IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSIE JAIMES,
TOMAS GONZALES,
CLARENCE TURNER,
and
PATRICIA DAVIS,
on their own behalf and on behalf of all others similarly situated,

Plaintiffs

-vs-

TOLEDO METROPOLITAN HOUSING AUTHORITY,

CARL BARRETT, in his official capacity as the Director of the Toledo Metropolitan Housing Authority,

RAY J. FLORY,
ROBERT DORRELL,
JOHN CHADWELL,
FRANK B. DAIG, JR., and
DOROTHY DENNIS, in their official capacities as Board members of the Toledo Metropolitan Housing Authority,

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

CARLA HILLS, in her official capacity as the Secretary of the U.S. Department of Housing and Urban Development,

DON MORROW, in his official capacity as the Regional Administrator, Region V of the U.S. Department of Housing and Urban Development, and

PAUL LYDENS, in his official capacity as the Director of the Columbus, Ohio Area Office of the U.S. Department of Housing and Urban Development,

Defendants

Civil Action No. C74-68

Hon. Don J. Young

AMENDED COMPLAINT--
CLASS ACTION

I. PRELIMINARY STATEMENT

1. This action is brought to enjoin racially discriminatory conduct in the provision and location of low-income housing

in the Toledo metropolitan area. It is also brought to restrain interference with the right to travel and with the implementation of Federal housing programs.

2. This suit is instituted by low-income, minority persons residing in the Toledo metropolitan area on behalf of themselves and all other low-income minority residents living in the Toledo metropolitan area who seek the opportunity to live in decent, safe, and sanitary housing in suburban areas outside areas of minority concentration.

II. JURISDICTION

3. This Court has jurisdiction of the action pursuant to 28 U.S.C. 1331, 1343, 1361, and 42 U.S.C. 3612 and 3617. The amount in controversy exceeds ten thousand dollars ($10,000) exclusive of interest and costs.

4. The Plaintiffs' claims for relief are predicated upon 42 U.S.C., 1401, et seq., 1981, 1982, 1983, 2000d, and 3601, et seq., and upon the Commerce Clause, the Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution.

III. PLAINTIFFS

5. Plaintiff Josie Jaimes, a Mexican-American, is a citizen of the United States who resides in Toledo, Ohio. Until her house was condemned in November, 1973 by the Lucas County Health Department, she and her six (6) children lived in Sylvania, a suburb of Toledo, in a two (2) room house which had no running water, no toilet facilities, defective wiring, and inadequate heat. She had lived in the Sylvania area for approximately nineteen (19) years. She and her family would like to live in the Sylvania area for reasons of employment, schools, and personal ties, but they are unable to afford decent, safe, and sanitary housing without the assistance of the Toledo Metropolitan Housing Authority (TMHA). When she applied for a

public housing unit at TMHA, Plaintiff Jaimes was advised that no such housing is located in the Sylvania area. She is on the TMHA waiting list.

6. Plaintiff Tomas Gonzales, a Mexican-American, is a citizen of the United States who resides with the other seven (7) members of his family in Sylvania in a two (2) room house which has no running water and no toilet facilities. He has lived in the Sylvania area for approximately twenty-two (22) years. Plaintiff Gonzales would like to live in decent, safe, and sanitary housing in the Sylvania area, but is unable to afford such housing without the assistance of TMHA. He is on the TMHA waiting list.

7. Plaintiff Clarence Turner, a black American, is a citizen of the United States who resides with his family in a TMHA public housing development which is predominantly black and which is located in a racially concentrated area of Toledo. His children attend racially segregated schools. He has to travel to his job in Wood County, Ohio because he is unable to afford housing in proximity to his work. Plaintiff Turner would like to live with his family in the Maumee area, but is unable to afford decent, safe, and sanitary housing without the assistance of TMHA.

8. Plaintiff Patricia Davis, a black American, is a citizen of the United States who resides with her family in a TMHA public housing development which is predominantly black and which is located in a racially concentrated area of Toledo. Her children attend racially segregated schools. She would like the opportunity to live in the suburbs of Toledo, but is unable to afford decent, safe, and sanitary housing without the assistance of TMHA.

