

**Submission of Sandra S. Park, Senior Staff Attorney, ACLU Women's Rights Project  
to the New York Advisory Committee to the United States Commission on Civil Rights**

July 23, 2021

Thank you for the opportunity to highlight how eviction-related policies and practices can result in intersectional racial and gender discrimination. My testimony is based on my work for the last fourteen years at the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan organization of over four million members, activists, and supporters dedicated to preserving the Constitution and protecting civil liberties. The ACLU Women's Rights Project, co-founded in 1972 by Ruth Bader Ginsburg, has been a leader in efforts to eliminate barriers to women's full equality in American society. The ACLU has engaged in advocacy and litigation related to housing justice across the country and advocated for housing policies at the federal, state, and local levels. These efforts include challenging housing discrimination experienced by women, people of color, and people with disabilities, with a focus on advancing their rights to obtain and maintain safe and secure housing. The Women's Rights Project has especially prioritized advancing housing opportunities for Black women and other women of color as well as survivors of gender-based violence.

This written submission provides more detailed information on my oral testimony and makes the following five points:

- 1) Evictions are a racial and gender justice issue;
- 2) Eviction records unfairly restrict tenants' housing for years, locking out people of color, and particularly Black women, from housing that offers greater opportunity;
- 3) Crime-free and nuisance ordinances and crime-free housing programs result in unjust and discriminatory evictions;
- 4) The threat of eviction is often used as a tool to commit sexual harassment targeting Black women; and
- 5) Structural inequality is built into the unfairness of evictions proceedings.

It concludes with recommendations to the federal and New York state governments.

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**Evictions are a racial and gender justice issue.** As the New York Advisory Committee to the U.S. Commission on Civil Rights is aware, the U.S. is facing an unprecedented housing crisis that has already forced large numbers of Americans to double up with friends or family; use emergency shelters; and live in their vehicles, tents, and makeshift shelters on public property. The COVID-19 pandemic has only exacerbated existing inequities. Millions of tenants across the country face the threat of eviction in the upcoming months, and communities of color are disproportionately rent-burdened and at risk of eviction. Because of longstanding systemic income and wealth inequality in this country, women and workers of color are

overrepresented in low-wage jobs that have been most vulnerable to layoffs during the pandemic, which makes these groups even more likely to face rent insecurity and eviction.<sup>1</sup>

The U.S. evictions crisis is a race and gender issue with myriad civil rights implications. The factors leading to the current eviction crisis are part of a longer history of systemic racism and housing discrimination in the United States.<sup>2</sup> The coming waves of evictions, as with the eviction crisis steadily growing prior to the pandemic, will therefore not be experienced equally by all. Without deliberate federal, state, and local action and funding, mass evictions will only perpetuate racial segregation and systemic barriers to equality.

Black households only recently began to recover from the financial crisis of 2008; recovery after the pandemic is expected to be considerably slower. Black and Latinx households are more likely than white households to rent their homes,<sup>3</sup> and they are consistently over-represented in households facing eviction.<sup>4</sup> Black and Latinx households have been hit significantly harder by COVID-19,<sup>5</sup> and in turn, have been almost twice as likely as white households to report that they have little to no ability to make rent each month during the pandemic.<sup>6</sup> Rent insecurity overwhelmingly burdens communities of color and women, in particular Black women, who are

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<sup>1</sup> Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, Ctr. for Am. Progress (Apr. 14, 2020), <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/> [https://perma.cc/KFK7-56SQ].

<sup>2</sup> See Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (1st ed. 2017).

<sup>3</sup> See Anthony Cilluffo, A.W. Geiger & Richard Fry, *More U.S. Households Are Renting than at Any Point in 50 Years*, Pew Res. Ctr. (July 19, 2017), <https://www.pewresearch.org/fact-tank/2017/07/19/more-u-s-households-are-renting-than-at-any-point-in-50-years/> [https://perma.cc/FZ8P-HE8Z].

<sup>4</sup> See Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, Ctr. for Am. Progress (Oct. 30, 2020), <https://www.americanprogress.org/issues/poverty/reports/2020/10/30/492606/pandemic-exacerbated-housing-instability-renters-color/> [https://perma.cc/UL3Y-MV6U]; Timothy A. Thomas et al., *The State of Evictions: Results from the University of Washington Evictions Project* (Feb. 17, 2019) <https://evictions.study/washington/> [https://perma.cc/AY2R-TW92]; Reinvestment Fund, *Evictions in Philadelphia: A Data & Policy Update* (Oct. 2019), <https://www.reinvestment.com/research-publications/evictions-in-philadelphia-a-data-policy-update/> [https://perma.cc/Y723-28AA].

<sup>5</sup> See Anna Bahnney, *It's Getting Even Harder for Black and Latino Tenants to Pay the Rent*, CNN Bus. (June 5, 2020), <https://www.cnn.com/2020/06/05/success/black-and-latino-housing-gaps-coronavirus/index.html> [https://perma.cc/P5F9-YQ9W]; Sharon Cornelissen & Alexander Hermann, *A Triple Pandemic? The Economic Impacts of Covid-19 Disproportionately Affect Black and Hispanic Households*, Joint Ctr. for Hous. Stud. of Harvard Univ. (July 7, 2020), <https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households> [https://perma.cc/QQU6-Q76U]; Richard A. Opiel Jr. et al., *The Fullest Look yet at the Racial Inequity of the Coronavirus*, N.Y. Times (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html> [https://perma.cc/L6NP-SUU7].

