DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, CO 80112	DATE FILED January 29, 2025 2:50 PM FILING ID: E91CADADF9E39 CASE NUMBER: 2025CV30241
Plaintiffs: John Doe and Jane Roe, individuals, v. **Defendant:** Avi Schwalb and Nancy Dominguez, individuals; PHS Rent, a limited liability corporation.	▲COURT USE ONLY▲
Attorneys for Plaintiffs: Timothy R. Macdonald, #29180 Emma Mclean-Riggs, #51307 Anna I. Kurtz, #51525 American Civil Liberties Union Foundation of Colorado 303 E. 17th Ave., Suite 350 Denver, Colorado 80203 tmacdonald@aclu-co.org emcleanriggs@aclu-co.org akurtz@aclu-co.org (720) 402-3151 Kelly L. Reeves, #58170 CED Law 1600 N Downing St. Suite 600 Denver, CO 80238 kelly.reeves@cedlaw.org (720) 248-6492	Case Number: Division: Courtroom:

PLAINTIFFS' RENEWED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

CERTIFICATION OF COUNSEL

Plaintiffs' counsel certify that they have made the following efforts to give notice of the request for a Temporary Restraining Order to Defendants. Plaintiffs' counsel effectuated formal service on the Defendants at 4:39 pm on January 28, 2025, via personal service on Defendant Nancy

Dominguez as the Property Manager at the address of 1575 Galena C105, Aurora, CO 80010, the address listed in the lease for the Landlord or Landlord's property management company. *See* Return of Service, filed electronically with the Court on January 29, 2025. Ms. Dominguez stated that she was authorized to accept service for Defendant Avi Schwalb and Defendant PHS Rent LLC, and would inform them of the contents of the filings. *Id.* She indicated that Mr. Schwalb was the owner of the company, but that he was not available at the moment. *Id.* In addition, on January 29, 2025, at approximately 1:00pm, Plaintiffs' counsel called the phone number provided on the September 20, 2024, lease and spoke to an employee of the property management company. The employee refused to provide their name. Plaintiffs' counsel informed the employee that Plaintiffs have filed a complaint, as well as a Motion for Temporary Restraining Order (TRO) and Preliminary Injunction. The employee represented that she would have her manager return the call, which has not happened as of this filing. The reasons that further notice should not be required before a TRO is issued include the threats by Defendants to have immigration enforcement come immediately to remove Plaintiffs from their Apartment, their prior lockout of Plaintiffs from their Apartment, and their threat to terminate Plaintiffs lease as of today, January 29, 2025, as set forth in the Verified Complaint. Given the imminent threat of irreparable harm Plaintiffs face, Plaintiffs respectfully request that this Court issue a Temporary Restraining Order without further notice to Defendants and set a Preliminary Injunction hearing date where Defendants may be heard.

I. INTRODUCTION

This case presents an immediate risk of imminent irreparable injury, with Defendant-landlords threatening, in violation of Colorado law, to report Plaintiffs to immigration officials any day now based on their perceived immigration status, to coerce them to abandon their apartment.

Colorado's Immigrant Tenant Protection Act ("ITPA" or "the Act") expressly prohibits landlords from disclosing or threatening to disclose to law enforcement, including immigration enforcement, information regarding their tenants' immigration or citizenship status. C.R.S. § 38-12-1203(b). It further forbids landlords from harassing or intimidating their tenants or retaliating against them for efforts to enforce that legal protection. *Id.* § 1203(c). And it specifically proscribes influencing or attempting to influence a tenant to surrender possession of a dwelling unit, or taking steps to evict a tenant, based in part on their immigration or citizenship status. *Id.* § 1203(d)-(f).