IV. CLASS ACTION ALLEGATIONS

9. This is a class action brought pursuant to Rule 23 (a)(b)(1)(A) and (B), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

10. The class consists of all low-income residents of the greater Toledo, Ohio area who by virtue of their race and poverty are unable to secure decent, safe, and sanitary housing at rents or prices which they can afford without the assistance of Defendant TMHA. The class is so numerous that the joinder of all members is impracticable. The exact size of the class is unknown, but an indication of the class size is the TMHA waiting list for family housing units, which presently consists of approximately one thousand eight hundred (1,800) individuals who are members of this class. There are questions of law and fact common to the class. The common question of law and fact is whether Defendants' provision and location of public housing in the Toledo area has denied Plaintiffs and their class their rights under the Constitution and laws of the United States. The claims of the representative parties are typical of the claims of the above mentioned class. The Plaintiffs will fairly and adequately protect the interests of their class because they are members of the class and have no known adverse interest to the class. Prosecution of separate actions by individual members of the class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants, and (b) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interest of the other members not parties to the adjudication or substantially impede their ability to protect their interests. The Defendants have acted or refused to act, on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole. The questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for a fair and efficient adjudication of the controversy. There is no conflict among the interests in individually controlling the

prosecution and defense of separate actions. There is no known litigation presently pending concerning similar claims involving any members of the class. This Court is a desirable forum in which to concentrate the litigation of the claims of the class since it has the power to hear all the claims and to grant appropriate relief. There are not likely to be any difficulties in the management of a class action in notice to the members of the class, since the whereabouts of all the members of the class is known.

V. DEFENDANTS

11. Defendant Toledo Metropolitan Housing Authority (TMHA) is a body corporate and politic established under the laws of the State of Ohio. Ohio Revised Code (O.R.C.) 3735.27 et seq. It has the responsibility and authority to provide, through construction, acquisition, and/or leasing, low-income housing in all areas of Lucas County except Harding Township. Under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401, et seq., the United States Department of Housing and Urban Development is the principal source of financial assistance for such housing.

12. Defendant Barrett is the Director of TMHA and as such, is charged with the administration and general supervision of its housing programs.

13. Defendants Flory, Borrell, Chadwell, Daig and Dennis are members of the TMHA Board of Commissioners appointed pursuant to O.R.C. 3735.27, who determine the policies of TMHA.

14. Defendant United States Department of Housing and Urban Development (HUD) is an Executive Department of the United States and is TMHA's primary funding source.

15. Defendant Carla Hills is the Secretary of the United States Department of Housing and Urban Development and is the Chief Administrator of Federal housing and urban development programs. She is responsible for the overall administration,

review, approval, and execution of Federal housing and urban development programs, including the low rent public housing programs, 42 U.S.C. 1401, et seq.

16. Defendant Don Morrow is the Regional Administrator for Region V of the United States Department of Housing and Urban Development and is responsible for the administration, review, approval, and execution of Federal housing and urban development programs, including the low rent public housing programs, 42 U.S.C. §1401, et seq., in the cities located in that region. Lucas County, Ohio is located in Region V.

17. Defendant Paul Lydens is the Director of the Columbus, Ohio Area Office of the United States Department of Housing and Urban Deveopment and is responsible for the administration, review, approval, and execution of Federal housing and urban development programs, including the low rent public housing programs, 42 U.S.C. 1401, et seq., located within that area. Lucas County, Ohio is located in the Columbus Area.

VI. FACTUAL ALLEGATIONS

18. Lucas County, Ohio is composed of the municipalities of Toledo, Sylvania, Maumee, and Oregon, the villages of Ottawa Hills, Holland, Whitehouse, Waterville, Berkey and Harbor View, and the townships of Swanton, Washington, Jerusalem, Waterville, Spencer, Springfield, Sylvania, Monclova, Providence, Richfield, and Harding.