<sup>6</sup> See U.S. Census Bureau, *Week 31 Household Pulse Survey: Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics (May 26 - June 7, 2021)*, [https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk31/housing2b\\_week31.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk31/housing2b_week31.xlsx) [https://perma.cc/65UK-PQ7T] (last visited July 21, 2021).

overrepresented in low-wage jobs and who shoulder the majority of caregiving responsibilities.<sup>7</sup>

Multiple studies have shown that Black, Latinx, and women renters are disproportionately exposed to the many documented negative consequences of eviction, from homelessness and material hardship to job loss and depression. The Eviction Lab, a team of researchers committed to understanding the racial and gender disparities among evicted Americans, found that nearly one in four black renters lived in a county in which the black eviction rate was more than double the white eviction rate.<sup>8</sup> They also found that, among renters, women – especially Black and Latinx women – faced higher eviction rates than men. The ACLU Data Analytics team analyzed the Eviction Lab’s national eviction data from 2012 to 2016 and found that, on average, Black women renters had evictions filed against them by landlords at double the rate of white renters (or higher) in 17 of 36 states.<sup>9</sup> Other research has shown that having children is the single greatest predictor of whether someone will face eviction.<sup>10</sup> Recent data released by the Urban Displacement Project at UC Berkeley—a group aiming to identify neighborhoods with the highest risk of displacement and eviction across 53 metropolitan areas with populations larger than one million people—reveals that 73% of Black renters live in neighborhoods with a high risk of eviction. They also found that, on a list of the top ten most precarious metro areas, Buffalo ranked number five, and Rochester ranked number ten.<sup>11</sup>

The filing of an eviction action triggers a cascading sequence of harmful events. The record makes other landlords less likely to approve housing applications, which makes individuals with prior eviction records more vulnerable to homelessness and to landlords who might take advantage of a desperate situation to charge more for rent, leave tenants in sub-standard housing conditions, or demand sexual activity.<sup>12</sup> Harvard scholar Matthew Desmond has studied the hardships experienced by families who face eviction. These families regularly endure prolonged homelessness and increased residential mobility. Mothers who are evicted experience more material hardship and are more likely to suffer from depression.<sup>13</sup> Accordingly, low-income,

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<sup>7</sup> Emma Singh, *6 Ways States’ Response to COVID-19 Centers Gender and Racial Justice*, Nat’l Women’s Law Ctr. (Aug. 4, 2020), <https://nwl.org/blog/6-ways-states-response-to-covid-19-centers-gender-and-racial-justice/> [https://perma.cc/ZT9Q-Y4QA].

<sup>8</sup> Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/> [https://perma.cc/AQ76-MST7].

<sup>9</sup> Sophie Beiers, Linda Morris & Sandra Park, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/> [https://perma.cc/SYK9-37AB].

<sup>10</sup> See Bryce Covert, *Why Landlords Target Mothers for Eviction*, New Republic (Mar. 16, 2021), <https://newrepublic.com/article/161578/landlords-target-mothers-eviction-crisis-covid> [https://perma.cc/X59X-FAQG].

<sup>11</sup> See Univ. of Calif. Berkeley Urb. Displacement Project, *Housing Precarity Risk Model*, <https://www.urbandisplacement.org/us-regions/housing-precarity-risk-model> [https://perma.cc/JQB6-UYCK] (last updated July 14, 2021).

<sup>12</sup> See, e.g., ACLU, *Fox v. Gaines* (Oct. 1, 2020), <https://www.aclu.org/cases/fox-v-gaines> [https://perma.cc/37GM-3G5Y].

<sup>13</sup> See Matthew Desmond et al., *Evicting Children*, 92 Social Forces 303 (2013), <https://academic.oup.com/sf/article-abstract/92/1/303/2235762?redirectedFrom=fulltext> [https://perma.cc/BQ8C-2VZU].

single mothers and families are at particular risk of eviction and most likely to be subjected to the myriad short-term and long-term financial, health, safety, and social consequences of losing one's home.

**Eviction records unfairly restrict tenants' housing for years, locking out people of color, and particularly Black women, from housing that offers greater opportunity.** Across the country, landlords routinely use screening policies that deny housing whenever an applicant was named in an eviction case – even when a court never ordered the eviction. Tenant screening companies play a key role in tenant exclusion: they may provide court data to landlords, or they may deploy algorithms that result in negative housing decisions or recommendations that fail to give applicants any opportunity to address their record. With a record, people's housing options disappear. Black women are the group most likely to be harmed by the eviction screenings,<sup>14</sup> and are also more likely to have a case filed against them that was later dismissed.<sup>15</sup> Thus, it is especially unfair that these tenants are marked with the scarlet "E." Eviction records follow people for years, stigmatizing already marginalized groups and blocking them from housing opportunities. And when the mere filing of an eviction case means that a family's future housing applications will be rejected, many tenants will avoid a case at all costs.<sup>16</sup> They may choose to leave their home, rather than have an eviction filed against them, even when they have legal defenses or counterclaims they could bring.

In light of stark race and gender disparities, blanket policies that categorically deny any applicant with a prior eviction filing disproportionately harm Black tenants, and particularly Black women, in violation of the Fair Housing Act.<sup>17</sup> These practices pose barriers for survivors of domestic violence, who often face eviction because police have responded to their homes even when they themselves are a victim of a crime. They may be successful in defeating the eviction, but it remains on their record. Such violations are akin to barring individuals with criminal records from access to housing. As eviction moratoria end, we expect to see a devastating rise in eviction filings and judgements, creating records that tenants will bear for years to come.<sup>18</sup> Ending unfair eviction screenings would open the doors of opportunity for families to many communities that are currently closed to them.

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<sup>14</sup> See Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MacArthur Found. (Mar. 2014), [https://www.macfound.org/media/files/hhm\\_-\\_poor\\_black\\_women\\_are\\_evicted\\_at\\_alarming\\_rates.pdf](https://www.macfound.org/media/files/hhm_-_poor_black_women_are_evicted_at_alarming_rates.pdf) [https://perma.cc/R5F9-URR5] (“Poor black men may be locked up, but poor black women are locked out. Both phenomena work together to propagate economic disadvantage in the inner city.”).