Defendants Avi Schwalb, Nancy Dominguez, and PHS Rent LLC are landlords of a residential building in Aurora who have openly engaged in almost every form of misconduct the Act proscribes. Plaintiffs John Doe and Jane Roe are a Venezuelan couple with pending applications for asylum in the United States who rent an apartment (the "Apartment") from Defendants. Over the course of Plaintiffs' tenancy, Defendants have repeatedly wielded Plaintiffs' immigration status as a coercive tool to intimidate and take advantage of them. Four days ago, on January 24, 2025, in the wake of the inauguration of a new federal administration that promised mass deportations in a project it called "Operation Aurora,"[1] Defendants' menacing reached a new peak.

Defendant Schwalb—owner of the building, employer of Defendant Dominguez, and registered officer of PHS Rent LLC—showed up at the Apartment, banging loudly on the door. As Ms. Roe began to open the door, Schwalb slammed it the rest of the way, hitting her in the nose. Schwalb said he was there to discuss allegedly unpaid rent. But in doing so, he proceeded

[1] Bennito L. Kelty, "Operation Aurora: Trump's Mass Deportation Plan Explained," Westword (Jan. 21, 2025), https://www.westword.com/news/operation-aurora-trumps-mass-deportation-plan-explained-23106655.

flagrantly to violate multiple provisions of the Act. He repeatedly threatened to report Plaintiffs to immigration and law enforcement if they did not voluntarily abandon the premises within a matter of hours. He said they had "one hour, two hours" to "get out," and made his warning clear: "Migra[2] today." In December, Defendants also illegally locked Plaintiffs out of their own Apartment, forcing Mr. Doe and his 15-year-old son to sleep in their car in the freezing cold. Defendants have further threatened that Plaintiffs tenancy would be terminated as of tomorrow, January 29, 2025, at 10 am.

Plaintiffs respectfully ask this Court immediately to enjoin Defendants' abusive behavior. Specifically, Plaintiffs seek an order restraining Defendants from disclosing anything about Plaintiffs' immigration or citizenship status—real or perceived—to anyone; from making further threats to disclose such information; and from taking any action to exclude Plaintiffs from their home without process. Defendants have demonstrated their willingness to harass and intimidate Plaintiffs based on their status, and Plaintiffs credibly fear immediate and irreparable harm without this Court's intervention.

II. ARGUMENT

A temporary restraining order is warranted where "specific immediate and irreparable harm will occur absent the order." *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). Likewise, a preliminary injunction is appropriate where (1) the parties seeking relief have a reasonable probability of success on the merits; (2) there is a danger of real, immediate and irreparable injury that may be prevented by injunctive relief; (3) there is no plain, speedy, and adequate remedy at law; (4) the granting of a temporary injunction will not disserve the public interest; (5) the balance

[2] Migra is Spanish slang for immigration enforcement.

of equities favors the injunction; and (6) the injunction will preserve the status quo pending trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982). Plaintiffs meet all the requirements for both forms of relief.

I. Plaintiffs have a substantial probability of success on the merits because Defendants openly did what the ITPA expressly forbids.

The ITPA unambiguously proscribes the misconduct Defendants have already engaged in and stated their intent to repeat. By its plain terms, the law states that "a landlord shall not . . . [d]isclose or threaten to disclose information regarding or relating to the immigration or citizenship status of a tenant to any person, entity, or immigration or law enforcement agency." C.R.S. § 38-12-1203(1)(b). It likewise plainly states that a landlord shall not "harass or intimidate a tenant or retaliate against a tenant" for exercising their rights under the ITPA or opposing any conduct it prohibits. *Id* § 1203(1)(c). And it provides that "a landlord shall not . . . interfere with a tenant's rights" by "influencing or attempting to influence a tenant to surrender possession of a dwelling unit . . . based solely or in part on the immigration or citizenship status of the tenant." *Id* § 1203(1)(d).

