Department of Justice

STATEMENT

OF

JESSIE K. LIU
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

HEARING ENTITLED

"ENFORCEMENT OF THE FAIR HOUSING ACT OF 1968"

PRESENTED ON

JUNE 12, 2008

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Mr. Chairman, Ranking Member Franks, and Members of the Subcommittee, it is an honor to appear before you today to discuss the Civil Rights Division's fair housing and lending enforcement.

In my role as a Deputy Assistant Attorney General for the Civil Rights Division, I oversee the Housing and Civil Enforcement Section, which is charged with ensuring non-discriminatory access to housing, credit, and public accommodations. We understand the importance of these opportunities to American families, and we work hard to meet this weighty responsibility. The Division is strongly committed to enforcing the Fair Housing Act, the Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the Religious Land Use and Institutionalized Persons Act, and the Servicemembers Civil Relief Act.

This April, we commemorated the fortieth anniversary of the Fair Housing Act – landmark legislation that outlawed discrimination on the basis of race, color, national origin, or religion in the sale, rental, or financing of housing. On several occasions since the original Act was passed in 1968, Congress has reaffirmed and expanded this country's commitment to fair housing by extending the Act's protections to include sex, disability, and familial status and providing for much-needed enforcement tools.

The right protected by the Act – to be free from discrimination in housing – is at the heart of the American dream, and for forty years, the Department of Justice has worked to make that dream a reality for all Americans. Since 2001, the Department has brought more than 200 cases based on discrimination because of race, color, national origin, sex, religion, disability, or familial status. We have required landlords, real estate companies, builders, architects and engineers, lenders, and local governments to implement non-discriminatory policies and procedures. We have obtained millions of dollars of compensation for victims of discrimination. And, although criminal enforcement is not the subject of today's hearing, I would be remiss if I

did not note that we have convicted dozens of defendants who have threatened families by burning crosses and committing other acts of violence outside their homes.

Although we have made progress over the last forty years, there can be no question that housing discrimination exists today. Just a sample of recent cases confirms the work still to be done. In one case, a landlord refused to rent to an African-American mother and daughter because of what his other tenants would think. In another case, a landlord replaced a tenant's rent and refused to make repairs to her unit when her African-American boyfriend moved in with her. In another case, a local government retaliated against an employee who promoted an affordable housing development that would be welcoming to African Americans. And in yet another case, a new landlord decided to systematically terminate the leases of long-time Hispanic tenants under the guise of making renovations. Each of these cases was investigated and charged by the Department of Housing and Urban Development. The Housing and Civil Enforcement Section then litigated and successfully settled them.

But these cases are just the tip of the iceberg. Over the years, discrimination, particularly race and national origin discrimination, has become more difficult to detect, as more and more housing providers have learned that even discriminatory statements are illegal. A rental agent who treats a prospective African-American, Hispanic, Asian-American, or Native-American tenant politely but falsely tells him or her that no apartment is available violates the Fair Housing Act. Unfortunately, the prospective tenant is not likely even to know that he or she has been the victim of discrimination, much less complain about it.

Two years ago, the Department of Justice launched Operation Home Sweet Home, an initiative specifically designed to combat these more hidden forms of discrimination. As part of the initiative, we committed additional resources to our fair testing program and enhanced our targeting. By conducting multiple paired tests in the same location, we can find and collect evidence against the landlord who politely lies about the availability of an apartment because of a prospective tenant's race, national origin, sex, religion, disability, or familial status.

Operation Home Sweet Home is achieving significant results. In fiscal year 2007, we conducted more than 500 paired tests, exceeding by more than 20 percent the highest number of tests conducted in any previous year since the program's inception. The testing program also is producing new cases. We are currently litigating a case alleging a pattern or practice of discrimination against African Americans in Roseville, Michigan. Another case on behalf of African Americans based on testing evidence is in pre-suit negotiations. In addition, during fiscal year 2007, Operation Home Sweet Home resulted in the first pattern or practice discrimination case ever brought by the Civil Rights Division on behalf of Asian Americans based on evidence from our testing program. That case, *United States v. Pine Properties* (D. Mass.), was settled in January 2008, with the defendants agreeing to pay up to $158,000 in monetary relief. Operation Home Sweet Home also has resulted in pattern or practice discrimination cases on behalf of families with children and guide-dog users.

During fiscal year 2007, the Housing and Civil Enforcement Section obtained settlements and judgments in fair housing and fair lending cases requiring the payment of a total of over $7

million in monetary damages to victims of discrimination and civil penalties to the government. These cases involve a wide range of vulnerable victims of discrimination.