<sup>15</sup> Beiers et al., *supra* note 9.

<sup>16</sup> Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately> [https://perma.cc/RQ4U-JJHJ].

<sup>17</sup> *Id.*

<sup>18</sup> See Peter Hepburn & Renee Louis, *Preliminary Analysis: Six Months of the CDC Eviction Moratorium*, Eviction Lab (Mar. 8, 2021), <https://evictionlab.org/six-months-cdc/> [https://perma.cc/T2LW-JR44] (showing that, because of moratoria, eviction filings were at 50.1% of the historical average).

**Crime-free and nuisance ordinances and crime-free housing programs result in unjust and discriminatory evictions.** Towns and cities across the country, including in New York, have enacted and continue to adopt laws called crime-free or nuisance ordinances (also disorderly house ordinances) that punish landlords and tenants when police are called too many times to the premises or when criminal activity occurs at the home.<sup>19</sup> Nuisance ordinances mandate or incentivize eviction; once a property is designated a “nuisance,” the city can impose penalties on the landlord unless they abate the problem, usually by evicting the family. Crime-Free Housing Programs similarly incentivize or require eviction; in addition to use of criminal record screening (including access to police data), these programs often mandate or encourage use of a crime-free lease,<sup>20</sup> which authorizes eviction based on any alleged criminal activity, and notify landlords about police activity at the property, often requiring or encouraging eviction.

Nuisance ordinances and crime-free housing programs run parallel to the criminal system, counting alleged criminal violations as triggering separate punishments under the ordinance, although they typically do not require any type of arrest or conviction. They usually provide no notice or process for tenants to contest alleged violations of a nuisance ordinance. These laws and programs—such as those challenged in the ACLU’s case against Faribault, MN and the ACLU of Southern California’s case against Hesperia’s attempts to unlawfully restrict housing and support services for people with criminal records<sup>21</sup>—are often rooted in racist beliefs connecting people of color with crime. The same racism that fuels our mass incarceration crisis has also generated evictions and displacement.

Proponents argue that nuisance ordinances and crime-free programs are necessary to deter crime and recoup costs. Yet there is no evidence that this is the case.<sup>22</sup> There is evidence, however, that these ordinances can cause real harm to survivors of domestic violence, people with mental disabilities, and people of color.

Studies have documented racial disparities in the enforcement of nuisance ordinances and crime-free housing programs. One 2012 study conducted in Milwaukee was among the first to empirically evaluate the impact of coercive third-party policing on poor communities. The study found that properties in black neighborhoods had the highest likelihood of being deemed nuisances, that property owners took steps to discourage tenants from calling 911, and that landlords evicted domestic violence victims.<sup>23</sup> Another study of the effect of nuisance ordinances

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<sup>19</sup> ACLU, *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*, <https://www.aclu.org/other/i-am-not-nuisance-local-ordinances-punish-victims-crime> [https://perma.cc/ZA8T-EXYR] (last visited July 21, 2021).

<sup>20</sup> Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3831&context=mlr> [https://perma.cc/J9GQ-M6RV].

<sup>21</sup> ACLU SoCal Files Lawsuit Challenging Efforts to Shutter Transitional Housing in Hesperia, ACLU of Southern California (May 4, 2016), <https://www.aclusocal.org/en/press-releases/aclu-socal-files-lawsuit-challenging-efforts-shutter-transitional-housing-hesperia> [https://perma.cc/HTB9-UMNZ].

<sup>22</sup> See Archer, *supra* note 20.

<sup>23</sup> See Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 28 Am. Socio. Rev. 117 (2012),

in Ohio showed similar results on survivors of domestic violence and people of color.<sup>24</sup> A 2018 ACLU and NYCLU report surveying forty of the most populous municipalities in New York found that nuisance ordinance enforcement was most heavily concentrated in neighborhoods with the highest percentage of people of color.<sup>25</sup>

These ordinances particularly undermine the rights of domestic violence survivors, many of whom are women of color, because survivors may need to make repeated calls to the police or disproportionately experience crime in their homes. They therefore face an elevated risk of having their properties deemed a nuisance.<sup>26</sup> A 2015 ACLU report in partnership with the Social Science Research Council examined nuisance ordinances in Binghamton and Fulton, New York. It found that domestic violence made up the single largest category of ordinance enforcement in both cities and that in Binghamton, landlords' most common response to a nuisance property warning was pursuing eviction against the tenants who were the subject of police response.<sup>27</sup> Sociologist Gretchen Arnold also documented the myriad harms of nuisance ordinances on survivors, including to their longer-term housing security.<sup>28</sup>

Because of the pernicious impact on people of color and women, the ACLU has challenged these ordinances and programs across the country. For example, we have brought multiple lawsuits challenging these ordinances on behalf of African-American women<sup>29</sup> as well as organizations advocating on behalf of people of color.<sup>30</sup> These cases often have ended with repeals of the ordinance, given the real harms they impose on communities, including law enforcement efforts.<sup>31</sup>

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[https://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr\\_0.pdf](https://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf) [https://perma.cc/P5US-4FLU].

<sup>24</sup> See Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, Urb. Publ'n (Nov. 8, 2017), [https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2513&context=urban\\_facpub](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2513&context=urban_facpub) [https://perma.cc/LQ97-9ANT].

<sup>25</sup> NYCLU & ACLU, *More Than A Nuisance: The Outsized Consequences of New York's Nuisance Ordinances* 13 (2018), [https://www.nyclu.org/sites/default/files/field\\_documents/nyclu\\_nuisancereport\\_20180809.pdf](https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf) [https://perma.cc/6EEY-SB88].

