

**TESTIMONY FROM NYCHA'S SENIOR ADVISOR TO THE GENERAL COUNSEL DAN HAFETZ**

**EXAMINING DOI'S REPORT ON NYCHA'S PERMANENT EXCLUSION POLICY  
COMMITTEE ON PUBLIC HOUSING WITH THE COMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS**

**MONDAY, APRIL 24, 2017 – 10:00 AM  
250 BROADWAY, 16<sup>TH</sup> FLOOR COMMITTEE ROOM, NEW YORK, NY**

Chairs Ritchie Torres and Vincent Gentile, members of the Committees on Public Housing and Oversight and Investigations, and other distinguished members of the City Council: good morning. I am Dan Hafetz, Senior Advisor to the General Counsel for the New York City Housing Authority. Joining me today are David Farber, NYCHA's Executive Vice President for Legal Affairs and General Counsel, and Gerald Nelson, Vice President for Public Safety. We are also joined by Deputy Inspector Howard Gottesman from the NYPD.

Under the leadership of Chair Olatoye and through our long-term strategic plan, NextGeneration NYCHA, we are changing the way we do business to create the safe, clean, and connected communities that all New Yorkers deserve. Thank you for this opportunity to discuss NYCHA's new permanent exclusion policies, which are designed to ensure the safety and well-being of residents while promoting stable and healthy communities.

Since we last spoke with the Council, NYCHA has made considerable progress in its approach to this complex issue. The safety of residents remains our top priority, and we have been working with a variety of partners, including the NYPD, the Mayor's Office of Criminal Justice (MOCJ), residents, and criminal justice experts, to create policies that keep residents secure while helping ensure that our city's most vulnerable families have a home they can afford.

**What Is Permanent Exclusion?**

Permanent Exclusion is a strategy used by NYCHA to promote the safety and security of its residents. Permanent Exclusion happens when NYCHA brings a

“termination of tenancy” action against a NYCHA tenant for dangerous conduct that violates the tenant’s lease agreement. Instead of terminating the lease (which would mean evicting the whole family), NYCHA can save the residents’ tenancy by excluding only the dangerous person. An excluded person is barred from residing in or visiting the apartment as long as the Permanent Exclusion is in place.

Permanent exclusion arose from federal litigation in the 1970s, when NYCHA was criticized for evicting too many families. Permanent exclusion enables NYCHA to remove individuals who threaten the safety of the community while protecting the tenancy of innocent family members who are not involved in any wrongdoing. Oftentimes, we are saving the tenancy of grandmothers, seniors, children, and people with disabilities, families who would likely be homeless if it were not for public housing.

We evaluate each case individually, looking at all the facts and evidence to assess risk to the community – from the information that we have at our disposal to the evidence we gather from our own rigorous investigations. When the head of household is the dangerous person, NYCHA seeks eviction. If the head of household is not the person involved in the offense, we believe that permanent exclusion is the best and most sensible remedy, for the safety of residents and the stability of the community. For instance, we used permanent exclusion to save the tenancy of a grandmother who was in her 70s living at Patterson Houses whose grandson, a 29-year-old unauthorized occupant, was indicted as part of a federal gang takedown in 2015.

Permanent exclusion is not permanent – tenants can apply to have it lifted, which I’ll discuss later in my testimony. It is enforced through unannounced visits by trained NYCHA staff to apartments where individuals have been excluded. If the exclusion is violated, we open a case against the tenant.

## **Our Work to Improve the Permanent Exclusion Process**

### *Enhanced Collaboration: Better Information and Faster Response*

Last year, NYCHA developed a plan to improve the permanent exclusion process, based on recommendations that the Department of Investigations (DOI) made previously and on our own assessment of the need to modernize our process. To that end, NYCHA led the development of a digital database shared by the Authority and the Police Department that ensures NYCHA gets accurate, comprehensive information on criminal cases from the NYPD quickly. Our progress in information sharing was noted in DOI's report from last month. We also worked with the NYPD to create criteria for high-priority cases concerning violence such as murder, sex crimes, robberies, assaults, and crimes involving guns. "High priority" means moving cases faster, usually within 60 days, although all investigations of dangerous offenses are a priority to NYCHA and are generally handled within several months.

These enhancements enable us to focus our resources on addressing dangerous offenses more efficiently. In the year following the DOI's 2015 report, the NYPD sent 80 percent more cases centrally to NYCHA's Law Department. A quarter of the cases received since the 2015 report were designated high priority, which we handled aggressively, leading to more permanent exclusions than in non-High Priority cases.