Yet on January 24, 2025, Defendant Schwalb approached Plaintiffs at their home and did precisely what the ITPA forbids. Compl. ¶¶ 27-33. Defendant Schwalb raised his voice, shouting that Plaintiffs owed him money and if they did not have money they were going to go outside to the street where it is cold. Compl. ¶ 29. He said they had "one hour, two hours" to get out. Compl. ¶ 29. When Plaintiffs stated that they had a right to an order before being evicted, Schwalb stated that immigration would "come here [to the Apartment,]" that day. Compl. ¶ 30. He repeated that immigration enforcement would come and get them out. Compl. ¶ 30. He

stated his view that Plaintiffs had no papers. Compl. ¶ 31. And he warned again: "Migra today." Compl. ¶ 30.

Defendant Schwalb's statements were clear, unabashed threats to disclose information relating to Plaintiffs' immigration status to immigration enforcement. These threats were calculated to intimidate Plaintiffs in retaliation for asserting their rights as tenants. And they were attempts to influence Plaintiffs to surrender their apartment based on their immigration status. Indeed, Defendant Schwalb's conduct was consistent with Defendants' prior history of coercive behavior. Earlier, when Defendants had changed the locks to exclude Plaintiffs from the Apartment—flouting clear Colorado law, C.R.S. § 38-12-510 (forbidding removals without process)—Defendant Dominguez admitted that they were emboldened by their perception of Plaintiffs' immigration status, telling Ms. Roe that she and Mr. Doe had no rights. Compl. ¶¶ 18.

Defendants were wrong—Plaintiffs do have rights, including under the ITPA. Those rights are as unambiguous as Defendants' disregard for the law. Because Plaintiffs are likely to succeed on the merits of their claim under the ITPA, immediate injunctive relief is appropriate.

II. Immediate injunctive relief is necessary to prevent Plaintiffs further real and irreparable injury for which there is no adequate remedy at law.

Defendants' reliance on threats to call immigration enforcement to flout Colorado law and ignore Plaintiffs' rights as tenants presents a risk of imminent, irreparable injury and must be enjoined. "The threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable injury, and satisf[y] the first prong of the test for preliminary injunctive relief." *McNeill v. New York City Hous. Auth.*, 719 F. Supp. 233, 254 (S.D.N.Y. 1989); *see also Watkins v. Greene Metro. Hous. Auth.*, 397 F. Supp. 3d 1103, 1109 (S.D. Ohio 2019) ("A loss of housing constitutes an irreparable harm."); *Recalde v. Bae Cleaners, Inc.*, 862 N.Y.S.2d 781, 784 (Sup.

Ct. 2008) ("Plaintiff has established that he is entitled to a preliminary injunction pending determination of the underlying action by demonstrating the irreparable harm of a possible eviction if the relief sought is not granted"); *Dinter v. Miremami*, 627 F. Supp. 3d 726, 732–33 (E.D. Ky. 2022) (plaintiff "would suffer irreparable harm without preliminary relief" because "if the Court declined to grant a temporary restraining order, [she] would almost certainly face eviction"). This is particularly true when, as here, the eviction threat is discriminatory. *See Chapp v. Bowman*, 750 F. Supp. 274, 277 (W.D. Mich. 1990) ("When housing discrimination is shown, 'it is reasonable to presume that irreparable injury flows from the discrimination.'") (quoting *Gresham v. Windrush Partners*, Ltd., 730 F.2d 1417, 1423 (11th Cir.1984)); *Dinter v. Miremami*, 627 F. Supp. 3d 726, 732–33 (E.D. Ky. 2022) (same).

Defendants have already demonstrated their willingness to lock Plaintiffs (and their minor sons) out of the Apartment in the middle of winter with no notice or judicial process. Compl. ¶ 16. In the past two weeks alone, Defendants have threatened that Plaintiffs had "10 days" to get out, "1 hour" to get out, and that they should be ready to sleep outside in the cold. Compl. ¶¶ 24, 29. These repeated threats of eviction are part of a pattern of discrimination, harassment, and intimidation on the basis of Plaintiffs' national origin and perceived immigration status. No amount of damages at some point in the future could cure the physical and dignity injury to Plaintiffs—and their sons—of being coerced, on the basis of their identity, into a period of homelessness in the middle of winter on Colorado's Front Range. Injunctive relief is the only way to redress these harms and is warranted here.