<sup>26</sup> Evictions that result from nuisance ordinances compound the elevated risk of homelessness already faced by survivors of domestic violence, and the threat of nuisance ordinance enforcement often prompts domestic violence survivors to endure abuse rather than call the police. See NYCLU & ACLU, *supra* note 25, at 24.

<sup>27</sup> ACLU, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* 2 (2015), [https://www.aclu.org/files/field\\_document/equ15-report-nuisanceord-re13.pdf](https://www.aclu.org/files/field_document/equ15-report-nuisanceord-re13.pdf) [https://perma.cc/HAY2-GPS9].

<sup>28</sup> See Gretchen Arnold, *From Victim to Offender: How Nuisance Property Laws Affect Battered Women*, 34 J. of Interpersonal Violence 1103 (2016), <https://journals.sagepub.com/doi/10.1177/0886260516647512> [https://perma.cc/X8WJ-2VAN].

<sup>29</sup> See *Somai v. City of Bedford*, No. 1:19-CV-373 (N.D. Ohio Sept. 14, 2020); *Watson v. Maplewood*, No. 4:17-CV-01268 (E.D. Mo. Aug. 17, 2018); *Briggs v. Borough of Norristown*, No. 2:13-CV-02191-ER (E.D. Pa. Sept. 18, 2014); *Jones v. City of Faribault*, No. 0:18-CV-01643 (D. Minn. Feb. 18, 2021).

<sup>30</sup> See *Victor Valley Fam. Res. Ctr. v. City of Hesperia*, No. 5:16-CV-00903 (C.D. Calif. April 6, 2018).

<sup>31</sup> Expert Declaration of Chief of Norristown Police Mark Talbot, *Somai v. City of Bedford*, No. 1:19-CV-373 (N.D. Ohio Sept. 14, 2020), (“Nuisance ordinances target much more than people’s individual conduct. They go after people who seek help and the family members of people who commit criminal conduct. They can be used as a weapon against crime victims, because victims and the perpetrators of crime know that calling for assistance could



Nuisance ordinances and programs drive evictions in many communities, but operate with little oversight or accountability for how they violate civil rights. Action must be taken to counter the disparate and disproportionate impact of these laws and policies on vulnerable communities.

**The threat of eviction is often used as a tool to commit sexual harassment targeting Black women.** Sexual harassment of low-income women of color by their landlords is a significant and widespread national problem.<sup>32</sup> It is perpetrated primarily by male landlords and housing providers against women who are poor, usually young, disproportionately women of color, and have few housing options, as documented by Professor Rigel Oliveri of University of Missouri School of Law. Results of studies like Oliveri’s underscore the argument for treating sexual harassment in housing as an entirely different legal phenomenon from employment harassment.<sup>33</sup>

Landlords and housing managers use the threat of eviction to commit sexual harassment against their tenants. Women may submit to unwanted sexual activity with landlords out of fear of being evicted. Or, if they refuse to participate in sexual behavior, landlords retaliate by filing evictions.<sup>34</sup>

Our current fair housing law, with some exceptions, generally recognizes that sexual harassment in housing violates tenants’ civil rights, but it falls short in addressing how eviction can be used as a tool to sexually harass. If a woman cannot pay or is behind in rent, she is unlikely to report sexual harassment as that might provoke an eviction action; instead, she may endure the harassment and/or face eviction when she challenges it.

**Structural inequality is built into the unfairness of evictions proceedings.** Evictions proceedings historically have been unfair and imbalanced, with the odds stacked against tenants. The National Coalition for a Civil Right to Counsel compiled statistics from twenty-four jurisdictions in the U.S., and found that, on average, 3% of tenants have legal representation in eviction cases, compared to 81% of landlords. In New York City, before right to counsel

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lead to fines or eviction. In the end, nuisance ordinances can be used to harm some of the most vulnerable members of the community.”).

<sup>32</sup> See Rigel C. Oliveri, *Sexual Harassment of Low-Income Women in Housing: Pilot Study Results*, 83 Mo. L. Rev. 598 (2018), <https://scholarship.law.missouri.edu/mlr/vol83/iss3/6/> [https://perma.cc/X8WJ-2VAN] (conducting the first rigorous empirical study in the United States on sexual harassment in housing).

<sup>33</sup> See Dep’t of Just., U.S. Att’y’s Office, N.D.N.Y., *Justice Department Files Sexual Harassment Lawsuit Against Owners and Managers of Oswego-Area Rental Properties* (April 11, 2018), <https://www.justice.gov/usao-ndny/pr/justice-department-files-sexual-harassment-lawsuit-against-owners-and-managers-oswego> [https://perma.cc/E55G-B8EG] (discussing a case in which a residential property owner and landlord in Oswego, New York subjected female tenants and potential tenants to egregious sexual harassment in violation of the Fair Housing Act).

<sup>34</sup> One recently published example in New York is the case of Victor Rivera, who oversaw a network of Bronx homeless shelters. He offered one homeless woman a spare apartment at his home, and later demanded to engage in sexual activity with her, suggesting he would evict her if she refused. See Amy Julia Harris, ‘Nobody Tells Daddy No’: A Housing Boss’s Many Abuse Cases, N.Y. Times (Feb. 7, 2021), <https://www.nytimes.com/2021/02/07/nyregion/victor-rivera-bronx-homeless.html> [https://perma.cc/8ARP-6867].

legislation passed,<sup>35</sup> 1% of tenants had representation compared to 85% of landlords.<sup>36</sup> This is not surprising, considering many tenants face eviction because of unforeseen circumstances or financial stress that prevents them from being able to afford their rent, let alone counsel. Others lack the ability to go to court due to employment, child care, or transportation restrictions. On top of this, tenants have few options for legal aid and legal services programs, as legal aid is not funded to so that it can meet the demand. As a result, tenants default at high rates, and landlords count on this imbalance to file meritless eviction cases. This systematically sets up tenants to fail, forcing them to leave their homes and leaving them to deal with the devastating, long-lasting impacts of eviction.<sup>37</sup>

Thus, in many cities, a disproportionate number, and sometimes the majority, of eviction cases involve *pro se* women of color tenants who lack access to counsel trying to navigate legal proceedings against lawyers for the landlord.<sup>38</sup> They therefore are rarely able to assert any relevant legal defenses or counterclaims that may be available to them, or even mitigate the legal judgments that may be entered against them.

