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INVESTIGATIVE REPORT

HRC Case No. HV20-0020

COMPLAINANT: Yesica Sanchez de Ramirez and Felipe Ramirez-Diaz

RESPONDENT: Stephen and Kristina Polak

CHARGE: Discrimination based on race, color, and national origin

SUMMARY OF COMPLAINT

Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz are originally from Mexico. Their neighbors, Mr. and Mrs. Polak have threatened them with a gun and regularly shout at them, including comments referring to their race, color, and national origin. Mr. and Mrs. Polak have also interfered with their property and invaded their privacy. Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz believe Mr. and Mrs. Polak discriminated against them on the basis of race, color, and national origin, in violation of the Vermont Fair Housing and Public Accommodations Act (VFHPAA).

SUMMARY OF RESPONSE

Mr. and Mrs. Polak deny discriminating against Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz. According to the Polaks, the dispute between the neighbors is a result of problems such as the Ramirez family burning trash and is unrelated to race, color, or national origin.

PRELIMINARY RECOMMENDATIONS

This investigation makes a preliminary recommendation to the Vermont Human Rights Commission (HRC) to find there are **reasonable grounds** to believe that Mr. and Mrs. Polak discriminated against Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz based on their race, color, and national origin, in violation of the Vermont Fair Housing and Public Accommodations Act (VFHPAA) 9 V.S.A. §4503 and §4506.

INTERVIEWS

- Jennifer Dunbar, neighbor – 6/11/2020
- Jennifer Deso, wellness coach for children of Complainants – 6/11/2020
- Martina Tesarova, family support specialist for Complainants – 6/11/2020
- Alan Robtoy, former director of public works for St. Albans – 6/12/2020
- Howard Church, friend of Complainants – 6/16/2020
- Albert Harris, land surveyor for Complainants – 6/24/2020
- Greg LaClair, neighbor – 7/9/2020; 8/3/2020
- Travis Vigneau, neighbor – 7/9/2020
- Nora Roberge, neighbor – 7/9/2020
- Yesica Sanchez de Ramirez, Complainant – 7/24/2020
- Felipe Ramirez-Diaz, Complainant – 7/24/2020
- Harold Cross, public safety administrator for St. Albans – 7/29/2020
- Rosa Burch, friend of Complainants – 7/29/2020
- David Murrish, environmental enforcement officer for Vermont Department of Environmental Conservation – 8/3/2020
- Roxane Rushlow, former neighbor – 8/4/2020
- Ken McDaniel, friend of Respondents – 8/4/2020
- Tim Marsh, friend of Respondents – 8/6/2020
- John Paul, friend of Respondents – 8/7/2020
- Heidi Durand, customer of Respondents – 8/7/2020
- Christopher Lake, friend of Respondents – 8/7/2020
- Kristina Polak, Respondent – 8/10/2020
- Stephen Polak, Respondent – 8/10/2020
- Kelsey Swann, neighbor – 8/10/2020
- Dana Rucheau, barber – 8/12/2020; 8/18/2020
- L.R., son of Complainants – 8/28/2020
- Y.R., son of Complainants – 8/28/2020
- Hector Coolum, neighbor – 8/28/2020
- Ross Delacy, friend of Respondents – 10/15/2020

DOCUMENTS

INVESTIGATION

- Complaint – 5/12/2020
- Response – 5/26/2020
- Motion to Dismiss – 6/19/2020
- Decision for Motion to Dismiss – 8/7/2020

VIDEOS

- K.P. – 4/14/2017
- Police body camera from Officer Trevor Sargent – 5/14/2018
- Police body camera from Officer Francis McCarty – 5/14/2018

- Police body camera from Officer Kristine Koch– 6/11/2018
- Kristina Polak – 6/23/2018
- Yesica Sanchez de Ramirez and Felipe Ramirez-Diaz leave confrontation with Stephen Polak – 6/23/2018
- Police body camera from Corporal William Furnari – 6/23/2018
- Yesica Sanchez de Ramirez and Stephen Polak waiting for school bus – 8/28/2019
- Stephen Polak bicycling – 8/28/2019

PHOTOS

- K.R. and O.P. – 8/23/2016
- Stephen and Kristina Polak watching Felipe Ramirez-Diaz building fence – summer, 2019

COURT DOCUMENTS

- Notice Against Trespass to Kristina Polak – 11/13/2017
- Complaint for Order Against Stalking – 6/25/2018
- Emergency Order Against Stalking – 6/25/2018
- Relief from Abuse Hearing Transcript – 7/2/2018
- Extended Order for Stalking against Stephen and Kristina Polak – 7/3/2018
- Victim Impact Statement from Yesica Sanchez de Ramirez – 9/24/2018
- Conditions of Release Order for Stephen Polak – 9/25/2018
- Order to Vacate Order Against Stalking – 10/18/2018
- Notice to Victim of Hearing from Office of Franklin County State’s Attorney to Yesica Sanchez – 1/28/2019
- Affidavit in Support of Request for Order Against Stalking from Yesica Sanchez de Ramirez – 8/28/2019
- Email from Franklin County Criminal Court to Human Rights Commission – 10/5/2020

POLICE DOCUMENTS

- Motor Vehicle Complaint – 4/6/2018
- Incident Report – 5/14/2018
- Incident Report – 6/11/2018
- Affidavit from Corporal William Furnari – 6/23/2018
- Affidavit from Corporal William Furnari – 9/24/2018
- Incident Report – 11/2/2018
- Incident Report – 5/22/2019
- Incident Report – 8/28/2019
- Incident Report – 3/16/2020
- Incident Report – 5/5/2020
- Email from St. Albans Police Department to Human Rights Commission – 10/16/2020

MEDICAL DOCUMENTS

- Northwestern Medical Center Record for Yesica Sanchez de Ramirez – 5/14/2018

- Northwestern Counseling & Support Services Discharge Summary Plan for Y.R. – 12/24/2019

ST. ALBANS DOCUMENTS

- Town Health Officer Complaint and Inspection Form – 12/26/2017
- Animal Control Complaint Form – 6/1/2018
- Email from Ramirez family to Animal Control – 6/19/2018
- Animal Control Complaint Form – 6/23/2018
- Zoning Complaint Affidavit from Kristina Polak – 9/24/2018
- Zoning Complaint Affidavit from Stephen Polak – 9/16/2019
- Email from St. Albans recreation director to Human Rights Commission – 8/18/2020

ADDITIONAL DOCUMENTS

- Contract between Mr. Ramirez-Diaz and TDH Surveying & Design, LLC – 12/15/2017
- Email from Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz to Human Rights Commission – 5/29/2020
- Email from Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz to Human Rights Commission – 10/16/2020

FACEBOOK POSTS

- Facebook post from Kristina Polak about immigrants – 6/29/2017
- Facebook posts from Stephen and Kristina Polak about L.R., complainants' child – 7/20/2017
- Facebook post from Kristina Polak about neighbor burning trash – 11/12/2017
- Facebook post from Kristina Polak addressed to neighbor – 11/20/2017
- Facebook post from Kristina Polak showing gun she owns – 1/25/2018
- Facebook post from Kristina Polak about funding for immigrants – 4/9/2018
- Facebook post from Stephen Polak about immigrants – 5/21/2018
- Facebook post from Kristina Polak about protecting border from invasion – 11/3/2018
- Facebook post from Kristina Polak about funding border wall – 12/20/2018
- Facebook post from Stephen Polak about immigration – 4/12/2019
- Facebook post from Stephen Polak about neighbors – 5/5/2020
- Facebook post from Stephen Polak with comment about neighbors – 5/9/2020
- Facebook post from Kristina Polak about immigrants – 5/18/2020
- Facebook post from Stephen Polak about border patrol – 5/20/2020

FACTS

Felipe Ramirez-Diaz and his wife, Yesica Sanchez de Ramirez, live at 39 Jewell Street in St. Albans, Vermont.¹ They have four of their children and one dog living with them.² Before living

¹ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

² *Id.*

in St. Albans, they lived and worked at a farm in Swanton, Vermont.³ Both Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez are originally from Mexico.⁴

In December, 2014, Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez began looking for a house to buy.⁵ They found the house at 39 Jewell Street through the internet, and they went to look at it three times.⁶ They liked the price of the house and that the area looked quiet.⁷ A friend of theirs, Rosa Burch, helped them communicate with the bank in order to get a loan.⁸ They bought the house in March, 2015.⁹ The house needed many repairs before the family could move in.¹⁰

Stephen Polak, and his wife, Kristina Polak, live at 43 Jewell Street in St. Albans with their two children.¹¹ They also operate a financial services business at 42 Jewell Street in St. Albans.¹² Mr. and Mrs. Polak have lived on Jewell Street since approximately 2001.¹³ Mrs. Polak also lived on Jewell Street as a child.¹⁴ Mr. and Mrs. Polak own multiple properties on Jewell Street.¹⁵ In their interview, Mr. and Mrs. Polak stated they were excited to have Spanish-speaking neighbors because Mr. Polak has been trying to learn Spanish for several years and their children are learning Spanish.¹⁶

Mr. Ramirez-Diaz does not remember exactly when he met Mr. Polak, but he remembers that there was no longer snow on the ground.¹⁷ Both Mr. Ramirez-Diaz and Mr. Polak remember meeting each other in the backyard area.¹⁸ According to Mr. Ramirez-Diaz, Mr. Polak asked when they were going to move into the house and talked about how many repairs it needed.¹⁹ Mr. Polak told Mr. Ramirez-Diaz that, if he planned to sell the house, he should let Mr. Polak know because Mr. Polak planned to buy it from him.²⁰ Mr. Polak stated that he welcomed Mr. Ramirez-Diaz and that he might have mentioned in passing that they were interested in buying

³ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁴ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁵ Interview with Mr. Ramirez-Diaz, 7/24/2020.

⁶ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁷ Interview with Mr. Ramirez-Diaz, 7/24/2020.

⁸ Interview with Ms. Burch, 7/29/2020.

⁹ Interview with Mr. Ramirez-Diaz, 7/24/2020.

¹⁰ *Id.*

¹¹ Interview with Mrs. Polak, 8/10/2020.

¹² *Id.*

¹³ Interview with Mr. Polak, 8/10/2020.

¹⁴ Interview with Mrs. Polak, 8/10/2020.

¹⁵ Interview with Greg LaClair, 7/9/2020.

¹⁶ Interview with Mr. Polak, 8/10/2020; Interview with Mrs. Polak, 8/10/2020.

¹⁷ Interview with Mr. Ramirez-Diaz, 7/24/2020.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with L.R., 8/28/2020.

the house at 39 Jewell Street.²¹ It is common knowledge in the neighborhood that Mr. and Mrs. Polak want to buy additional properties on the street.²²

Before Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez moved into the house, they would visit the house occasionally to work on it and to pick up the mail.²³ They began to notice that the mail was disappearing.²⁴ According to Mrs. Sanchez de Ramirez, Mr. Polak brought them a stack of mail and said that he had collected their mail for them.²⁵ Once, they found mail inside their house.²⁶ Mrs. Sanchez de Ramirez asked her husband if he had given the keys to Mr. Polak to get the mail, however her husband had not given Mr. Polak the keys.²⁷ The door looked like it had been forced open, and it no longer closed well.²⁸ According to Mr. Polak, he did not collect their mail for them or put mail in their house.²⁹

While Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez were still living at the farm, Mr. and Mrs. Polak invited Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez to celebrate their daughter's birthday.³⁰ When they visited the Polaks' house, Mrs. Polak asked them a lot of questions.³¹ Mrs. Sanchez de Ramirez let her husband answer their questions because she did not speak English very often.³² She also wanted to avoid conversations with the Polaks because they always brought up the fact that their house was not in good shape and how many repairs it needed.³³

Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez moved into the house one year after they bought it.³⁴ Their daughter, K.R. would sometimes play with the Polaks' two children, F.P. and O.P.³⁵ When Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez had visitors over, Mr. and Mrs. Polak would walk into their yard and introduce themselves to the visitors.³⁶ Then Mr. and Mrs. Polak would talk to their visitors about how their house needed more repairs and ask the visitors to translate into Spanish how many repairs the house needed.³⁷ In a 2018 Relief from Abuse hearing, Mrs. Ramirez-Diaz stated, "they came to my property sometimes, but I never asked

²¹ Interview with Mr. Polak, 8/10/2020.