Clearly, race and national origin discrimination in housing is an ongoing problem. Fortunately, the Division continues to enjoy significant success in its pattern or practice race discrimination cases under the Fair Housing Act. For example, in March 2007, we obtained a judgment in *United States v. Matusoff Rental Company* (S.D. Ohio) that the defendant had engaged in a pattern or practice of discrimination on the basis of both race (against African Americans) and familial status. The *Matusoff* judgment requires the defendant to pay a total of $405,000 in compensatory damages and $130,000 in punitive damages to twenty-six individual victims of discrimination. This is the second largest damage award the Department ever has obtained in a Fair Housing Act case. Also in March 2007, a federal court in Nevada entered a consent decree in *United States v. Bonanza Springs* (D. Nev.), a race, disability, and familial status discrimination case, providing for $450,000 in monetary relief.

In August 2007, the court in *United States v. General Properties Company, LLC* (E.D. Mich.), entered a consent order providing for $725,000 in monetary relief to resolve the Division's allegations that the owners and operators of an apartment complex in Livonia, Michigan, had discriminated against African-American prospective tenants. In May 2008, the court in *United States v. Henry* (E.D. Va.), entered a consent order requiring the landlord of a subsidized housing complex to pay up to $361,000 to settle the Division's lawsuit alleging that the defendant imposed more restrictive rules and regulations on African-American tenants than on other tenants; verbally harassed African-American tenants with racial slurs and epithets; and evicted tenants by enforcing a limit of two children per family. In addition, we currently are litigating several other pattern or practice cases involving race and national origin discrimination.

The Division's enforcement of the Fair Housing Act's protections against discrimination based on disability are a vital element of the President's New Freedom Initiative to provide and enhance community-based opportunities for individuals with disabilities. The Fair Housing Act requires that multi-family housing constructed after 1991 include certain features to make it usable by, and accessible to, persons with disabilities. Twice a year since 2005, we have held a Multi-Family Housing Access Forum, intended to assist developers, architects, and others understand the Act's accessibility requirements and to promote a dialogue between the developers of multi-family housing and persons with disabilities and their advocates. Our most recent Access Forum events were held in Miami in November 2007 and in Seattle in May 2008.

In addition to these proactive outreach efforts, the Division actively litigates cases involving housing that is not designed and constructed in accordance with the Fair Housing Act and the Americans with Disabilities Act. In January 2008, the Division settled a case alleging systemic violations of the Fair Housing Act's multi-family housing accessibility requirements for $175,000 in monetary relief plus retrofitting of the inaccessible features. During fiscal year 2007, we filed six accessibility cases, settled seven such lawsuits, and obtained favorable summary judgment rulings in two accessibility cases. The Housing and Civil Enforcement Section also actively monitors compliance with the consent decrees in these cases. During calendar year 2007, we distributed $700,000 and more than $1 million, respectively, to victims in two disability discrimination cases. We also continue to monitor the creation of more than 14,500

new accessible housing opportunities in twenty-six States resulting from settlements entered since October 2004.

Moreover, the Division vigorously enforces the Fair Housing Act's requirement that local governments not discriminate against group homes for persons with disabilities. For example, in March 2008, the Division obtained favorable rulings on behalf of group homes for youth with disabilities in the District of Columbia and group homes for persons in recovery from alcohol or drug addiction in Boca Raton, Florida. Last fall, working with private plaintiffs, we ended contentious litigation over Sarasota County, Florida's treatment of group homes for persons in recovery or with mental illness. The settlement allows the group homes to continue to operate and requires the county to pay $760,000 in monetary relief – our largest monetary settlement ever in a group home case.

Another active area in our Fair Housing Act enforcement has been cases alleging systemic sexual harassment by landlords. During this Administration, the Civil Rights Division has filed almost three times as many housing-related systemic sexual harassment cases than in the prior Administration. Sexual harassment by a landlord is particularly disturbing because the perpetrator holds both the lease and a key to the apartment. For example, in April 2008, the court entered our consent decree providing for $250,000 in monetary relief to resolve a lawsuit alleging that the owner of rental properties in Missouri had subjected female tenants to unwanted verbal sexual advances, unwanted physical sexual advances, forcible physical contact, and threats of eviction when they refused or objected to his sexual advances. In March of this year, we obtained a consent decree requiring the property managers, owner, and a maintenance man at two other Missouri apartment complexes to pay $75,000 in damages to aggrieved persons, as well as a $20,000 civil penalty.

Although most sexual harassment cases brought by the Housing and Civil Enforcement Section involve claims against landlords under the Fair Housing Act, in October 2007, the Division resolved its first-ever case alleging systemic sexual harassment in lending in violation of both the Fair Housing Act and the Equal Credit Opportunity Act. In *United States v. First National Bank of Pontotoc, Mississippi* (N.D. Miss.), we alleged that a former bank vice president used his position to sexually harass female borrowers and applicants for credit, including home mortgage loans, and that the bank was liable for those actions. The consent decree requires the defendants to pay $250,000 to fifteen identified victims, up to $50,000 for any additional victims, and $50,000 to the United States as a civil penalty. The settlement also requires the bank to make changes to its policies and practices to prevent and detect any future harassment.