Indeed, courts have recognized that violations of fair housing statutes create a presumption of irreparable harm. *Diamond House of SE Idaho, LLC v. City of Ammon*, 381 F.

Supp. 3d 1262, 1277–78 (D. Idaho 2019); *see also, e.g.*, 901 *Ernston Road, LLC v. Borough of Sayreville Zoning Bd. of Adjustment*, 2018 WL 2176175, at *5 (D.N.J. 2018) (violation of FHA sufficient to presume irreparable harm); *Step by Step, Inc. v. City of Ogdensburg*, 176 F.Supp.3d 112, 133 (2d Cir. 2016) (noting the Eleventh Circuit "has taken the position that a showing of a substantial likelihood that a defendant has violated the FHA is itself sufficient to create a presumption of irreparable harm, which shifts the burden to defendant to prove that any injury that may occur is not irreparable"). This is especially appropriate where the statute itself provides for injunctive relief, as the ITPA does. *Diamond House*, 381 F. Supp. 3d at 1277–78; *see also Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 259-60 (10th Cir. 1981) ("When evidence shows that the defendants are engaged in, or are about to be engaged in, the act or practices prohibited by a statute which provides for injunctive relief to prevent such violations, irreparable harm to the plaintiffs need not be shown.").

Given Plaintiffs' overwhelming likelihood of success on the merits, this Court should also conclude they face an imminent risk of irreparable injury and issue an immediate restraining order and injunction.

III. A temporary injunction will serve the public interest.

Enjoining Defendants from mistreating their tenants will overwhelmingly serve and "not disserve the public interest." *Rathke*, 648 P.2d at 654. Courts universally recognize that eradicating discrimination in housing is strongly in the public interest and that preliminary injunctive relief is appropriate to ensure compliance with nondiscrimination laws and fair housing statutes. *See, e.g.*, *Diamond House*, 381 F. Supp. at 1279 (noting "courts have emphatically declared the public interest is served by effective enforcement of [fair housing statutes]"); *Hasenkamp v. Shah Tr.*,

No. CV-21-02226-PHX-DLR, 2022 WL 180722, at *2 (D. Ariz. Jan. 20, 2022) ("[T]he public interest is served by holding parties accountable to Federal and state laws seeking to protect … persons from housing discrimination."); *S. California Hous. Rights Ctr. v. Krug*, 564 F.Supp.2d 1138, 1145 (C.D. Cal. 2007) (noting that when granting injunctive relief where a fair housing violation has occurred, "the public interest in abolishing discrimination dictates that the defendants be held to a continuing standard of fair dealing"); *see also U.S. v. Commonwealth of Puerto Rico*, 764 F.Supp. 220, 225 (D. Puerto Rico 1991) (emphasizing "the public interest that all citizens have in seeing vigorous enforcement of civil rights legislation like the Fair Housing Act" in concluding that "the public interest weighs heavily in favor of a preliminary injunction").

Indeed, by passing the ITPA, Colorado's General Assembly has already made the determination that preventing the misconduct at issue here is in the public interest. *See, e.g.*, *Gonzalez v. Recht Family P'ship*, 51 F.Supp.3d 989, 992–93 (S.D. Cal. 2014) (concluding plaintiff met public interest requirement for preliminary injunction in disability discrimination suit because the "public interest has been authoritatively declared by Congress in its enactment of the [Fair Housing Act]"); *Caron Found. of Florida, Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1374 (S.D. Fla. 2012) (observing that "through the FHA and ADA, Congress has declared that it is in the public interest to allow individuals with disabilities to live on an equal footing with the non-disabled. Therefore, it is not against the public interest to enjoin discrimination against individuals with disabilities . . . .").