²² Interview with Mr. Polak, 8/10/2020.

²³ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Interview with Mr. Polak, 8/10/2020.

³⁰ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; Response, 5/26/2020.

³¹ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³² *Id.*

³³ *Id.*

³⁴ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁵ Photo of K.R. and O.P., 8/23/2016; interview with Ms. Rushlow, 8/4/2020; interview with Ms. Swann, 8/10/2020; interview with Mr. Polak, 8/10/2020; interview with L.R., 8/28/2020.

³⁶ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁷ *Id.*

them over.”³⁸ Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez’s sons, L.R. and Y.R., stated that their family tried to keep to themselves and have privacy from the Polak family.³⁹

2017

Notwithstanding the Ramirez family’s desire to have privacy from Mr. and Mrs. Polak, Mr. and Mrs. Polak hired L.R. in June, 2017.⁴⁰ Mr. and Mrs. Polak needed someone to answer the phone, and they had employed children in the neighborhood in the past.⁴¹ L.R. told his parents that Mr. and Mrs. Polak were asking him questions about them, which made him feel “weird.”⁴² Mr. Polak once made a comment about tequila and asked L.R. if he was sober.⁴³ On another occasion, Mrs. Polak insisted that L.R. open a bank account and told him that if he couldn’t open an account because he wasn’t a citizen, that they could help him with an account.⁴⁴ L.R. felt that the Mr. and Mrs. Polak used conversations like this to try and find out his family’s immigration status.⁴⁵

Mr. Polak denied that they asked L.R. about his parents except possibly some general questions to get to know the family.⁴⁶ According to Mrs. Sanchez de Ramirez, Mr. and Mrs. Polak offered to do their taxes for free.⁴⁷ Mr. Polak stated that he didn’t remember offering to do their taxes.⁴⁸

L.R. stopped working for Mr. and Mrs. Polak in August, 2017.⁴⁹ According to L.R. and Mrs. Polak, he stopped working for them because the soccer season was starting.⁵⁰ According to Mr. Polak, he stopped working for them because he refused to provide his social security number to them.⁵¹ Mr. and Mrs. Polak usually have employees fill out government-required paperwork at the beginning of their employment.⁵² They did not have L.R. complete the employment paperwork when he began work, but they did ask him to provide his social security number so that they could file their taxes.⁵³ L.R. was apprehensive about providing this information, and he stated that Mr. Polak told him that he wasn’t concerned if his parents were “illegal immigrants” and that he would still be able to help L.R. fill out his form to be able to file taxes without

³⁸ Relief from Abuse Hearing Transcript, 7/2/2018.

³⁹ Interview with L.R., 8/28/2020; Interview with Y.R., 8/28/2020.

⁴⁰ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Polak, 8/10/2020; interview with Mrs. Polak, 8/10/2020.

⁴¹ Interview with Mr. Polak, 8/10/2020; interview with Mrs. Polak, 8/10/2020.

⁴² Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with L.R., 8/28/2020.

⁴³ Interview with L.R., 8/28/2020.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Interview with Mr. Polak, 8/10/2020.

⁴⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁴⁸ Interview with Mr. Polak, 8/10/2020.

⁴⁹ Interview with Mrs. Polak, 8/10/2020.

⁵⁰ Interview with Mrs. Polak, 8/10/2020; interview with L.R., 8/28/2020.

⁵¹ Interview with Mr. Polak, 8/10/2020.

⁵² Interview with Mr. Polak, 8/10/2020; interview with Mrs. Polak, 8/10/2020.

⁵³ *Id.*

creating problems.⁵⁴ In his business, Mr. Polak sometimes uses Individual Taxpayer Identification Numbers (ITINs) for individuals who do not have a social security number but need to file taxes.⁵⁵

According to Mr. Polak, L.R. came back a day or two after their conversation and he “got all crazy” and said he wasn’t going to give Mr. Polak his information because he did not want Mr. and Mrs. Polak to steal his identity.⁵⁶ Mr. Polak said he laughed and told L.R. that he and his wife work with a lot of private information and they aren’t the type of people who steal identities.⁵⁷

Mr. Polak told one of his friends, Ross Delacy, that L.R. and his parents refused to provide L.R.’s social security number and that the family is Mexican.⁵⁸ Mr. Delacy is now retired, but, at the time of their conversation, Mr. Delacy worked as a border patrol agent for the U.S. Department of Homeland Security.⁵⁹ Mr. Delacy asked Mr. and Mrs. Polak if they knew whether the Ramirez family was legally in the U.S., and they told him they did not know.⁶⁰ Mr. Delacy told them that it would be worth checking into. Mr. Delacy then told his supervisor that a friend of his was having trouble with his neighbors and that Mr. Delacy had reason to believe they were in the U.S. illegally.⁶¹ Mr. Delacy asked his supervisor if he should pass that information along to ICE or investigate himself.⁶² His supervisor gave him permission to investigate, and he got Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz’s information and ran checks on them.⁶³ He learned details about their immigration status and found that they are in the U.S. legally.⁶⁴ He did not share the details with Mr. and Mrs. Polak, but he did tell them that they were in the U.S. legally.⁶⁵ In his interview, Mr. Delacy stated that his observations of Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz and the totality of the circumstances, including them being from a foreign country, how they carry themselves, how they dress and the way they were treating Mr. and Mrs. Polak “gave [him] every reason to believe that they might have been here illegally.”⁶⁶

In November, 2017, Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez returned to their house one morning to find that the trees at the back of their garden had been cut down.⁶⁷ Mr. and Mrs. Polak came over to them and told them that they had created more space for them.⁶⁸ Mr. Polak

⁵⁴ Interview with Mr. Polak, 8/10/2020.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Interview with Ross Delacy, 10/15/2020.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁶⁸ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

stated that he had seen Mr. Ramirez-Diaz working with a machete to clear the area where the trees were.⁶⁹ In his interview, Mr. Ramirez-Diaz stated that Mr. Polak had watched him cutting some tree branches and told him that he looked like a monkey.⁷⁰ Mr. Polak talked to Mr. Ramirez-Diaz and offered to clear the area for him with his bulldozer.⁷¹ According to Mr. Polak, Mr. Ramirez-Diaz stated he wanted to use that spot in the yard for a soccer field.⁷²

There were branches left over from the trees that had been cut down.⁷³ Mrs. Sanchez de Ramirez made a fire with the branches and started to roast marshmallows with her children.⁷⁴ Mr. and Mrs. Polak's children came over and roasted marshmallows with them.⁷⁵ Mrs. Polak came over and took her children back to their house without saying hello to Mrs. Ramirez-Diaz.⁷⁶ Mrs. Polak didn't want her children to roast marshmallows with the family because Mrs. Ramirez-Diaz was burning trash along with the wood.⁷⁷ In her interview, Mrs. Ramirez-Diaz denied that she was burning trash.⁷⁸ During a later court hearing, Mrs. Ramirez-Diaz stated that she was burning paper from her mail along with wood.⁷⁹

Mrs. Sanchez de Ramirez and her family roasted marshmallows again the next day, and the Polak children watched from a distance but did not come over to join them.⁸⁰ Mrs. Sanchez de Ramirez's children told them they could come have marshmallows, but they said their mom wouldn't allow them.⁸¹ In her interview, Mrs. Polak stated that she smelled burning plastic from the fire while she was inside her house.⁸²

Mrs. Sanchez de Ramirez stated that Mrs. Polak came over and started screaming that she was burning garbage.⁸³ Mrs. Polak stated that she came over and told Mrs. Sanchez de Ramirez that she couldn't burn trash.⁸⁴ Mrs. Sanchez de Ramirez told Mrs. Polak she was not burning trash.⁸⁵ In his interview, L.R. stated that it was probably difficult for Mrs. Polak to understand what Mrs. Sanchez de Ramirez was saying because she doesn't speak English very well.⁸⁶ Mrs. Sanchez de Ramirez stated that Mrs. Polak yelled for Mr. Ramirez-Diaz, who speaks more English than Mrs.

⁶⁹ Interview with Mr. Polak, 8/10/2020.

⁷⁰ Interview with Mr. Ramirez-Diaz, 7/24/2020.

⁷¹ Interview with Mr. Polak, 8/10/2020.

⁷² *Id.*

⁷³ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Interview with Mrs. Polak, 8/10/2020.

⁷⁸ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁷⁹ Relief from Abuse Hearing Transcript, 7/2/2018.

⁸⁰ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁸¹ *Id.*

⁸² Interview with Mrs. Polak, 8/10/2020.

⁸³ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with L.R., 8/28/2020.

⁸⁴ Interview with Mrs. Polak, 8/10/2020.

⁸⁵ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with L.R., 8/28/2020.

⁸⁶ Interview with L.R., 8/28/2020.

Sanchez de Ramirez.⁸⁷ Mrs. Polak stated that Mrs. Sanchez de Ramirez told her to talk to Mr. Ramirez-Diaz.⁸⁸

Mr. Ramirez-Diaz was working in their basement, but he came outside.⁸⁹ Mrs. Polak told them that she could call the safety officer but that making the call was not what she wanted to do.⁹⁰ Mrs. Sanchez de Ramirez told Mrs. Polak that, if Mrs. Polak thought she was burning garbage, then she could call the police.⁹¹ Mrs. Sanchez de Ramirez put out the fire and took the children inside.⁹² Mrs. Polak went home and called the St. Albans safety officer.⁹³

The health officer for St. Albans, Harold Cross, visited Mrs. Sanchez de Ramirez at the house.⁹⁴ She showed him their trash containers, their receipts for paying for trash pickup, and where she had the fire in the yard.⁹⁵ The record from his inspection states that he found no health issues.⁹⁶

In response to the increasing problems between the neighbors, Mrs. Sanchez de Ramirez filed a Notice Against Trespass against Mrs. Polak with the St. Albans Police Department.⁹⁷ Mrs. Sanchez de Ramirez told Mr. Ramirez-Diaz that they should ask the neighbors about the property line and then install a fence so that they would have more privacy.⁹⁸ Mr. Ramirez-Diaz talked to Mr. Polak about where the boundary between their properties, and Mr. Polak showed him where he thought the line was. Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz thought that the line Mr. Polak showed them was very close to their house.⁹⁹ In December, 2017, Mr. Ramirez-Diaz contracted TDH Surveying & Design, LLC (TDH) to calculate the boundaries of the property at 39 Jewell St.¹⁰⁰

In December, 2017, St. Albans' health officer, Harold Cross went to Mr. and Mrs. Polak's house because Mr. Polak planned to store fireworks on their property.¹⁰¹ In their conversation, Mr. Polak told Mr. Cross that he was going to shoot the Ramirez family's dog if it came onto his property.¹⁰² The next day, Mrs. Polak contacted Mr. Cross to report the odor of sewage coming from Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez's property.¹⁰³ Mr. Cross told Mrs. Polak that he would check into the issue, and he asked her what type of septic system the Polak family

⁸⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁸⁸ Interview with Mrs. Polak, 8/10/2020.

⁸⁹ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mrs. Polak, 8/10/2020.

⁹⁰ Interview with Mrs. Polak, 8/10/2020.

⁹¹ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁹² *Id.*

⁹³ Interview with Mrs. Polak, 8/10/2020.

⁹⁴ Interview with Mr. Cross, 7/9/2020.