The First National Bank of Pontotoc case is just one of the Division's lawsuits that protect the rights of Americans to purchase houses as well as to rent them. Our fair lending enforcement efforts are a key component of our fight against housing discrimination. While a lender may legitimately consider a range of factors in determining whether to provide a loan to an applicant, race or national origin has no place in this determination. "Redlining" is the term used to describe a lender's refusal to provide lending services in certain areas based on the racial makeup of the area's residents. The Division is working hard to eliminate this form of

discrimination, which places a barrier between Americans and the dream of owning their own home.

During fiscal year 2007, we filed and resolved a lawsuit against Centier Bank in Indiana for violations of the Equal Credit Opportunity Act and the Fair Housing Act. In this case, we alleged Centier unlawfully refused to provide its lending products and services on an equal basis to residents of minority neighborhoods, thereby denying hundreds of loans to prospective African-American and Hispanic residents. Under the settlement agreement, the bank will open new offices and expand existing operations in the previously excluded areas, as well as invest $3.5 million in a special financing program and spend at least $875,000 on outreach, marketing, and consumer financial education in these redlined areas.

Also in fiscal year 2007, we filed and resolved three cases under the Equal Credit Opportunity Act (ECOA) involving auto lending discrimination. In August 2007, the Division filed and resolved two cases against Ford dealerships in Pennsylvania. These lawsuits alleged that the dealerships engaged in a pattern or practice of discriminating against African-American customers by charging them higher dealer markups on car loan interest rates. The consent orders in those cases provide for up to $457,000 in damages for African-American customers who were charged higher interest rates. In addition, the dealerships agreed to implement changes in their policies and practices, including new guidelines to ensure that the dealerships follow the same procedures for setting markups for all customers and that only good faith, competitive factors consistent with ECOA influence that process. In January 2007, we filed and resolved a case against Compass Bank in Alabama, alleging that the bank violated ECOA by engaging in a pattern of discrimination on the basis of marital status in thousands of automobile loans it made through hundreds of different car dealerships in the South and Southwest. Specifically, we alleged that the bank charged non-spousal co-applicants higher interest rates than similarly-situated married co-applicants. The consent decree requires the bank to pay up to $1.75 million to compensate several thousand non-spousal co-applicants whom we alleged were charged higher rates as a result of their marital status. We currently have two additional fair lending lawsuits in pre-suit negotiations.

The Housing and Civil Enforcement Section also enforces the anti-discrimination requirements of Title II of the Civil Rights Act of 1964. In March 2008, we resolved a Title II lawsuit against the owner and operator of Kokoamos Island Bar and Grill, a Virginia Beach club and restaurant. We alleged that Kokoamos discriminated against African-American patrons in a place of public accommodation by implementing a discriminatory dress code targeting African Americans and by applying the dress code in a discriminatory manner. Our consent decree requires Kokoamos to implement changes to its policies and practices in order to prevent such discrimination. We also continue to monitor compliance with our 2004 consent decree in *United States v. Cracker Barrel Old Country Stores*, which resolved our lawsuit alleging a pattern or practice of discrimination against African-American customers and prospective customers in the restaurant's seating and service practices. Cracker Barrel continues to make progress toward full compliance with the comprehensive reforms mandated by that consent decree.

In addition, the Division continues its vigorous enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The land-use provisions of RLUIPA bar

zoning practices that discriminate against or impose undue burdens on house of worship and religious schools. Since 2001, the Division has reviewed 156 RLUIPA matters and has opened thirty-eight full investigations. Seventeen of these full investigations have been resolved favorably prior to the filing of a lawsuit. The Division also has filed five RLUIPA lawsuits, three of which have been resolved by consent decree, and two of which are pending.

In February 2008, the Division reached a consent decree in a suit against the City of Waukegan, Illinois, which requires that the city amend its zoning code to treat religious assemblies and non-religious assemblies equally as required by RLUIPA. The Division also obtained a favorable summary judgment ruling in October 2007 after filing an *amicus* brief in a case in which the Township of Wayne, New Jersey, had taken various actions to block the building of a mosque. The two RLUIPA cases currently pending involve alleged discrimination by the Village of Airmont, New York against Hasidic Jews seeking to build a boarding school, and the Village of Suffern, New York's denial of a permit to an Orthodox Jewish group to operate a "Shabbos House" near a hospital where Sabbath-observant Jews may stay while visiting patients on the Sabbath.

The Division also continues to build a Servicemembers Civil Relief Act (SCRA) enforcement program. Since receiving SCRA enforcement authority in 2006, we have opened several investigations under the SCRA and have resolved the first such investigation with a favorable outcome. In addition, we have engaged in a sustained outreach effort, including visiting military bases throughout the country to inform JAG attorneys that we are actively investigating SCRA matters and stand ready to help them enforce the SCRA.

President Bush has said: "As a Nation, and as individuals, we must be vigilant in responding to discrimination wherever we find it and ensuring that minority families have access to housing." I am committed to fulfilling this pledge, and the Civil Rights Division will continue to dedicate our energy and resources to exposing and eliminating discriminatory housing and lending practices.

Thank you for the opportunity to testify today.