### **Recommendations for the Federal Government**

**The federal government should extend the federal moratorium while working as quickly as possible to ensure that rental assistance funds are fairly distributed and used to establish the right to counsel and eviction diversion programs.** The CDC has extended its moratorium to the end of July.<sup>39</sup> Over the course of the moratorium, the federal government enacted multiple relief packages that provide rental assistance.<sup>40</sup> However, much of that aid has yet to reach

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<sup>35</sup> In 2017 New York City became the first city in the country to pass Right to Counsel (RTC) legislation. The law ensures that tenants facing eviction cases have access to free legal assistance.

<sup>36</sup> Nat'l Coal. for a Civ. Rt. to Couns., *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention* (Apr. 21, 2021), [http://civilrighttocounsel.org/uploaded\\_files/280/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_NCCRC\\_.pdf](http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC_.pdf) [https://perma.cc/T6WQ-4CUA].

<sup>37</sup> Sandra Park & John Pollock, *Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond*, ACLU (Jan. 12, 2021), <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond/> [https://perma.cc/FE5L-4LKY].

<sup>38</sup> For more on the gender implications of the deprivation of a civil right to counsel, see Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. Rev. (forthcoming 2022), [https://privpapers.ssrn.com/sol3/papers.cfm?abstract\\_id=3807349](https://privpapers.ssrn.com/sol3/papers.cfm?abstract_id=3807349) [https://perma.cc/N96P-XF45].

<sup>39</sup> Ashraf Khalil & Michael Casey, *CDC Extends Eviction Moratorium a Month, Says It's Last Time*, Associated Press (June 24, 2021), <https://apnews.com/article/eviction-ban-extended-biden-coronavirus-9e7c4dc97c49cbb42a1ecb55b06e3b4c> [https://perma.cc/3VRP-2N5D].

<sup>40</sup> Nat'l Coal. for a Civ. Rt. to Couns., *Federal Funding to Support State/Local Tenant Right to Counsel Efforts* (July 15, 2021), [http://civilrighttocounsel.org/uploaded\\_files/278/Federal\\_funding\\_for\\_tenant\\_RTC\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/278/Federal_funding_for_tenant_RTC_FINAL.pdf) [https://perma.cc/5HTY-UTPR].



tenants.<sup>41</sup> The upcoming flood of evictions, the threats to public health and safety,<sup>42</sup> and the suffering will disproportionately harm tenants of color,<sup>43</sup> particularly women and caretakers.<sup>44</sup> Albany, Buffalo, and New York City all have tenants who have a high risk of eviction with neighborhoods that rank above 90% on the Urban Institute’s Emergency Rental Assistance Priority Index for New York state.

The Biden-Harris Administration has “recognize[d] the need to deliver more [American Rescue Plan for Emergency Rental Assistance] funding directly to renters” and is taking steps to facilitate a fairer distribution process.<sup>45</sup> Guidance released in May eases the requirement that landlords make the first request for assistance and enables tenants to access the funds themselves.<sup>46</sup>

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<sup>41</sup> Jung Hyun Choi et al., *With Just a Month Left of the Eviction Moratorium, Many Mom-and-Pop Landlords and Tenants Are Still Unaware of Federal Rental Assistance*, Urban Inst. (June 30, 2021), <https://www.urban.org/urban-wire/just-month-left-eviction-moratorium-many-mom-and-pop-landlords-and-tenants-are-still-unaware-federal-rental-assistance> [https://perma.cc/U4VC-ALGS].

<sup>42</sup> Olivia Jin et al., *Neighborhoods with Highest Eviction Filing Rates Have Lowest Levels of COVID-19 Vaccination*, Eviction Lab (June 11, 2021), <https://evictionlab.org/filing-and-vaccination-rates/> [https://perma.cc/NF6J-G4YN] (finding “that those most at risk of being evicted are still at high risk of contracting and passing the virus” due to low vaccination rates).

<sup>43</sup> NLIHC Statement: NLIHC Urges Aggressive Action by Biden Administration to Prevent Historic Wave of Evictions, Nat’l Low Income Hous. Coal. (June 15, 2021), <https://nlihc.org/news/nlihc-statement-nlihc-urges-aggressive-action-biden-administration-prevent-historic-wave> [https://perma.cc/WY6T-VLCF].