As described by a prime sponsor of the ITPA, the legislation recognized that "[i]mmigrants . . . are left vulnerable to harassment, intimidation, and mistreatment from their landlord," and was

intended "to protect immigrants and undocumented tenants" by preventing those harms.[3] Consistent with its public purpose, the statute allows prevailing plaintiffs to recover reasonable attorney's fees, effectively "creat[ing] a mechanism by which claimants act as private attorneys general, seeking to vindicate the rights secured by [the nondiscrimination law]." *Elder v. Williams*, 2020 CO 88, ¶ 26 (analyzing CADA). Thus, private actions under the ITPA "are more akin to civil prosecutions in the public interest of eliminating . . . discrimination than to actions designed primarily to compensate an individual for personal injury." *Id.* For all these reasons, an order restraining Defendants' misconduct and preventing continued violations of the ITPA during the pendency of the case is in the public interest.

IV. The balance of equities favors a grant of interim relief.

The balance of equities here also weighs in favor of a preliminary injunction. First, Defendants have no valid interest in violating the express terms of Colorado law. A Defendant "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). To the extent Defendants have any legitimate reason to seek to evict Plaintiffs, Colorado law provides a legal process to pursue that relief.

On the other hand, Plaintiffs have a compelling interest in remaining in their home, maintaining stable housing for their young sons, and living free from the dignitary harms of discriminatory treatment by their landlord.

[3] Rep. Gonzalez-Gutierrez, Hearing, House Committee on State, Veterans, and Military Affairs (June 11, 2020), https://sg001harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/ 20200611/-1/10008#agenda.

Here, "an injunction will only require that which the law already requires." *Bolthouse v. Cont'l Wingate Co.*, 656 F. Supp. 620, 630 (W.D. Mich. 1987). Indeed, by passing the ITPA, the General Assembly already concluded that forbidding the type of misconduct at issue here is the right balance of interests. This Court should conclude that Plaintiffs' interest in fair housing treatment and non-discrimination outweighs Defendants' interest in defying the law.

V. Interim injunctive relief will preserve the status quo pending trial.

The Court should grant interim injunctive relief to preserve the status quo by preserving Plaintiffs' privacy and preventing an extrajudicial action that would exclude Plaintiffs from their home and separate them from their personal belongings. The status quo prior to Defendants' unlawful conduct means Plaintiffs living in the Apartment free from the landlords' threats to violate various Colorado tenant protections.

VI. Security bond should be waived or set at $1.

While C.R.C.P. Rule 65(c) requires an applicant for a temporary restraining order or preliminary injunction to pay damages sustained by a party that is wrongfully restrained by the order or injunction, the Court may set the bond at a nominal amount where the enjoined party would not suffer a compensable loss if the injunction was wrongfully issued. *Kaiser v. Market Square Discount Liquors, Inc.*, 992 P.2d 636, 642–43 (Colo. App. 1999); *see also Bella Health and Wellness v. Weiser*, 2023 WL 6996860, at *20–21 (D. Colo. Oct. 21, 2023) (not requiring a bond is permissible where there is "an absence of proof showing a likelihood of harm" to the enjoined party). The Court's authority to set a nominal bond ensures that the Court is not "render[ed] . . . powerless in innumerable situations where immediate equitable relief is required." *Kaiser*, 992 P.2d at 643 (internal citation omitted).

Defendants will not suffer a compensable loss as a result of the injunction, as it enjoins nothing but expressly unlawful behavior. As such, the risk of harm is remote and a nominal bond is appropriate.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to (1) set an accelerated briefing schedule and a prompt date for an evidentiary hearing on the issues Plaintiffs raise here, (2) issue an immediate temporary restraining order—to be effective until the Court conducts an evidentiary hearing—that Defendants are prohibited from threatening to evict Plaintiffs and otherwise violating the ITPA, and (3) after a hearing, issue a preliminary injunction ordering the same relief.

Respectfully submitted this 29th day of January, 2025.

/s/ Anna I. Kurtz

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