19. In 1970, the population of Lucas County was 484,370 persons: 427,541 (approximately 88%) were white; 54,694 (approximately 11%) were black; and 2,135 (less than 1%) were Mexican-American or other minority group.

20. The population of Lucas County is racially segregated. Approximately 97% of the black persons and about 86% of the Mexican Americans and other minorities who reside in the County live in the City of Toledo and are concentrated in limited sections of it. The remaining minority group members reside in concentrated pockets in other parts of the County.

21. In the past several years, employment opportunities in the suburban areas of Lucas County have increased at a rate far exceeding the rate of increase for the City of Toledo, where the overwhelming majority of blacks, Mexican-Americans, and other minorities reside.

22. The racial composition of the public schools in Lucas County reflects the racially segregated residential patterns of the area.

23. TMHA manages approximately 3,000 units of public housing in the City of Toledo. These dwellings have been provided under cooperation agreements or resolutions with the City. TMHA has also entered into a cooperation agreement with Lucas County calling for 100 units, of which only 52 have been erected. All family public housing is located in the City of Toledo, except for the 52 units which are located in a predominantly black and low-income area of the County called Spencer Sharples.

24. The TMHA waiting list for family public housing units is composed of about 1,800 applicants, two-thirds of whom are blacks and Mexican-Americans.

25. In the past, TMHA has maintained policies and practices of racial discrimination and segregation in the administration and operation of its public housing program.

26. TMHA's past policies and practices have contributed substantially to the racially segregated character of Lucas County.

27. There is a substantial need in all areas within the jurisdiction of TMHA for decent, safe, and sanitary low-income housing which plaintiffs and the members of their class can afford.

28. Before TMHA may construct or acquire low-income conventional public housing, it must enter into a cooperation agreement with the governing body in whose jurisdiction the project is to be located. There are presently conventional family public housing units under reservation from HUD to TMHA.

29. In August 1974, Congress enacted the Community Development Act of 1974 (Public Law 93-383) which, inter alia, includes a new low income public housing program commonly referred to as Section 8. Under the Section 8 program, 42 U.S.C. 1437 f., TMHA may participate as both an administrator and developer.

30. Beginning in 1972, TMHA has been asked, through oral and written communications, to seek cooperation agreements and authorizing resolutions from each of the governing bodies in Lucas County. Despite these requests, Defendants refused and failed to seek cooperation agreements and resolutions, and have refused and failed to take all necessary steps to locate public housing outside the City of Toledo. Without such agreements, TMHA is precluded from constructing or acquiring, conventional public housing outside the City of Toledo.

31. HUD provides financial support to TMHA in the form of loans and annual contributions for the administration and operation of the TMHA public housing program. In addition to this financial support, HUD also has responsibility for reviewing and approving all policies and practices of TMHA in the administration and operation of its public housing program, including policies and practices relating to tenant assignment and site selection.

32. In the past, HUD has knowingly approved and financially supported TMHA's policies and practices of racial discrimination and segregation in the administration and operation of the TMHA public housing program.

33. Under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, et seq., Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, Executive Order 11063, HUD is required to ensure that its housing and urban development programs provide minorities with the full enjoyment of equal housing opportunities. HUD has failed to ensure that its programs are

administered in an affirmative manner to achieve equal housing opportunities.

34. In October,1973, in response to an administrative complaint filed by individuals and various neighborhood organizations in the City of Toledo, officials in the HUD Columbus Area Office determined, inter alia, that the Toledo Metropolitan Housing Authority should be seeking cooperation agreements from the local governing bodies within its jurisdiction.

35. Defendants HUD, Hills, Morrow, and Lydens have failed and refused to take all necessary, appropriate and effective action to ensure that TMHA seek cooperation agreements and resolutions from the local governing bodies within its jurisdiction and that public housing be located in the suburban communities of said jurisdiction pursuant to Title VIII, of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq., Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d, and the regulations promulgated pursuant thereto, and have failed and refused to impose sanctions within their power to impose.