<sup>44</sup> See Karlee M. Naylor et al., *Civil Legal Aid Funding in the Time of COVID-19*, Mgmt. Info. Exch. J. 1, 5-6 (Summer 2020), <https://evictioninnovation.org/wp-content/uploads/2021/04/Civil-Legal-Aid-Funding-in-the-Time-of-COVID-19.pdf> [https://perma.cc/B96J-8DD4] (“[E]victions have a significantly disproportionate effect on communities of color. Pre-pandemic, Black women were evicted at four times the rate of white men, and nearly half of Black/Latinx renters were unable to pay May’s rent compared to 25 percent of white renters.” (citations omitted)); Letter from Vanita Gupta, Assoc. Att’y Gen., U.S. Dep’t of Just., to State Chief Justices and Court Administrators (June 24, 2021), <https://www.justice.gov/asp/page/file/1405886/download> [https://perma.cc/46LN-4DRY] (“Women, particularly Black and Latina women, are evicted at higher rates than men.”). The Urban Institute calculates eviction risk using factors that disproportionately apply to women of color, such as pandemic-related job loss. See *Where to Prioritize Emergency Rental Assistance to Keep Renters in Their Homes*, Urban Inst. (May 14, 2021), <https://www.urban.org/features/where-prioritize-emergency-rental-assistance-keep-renters-their-homes> [https://perma.cc/3JEF-Y4GG] [hereinafter *Emergency Rental Assistance Priority Index*] (mapping data as of April 2021 by census tracts, including in Albany, Buffalo, New York, Bronx, Kings, and Queens counties); Michael Madowitz & Diana Boesch, *The Shambolic Response to the Public Health and Economic Crisis Has Women on the Brink as the Job Recovery Stalls*, Ctr. for Am. Progress (Oct. 22, 2020, 9:07 AM), <https://www.americanprogress.org/issues/economy/reports/2020/10/22/492179/shambolic-response-public-health-economic-crisis-women-brink-job-recovery-stalls/> [https://perma.cc/7ZZ5-CM8P] (explaining U.S. Bureau of Labor Statistics showing greater pandemic-related job loss for women compared to men and describing the sharper declines and slower recoveries in employment for Black, Latina, and Asian-American women as compared to white women).

<sup>45</sup> U.S. Dep’t of Treas., *Fact Sheet: The Biden-Harris Administration Announces Enhanced Efforts to Prevent Evictions and Provide Emergency Assistance to Renters 1* (2021), [https://home.treasury.gov/system/files/136/FACT\\_SHEET-Emergency-Rental-Assistance-Program\\_May2021.pdf](https://home.treasury.gov/system/files/136/FACT_SHEET-Emergency-Rental-Assistance-Program_May2021.pdf) [https://perma.cc/5Q8D-89DY].

<sup>46</sup> *Id.* at 2.

These “enhanced efforts”<sup>47</sup> are commendable, but the federal government must do more to get assistance to tenants in need.

In addition to facilitating direct rental assistance, the federal government should continue its work encouraging states to use federal funds to develop eviction diversion programs and establish the right to counsel in tenant-landlord proceedings.<sup>48</sup> This would address the immediate needs of the eviction crisis while also creating long-term, sustainable solutions to systemic housing injustice—building back better, in short.

The CARES Act, both Emergency Rental Assistance Programs, and the Coronavirus State and Local Fiscal Recovery Funds (FRF) permit spending on civil legal services.<sup>49</sup> These bills contain provisions that incentivize this spending, such as the CARES Act’s lifting of “the usual 15 percent cap on public services (generally the category used for legal services)”<sup>50</sup> and the FRF’s allowance of funds to be “transferred to non-profits” that can represent tenants in eviction proceedings.<sup>51</sup>

While the upfront costs have been a persistent barrier to adopting tenants’ right to counsel,<sup>52</sup> multiple states and municipalities are using COVID-19 relief funds to get it off the ground. Houston, Texas, for example, has allocated \$2 million from the CARES Act’s Coronavirus Relief Fund to start a “pilot” right to counsel program.<sup>53</sup> Other jurisdictions have used COVID-19 aid to expand access to counsel, such as Pennsylvania, which deployed \$8 million from its CARES Act’s Coronavirus Relief Fund allocation to provide civil legal services for “needs arising from COVID-19, including . . . rental assistance.”<sup>54</sup> The federal government should incentivize jurisdictions like Pennsylvania to go beyond expanded legal assistance and secure counsel for tenants in all future eviction proceedings. For instance, in its grant-making, the Department of Housing and Urban Development (HUD) should approve some larger grants that are focused on piloting right-to-counsel programs.<sup>55</sup> Immediate solutions need not be temporary, and the tenants who are most vulnerable to eviction due to the COVID-19 pandemic are also entitled to legal representation and housing fairness long-term.

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<sup>47</sup> *Id.* at 1.

<sup>48</sup> *See, e.g.*, Letter from Vanita Gupta, *supra* note 44.

<sup>49</sup> *Federal Funding to Support State/Local Tenant Right to Counsel Efforts*, *supra* note 40.

<sup>50</sup> Naylor et al., *supra* note 44, at 7.

<sup>51</sup> *Federal Funding to Support State/Local Tenant Right to Counsel Efforts*, *supra* note 40.

<sup>52</sup> *See* John Pollock, *Federal Funding Charts the Path for Local Eviction Right-to-Counsel Efforts*, *The Appeal* (Mar. 26, 2021), <https://theappeal.org/federal-funding-charts-the-path-for-local-eviction-right-to-counsel-efforts/> [<https://perma.cc/4VXM-8BDG>].

<sup>53</sup> Nat’l Coal. for a Civ. Rt. to Couns., *CARES Act Funding for Tenant Representation 2*, [http://civilrighttocounsel.org/uploaded\\_files/271/CARES\\_Act\\_funding\\_jurisdictional\\_summary.pdf](http://civilrighttocounsel.org/uploaded_files/271/CARES_Act_funding_jurisdictional_summary.pdf) [<https://perma.cc/6ZW4-C274>] (last visited June 4, 2021).

<sup>54</sup> Naylor et al., *supra* note 44, at 8.

<sup>55</sup> This may be possible, for example, through a recent Notice of Funding Opportunity HUD issued. U.S. Dep’t of Hous. & Urban Dev., *Eviction Protection Grant Program*, FR-6500-N-79 (July 20, 2021), <https://www.grants.gov/web/grants/view-opportunity.html?oppId=334849> [<https://perma.cc/EYQ4-4LFH>].