⁹⁵ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁹⁶ Town Health Officer Complaint and Inspection Form, 12/26/2017.

⁹⁷ Notice Against Trespass to Kristina Polak, 11/13/2017.

⁹⁸ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

⁹⁹ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

¹⁰⁰ Contract between Felipe Ramirez-Diaz and TDH Surveying & Design, LLC, 12/15/2017.

¹⁰¹ Town Health Officer Complaint and Inspection Form, 12/26/2017.

¹⁰² *Id.*

¹⁰³ *Id.*

has.¹⁰⁴ He tried to explain his question and the process to check for septic problems, but she kept screaming and would not let him get a word in.¹⁰⁵ He monitored the area and did not find any odors or signs of sewage.¹⁰⁶ He determined that the complaints were part of a dispute between the neighbors and Mr. And Mrs. Polak “wanted the Town to add to their neighbor’s misery.”¹⁰⁷

2018

In March, 2018, Mrs. Polak called Mr. Cross to report a sewage odor again.¹⁰⁸ Mr. Cross visited the area, and Mrs. Sanchez Ramirez allowed him to place dye tablets in the toilet so that Mr. Cross could check for a leak.¹⁰⁹ Mr. Cross found no indication of a leak from Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez’s house. He contacted Mrs. Polak in order to conduct the same test for the Polaks’ septic system, but she did not return his call.¹¹⁰

In April, 2018, Mrs. Sanchez de Ramirez called the police when one of her family’s two dogs was run over by a vehicle leaving the Polaks’ business.¹¹¹ Mr. Polak told the police he was saddened the dog was killed but he was not surprised because the dog was “always” in the road.¹¹² Another neighbor, Hector Coolum, also told the police that he had seen the dog in the road regularly.¹¹³

In May, 2018, Mrs. Sanchez de Ramirez contacted the police after she and Mr. Polak had an argument about their property, particularly several rocks that had been in the Ramirez family’s yard but were moved by Mr. Polak to the Polak family’s yard.¹¹⁴ According to Mrs. Sanchez de Ramirez, Mr. Polak pushed her, and she fell to the ground while she was holding her youngest child.¹¹⁵ Mr. Polak denied pushing Mrs. Sanchez de Ramirez.¹¹⁶ When Officers McCarty and Sargent talked to Mr. Polak, he was putting up ‘no trespassing’ signs.¹¹⁷ Officer McCarty told Mrs. Sanchez de Ramirez and Mr. Polak that they needed to have the property surveyed so that the issues between the neighbors would stop.¹¹⁸ Mr. Ramirez-Diaz was at work at the time of the incident, but he took Mrs. Sanchez de Ramirez to Northwestern Medical Center that evening.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Motor Vehicle Complaint, 4/6/2018.

¹¹² *Id.*

¹¹³ Motor Vehicle Complaint, 4/6/2018; Interview with Hector Coolum, 8/28/2020.

¹¹⁴ Incident Report, 5/14/2018; interview with Mrs. Sanchez de Ramirez, 7/24/2020; Interview with Mr. Polak, 8/10/2020.

¹¹⁵ Incident Report, 5/14/2018; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

¹¹⁶ Interview with Mr. Polak, 8/10/2020.

¹¹⁷ Incident Report, 5/14/2018.

¹¹⁸ Police body camera from Officer Sargent, 5/14/2018; incident Report, 5/14/2018.

According to her physician's documentation, she had very mild erythema (abnormal redness) on the back of her thigh.¹¹⁹

In late May or early June, 2018, Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz went to Dana's Barbershop to get one of their children a haircut.¹²⁰ Mrs. Polak and her son, F.P., were already in the barbershop.¹²¹ Mrs. Ramirez-Diaz stated that Mrs. Polak began talking about their family, announcing that they are the Mexicans who are her neighbors and that they are liars.¹²² In her interview, Mrs. Polak stated that she was uncomfortable when Mrs. Sanchez de Ramirez came into the barbershop because Mrs. Sanchez de Ramirez had made a serious allegation against Mr. Polak when she told the police that he had pushed her.¹²³ Mrs. Polak stated that she has referred to Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez as "the Mexicans" to describe who they are but she was only trying to identify them and not to be derogatory.¹²⁴ According to Mr. Ramirez-Diaz, Mrs. Polak stated that they should go back to the country they came from and she mentioned that President Trump supports deportation.¹²⁵ Mrs. Sanchez de Ramirez started crying, and Mr. Ramirez-Diaz didn't want to respond in front of his children.¹²⁶

According to Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz, the owner of the barbershop, Dana Rucheau, did not say anything in response to Mrs. Polak's statements.¹²⁷ Mr. Rucheau stated that Mrs. Polak and Mrs. Sanchez de Ramirez were arguing and that he asked them to quiet down.¹²⁸ He did not remember anyone mentioning anything about race, color or being Mexican.¹²⁹ Mr. Rucheau finished cutting F.P.'s hair, and the Polaks left the barbershop.¹³⁰

On June 1, 2018, Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz's son, Y.R., complained to St. Albans animal control that the Polaks' chickens were loose on the Ramirez family's property, and the officer told Mrs. Polak that they needed to keep their chickens on their land.¹³¹ On June 19, 2018, Mrs. Sanchez de Ramirez wrote an email to St. Albans animal control to complain about Mrs. Polak's refusal to keep her chickens in her own yard.¹³² In a later court hearing, she stated that Mrs. Polak's chickens destroyed her garden.¹³³

¹¹⁹ Northwestern Medical Center Record for Yesica Sanchez de Ramirez, 5/14/2018.

¹²⁰ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020.

¹²¹ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Polak, 8/10/2020.

¹²² Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020.

¹²³ Interview with Mrs. Polak, 8/10/2020.

¹²⁴ *Id.*

¹²⁵ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

¹²⁶ Interview with Mr. Ramirez-Diaz, 7/24/2020.

¹²⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020.

¹²⁸ Interview with Mr. Rucheau, 8/18/2020.

¹²⁹ *Id.*

¹³⁰ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020.

¹³¹ Animal Control Complaint Form, 6/1/2018.

¹³² Email from Ramirez family to Animal Control, 6/19/2018.

¹³³ Relief from Abuse Hearing Transcript, 7/2/2018.

Also, in June, 2018, Mr. Ramirez-Diaz contacted Albert (Terry) Harris to complete the survey of their land.¹³⁴ Although Mr. Ramirez-Diaz had earlier contracted with TDH Surveying & Design, LLC to do the survey, they did not complete the work.¹³⁵ Mr. Harris stated that he thought TDH chose not to complete the job because they wanted to avoid being entangled in a local controversy.¹³⁶ TDH is based in St. Albans and Mr. Harris' business is based in Hinesburg, Vermont.¹³⁷ When Mr. Harris visited the site, he went to the Polaks' office to introduce himself.¹³⁸ Mrs. Polak was extremely agitated and refused to let him go on her property.¹³⁹ Mr. Harris explained that surveyors have a right of entry to be on people's property in the course of their work.¹⁴⁰ They had an hour-long meeting, and Mrs. Polak called Mr. Polak while he was at a dental appointment and, according to Mr. Harris, the three of them had an "unpleasant" conversation.¹⁴¹ Eventually, Mr. Harris completed his work, and he concluded that the line Mr. Polak had indicated was the property line was not correct and that more land belonged to Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez.¹⁴²

Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez have had ongoing concerns that Mr. and Mrs. Polak influence other people to treat them negatively. For example, Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez's initially got along with David Iwaskeiwicz, whose land also borders their land.¹⁴³ Mr. Polak and Mr. Iwaskeiwicz are "brothers" at the Mason lodge in St. Albans.¹⁴⁴ According to Mr. Cross, the health officer for St. Albans, Mr. Iwaskeiwicz told him that he felt sorry for Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez because it seemed like they were being picked on by the Polaks.¹⁴⁵ Eventually, Mr. Iwaskeiwicz became involved in the dispute over property boundaries.¹⁴⁶ Mr. Iwaskeiwicz refused to be interviewed by the Human Rights Commission.¹⁴⁷

On June 11, 2018, Mr. Polak and another "brother," Christopher Lake, joined Mr. Iwaskeiwicz at his property to place stakes where Mr. Iwaskeiwicz thought the property boundary was located.¹⁴⁸ The Ramirez family called the police because they were putting stakes on the disputed property without having a survey done, and two officers responded.¹⁴⁹ Officer Koch's body cam recorded the interactions. It recorded Mr. Iwaskeiwicz yelling at Mrs. Sanchez de Ramirez for

¹³⁴ Interview with Albert Harris, 6/24/2020.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Police body camera from Officer Koch, 6/11/2018; interview with Mr. Lake, 8/7/2020.

¹⁴⁴ Interview with Mr. Lake, 8/7/2020.

¹⁴⁵ Interview with Mr. Cross, 7/9/2020.

¹⁴⁶ Police body camera from Officer Koch, 6/11/2018.

¹⁴⁷ Call from Human Rights Commission to Mr. Iwaskeiwicz, 10/2/2020.

¹⁴⁸ Interview with Mr. Lake, 8/7/2020.

¹⁴⁹ Police body camera from Officer Koch, 6/11/2018.

interfering with them placing the stakes, including removing one of the stakes, and Mr. Ramirez-Diaz telling the police officer that he had hired a professional surveyor who would decide where the boundary was.¹⁵⁰ Mr. Iwaskeiwicz could be heard saying that, because of the family's Mexican heritage, the Ramirez family should want for their two families to work together.¹⁵¹ Mr. Polak could be heard commenting about his own dispute with the family, and Mr. Lake telling him several times to stop, but Mr. Polak continuing to make comments until Mr. Iwaskeiwicz asked him to "take a walk."¹⁵²

On June 23, 2018, the animal control officer went to Mrs. Polak's house and talked to her about having her chickens loose on other people's property.¹⁵³ After the visit, Mrs. Polak was agitated and she walked to the edge of her property and yelled at Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz.¹⁵⁴ Mr. Ramirez-Diaz was outside unloading groceries and Mrs. Ramirez-Diaz was outside mowing the grass.¹⁵⁵ According to Mrs. Polak, Mr. Ramirez-Diaz walked towards her and made a fist.¹⁵⁶ She went to her office, retrieved a handgun and returned to the edge of her property.¹⁵⁷

According to Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez, Mrs. Polak threatened them with a gun.¹⁵⁸ They stated that Mrs. Polak had what appeared to be a small black bag and that she removed the gun from it and pointed it at them while she was yelling.¹⁵⁹ In her interview, Mrs. Polak stated that she had the gun in a holster on her skirt, but that she did not point the gun at them or threaten them with the gun.¹⁶⁰ L.R. heard yelling from where he was cutting the grass in the backyard.¹⁶¹ He came to the front yard and saw Mrs. Polak put a black item in her waist; he did not know what the item was.¹⁶² L.R. began filming the incident. This investigation reviewed the video which does not show a gun but does show Mrs. Polak yelling.¹⁶³ Mrs. Sanchez de Ramirez does not appear in the video, but her statements can be heard in the background. She stated, "arma (gun)" and "tiene una pistola (she has a gun)."¹⁶⁴

In his interview, Mr. Ramirez-Diaz stated that he was shocked because he had never been threatened with a gun before.¹⁶⁵ Mrs. Sanchez de Ramirez started her lawn mower again because

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Animal Control Complaint Form, 6/23/2018.

¹⁵⁴ Affidavit from Corporal William Furnari, 6/23/2018; interview with Mrs. Polak, 8/10/2020.

¹⁵⁵ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020.

¹⁵⁶ Interview with Mrs. Polak, 8/10/2020.

¹⁵⁷ *Id.*

¹⁵⁸ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Mr. Ramirez-Diaz, 7/24/2020.

¹⁵⁹ *Id.*

¹⁶⁰ Interview with Mrs. Polak, 8/10/2020.

