviction action

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(…continued)
termination matter was closed after Mr. Rodriguez did not attend the formal hearing (for which he did not receive proper notice). Had HHA responded to Mrs. Rodriguez's letter, this matter could have been resolved through the interactive process, thus making the eviction action unnecessary. Likewise, had HHA sent the notice of the formal hearing regarding the lease termination to the correct address (*i.e.*, to the attorney, not the Rodriguezes), this matter may also have been resolved without the necessity for this litigation.

and worked with Mr. Rodriguez to try to address his needs. That HHA did not do so, and instead allowed Mr. Rodriguez to abandon his tenancy, does not mean that HHA was relieved of liability for failing to engage in the interactive process. Rather, HHA's failure to engage in the interactive process and meet Mr. Rodriguez half-way effectively denied him the straightforward accommodation he sought.

The district court found none of this evidence sufficient to create a question of fact whether Mr. Rodriguez sufficiently put HHA on notice that he desired an accommodation because of his disability. In so doing, the district court held the Rodriguezes' attempts to request an accommodation to a level of precision and detail that is inconsistent with the broad remedial purpose of the FHA "to end the unnecessary exclusion of persons with handicaps from the American mainstream." H.R. Rep. No. 711, 100th Cong., 2d Sess. 18 (1988). The court also failed to give the FHA the "generous construction warranted for antidiscrimination prescriptions," *City of Edmonds* v. *Oxford House, Inc.*, 514 U.S. 725, 737 n.11, 115 S. Ct. 1776, 1783 n.11 (1995) (internal quotation marks omitted), particularly in view of the reality that the initial request for accommodation generally is going to be provided by laypeople.

More specifically, the district court erred by reviewing, and rejecting, *in isolation*, each instance where HHA was made aware that Mr. Rodriguez had a disability and that his physical condition affected his ability to use stairs. For

example, the court stated Mr. Rodriguez's statement at the January 20, 2005, informal hearing that he was sick was insufficient to establish "that he was disabled and that the requested accommodation was necessary." R.E.150 at 17-18 n.24. Similarly, the court stated that, even assuming Mr. Rodriguez gave HHA Dr. Nunez's letter at the June 30, 2005, mediation, the letter was not sufficient because it did not address the extent and nature of Mr. Rodriguez's diagnosis or his alleged limited ability to climb stairs. R.E. 150 at 19. This analysis, however, fails to put the statement and document in context – *i.e.*, HHA's prior knowledge that Mr. Rodriguez was disabled and therefore could not work; Mrs. Rodriguez's January 21, 2005, letter indicating that, because of his disability, he did not want to live in a unit where he would have to use the stairs to reach the bathroom, offering medical documents, and asking for an opportunity to discuss the matter; and Mr. Rodriguez's May 17, 2005, answer to the eviction complaint. Therefore, by June 30, 2005, HHA knew full well what Mr. Rodriguez claimed his disabilities were and what accommodation he was requesting. For this reason, the fact that Dr. Nunez's letter did not detail the specific nature of the disability and the appropriate type of accommodation (which HHA already knew) did not relieve HHA of its obligation under the FHA to pursue and clarify the matter with Mr. Rodriguez.

Therefore, under the circumstances, and viewing the evidence in the light most favorable to Mr. Rodriguez, the court should have concluded that, at least at

the time of the June 30, 2005, mediation, a reasonable person would have been aware, or should have been aware, that Mr. Rodriguez's disability required special housing needs and that he was requesting an accommodation. Mr. Rodriguez's multiple attempts to give notice, along with his inability to continue to work as a night manager for HHA, are all relevant to HHA's overall knowledge, and the district court should have considered whether a reasonable juror could conclude that HAA had knowledge or constructive knowledge based on the cumulative weight of the available information. As a result, a reasonable jury could find that, rather than moving to evict Mr. Rodriguez and then allowing him to abandon his tenancy, HHA had an obligation to engage in the interactive process and seek a resolution of the matter. As discussed above, the FHA requires only that an individual give a landlord notice of the disability and his desire for an accommodation; the subsequent interactive process is designed to permit the landlord to determine whether it thinks an accommodation is really necessary and whether it can be reasonably made. Moreover, the tenant should not be left to guess whether the information the landlord has received is sufficient, and therefore the landlord has an obligation to advise the tenant if the information submitted is insufficient to make a decision and more information is necessary.

In sum, here the circumstances were, at a minimum, "sufficient to cause a reasonable [person] to make appropriate inquiries about the possible need for an

accommodation." *Colwell*, 602 F.3d at 506 (citation omitted) (Title I case); see also *Douglas*, 884 A.2d at 1124 (although counsel "should have stated the request for accommodation with greater specificity in his letter," in the "context of this pending action for possession, a jury could reasonably find * * * that * * * a request for a stay was implicit," and therefore that "the landlord had been obliged * * * to respond promptly by 'opening a dialogue'"). The district court's standard, which relied on *Hawn*, see R.E. 150 at 11-14, 19, a case involving a landlord that had good reason to be skeptical of the tenant's claimed need for an accommodation, is inappropriately and unrealistically high in the context of a procedure intended to by initiated by laypeople. Moreover, unlike in *Hawn*, HHA had no reason to be suspicious of Mr. Rodriguez's desire to live in a unit with a bathroom on the main living level, and therefore of the documentation (Dr. Nunez's letter) he offered in support of his needs. In fact, as the evidence reflects, HHA was told at the informal hearing that the Rodriguezes needed a unit with a bathroom on the main living level, and stated to the Rodriguezes that the unit had such a bathroom.

It follows that the district court's conclusion (R.E. 150 at 19) that "HHA had no meaningful opportunity to * * * assess whether the requested accommodation was necessary" is both belied by the facts and ignores HHA's obligation to meet Mr. Rodriguez half-way. It also ignores the fact that on several occasions HHA's

own conduct – *e.g.*, ignoring Mrs. Rodriguez's January 21, 2005, letter and failing to send the notice of the formal hearing to Mr. Rodriguez's attorney – undermined and prolonged this relatively straightforward matter. On this record, summary judgment for the defendant was reversible error.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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s/ Thomas E. Chandler
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Dated: August 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2010, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLANT with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the EDF system.

In addition, I hereby certify that on August 9, 2010, the original and six copies of the BRIEF FOR THE UNITED STATES AS APPELLANT were served by federal express mail on the Clerk of the Court. I also certify that a copy of the foregoing brief was served by federal express mail on the following:

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