In addition, the federal government can build its access-to-justice work to examine more broadly the serious problems with fairness in eviction proceedings. In May 2021, the Biden administration issued a Presidential Memorandum directing the Department of Justice (DOJ) to restore its work on access-to-justice and reinvigorating the White House’s Legal Aid Interagency Roundtable.<sup>56</sup> The federal government should establish both bodies as homes for investigating how eviction cases are litigated, barriers to justice, opportunities to improve the system for all parties, and its own role in advocating for changes, including in housing operated by the federal government.

**The federal government should enact the Violence Against Women Reauthorization Act of 2021 (H.R. 1620).** The reauthorization bill includes section 603, which protects landlords and tenants from penalty due to their requests for assistance or criminal activity of which they are victim or otherwise not at fault.<sup>57</sup> Section 603 ensures that municipalities cannot enforce crime-free or nuisance ordinances against landlords and that tenants will not be evicted or refused a lease renewal as a result.<sup>58</sup> The right to seek emergency assistance would be guaranteed through the mechanisms established under the Fair Housing Act.<sup>59</sup> H.R. 1620 has only passed the House; enacting these protections in the Senate is a critical step in addressing racial and gender injustice in evictions.

**HUD should adopt regulations interpreting the Affirmatively Furthering Fair Housing (AFFH) obligation and disparate impact liability under the Fair Housing Act (FHA) that can be used to challenge discriminatory eviction-related policies and practices.** The two regulations were adopted in 2015 and 2013 respectively,<sup>60</sup> but were gutted under the prior administration.<sup>61</sup> HUD has the opportunity now to create a new AFFH framework that encourages jurisdictions to identify and address barriers to fair housing caused by discriminatory eviction practices. Likewise, HUD can issue a new disparate impact regulation that would permit tenants subjected to eviction-related policies which disproportionately harm people of color, including women of color, to seek redress under the Fair Housing Act. HUD has taken important steps on both fronts by promulgating an interim final rule on AFFH,<sup>62</sup> issuing a notice of proposed rule-making on disparate impact liability,<sup>63</sup> and indicating that it will propose further rule-making on

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<sup>56</sup> Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 Fed. Reg. 27, 793 (May 21, 2021).

<sup>57</sup> See Violence Against Women Reauthorization Act, H.R. 1620, 117th Cong. § 603 (2021).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> 24 C.F.R. pts. 5, 91-92, 570, 574, 576, 903 (2015); 24 C.F.R. pt. 100 (2013).

<sup>61</sup> *ACLU Comment on Biden’s Executive Order on Fair Housing*, ACLU (Jan. 26, 2021), <https://www.aclu.org/press-releases/aclu-comment-bidens-executive-order-fair-housing> [https://perma.cc/J5BP-E5KE].

<sup>62</sup> 24 C.F.R. pts. 5, 91-92, 570, 574, 576, 903 (2021).

<sup>63</sup> Reinstatement of HUD’s Discriminatory Effects Standard, 86 Fed. Reg. 33,590 (proposed June 25, 2021) (to be codified at 24 C.F.R. pt. 100).

AFFH.<sup>64</sup> HUD should complete its rule-making expeditiously and put in place robust fair housing tools.

**In addition, HUD should adopt a new regulation or guidance stating that blanket screening policies for tenants with eviction history violate the Fair Housing Act’s anti-discrimination provisions.** Up to this point, HUD has not spoken on the fair housing implications of eviction record screening. HUD’s 2016 guidance on the discriminatory effect of blanket policies screening for criminal history serves as an example of how HUD can productively weigh in to prevent discriminatory screening.<sup>65</sup> Just as Black and Latinx people are disproportionately burdened by criminal records, they, and particularly women, are also disproportionately haunted by past evictions.<sup>66</sup> HUD should issue a similar policy that recognizes how eviction record screening discriminates against rental applicants and violates the Fair Housing Act. HUD should also make complaints it receives on this issue a priority for investigation and enforcement.

**HUD should take action focused on preventing use of the threat of eviction to perpetrate sexual harassment.** HUD has taken commendable enforcement action in addressing complaints of sexual harassment by landlords. We call on HUD to also undertake prevention measures aimed at ending harassment and the use of the threat of eviction to perpetrate it. For example, HUD should require housing providers that receive federal funds take steps to stop this abuse by adopting policies that inform tenants of their rights and how and to whom to file reports about harassment, which could include designated staff at the housing provider, public housing authorities, and HUD. HUD should also provide trainings for housing providers on how best to prevent and remedy sexual harassment committed by staff against tenants.

## **Recommendations for New York State**

**New York should ensure the speedy and equitable distribution of federal rental assistance funds and ensure that the expiration of any state moratorium, currently set for August 31, is tied to the effective distribution of funds.** State ERAP programs, including New York’s, were delayed because of the challenge of devising a plan to distribute funds, and to do so in an equitable way.<sup>67</sup> New York’s program only opened on June 1 and only gave priority to the lowest-income New Yorkers—the renters who will have the hardest time accessing it—for the first 30 days.<sup>68</sup>

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<sup>64</sup> Press Release, U.S. Dep’t of Hous. & Urb. Dev., HUD Restores Affirmatively Furthering Fair Housing Requirement (June 10, 2021), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_21\\_098](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_098) [https://perma.cc/57PA-V65E] (“HUD intends to undertake a separate rulemaking to build upon and further improve the 2015 AFFH rule by instituting a new fair housing planning process and framework that increases efficiency and improves outcomes for communities across the country.”).

<sup>65</sup> See U.S. Dep’t of Hous. & Urb. Dev., Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (2016).

<sup>66</sup> See Beiers et al., *supra* note 9.