¹⁶¹ Interview with L.R., 8/28/2020.

¹⁶² *Id.*

¹⁶³ Video of Kristina Polak, 6/23/2018.

¹⁶⁴ *Id.*

¹⁶⁵ Interview with Mr. Ramirez-Diaz, 7/24/2020.

she was afraid for the safety of her children. She knew that by starting the lawnmower, the children would go back inside.¹⁶⁶ The noise from the lawn mower was louder than Mrs. Polak's shouts, and Mrs. Polak went back to her house.¹⁶⁷ L.R. called the police and told them Mrs. Polak had threatened the family with a gun.¹⁶⁸

Two police officers arrived and talked to Mrs. Sanchez de Ramirez, Mr. Ramirez-Diaz and L.R., who showed the officers the video he had taken.¹⁶⁹ The officers then talked to Mrs. Polak who told them, "I was being an asshole and running my mouth."¹⁷⁰ Mrs. Polak told the officers that she had not removed her gun from her holster nor shown the gun to Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz.¹⁷¹ While the officers were discussing Mrs. Polak, Sergeant Thomas stated, "I think there's some, some 96 stuff," and Corporal Furnari replied, "yeah."¹⁷² St. Albans police officers use codes to communicate with one another, and 96 refers to mental health, suggesting there were potentially some concerns about Mrs. Polak's mental health.¹⁷³

The officers sent the information about the incident to the Franklin County State's Attorney's office for review of possible criminal charges.¹⁷⁴ The incident happened on a Saturday, and, on the following Monday, June 25, 2018 Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez went to the courthouse and requested a protective order.¹⁷⁵ The Vermont Superior Court issued a temporary order against stalking to Mr. and Mrs. Polak and scheduled a hearing for July, 2018.¹⁷⁶ The court was unable to finish the hearing then so the court scheduled another hearing for October and extended the temporary order until then.¹⁷⁷ In her interview, Mrs. Polak stated that she has commented that Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez are "noncitizens."¹⁷⁸ Mrs. Polak didn't remember the context of the comment, but she stated it may have been during a court proceeding.¹⁷⁹

In September, 2018, Mr. and Mrs. Polak each made a complaint to St. Albans about Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez. Mrs. Polak reported to St. Albans that Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz did not have a permit for their pool.¹⁸⁰ Mr. Polak

¹⁶⁶ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

¹⁶⁷ Video of Kristina Polak, 6/23/2018.

¹⁶⁸ Interview with L.R., 8/28/2020.

¹⁶⁹ *Id.*

¹⁷⁰ Affidavit from Corporal William Furnari, 6/23/2018.

¹⁷¹ *Id.*

¹⁷² Police body camera from Corporal William Furnari, 6/23/2018.

¹⁷³ Email from St. Albans Police Department to Human Rights Commission, 10/16/2020.

¹⁷⁴ Affidavit from Corporal William Furnari, 6/23/2018.

¹⁷⁵ Complaint for Order Against Stalking, 6/25/2018.

¹⁷⁶ Emergency Order Against Stalking, 6/25/2018.

¹⁷⁷ Relief from Abuse Hearing Transcript, 7/2/2018.

¹⁷⁸ Interview with Mrs. Polak, 8/10/2020.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

reported that Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez were building an addition to their porch and had dug a septic hole in the backyard.¹⁸¹

Also in September, 2018, Mrs. Sanchez de Ramirez was waiting at the school bus stop with her neighbor, Robert Montanye, when Mr. Polak drove by and yelled at her.¹⁸² Mrs. Sanchez de Ramirez called the police to report that Mr. Polak had violated the court's order to stay away from her.¹⁸³ According to the order, the requirement to "stay away" from the plaintiff also prohibits talking to the plaintiff.¹⁸⁴ Mr. Montanye told the police that Mr. Polak called Mrs. Sanchez de Ramirez a liar and then he yelled "Andale (come on)" before spinning his tires and driving away.¹⁸⁵ Corporal Furnari talked to Mr. Polak, who stated, "this is so fucking ludicrous with this lady...not even a legal citizen...She doesn't even speak English how does she know what I'm talking about."¹⁸⁶ In his report, Corporal Furnari wrote, "Stephen then went on a rant about how frustrated he was about the situation and that Sanchez does not speak English."¹⁸⁷ Corporal Furnari issued Mr. Polak a citation to appear in court to answer to the charge of violating the order.¹⁸⁸ Mr. Polak was arraigned in September, 2018, and a pre-trial conference was set for Monday, February 4, 2019. The court considered the stalking case in October, 2018 and decided that Mrs. Sanchez de Ramirez did not prove by a preponderance of the evidence that Mr. and Mrs. Polak were stalking her and her family.¹⁸⁹ According to Vermont law, the definition of "stalk" means to engage in a course of conduct which consists of following or lying in wait for a person, or threatening behavior directed at a specific person or a member of the person's family, and: (A) serves no legitimate purpose; and (B) would cause a reasonable person to fear for his or her safety or would cause a reasonable person substantial emotional distress.¹⁹⁰ Accordingly, the court vacated the order against stalking that it had temporarily issued.¹⁹¹ The record of Mr. Polak's case for violating the order is sealed.¹⁹²

In November, 2018, Mrs. Sanchez de Ramirez, not realizing that the court's order had ended, called the police to report that Mr. Polak violated the court's order by not staying away from her when he was checking out at Walmart near where she was checking out.¹⁹³ Officer McMahon

¹⁸¹ Zoning Complaint Affidavit from Stephen Polak, 9/16/2019.

¹⁸² Affidavit from Corporal Furnari, 9/24/2018.

¹⁸³ *Id.*

¹⁸⁴ Emergency Order Against Stalking, 6/25/2018.

¹⁸⁵ Affidavit from Corporal Furnari, 9/24/2018.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Order to Vacate Order Against Stalking, 10/18/2018.

¹⁹⁰ 12 V.S.A. § 5131.

¹⁹¹ *Id.*

¹⁹² Email from Franklin County Criminal Court to Human Rights Commission, 10/5/2020.

¹⁹³ Incident Report, 11/2/2018.

viewed the video Mrs. Sanchez de Ramirez’s family had recorded and wrote that it “appeared he was not in violation.”¹⁹⁴ Officer McMahon tried to contact Mr. Polak but was unsuccessful.¹⁹⁵

2019

In May 2019, Officer McCarty responded to a call from Mrs. Sanchez de Ramirez about the boundary dispute between the neighbors.¹⁹⁶ Mrs. Sanchez de Ramirez told Officer McCarty that Mrs. Polak yells at her, and he told her she should try to get a restraining order.¹⁹⁷ Mr. and Mrs. Polak told Officer McCarty that their neighbor’s survey was not correct and that they would file for an injunction to stop them from building the fence.¹⁹⁸ In his interview, Mr. Polak stated that DuBois and King, the surveyors the Polaks hired, agreed with Mr. Harris, the surveyor hired by the complainants in June, 2018 about the location of the property line.¹⁹⁹ The Polaks decided not to challenge the survey because it would have cost more money than a few feet of land was worth.²⁰⁰ Mr. Polak wrote on Facebook that “justice was swayed due to [the Ramirez family’s] minority status.”²⁰¹

During the summer of 2019, Mr. Ramirez-Diaz constructed a fence between his property and the Polaks’ property.²⁰² According to Y.R., Mr. and Mrs. Polak taunted the Ramirez family while they were building the fence. In his interview, Y.R. stated that he didn’t remember exactly what they said but they were being racist, and they asked if the family had their papers and if they were allowed to be there.²⁰³ The fence gave the Ramirez family more privacy, but the problems between the families continued.²⁰⁴

Greg LaClair is a neighbor who rents his house from the Polak family and also does work for them.²⁰⁵ One of the jobs Mr. LaClair has done for the Polaks is to pick up their kids from school and other activities.²⁰⁶ During the summer of 2019, Mr. LaClair went to pick up F.P. from the St. Albans summer program at the pool.²⁰⁷ He saw L.R., who was working as a day camp counselor, standing on F.P.’s towel as F.P. was trying to pick it up.²⁰⁸ L.R. moved away from the towel, but

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Incident Report, 5/22/2019.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Interview with Mr. Polak, 8/10/2020.

²⁰⁰ *Id.*

²⁰¹ Facebook Post from Mr. Polak, 5/5/2020.

²⁰² Interview with Mrs. Polak, 8/10/2020; interview with Y.R., 8/28/2020.

²⁰³ Interview with Y.R., 8/28/2020.

²⁰⁴ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; Interview with Ms. Tesarova, 6/11/2020.

²⁰⁵ Interview with Mr. LaClair, 7/9/2020 and 8/3/2020.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

Mr. LaClair reported the incident to St. Albans Recreation Department.²⁰⁹ Kelly Viens, the St. Albans recreation director talked to L.R. about the incident, and he told her that he hadn't realized he was standing on the towel.²¹⁰ In his interview, L.R. stated that he had been playing cards with the kids in the program and had been surprised when he found out he was standing on F.P.'s towel.²¹¹

In August, 2019, Mrs. Sanchez de Ramirez drove to the bus stop at the end of the street to drop her daughter off for school.²¹² Mr. and Mrs. Polak were also at the end of the street, and they were on their bicycles.²¹³ Mr. Polak rode his bicycle around in circles, which made Mrs. Sanchez de Ramirez and her daughter nervous.²¹⁴ After the children boarded the bus, Mr. and Mrs. Polak began to bicycle home, and Mrs. Sanchez began to drive home.²¹⁵ When Mrs. Sanchez de Ramirez began to drive by the Polaks, Mr. Polak neared her vehicle on his bicycle and dropped to the ground.²¹⁶ According to Mrs. Sanchez de Ramirez, Mr. Polak threw himself on the ground and yelled, "bitch, you're on top of me."²¹⁷ According to Mr. Polak, he fell off his bicycle.²¹⁸ Mr. Polak moved away from the car, and Mrs. Sanchez de Ramirez could see Mrs. Polak laughing.²¹⁹

Mrs. Ramirez de Sanchez drove to her house and called the police.²²⁰ Officers McCarty and Koch responded to the call and talked to Mrs. Sanchez de Ramirez and Robert Montanye, whose house is at the end of the street where the bus stop is located. Mr. Montanye, who has cameras on his house, provided video footage to the police but stated he was "kind of hesitant because of the retaliation from the Polaks."²²¹ The police narrative of the incident states that Mr. Montanye told the officer the video shows "Polak waiting at end of fence and then when Sanchez gets close to him he falls down in the road way on his bike causing Sanchez to stop her vehicle."²²² The officers tried to contact Mr. Polak but were unsuccessful.²²³

In October, 2019, Mrs. Polak made a complaint to the Department of Environmental Conservation about the pit Mr. Ramirez-Diaz was digging in his yard.²²⁴ David Murrish, the DEC environmental enforcement officer for Franklin County, talked to Mrs. Polak, who

²⁰⁹ *Id.*

²¹⁰ Email from St. Albans recreation director to Human Rights Commission, 8/18/2020.

²¹¹ Interview with L.R., 8/28/2020.

²¹² Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²¹³ Video of Stephen Polak bicycling, 8/28/2019; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Video of Stephen Polak bicycling, 8/28/2019.

²¹⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²¹⁸ Interview with Mr. Polak, 8/10/2020.

²¹⁹ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²²⁰ *Id.*

²²¹ Incident Report, 8/28/2019.