36. Defendants HUD, Hills, Morrow, and Lydens continue to advance money and encourage TMHA to advertise for family public housing units inside the City of Toledo, while at the same time they have instructed TMHA not to seek cooperation agreements and resolutions from the other local governing bodies within its jurisdiction.

VII. FIRST CLAIM FOR RELIEF

37. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 36, as set forth above.

38. Defendants TMHA, Flory, Dorrell, Chadwell, Daig, and Dennis' failure to seek cooperation agreements and authorizing resolutions from the governing bodies of the suburban communities within the TMHA jurisdiction, and their failure to take all necessary and appropriate steps to locate public housing in

said communities has the effect of perpetuating racial residential segregation, of impeding the right to travel, and of interfering with the proper implementation and execution of Federal housing programs. Among other consequences, the results have been to:

(a) Exclude low-income minorities from living outside areas of racial concentration;

(b) Confine low-income minorities to the City of Toledo;

(c) Maintain the all-white character and image of the suburban communities surrounding Toledo;

(d) Deprive white residents living in segregated neighborhoods of the benefits of a racially integrated community; and

(e) Deny minority persons equal access to suburban jobs and deny their children equal educational opportunities.

39. The conduct, acts, and practices of the Defendants described in the preceding paragraphs interfere with and deny rights secured to the Plaintiffs and the members of their class by 42 U.S.C. 1401, et seq., 1981, 1982, 1983, 2000d, and 3601, et seq., and by the Commerce Clause, and the Thirteenth and Fourteenth Amendments to the United States Constitution. Unless restrained by order of this Court, the Defendants will continue to engage in illegal activity and cause irreparable harm to Plaintiffs and the members of their class.

VIII. SECOND CLAIM FOR RELIEF

40. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 36, as set forth above.

41. Defendants U.S. Department of Housing and Urban Development, Hills, Morrow, and Lydens', failure to require TMHA to seek cooperation agreements and authorizing resolutions from governing bodies of the suburban communities within the TMHA jurisdiction and their failure to take all necessary and

appropriate steps to place public housing within said suburban communities has the effect of perpetuating racial residential segregation, of impeding the right to travel, and of interfering with the proper implementation and exeuction of Federal housing programs. Among other consequences, the results have been to:

(a) Exclude low-income minorities from living outside areas of racial concentration;

(b) Confine low-income minorities to the City of Toledo;

(c) Maintain the all-white character and image of the suburban communities surrounding Toledo;

(d) Deprive white residents living in segregated neighborhoods of the benefits of a racially integrated community; and

(e) Deny minority persons equal access to suburban jobs and deny their children equal educational opportunities.

42. The conduct, acts, practices, and policies of the Defendants described in the preceding paragraphs interfere with and deny rights secured to the Plaintiffs and the members of their class by 42 U.S.C. 1401 et seq., 1981, 1982, 2000d, 3601, et seq., and the regulations promulgated pursuant thereto, and the Fifth and Thirteenth Amendments to the United States Constitution. Unless restrained by order of this Court, the Defendants will continue to engage in illegal activity and cause irreparable harm to Plaintiffs and the members of their class.

IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court cause this case to be in every way expedited for a hearing on the merits and, after such hearing, enter an order:

(a) Enjoining TMHA, its officers, agents, and employees, and all other persons acting in active concert or participation with any of them from:

(1) Engaging in any acts or practices which have the purpose or effect of denying equal housing opportunities because of race, color, religion, national origin, or sex, of obstructing or impeding the right to travel, or of interfering with the proper implementation and execution of Federal housing programs; and

(2) Expending any funds, selling any bonds, entering into any contract, or taking any other steps to construct or lease low-income housing in any area which is or may soon become racially impacted;

(b) Requiring TMHA, its officers, agents, and employees to:

(1) Take all necessary steps to secure cooperation agreements from each of the governing bodies in Lucas County;