<sup>67</sup> Jason DeParle, *Federal Aid to Renters Moves Slowly, Leaving Many at Risk*, N.Y. Times (May 4, 2021), <https://www.nytimes.com/2021/04/25/us/politics/rental-assistance-pandemic.html> [https://perma.cc/27EQ-R3EN].

<sup>68</sup> *Emergency Rental Assistance Program (ERAP)*, N.Y. Off. of Temp. & Disability Assist., <https://otda.ny.gov/programs/emergency-rental-assistance/> [https://perma.cc/YTQ6-D93D] (last visited July 21, 2021).

That expiration date should be re-assessed if funds have not yet reached all landlords/tenants who qualify.

**New York should adopt and fund the right to counsel for tenants in eviction proceedings.** New York City tenants are guaranteed this right,<sup>69</sup> but it has yet to be realized state-wide. The state Senate and Assembly have, however, recently introduced two bills that would “amend the real property actions and proceedings law and the real property law” to “establish[] the civil right to counsel in eviction proceedings.”<sup>70</sup> New York should ensure that legislation of this nature is enacted and implemented.

**The New York Attorney General should investigate and enforce a 2019 state law protecting tenants from nuisance and crime-free ordinances.** New York Civil Rights Law protects the right to seek emergency assistance and bans localities from penalizing those who exercise this right or their landlords.<sup>71</sup> This law has the potential to eliminate evictions that target domestic violence survivors and communities of color. It can only do so if it is enforced; yet, many ordinances remain on the books.<sup>72</sup> Since its enactment, there has been little action to ensure the implementation of the law. The New York Attorney General’s office should undertake a review of municipal laws and take appropriate enforcement actions where municipalities and landlords move to evict families under these ordinances.

**New York should take action to fully implement the state prohibition on using eviction records to screen prospective tenants and to strengthen the law.** New York’s legislature has banned the practice of using court history to screen tenants,<sup>73</sup> but this law also needs to be properly enforced. As part of the major tenant reform legislation passed in 2019, the provision outlawed so-called tenant blacklists, but there is little awareness about this legal protection throughout the state. Notably, the law specifically targeted the purchase of court history reports from private tenant screening bureaus by creating the presumption that a landlord rejected tenants on this basis and in violation of the law if the landlord requested or consulted court records.<sup>74</sup> The law also banned on the New York Office of Court Administration’s sale of tenant information from court records,<sup>75</sup> which had previously enabled the private tenant screening industry.<sup>76</sup>

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<sup>69</sup> See N.Y.C., N.Y., Admin. Code §§ 26-1301 to -1305.

<sup>70</sup> See S.B. 6678, 244th S., Reg. Sess. (N.Y. 2021); Assemb. B. 7570, 244th Assemb., Reg. Sess. (N.Y. 2021).

<sup>71</sup> N.Y. Civ. Rights Law §§ 90-98 (McKinney 2019). Municipalities can no longer impose nuisance ordinances that limit a person’s “right” to seek emergency assistance. *Id.* § 94. Landlords can no longer evict a victim or refuse to renew her lease on the grounds of “regulating nuisances,” *id.* §§ 91, 94, and they cannot be penalized by their municipality for failing to remove a victim from their property. *Id.* § 93.

<sup>72</sup> See, e.g., Albany, N.Y., Code §§ 255-43 to -56.

<sup>73</sup> See N.Y. Real Prop. Law § 227-f (McKinney 2019).

<sup>74</sup> *Id.* § 227-f.1 (“There shall be a rebuttable presumption that a person is in violation of this section if it is established that the person requested information from a tenant screening bureau relating to a potential tenant or otherwise inspected court records relating to a potential tenant and the person subsequently refuses to rent or offer a lease to the potential tenant.”).

<sup>75</sup> See N.Y. Jud. Law § 212.1(x) (McKinney 2021).

<sup>76</sup> An earlier 2012 reform established a more limited prohibition on the Office of Court Administration’s sale of the names and addresses of tenants party to eviction proceedings in N.Y.C. housing court. Hon. Gerald Lebovits &

The statute explicitly grants authority to the Attorney General to bring actions.<sup>77</sup> The Attorney General should use this authority and take action against landlords who violate the law by refusing to rent to a tenant because of a prior tenant-landlord proceeding.<sup>78</sup> In addition, the legislature should amend the law to also empower tenants to bring actions themselves.<sup>79</sup>

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Jennifer A. Rozen, N.Y. State Bar Ass'n, *The Use of Tenant Screening Reports and Tenant Blacklisting 3* (2020), <https://nysba.org/products/tenant-screening-reports-and-tenant-blacklisting-legalease-pamphlets/> [https://perma.cc/NS4E-EJ2Y]. The measure was inadequate because tenant screening bureaus could still gather information by matching public records with data that the OCA did sell. Hon. Gerald Lebovits & Jennifer A. Rozen, N.Y. State Bar Ass'n, *The Use of Tenant Screening Reports and Tenant Blacklisting 3-4* (2019), [https://works.bepress.com/gerald\\_lebovits/345/](https://works.bepress.com/gerald_lebovits/345/) [https://perma.cc/TPZ2-9QP8].

<sup>77</sup> N.Y. Real Prop. Law § 227-f.2 (McKinney 2019).

<sup>78</sup> As of June 3, 2021, there have been no publicly filed section 227 enforcement actions against landlords by the Attorney General.

<sup>79</sup> The New York City Council has sought to achieve this by introducing a bill that would make housing court involvement a protected category under the New York City Human Rights Law's housing discrimination provisions. *See* Intro. 85, 2018 N.Y.C. Council., Meeting (N.Y.C., N.Y. 2018). If the City Council recognizes this form of housing discrimination, tenants would likely be able to seek relief through the New York City Human Rights Commission Law Enforcement Bureau's complaint process.