²²² *Id.*

²²³ *Id.*

²²⁴ Interview with Mr. Murrish, 8/3/2020.

mentioned “something about the immigration history of the Ramirez family.”²²⁵ Mr. Murrish determined there was a potential violation, and he issued a notice of alleged violation in late 2019.²²⁶

2020

In March, 2020, Mr. Ramirez-Diaz called the police to report that Mr. Polak was setting off fireworks at his home. Officer Garrant responded to the call and told Mr. Polak that it is illegal to set off fireworks without a permit, and Mr. Polak told the officer he would not light any more fireworks.²²⁷

In May 2020, Mr. Polak called the police to report that Mr. Ramirez-Diaz tore down a no trespassing sign.²²⁸ Mr. Ramirez-Diaz told the officer that he did not touch any sign, and the officer did not observe any indication that a sign may have been destroyed.²²⁹ On the same day, Mr. Polak posted a video on Facebook showing Mrs. Sanchez de Ramirez removing the paper face from a wooden sign and Mr. Ramirez-Diaz moving a sign.²³⁰ The caption for the post stated, “This happened today.....this is what we are dealing with all the time, today marks the 2 year anniversary of these people FALSLY [sic] accusing my family. They jumped our boarder [sic] and vandalized our signage. This neighborhood is tough.....makes me sad.”²³¹ It is unclear from the video whose property the sign was on.

Impact on the Family

The Ramirez family experienced extensive emotional consequences because of the ongoing problems with the Polak family. After the incident with the gun, Mrs. Sanchez de Ramirez found herself becoming nervous very easily.²³² She had trouble sleeping and became depressed.²³³ She went to see a counselor, but she did not continue receiving services because they were too expensive.²³⁴ L.R., Y.R. and K.R. have each received counseling services.²³⁵ In her interview, Jennifer Deso, a wellness coach who provided some of the counseling services to the children, stated that incidents with the neighbors, such as the one involving a gun, triggered trauma for the

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Incident Report, 5/5/2020.

²²⁹ *Id.*

²³⁰ Facebook Post from Mr. Polak, 5/5/2020.

²³¹ *Id.*

²³² Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²³³ Interview with Mr. Ramirez-Diaz, 7/24/2020.

²³⁴ *Id.*

²³⁵ Interview with Ms. Deso, 6/11/2020; Northwestern Counseling & Support Services Discharge Summary Plan for Y.R., 12/24/2019.

children.²³⁶ Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz, who have another child who lives in Mexico, had planned to bring the additional child to live with them but decided not to because they feared he would also suffer emotional trauma.²³⁷

The Ramirez family does not feel safe in their home, especially in their yard.²³⁸ The Ramirez family feels uncomfortable because of the Polaks' disrespectful behavior, such as shouting at them and kicking their fence.²³⁹ Because the family does not feel safe, they use their yard much less than they would like to.²⁴⁰ L.R. stated that, when he had the same haircut as his dad, he couldn't do his chores without Mr. and Mrs. Polak yelling at him because they thought he was Mr. Ramirez-Diaz.²⁴¹ In his interview, Y.R. stated that he wants to be able to come out of his house and practice soccer in the backyard without the Polak family making fun of him.²⁴² Mr. Ramirez-Diaz built a fire pit they don't use, they decided not to enlarge their gazebo, and they stopped using their pool.²⁴³

Although the Ramirez family built a fence to increase their privacy, they continue to feel like Mr. and Mrs. Polak are always spying on them.²⁴⁴ Mr. and Mrs. Polak installed a camera that looks into their yard.²⁴⁵ They also have a third story of their house,²⁴⁶ from where they watch the Ramirez family.²⁴⁷ In her interview, Mrs. Polak stated that she doesn't think the Ramirez family has been deprived of the use of their yard because she's seen their kids outside.²⁴⁸ Mrs. Polak also stated that the Ramirez family has bicycles, a barbecue grill, a gazebo, a swing set and a trampoline in their yard.²⁴⁹

The Ramirez family is also negatively impacted because they believe Mr. and Mrs. Polak's treatment of them is motivated by the Ramirez family's race, color, and Mexican origin.²⁵⁰

²³⁶ Interview with Ms. Deso, 6/11/2020.

²³⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²³⁸ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Y.R., 8/28/2020; Interview with Ms. Deso, 6/11/2020; interview with Mr. Robtoy, 6/12/2020.

²³⁹ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁴⁰ *Id.*

²⁴¹ Interview with L.R., 8/28/2020.

²⁴² Interview with Y.R., 8/28/2020.

²⁴³ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁴⁴ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁴⁵ *Id.*

²⁴⁶ Interview with Mrs. Polak, 8/10/2020.

²⁴⁷ Photo of Mr. and Mrs. Polak watching Mr. Ramirez-Diaz building fence, summer, 2019; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁴⁸ Interview with Mrs. Polak, 8/10/2020.

²⁴⁹ *Id.*

²⁵⁰ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; Interview with Mr. Ramirez-Diaz, 7/24/2020. Paradies Y, Ben J, Denson N, Elias A, Priest N, Pieterse A, Gupta A, Kelaher M, Gee G. Racism as a determinant of health: a systematic review and meta-analysis. *PLoS One*. 2015, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4580597/> (Racism can manifest through discrimination, such as open threats and insults. Racism can impact health via several recognized pathways such as reduced access to

Ms. Tesarova, one of the specialists who provided counseling services to the family, stated that, from the beginning of their nearly two year relationship, the family mentioned to her that they feel the Polaks' behavior is racially and culturally based.²⁵¹ The Ramirez family also talked with a family friend, Rosa Burch, about how the Polak family's treatment of them is racist harassment.²⁵² Mrs. Sanchez de Ramirez's wrote in her affidavit in support of her request for an order against stalking that Mr. and Mrs. Polak are "very racist towards us."²⁵³

Mr. and Mrs. Polak know that Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez look at their Facebook pages.²⁵⁴ Mr. and Mrs. Polak posted several times about immigration or immigrants. On June 29, 2017, Mrs. Polak posted about how she was "fuming" because someone told her it is rude to use the term "illegal immigrant."²⁵⁵ On April 8, 2018, Mrs. Polak posted an American Military News article titled, "Baltimore mayor announces tax-payer defense fund for illegal immigrants."²⁵⁶ On May 21, 2018, Mr. Polak posted a Fox News article titled, "IRS Defends Giving Refunds to Illegals Who Never Paid Taxes."²⁵⁷ On November 3, 2018, Mrs. Polak posted about USA troops protecting the border from invasion.²⁵⁸ On December 20, 2018, Mrs. Polak posted a GoFundMe fundraiser to support building a wall on the border with Mexico.²⁵⁹ On April 12, 2020, Mr. Polak shared a Breitbart post captioned, "U.S. ADMITTING A MIGRANT CARAVAN EVERY 7 DAYS."²⁶⁰ On May 18, 2020, Mrs. Polak posted a CNN article titled, "California is now offering support to undocumented immigrants..." Three people reacted with emojis, all of which were the angry emoji.²⁶¹ On May 28, 2020, Mr. Polak reposted an update from "Usbp Laredo Sector" titled Human Smuggling."²⁶²

The Ramirez family is also concerned that Mr. and Mrs. Polak's behavior incites racial hatred.²⁶³ Mr. and Mrs. Polak have posted negative comments about Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez on Facebook.²⁶⁴ On May 9, 2020, Mr. Polak posted a photo on Facebook of someone holding a severed head, and someone commented on the photo, writing, "Hey Steve is that your

employment and housing, increased exposure to risk factors (e.g. avoidable contact with police), and diminished participation in healthy behaviors (e.g. sleep and exercise))

²⁵¹ Interview with Ms. Tesarova, 6/11/2020.

²⁵² Interview with Ms. Burch, 7/29/2020.

²⁵³ Affidavit in Support of Request for Order Against Stalking from Mrs. Sanchez de Ramirez, 8/28/2019.

²⁵⁴ Facebook post from Kristina Polak, 11/20/2017.

²⁵⁵ Facebook Post from Mrs. Polak, 6/29/2017.

²⁵⁶ Facebook Post from Mrs. Polak, 4/8/2018.

²⁵⁷ Facebook Post from Mr. Polak, 5/21/2018.

²⁵⁸ Facebook Post from Mrs. Polak, 11/3/2018.

²⁵⁹ Facebook Post from Mrs. Polak, 12/20/2018.

²⁶⁰ Facebook Post from Mr. Polak, 4/12/2019.

²⁶¹ Facebook Post from Mrs. Polak, 5/18/2020.

²⁶² Facebook Post from Mr. Polak, 5/28/2020.

²⁶³ Email from Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz to Human Rights Commission, 5/29/2020.

²⁶⁴ Facebook Post from Mr. Polak, 5/5/2020; Facebook Post from Mrs. Polak, 11/17/2017; Facebook Post from Mrs. Polak, 11/12/2017.

neighbor that built the fence; looks like he lost his head. Lol”²⁶⁵ In response to another one of Mr. Polak’s posts, commenters wrote, “you should ask Trump to build a wall here to keep the Mexicans out.....Haha” and “ICE DHS TIPLINE call them.”²⁶⁶

The Ramirez family also experienced financial consequences because of the ongoing problems with the Polak family. Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez lost days of work.²⁶⁷ Mrs. Sanchez de Ramirez lost a job because she had to take days off to go to court.²⁶⁸ They stated that the money spent on lawyers has kept them from being able to do things like build a shed.²⁶⁹

Perspectives from Neighbors

Jennifer Dunbar lives near the bus stop with her spouse, Mr. Montanye.²⁷⁰ Ms. Dunbar believes that Mr. and Mrs. Polak are responsible for the problems between the neighbors.²⁷¹ She witnessed Mr. Polak yelling at Mrs. Sanchez de Ramirez.²⁷² She doesn’t remember exactly what he was saying, but it was derogatory and had something to do with what kind of people Mrs. Sanchez de Ramirez and her family are and that they are liars.²⁷³ After her husband provided footage of the Polaks to the police when Mrs. Sanchez de Ramirez made a complaint, Mrs. Polak came to her front door and yelled at her husband.²⁷⁴ Ms. Dunbar stated that she knows a lot about Mr. and Mrs. Polak’s character because she used to date Mrs. Polak’s brother and she spent a lot of time with Mr. and Mrs. Polak during that time.²⁷⁵ She stated that Mrs. Polak and her entire family are racist.²⁷⁶

Hector Coolum lived in the house next to the Polaks for several years when he was married to Roxane Rushlow.²⁷⁷ He and his wife divorced, and he now lives further down the street from them, with another partner.²⁷⁸ According to Mr. Coolum, Mr. Polak “had a problem” with his current partner and Mr. Polak’s “mouth was always running.”²⁷⁹ Mr. Polak would come over and try to get his partner’s attention and talk to her, but she would ignore him.²⁸⁰ Mr. Polak called her

²⁶⁵ Facebook Post from Mr. Polak, 5/9/2020.

²⁶⁶ Facebook Post from Mr. Polak, 5/5/2020.

²⁶⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁶⁸ *Id.*

²⁶⁹ Interview with L.R., 8/28/2020.