(2) Take all necessary steps to participate in the Section 8 public housing program both as an administrator and developer and ensure that through such participation the following occur: (a) family public housing units are constructed in the suburban communities throughout the TMHA jurisdiction, and; (b) priority is given to those applicants on the present TMHA waiting list;

(3) Submit to this Court, within 30 days, a comprehensive plan for the dispersal of public housing throughout the territorial jurisdiction of TMHA;

(4) Award each of the named Plaintiffs and the class they represent compensatory and punitive damages in an amount to be determined by the Court; and

(5) Take reasonable steps to correct the effects of past discriminatory conduct, including the implementation of a comprehensive plan of affirmative action.

(c) Enjoining HUD, its officers, agents, and employees, and all other persons acting in active concert or participation with any of them from:

(1) Engaging in any acts or practices which have the purpose or effect of denying equal housing opportunities because of race, color, religion, national origin, or sex, of obstructing or impeding the right to travel, or of interfering with the proper implementation and execution of Federal housing programs; and

(2) Cancelling or otherwise interfering with those conventional public housing units and monies presently under reservation and allocated to TMHA,

(d) Requiring HUD, its officers, agents, and employees to:

(1) Take all necessary steps to ensure that a reasonable number of Section 8 family public housing units are allocated and constructed in the suburban communities within the TMHA jurisdiction and that priority is given to those applicants on the present TMHA waiting list;

(2) Take all necessary steps to ensure that sufficient monies in the form of annual contributions are provided to TMHA so as to ensure that all applicants on the present TMHA family public housing waiting list are eligible for the Section 8 family public housing program;

(3) Submit to this Court, within 30 days, a comprehensive plan for the dispersal of public housing throughout the territorial jurisdiction of TMHA; and

(4) Take reasonable steps to correct the effects of past discriminatory conduct, including the implementation of a comprehensive plan of affirmative action.

Plaintiffs pray for the recovery of all costs, including attorney fees, incurred in maintaining this action, and for such further relief as the interests of justice may require and this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Amended Complaint was mailed on this 11th day of June, 1975 to David Soutar, 833 First National Bank Building, Toledo, Ohio 43604 and Patrick J. Foley, Assistant U.S. Attorney, 1716 Spielbusch Avenue, Toledo, Ohio. Copies of the Summons and this Amended Complaint have also been forwarded to the U.S. Marshal in order that they may be served on Defendants U.S. Department of Housing and Urban Development, Carla Hills, Don Morrow, and Paul Lydens, pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Joseph R. Tafelski

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONI ARTHUR, et al.,	*	Case No. C78-153
Plaintiffs	*	HONORABLE NICHOLAS J. WALINSKI
-vs-	*	
CITY OF TOLEDO, OHIO, et al.,	*	MOTION FOR SUMMARY JUDGMENT
DEFENDANTS	*	

* * * * * *

Pursuant to Rule 56 of the Federal Rules of Civil Procedure plaintiffs move for Summary Judgment for the reason that there is no genuine issue of material fact and they are entitled to judgment as a matter of law, as set forth in the attached Memorandum in Support of Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Summary Judgment and accompanying Memorandum in Support of Motion was hand delivered this 5th day of September, 1978 to the offices of: William M. Connelly, 833 National Bank Building, Toledo, Ohio 43604, Charles A. Matuszynski, 435 Nebraska Avenue, Toledo, Ohio 43602, John D. Scouten, Joseph P. Jordan, Robert G. Young, City Law Department, 327 Safety Building, Toledo, Ohio 43624.

GLENN G. GALBREATH
PLAINTIFFS' COUNSEL

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Summary Judgment and accompanying Memorandum in Support of Motion was hand delivered this 15th day of September, 1978 to the offices of William M. Connelly, 833 National Bank Building, Toledo, Ohio 43604, Charles A. Matuszynski, 435 Nebraska Avenue, Toledo, Ohio 43602, John D. Scouten, Joseph P. Jordan, Robert G. Young, City Law Department, 327 Safety Building, Toledo, Ohio 43624.

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