²⁷⁰ Interview with Ms. Dunbar, 6/11/2020.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Interview with Mr. Coolum, 8/28/2020.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

names and threatened to throw eggs at her house but eventually stopped bothering her.²⁸¹ Mr. Coolum “[does] not doubt” that Mr. and Mrs. Polak are causing problems with the Ramirez family.²⁸² He has heard Mr. and Mrs. Polak screaming at the Ramirez family, but he did not hear what they were screaming.²⁸³

Travis Vigneau is a neighbor who has had the Polaks prepare his taxes.²⁸⁴ He has not seen the interactions between the two families firsthand, but he has heard about the disagreements from the Polaks.²⁸⁵ He does not think it would be out of the question that Mr. Polak would treat someone differently on the basis of race, color or national origin.²⁸⁶

Howard Church, along with his siblings, was the previous owner of Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez’s house.²⁸⁷ His mother lived in the house for over 60 years, and he visited her approximately every day.²⁸⁸ He became friends with the Ramirez family after they bought the house.²⁸⁹ He said Mr. Polak has yelled at him and Mr. Ramirez-Diaz.²⁹⁰ Mr. Church posted on Mr. Polak’s Facebook page, writing, “What the Ramirez family is going thru [sic] on the north and south of them by so called neighbors is totally harassment...”²⁹¹

Several neighbors expressed support for Mr. and Mrs. Polak. For example, Greg LaClair, the neighbor who rents his house from the Polaks and also works for them, stated that the Polaks are “way too busy” to be causing the conflict between the families.²⁹² Roxane Rushlow knows the Polak family well because she lived on Jewell St. for about 35 years until she moved away about two years ago. She stated that they are good people and that she’s never seen them treat anybody badly.²⁹³ Kelsey Swann, a neighbor who used to work for the Polaks, stated that the Polaks are “not racist and don’t come off that way at all.”²⁹⁴

Perspectives from Friends

Both the Complainants and Respondents requested that the investigation include interviews with friends who have witnessed the character of the parties. Friends of the Complainants described

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Interview with Mr. Vigneau, 7/9/2020.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Interview with Mr. Church, 6/16/2020; Interview with Mr. Polak, 8/10/2020; interview with Mrs. Polak, 8/10/2020; interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁸⁸ Interview with Mr. Church, 6/16/2020.

²⁸⁹ Interview with Mr. Church, 6/16/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

²⁹⁰ Interview with Mr. Church, 6/16/2020.

²⁹¹ Facebook Post from Mr. Polak, 5/5/2020.

²⁹² Interview with Mr. LaClair, 7/9/2020 and 8/3/2020.

²⁹³ Interview with Ms. Rushlow, 8/4/2020.

²⁹⁴ Interview with Ms. Swann, 8/10/2020.

them as hardworking,²⁹⁵ nice, genuine people who are trying to live the American dream.²⁹⁶ Friends of the Respondents described them as helpful and friendly,²⁹⁷ kind-hearted people,²⁹⁸ who would give you the shirt off their back.²⁹⁹

LEGAL ANALYSIS

Jurisdiction

Mr. and Mrs. Polak, through their attorney, filed a motion to dismiss the case, arguing that the HRC does not have jurisdiction over this complaint because Vermont's fair housing statute does not extend to adjoining property owners who do not have a business relationship in the sale or rental of property.³⁰⁰ The Executive Director of the HRC declined to dismiss the matter at the time but this investigation reconsiders whether the HRC has jurisdiction over this complaint now that the investigation is complete.

In analyzing statutes, Vermont courts are guided by the “whole of the statute and every part of it, its subject matter, the effect and consequences, and the reason and spirit of the law.” *Human Rights Comm’n v. Benevolent and Protective Order of Elks of the United States of America*, 2003 Vt. at ¶ 13 citing *In re P.S.*, 167 Vt. 63, 70, 702 A.2d 98, 102 (1997). “Where there are similar statutes in other jurisdictions, we are also guided by the interpretations of those statutes.” *Id.* at ¶13 citing to *State v. Weller*, 152 Vt. 8, 13, 563 A.2d 1318, 1321 (1989). Lastly, the VFHPAA is a remedial statute and therefore must be liberally construed in order to “suppress the evil and advance the remedy.” *Id.* citing 3 N. Singer, *Statutes and Statutory Construction* § 60:1, at 183 (6th ed.2001); see also *Human Rights Comm’n v. LaBrie, Inc.*, 164 Vt. 237, 245, 668 A.2d 659, 665 (1995); *Town of Killington v. State*, 172 Vt. 182, 191, 776 A.2d 395, 402 (2001).

The provisions of the fair housing statutes that are triggered and analyzed below, 9 V.S.A. § 4503 (make unavailable or denial of housing) and 9 V.S.A. § 4506 (coercion, threats, intimidation) are substantially identical to their federal statutory counterparts found at 42 U.S.C. § 3604 and 42 U.S.C. § 3617, respectively. HUD published comments on the regulation stating, “persons who are not involved in any aspect of the sale or rental of a dwelling are nonetheless prohibited from engaging in conduct to coerce, intimidate, threaten or interfere with persons in connection with protected activities.”³⁰¹ Furthermore, Rule 43 of the HRC Rules state, “prohibitions under 9 V.S.A. §4503 are interpreted in accordance with the federal Fair Housing

²⁹⁵ Interview w/Ms. Burch, 7/29/2020.

²⁹⁶ Interview with Mr. Robtoy, 6/12/2020.

²⁹⁷ Interview with Ms. Durand, 8/7/2020.

²⁹⁸ Interview with Mr. Marsh, 8/6/2020.

²⁹⁹ Interview with Mr. Delacy, 8/15/2020.

³⁰⁰ Motion to Dismiss, 6/19/2020.

³⁰¹ Implementation of Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3257 (Jan. 23, 1989) (codified at 24 C.F.R. pt. 100).

Act (FHA), its implementing regulations and any subsequent amendments and with any interpretive guidance issued by the United States Department of Housing and Urban Development (HUD).”³⁰²

As a result of the HRC’s statutory authority, the Rules of the HRC, the Legislature’s adoption of the language found in federal anti-discrimination laws, and the remedial nature of the VFHPAA, the HRC may look to federal statutes, regulations, legal precedence and agency guidance to interpret the scope of rights and protections granted under the VFHPAA.

The plain language of the VFHPAA at 9 V.S.A. 4503(a) states that “any person” is subjected to the provision if they “otherwise make unavailable or deny housing to another.” Courts have extended the same catch-all provision under 42 U.S.C. 3604(a) to capture discriminatory actions between neighbors. *Bloch v. Frischholz*, was a significant case in the body of fair housing laws because it overruled *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, a case that had rejected the application of the Fair Housing Act to harassment claims between neighbors.³⁰³ First, *Bloch* held that under 42 U.S.C § 3604(a), housing could be denied to someone *after* the sale and rental of property.³⁰⁴ Secondly, the court in *Bloch* held that 42 U.S.C. §3617 was a separate and cognizable claim from the sale and rental of property.³⁰⁵

The remedial nature of VFHPAA and legal precedent interpreting federal law support the conclusion that neighbor on neighbor harassment, separate and independent of the sale or rental of property is cognizable, and that the Vermont Human Rights Commission has jurisdiction to investigate this complaint.

Prima Facie Cases

Before this report analyzes the facts under the legal framework, it is important to note that a prima facie inquiry “was never intended to be rigid, mechanized, or ritualistic.”³⁰⁶ This means that elements of a prima facie case are in fact articulated differently from case to case and may vary depending on the facts and allegations of each.³⁰⁷ Furthermore, the burden of proving a

³⁰² Rule 43 of the Vermont Human Rights Commission Rules.

³⁰³ *Bloch v. Frisholz*, 587 F.3d at 782. *Bloch v. Frisholz*, 587 F.3d 771 (7th Cir. 2009) (holding that § 3617 covers post-acquisition discrimination where neighbors who were part of a condo association adopted and enforced rules leading to removal of complainants' mezuzot from doorposts outside their units); *Ohana v. 180 Prospect Place Realty Corp.*, 996 F. Supp. 238 (E.D.N.Y 1998) (holding that Jewish complainants had a valid and separate § 3617 claim over neighbors who harassed complainants on the basis of race, religion, and national origin); *Stirgus v. Benoit*, 720 F. Supp. 119 (N.D. Ill. 1989) (holding that neighbors of a black woman violated § 3617 by throwing Molotov cocktails at her house); *Stackhouse v. DeSitter*, 620 F. Supp. 208 (N.D. Ill. 1985) (holding that black complainant had § 3617 claim against neighbors

³⁰⁴ *Id.* at 772.

³⁰⁵ *Id.* at 781-82.

³⁰⁶ *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 575-76 (1978).

³⁰⁷ *United States v. Badgett*, 976 F.2d. 1176, 1178 (8th Cir. 1992).

prima facie case is light and not onerous.³⁰⁸ A burden-shifting analysis is not required in all cases, specifically harassment and where there is direct evidence of discriminatory intent. Direct evidence may take the form of discriminatory statements even if those statements are not written down. Thus, not all of the elements of proof need be shown under such circumstances.³⁰⁹

This analysis looks at two potential theories of discrimination and considers all of the reasons articulated by Respondents for their disputes with the Complainants, within the context of the prima facie case analysis. First, this investigation evaluates whether Mr. and Mrs. Polak made housing unavailable or denied housing to Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz based on their race, color and/or national origin. Vermont's fair housing statute, 9 V.S.A. §4503 states:

- (a) It shall be unlawful for any person:
 - (1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin...

In order to establish a prima facie case of discrimination under 9 V.S.A. §4503, Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz must prove the following:

- (1) they are members of a protected group,
- (2) they were subjected to unwanted harassment,
- (3) the harassment was based on their race, and
- (4) the harassment affected a term, condition, or privilege of housing.³¹⁰

Second, this investigation considers whether the same behavior violated 9 V.S.A. §4506(e), which states:

[a] person shall not coerce, threaten, interfere, or otherwise discriminate against any individual...who is exercising or enjoying a right granted or protected by this chapter.³¹¹

To prove discrimination under this theory, Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz must show the following:

- (1) they are members of a protected group,

³⁰⁸ Tex. Dep't of Comm. Affairs v. Burdine, 450 U.S. 248, 253 (1981).

³⁰⁹ See HUD Memorandum: Elements of Proof, 2014, citing to Ring v. First Interstate Mortg. Inc., 984 F.2d 924, 927 (8th Cir. Mo. 1993) ("If direct evidence of an intent to discriminate does exist, plaintiff may be able to prevail without proving all of the elements of a prima facie case of disparate treatment.").

³¹⁰ Ewers v. Columbia Hgts. Realty, LLC, 44 A.D.3d 608, 609-10 (2007); Ohio Civ. Rights Comm. v. Akron Metro. Hous. Auth., 119 Ohio St. 3d 77, 78 (2008).

³¹¹ 9 V.S.A. §4506.

- (2) they were engaged in the exercise or enjoyment of their fair housing rights,
- (3) the Respondents coerced, threatened, intimidated, or interfered with the Complainants on account of their protected activity under the FHA, and
- (4) the Respondents were motivated by an intent to discriminate.³¹²

A) Prima facie case under 9 V.S.A. §4503 – Make Unavailable or Denial of Housing

1) The Complainants must be members of a protected class.

Race, color, and national origin are protected categories under the VFHPAA. Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz identify their race as Latino.³¹³ The U.S. Census Bureau, following standards issued by the Office of Management and Budget, treats “Hispanic or Latino” as an ethnicity, the members of which may belong to any race.³¹⁴ However, according to a survey from the Pew Research Center, two-thirds of Hispanics identified their Hispanic background as a part of their racial background and not something separate from race.³¹⁵ The Second Circuit considered the argument that being Latino or Hispanic is not a race as a matter of law and therefore does not qualify for protection under laws against race-based discrimination.³¹⁶ The Court stated that, as a matter of law, race includes ethnicity and therefore includes being Latino or Hispanic.³¹⁷ Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz identify their color as Latino.³¹⁸ Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz are originally from Mexico.³¹⁹

Finding: Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz are members of a protected class.

2) Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz were subject to unwanted harassment.

Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with the use or enjoyment of a dwelling.³²⁰ According to HUD’s rule on hostile environment harassment, whether hostile environment harassment exists depends upon the totality of the circumstances.³²¹ Factors to be considered to determine whether hostile

³¹² *Bloch*, 587 F.3d 771 at 783.

³¹³ Email from Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz to Human Rights Commission, 10/16/2020.

³¹⁴ U.S. Census Bureau, *About Hispanic Origin*, available at <https://www.census.gov/topics/population/hispanic-origin/about.html#:~:text=The%20U.S.%20Office%20of%20Management%20and%20Budget%20%28OMB%29,ot her%20Spanish%20culture%20or%20origin%20regardless%20of%20race.> (last visited 10/15/2020).

³¹⁵ Kim Parker et al., Pew Research Center, *Multiracial in America* 99 (2015).

³¹⁶ *Barrella v. Village of Freeport*, 814 F.3d 594 (2d. Cir. 2016).

³¹⁷ *Id.* at 607.

³¹⁸ Email from Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz to Human Rights Commission, 10/16/2020.

³¹⁹ *Id.*

³²⁰ *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, 81 Fed. Reg. 63,054 (Sept. 14, 2016).

³²¹ *Id.*

environment harassment exists include, but are not limited to: the nature, context, location, duration, and severity of the conduct.³²²

Nature of the Conduct

According to the Ramirez family, Mr. and Mrs. Polak's conduct included entering the Ramirez family's property uninvited, cutting their trees down without permission, making mocking comments to the family, yelling at the family, repeatedly reporting the Ramirez family to a variety of authorities, threatening the family with a gun, and pushing Mrs. Sanchez de Ramirez.³²³ The Ramirez family consistently communicated about the Polaks' conduct to neighbors, friends, wellness and support professionals, and legal authorities.³²⁴

The Ramirez family's allegations are supported by a variety of sources, including videos, documents from the police and records from St. Albans. Videos show Mrs. Polak yelling at the Ramirez family³²⁵ and show Mr. Polak waiting until Mrs. Sanchez de Ramirez's car approaches before he falls into the street with his bicycle.³²⁶ A police affidavit refers to Mr. Polak yelling at Mrs. Sanchez de Ramirez and violating a court order to stay away from her.³²⁷ Records from St. Albans state that the Polaks made numerous complaints about the Ramirez family because they wanted to "add to their neighbor's misery."³²⁸

Corroboration from witnesses also supports that the Polaks' conduct was unwanted harassment. Multiple individuals outside the family viewed the Polaks' behavior as harassment. For example, several neighbors stated that they believe the Polaks caused problems with the Ramirez family,³²⁹ and neighbors also heard Mr. and Mrs. Polak screaming at the Ramirez family.³³⁰

Some of the harassment alleged by the Ramirez family did not have witnesses outside the two families. Mrs. Polak denied threatening the family with a gun. However, she acknowledged that she had a gun and was "being an asshole."³³¹ Whether or not she threatened the family with a gun, ample evidence shows that this was an instance that supports the Ramirez family's position that they were subjected to unwanted harassment. Similarly, Mr. Polak denied pushing Mrs. Sanchez de Ramirez.³³² Mrs. Sanchez de Ramirez's allegation is supported by the medical

³²² *Id.*

³²³ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with L.R., 8/28/2020; interview with Y.R., 8/28/2020.

³²⁴ Affidavit in Support of Request for Order Against Stalking from Mrs. Sanchez de Ramirez, 8/28/2019; interview with Ms. Tesarova, 6/11/2020; interview with Ms. Burch, 7/29/2020; interview with Mr. Church, 6/16/2020; interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³²⁵ Video of Kristina Polak, 6/23/2018.

³²⁶ Video of Stephen Polak bicycling, 8/28/2019.

³²⁷ Affidavit from Corporal William Furnari, 9/24/2018.

³²⁸ Town Health Officer Complaint and Inspection Form, 12/26/2017.

³²⁹ Interview with Ms. Dunbar, 6/11/2020; interview with Mr. Coolum, 8/28/2020; interview with Mr. Church, 6/16/2020.

³³⁰ Interview with Mr. Coolum, 8/28/2020; interview with Mr. Church, 6/16/2020.

³³¹ Affidavit from Corporal William Furnari, 6/23/2018.

³³² Interview with Mr. Polak, 8/10/2020.

record, which showed mild redness on the back of her thigh.³³³ However, whether or not Mr. Polak pushed Mrs. Sanchez de Ramirez, their argument over rocks from Mrs. Sanchez de Ramirez’s yard supports the Ramirez family’s position that they were subjected to unwanted harassment. Although physical harm may be relevant in determining whether a hostile environment existed, physical harm is not required to prove that a hostile environment exists.³³⁴

Context in Which the Incidents Occurred

The overall context of this case appears to be a dispute over a property boundary that led to a variety of incidents, many of which were racially charged. The context in which specific incidents occur can make a difference in determining whether an incident is unwanted harassment. For example, Mr. and Mrs. Polak made several negative comments about immigration on Facebook.³³⁵ Posting comments about immigration, on its own, is not necessarily conduct that supports the Ramirez family’s claim that they were subjected to unwanted harassment. However, the context in which the posts occurred transform the actions into something that supports the Ramirez family’s claim. Mr. and Mrs. Polak knew that Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz looked at their Facebook pages.³³⁶ In some ways, these Facebook posts incited others to comment and also leave racially charged comments which further frightened the Complainants. The Polaks also knew that their request for L.R.’s social security number made the Ramirez family uncomfortable.³³⁷ Their repeated posts about immigration may or may not have been directed at Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz, but they had the effect of frightening and intimidating the Ramirez family.³³⁸

Location of the Conduct

The location of the Polaks’ conduct was generally at or next to the Ramirez family’s home.³³⁹ Incidents also occurred at the end of the street they share as well as at a business in the community they share.³⁴⁰ One’s home is a place of privacy, security, and refuge (or should be), and harassment that occurs in or around one’s home can be far more intrusive, violative and threatening than harassment in the more public environment of one’s work place.³⁴¹ Consistent

³³³ Northwestern Medical Center Record for Yesica Sanchez de Ramirez, 5/14/2018.

³³⁴ *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act*, 81 Fed. Reg. 63,054 (Sept. 14, 2016).

³³⁵ Facebook post from Kristina Polak, 11/20/2017; Facebook Post from Mrs. Polak, 6/29/2017; Facebook Post from Mrs. Polak, 4/8/2018; Facebook Post from Mr. Polak, 5/21/2018; Facebook Post from Mrs. Polak, 11/3/2018; Facebook Post from Mrs. Polak, 12/20/2018; Facebook Post from Mr. Polak, 4/12/2019.

³³⁶ Facebook post from Kristina Polak, 11/20/2017.

³³⁷ Interview with Mr. Polak, 8/10/2020.

³³⁸ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³³⁹ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁴⁰ *Id.*

³⁴¹ See, e.g., *Quigley v. Winter*, 598 F.3d 938 (8th Cir. 2010) (emphasizing that defendant’s harassing conduct was made “even more egregious” by the fact that it occurred in plaintiff’s home, “a place where [she] was entitled to feel safe and secure and need not flee”); *Salisbury v. Hickman*, 974 F. Supp. 2d 1282, 1292 (E.D. Cal. 2013) (“[c]ourts have recognized that harassment in one’s own home is particularly egregious and is a factor that must be considered in determining the seriousness of the alleged harassment”).

with this reality, the Supreme Court has recognized that individuals have heightened expectations of privacy at their home.³⁴²

Duration of the Conduct

Mr. and Mrs. Polak's conduct, such as yelling at the Ramirez family and reporting them to a variety of authorities, has been happening for over two years.³⁴³

Severity of the Conduct

The severity of Mr. and Mrs. Polak's conduct ranged from less severe, such as name calling, to more severe, such as threatening physical violence. The severity of the Polaks' conduct is increased by the years-long duration of the conduct and its repeated nature.

Totality of Circumstances

In *Bloch v. Frischholz*, the court stated that behavior must be more than a quarrel among neighbors or an isolated act of discrimination.³⁴⁴ Here, although there have been many quarrels between neighbors, Mr. and Mrs. Polak's conduct towards the Ramirez family extends beyond the quarrel over property boundaries. Conduct included threatening the Ramirez family's safety, bringing up the family's immigration status with a border patrol agent, regularly disregarding the Ramirez family's privacy, calling them names, shouting at them, referring to stereotypes about Mexicans, threatening to kill their dog, and making numerous and sometimes baseless complaints about the family to a variety of authorities. These pervasive actions by Mr. and Mrs. Polak strongly support that the Ramirez family was subject to unwanted harassment.

Finding: Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz were subject to unwanted harassment.

3) The harassment was based on the Complainants' race, color, or national origin.

Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz believe the Polaks' conduct towards them is because of their race, color, or national origin.³⁴⁵ Mr. and Mrs. Polak deny that their conduct toward the Ramirez family was based on race, color, or national origin.³⁴⁶ Instead, they argue that their conduct towards the family is based on the dispute over the boundary between their two properties.³⁴⁷ Information from the investigation suggests that, while the property dispute was a source of the conflict between the families, the Polaks' conduct towards the Ramirez family was also motivated by their race, color, and national origin.

³⁴² See, e.g. *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (“[w]e have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom”).

³⁴³ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁴⁴ *Bloch*, 587 F.3d at 783.

³⁴⁵ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁴⁶ Interview with Mr. Polak, 8/10/2020; interview with Mrs. Polak, 8/10/2020

³⁴⁷ *Id.*

Mrs. Polak made repeated comments about the Ramirez family’s national origin to a variety of people. Mrs. Polak stated that she has referred to Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez as “the Mexicans.”³⁴⁸ Although Mrs. Polak stated that her reference to the Ramirez family as Mexicans was in order to identify them, her explanation is undermined by her Facebook posts about immigration and her also mentioning the family’s immigration status to a state enforcement officer.³⁴⁹ Information about the Ramirez family’s immigration status does not help to identify the family but instead attempts to influence other people’s opinions about the Ramirez family. According to Mr. Ramirez-Diaz, when the families were at a local barber shop, Mrs. Polak also stated that they should go back to the country they came from and she mentioned that President Trump supports deportation.³⁵⁰ Although the owner of the barber shop did not remember Mrs. Polak making those statements³⁵¹, the investigation concludes, based on evidence such as the video of her shouting at the family, that it is likely she made those comments.

Mr. Polak also made repeated comments about the Ramirez family’s national origin to a variety of people. Mr. Montanye heard Mr. Polak called Mrs. Sanchez de Ramirez a liar and then yell at her in Spanish before spinning his tires and driving away.³⁵² When St. Albans police responded to Mr. Polak’s violation of a court order not to talk to Mrs. Sanchez de Ramirez, he told a police officer, “this is so fucking ludicrous with this lady...not even a legal citizen...She doesn’t even speak English how does she know what I’m talking about.”³⁵³ The officer wrote in an affidavit, “[Mr. Polak] then went on a rant about how frustrated he was about the situation and that Sanchez does not speak English.”³⁵⁴ Based on the questions that Mr. and Mrs. Polak asked L.R., he felt that Mr. and Mrs. Polak were trying to find out his family’s immigration status.³⁵⁵ Although Mr. Polak denied that he and Mrs. Polak asked questions to find out about the family’s immigration status,³⁵⁶ his denial is undermined by their focus on the family’s immigration status and the fact that he talked to a border patrol agent about the family’s status.³⁵⁷

Mr. Polak’s comments also referenced derogatory stereotypes about people of color and Mexicans. Mr. Polak told Mr. Ramirez-Diaz that he looked like a monkey.³⁵⁸ Several cases have recognized that calling someone a monkey is derogatory and based on race or color.³⁵⁹ Mr. Polak

³⁴⁸ Interview with Mrs. Polak, 8/10/2020

³⁴⁹ Interview with Mr. Murrish, 8/3/2020.

³⁵⁰ Interview with Mr. Ramirez-Diaz, 7/24/2020.

³⁵¹ Interview with Mr. Rucheau, 8/18/2020.

³⁵² Affidavit from Corporal William Furnari, 9/24/2018.

³⁵³ Interview with Mrs. Polak, 8/10/2020.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ Interview with Mr. Polak, 8/10/2020.

³⁵⁷ Interview with Mr. Delacy, 10/15/2020.

³⁵⁸ Interview with Mr. Ramirez-Diaz, 7/24/2020.

³⁵⁹ See e.g. Springgs v. Diamond Auto Glass, 242 F.3d 179, 185-186 (4th Cir. 2001) (holding that a workplace where a supervisor constantly referred to African Americans as “monkeys” was a hostile work environment); Navarro v. United States Tsubaki, Inc., 577 F. Supp. 2d. 487, 509 (D. Mass. 2008) (stating that a Mexican worker’s allegation that his coworker told him to take his “monkey hands” off a machine supported the worker’s claim of a hostile

also referred to tequila and asked L.R. if he was sober.³⁶⁰ A court has also recognized that making comments to Mexicans about tequila can support a harassment claim.³⁶¹

Finding: The harassment was based on Mrs. Sanchez de Ramirez's and Mr. Ramirez-Diaz's race, color or national origin.

4) The harassment affected a term, condition, or privilege of housing.

Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz and their family testified that they experienced extensive emotional consequences because of the ongoing problems with the Polak family. After the incident with the gun, Mrs. Sanchez de Ramirez told this investigator that she becomes nervous very easily.³⁶² She had trouble sleeping and experienced depression.³⁶³ She went to see a counselor, but she did not continue receiving services because they were too expensive.³⁶⁴ L.R., Y.R. and K.R. have each received counseling services.³⁶⁵ In her interview, Jennifer Deso, a wellness coach who provided some of the counseling services to the children, stated that incidents with the neighbors, such as the one involving a gun, caused trauma for the children.³⁶⁶

The Ramirez family does not feel safe in their home, especially in their yard.³⁶⁷ The Ramirez family reports that the Mr. and Mrs. Polak are disrespectful and do things such as shout at them and kick their fence.³⁶⁸ Because they feel unsafe, the family uses their yard much less than they would like to.³⁶⁹ L.R. stated that when he had the same haircut as his dad, he couldn't do his chores without Mr. and Mrs. Polak yelling at him because they thought he was Mr. Ramirez-Diaz.³⁷⁰ In his interview, Y.R. stated that he wants to be able to come out of his house and practice soccer in the backyard without the Polak family making fun of him.³⁷¹ Mr. Ramirez-Diaz built a fire pit they don't use, they decided not to enlarge their gazebo, and they stopped using their pool.³⁷²

environment); See Rodriguez v. Marrone, 2009 WL 3253771 (Ill.Cir.) (Trial Order) and 2009 WL 3245140 (Ill.Cir.) (Trial Filing) (white neighbor's calling Puerto Rican neighbor "monkey" supported allegation of human rights law.).

³⁶⁰ Interview with L.R., 8/28/2020.

³⁶¹ Sauceda v. Central Pool Supply, Inc., 2017 WL 1205050 (Ill.Cir.) (Order) (Manager asking French-Mexican worker if he drank tequila like all Mexicans supported court's decision to deny summary judgment).

³⁶² Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁶³ Interview with Mr. Ramirez-Diaz, 7/24/2020.

³⁶⁴ *Id.*

³⁶⁵ Interview with Ms. Deso, 6/11/2020; Northwestern Counseling & Support Services Discharge Summary Plan for Y.R., 12/24/2019.

³⁶⁶ Interview with Ms. Deso, 6/11/2020.

³⁶⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020; interview with Y.R., 8/28/2020; Interview with Ms. Deso, 6/11/2020; interview with Mr. Robtoy, 6/12/2020.

³⁶⁸ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁶⁹ *Id.*

³⁷⁰ Interview with L.R., 8/28/2020.

³⁷¹ Interview with Y.R., 8/28/2020.

³⁷² Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

Although the Ramirez family built a fence to increase their privacy, they continue to feel like Mr. and Mrs. Polak are always spying on them.³⁷³ The Polaks installed a camera that looks into their yard.³⁷⁴ They also have a third story of their house,³⁷⁵ from where they watch the Ramirez family.³⁷⁶

The Ramirez family also experienced financial consequences because of the ongoing problems with the Polak family. Mr. Ramirez-Diaz and Mrs. Sanchez de Ramirez lost days of work.³⁷⁷ Mrs. Sanchez de Ramirez lost a job because she had to take days off to go to court.³⁷⁸ The money the family has spent money on lawyers that has kept them from being able to do things like build a shed.³⁷⁹

In *Gnerre v. Massachusetts Com'n Against Discrimination*, the court stated that a tenant established that her harassment affected a term, condition or privilege of her housing because the harassment made her tenancy less desirable.³⁸⁰ Here, the unwanted harassment the Ramirez family experienced from the Polaks negatively affected their housing in a variety of ways, such as harming the family's mental health, keeping them from bringing their son to live with them, and limiting the use of the space they owned. These effects made their ownership of the house less desirable.

Finding: The harassment affected a term, condition, or privilege of housing.

Conclusion for 9 V.S.A. §4503 Prima Facie Case

Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz established a prima facie case to show that Mr. and Mrs. Polak discriminated against them on the basis of race, color or national origin under 9 V.S.A. §4503. The privileges and benefits of their dwelling was essentially denied to them or otherwise made unavailable because of the Polaks' harassment.

B) Elements of the prima facie case under 9 V.S.A. §4506 – Coercion, Threats, Interference

1) The Complainants are members of a protected class.

As stated in the above analysis for 9 V.S.A. §4503, Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz are members of a protected class, based on their race, color, and national origin.

³⁷³ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁷⁴ *Id.*

³⁷⁵ Interview with Mrs. Polak, 8/10/2020.

³⁷⁶ Photo of Mr. and Mrs. Polak watching Mr. Ramirez-Diaz building fence, summer, 2019; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁷⁷ Interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁷⁸ *Id.*

³⁷⁹ Interview with L.R., 8/28/2020.

³⁸⁰ *Gnerre v. Massachusetts Com'n. Against Discrimination*, 402 Mass. 502, 509–10 (1988).

Finding: Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz are members of a protected class.

2) The Complainants were engaged in the exercise or enjoyment of their fair housing rights.

Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz live in their house at 39 Jewell Street in St. Albans, Vermont.³⁸¹ They were exercising their right for their housing to be free from discrimination.³⁸²

Finding: Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz were engaged in the exercise or enjoyment of their fair housing rights.

3) Mr. and Mrs. Polak coerced, threatened, intimidated, or interfered with the Complainants on account of their protected activity under the FHA.

Several HUD administrative decisions have determined that verbal attacks can be sufficient to establish harassment.³⁸³ In one of the cases, HUD found that a single conversation was enough to establish harassment.³⁸⁴ However, some courts have stated that the corollary federal law should be interpreted to require sufficiently abusive or systematic behavior so as not to apply to simple neighborhood quarrels.³⁸⁵ Although legal scholarship suggests that showing interference with protected activity, such as the right to be free from racial discrimination, should be easier for Complainants to meet than the hostile environment harassment “severe or pervasive” standard,³⁸⁶ this investigation does not conclude whether the lower standard is applicable. Doing so is unnecessary because Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz were able to meet the higher standard from 9 V.S.A. §4503. As demonstrated in the above analysis for 9 V.S.A. §4503, Mr. and Mrs. Polak interfered with the Ramirez family’s right for their housing to be free from discrimination.

Finding: Mr. and Mrs. Polak coerced, threatened, intimidated, or interfered with the Ramirez family’s right to live free from discrimination.

³⁸¹ Interview with Mr. Ramirez-Diaz, 7/24/2020; interview with Mrs. Sanchez de Ramirez, 7/24/2020.

³⁸² Johnson v. Levy, 812 F.Supp.2d 167, 179 (E.D.N.Y.2011).

³⁸³ HUD v. Gutleben, Fair Housing-Fair Lending Rep. (Aspen L. & Bus.) 1 25,078, In 25,726-28 (HUD ALJ 1994), available at 1994 WL 441981 (respondent-neighbor made a series of remarks that included racial epithets directed at the complainants' children and efforts to convince their landlord to evict complainants); HUD v. Johnson, Fair Housing-Fair Lending Rep. (Aspen L. & Bus.) 125,076 (HUD ALJ 1994), available at 1994 WL 391135 (awarding maximum civil penalty and \$300,000 in emotional distress damages for the respondent-neighbor's lengthy campaign of verbal abuse and threats directed against a minority tenant and his white friend).

³⁸⁴ HUD v. Weber, Fair Housing-Fair Lending Rep. (Aspen L. & Bus.) 125,041, T 25,424 (HUD ALJ 1993), available at 1993 WL 42262 (respondent-neighbor made threats and otherwise "verbally assaulted" the Hmong complainant while the latter was inspecting next-door house as a prospective tenant).

³⁸⁵ Bloch, 587 F.3d at 783; Egan v. Schmock, 93 F.Supp.2d 1090, 1093 (N.D.Cal. 2000).

³⁸⁶ Robert G. Schwemm, *Neighbor-on-Neighbor Harassment: Does the Fair Housing Act Make a Federal Case Out of It?*, 61 Case W. Res. L.Rev. 865, 885 (2011).

4) Mr. and Mrs. Polak were motivated by an intent to discriminate.

As demonstrated in the above analysis for 9 V.S.A. §4503, Mr. and Mrs. Polak were motivated to discriminate against Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz's race, color, and national origin.

Finding: Mr. and Mrs. Polak were motivated by an intent to discriminate.

Conclusion for 9 V.S.A. §4506 Prima Facie Case

Mrs. Sanchez de Ramirez and Mr. Ramirez-Diaz established a prima facie case to show that Mr. and Mrs. Polak discriminated against them on the basis of race, color, or national origin under 9 V.S.A. §4506.

Conclusion

Although §4506 and §4503 claims can be brought independently, a large portion of the federal cases brought under the corollary to §4506 have challenged behavior that allegedly violates other sections of federal fair housing law, such as the corollary to §4503.³⁸⁷ This case is one where the conduct at issue violates both sections of the law. Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz established prima facie cases under both 9 V.S.A. §4503 and §4506 to show that Mr. and Mrs. Polak discriminated against them on the basis of race, color, or national origin. This investigation makes a preliminary recommendation to find there are **reasonable grounds** to believe that Mr. and Mrs. Polak discriminated against Ms. Sanchez de Ramirez and Mr. Ramirez-Diaz based on their race, color, and national origin in violation of the 9 V.S.A. §4503 and §4506.

Cassie Burdyshaw
Cassandra Burdyshaw, Investigator

11/16/2020
Date

Approved By:
Bor Yang
Bor Yang, Executive Director

12/15/2020
Date

³⁸⁷ *Id.* at 896.

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Yesica Sanchez de Ramirez and)
Felipe Ramirez-Diaz ,)
Complainants)
)
)
v.) HRC Complaint No. HV20-0020
)
)
Kristina & Stephen Polak,)
Respondents)

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

The following vote was taken on a motion to find that there are **reasonable grounds** to believe that Kristina & Stephen Polak, the Respondents, illegally discriminated against Yesica Sanchez de Ramirez and Felipe Ramirez-Diaz, the Complainants, on the basis of their race, color, and national origin, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <u>X</u>	Against __	Absent __	Recused __
Nathan Besio	For <u>X</u>	Against __	Absent __	Recused __
Donald Vickers	For <u>X</u>	Against __	Absent __	Recused __
Dawn Ellis	For <u>X</u>	Against __	Absent __	Recused __
Joan Nagy	For <u>X</u>	Against __	Absent __	Recused __

Entry: X Reasonable grounds ___ Motion failed

Dated at Montpelier, Vermont, this 28th day of January, 2021.

BY: VERMONT HUMAN RIGHTS COMMISSION

/s/ Kevin Christie
Kevin Christie, Chair

/s/ Nathan Besio
Nathan Besio

/s/ Donald Vickers
Donald Vickers

/s/ Dawn Ellis
Dawn Ellis

/s/ Joan Nagy
Joan Nagy