### *Improved Policies*

Throughout the past two years, we worked with a range of partners to an unprecedented degree to craft new permanent exclusion policies informed by social science research and data. Our new guidelines clearly spell out for residents and staff when NYCHA will pursue permanent exclusion and how it can be lifted. There are several key improvements:

- We developed clear, written guidelines for when permanent exclusion can be lifted. There are now two paths for this: evidence of changed circumstances (such as participation in a rehabilitative program) and a certain period of crime-free time, demonstrating that the individual is no longer a risk to the community. With our stakeholders, we developed a new, user-friendly application for lifting the permanent exclusion; the form is online and submission will become available through our website and the self-serve kiosks at our property management offices. By simplifying this process and lifting exclusions that are no longer warranted, we can focus our limited resources on those who present a danger to the community rather than those who do not.
- We are developing clear, written guidelines on when permanent exclusion is sought. Violent crimes are prioritized for exclusion, and NYCHA staff now have guidance on the kinds of offenses that are likely to present a risk of future harm to the community as well as the factors that may mitigate the risk. This guidance is based on the latest research, but every case that comes across our desk is assessed individually.
- We started an education and outreach campaign to better familiarize the community with these new policies and guidelines. We already met with the presidents of NYCHA's resident associations as well as our Youth Leadership Councils to discuss these changes and get their input, and there will be targeted outreach at developments with a high number of permanent exclusions. New and revised communication materials, including FAQs and posters, are part of the education campaign and can be viewed on our website.
- We will train NYCHA case handlers on the new policies and procedures, and on implicit bias, and will bring in experts on risk assessment, risk mitigation, and criminal justice reform.

We already released some of our new forms and policies, and more will be available in the coming months. In addition to publishing the permanent exclusion policies for the first time, we are publishing an annual report on our website that will provide statistics on the number of investigations of dangerous conduct we opened, permanent exclusions, terminations and other dispositions from our administrative process; the number of applications to lift permanent exclusions and the number approved.

In order to evaluate this issue from every angle and craft a new approach that best serves the community, we developed these new policies, and the associated forms and communication materials, in collaboration with our stakeholders, from residents to advocates. For instance, the Vera Institute of Justice and John Jay College professor Fritz Umbach released a report this past February that outlined a host of recommended changes to our policies and procedures, based on extensive review of our practices and significant engagement with us. This report and its recommendations are vital to grounding our practice in the best of research on risk and rehabilitation. We are bringing virtually all of these recommendations to fruition. Over the past two years, we also met extensively with residents (including victims and the formerly incarcerated, the Citywide Council of Presidents, and the Youth Leadership Councils), legal and community advocates, and the NYPD, DOI, prosecutors' offices, MOCJ, the Department of Probation, and the Department of Corrections.

### **Our Response to the DOI Report**

I'd now like to make a few points about the DOI's recent report, which received significant attention a few weeks ago. First, we object to the notion that NYCHA is harboring criminals – that is simply not true. Second, these cases are not as simple as the report would suggest, and require a fair and effective approach. Third, the report assumes that evicting an entire innocent (and vulnerable) family promotes safety – we reject this premise. Finally, the report suggests that

there's a tremendous problem. However, the reality is that the vast majority of NYCHA residents are not involved in wrongdoing – to suggest otherwise unfairly stigmatizes the entire public housing community, which is overwhelmingly a community of hardworking families, the backbone of our city.

Here are the facts that disprove DOI's claim that NYCHA allows criminals to reside in public housing. In over 5,000 visits to apartments during the period covered by the DOI report, NYCHA found approximately 130 violations of permanent exclusion, 57 of which NYCHA have final outcomes that we can share. Of those, 20 were withdrawn for good reasons (the permanent exclusion had been lifted, the tenant was deceased or the offender was incarcerated, or the inspectors were refused access by a visiting relative who didn't know they were supposed to let our investigators in). Of the violations where the excluded person was actually found in the apartment, 16 percent of the cases resulted in termination or the tenant moving out. For nearly all of the other cases, we continued the permanent exclusion for good reasons, such as the fact that the family had serious vulnerabilities and the excluded person posed little threat to the community, or there was a long history of compliance with the exclusion, so eviction based on one violation would have been unwarranted. For example, there was the case of a very ill tenant of Redfern in her 70s whose son was excluded 20 years ago. Her son picked up her medication because she was recuperating from surgery and the elevator was out of service for rehabilitation (which we confirmed). Or take the case of a 61-year-old tenant with disabilities who lives with two disabled sons and a disabled granddaughter at Lafayette Gardens. The excluded person came to the apartment uninvited, and the tenant tried to get him to leave. In light of the circumstances, NYCHA decided to give her another chance.

In many of its examples, the report concludes that NYCHA should have evicted an entire family and that NYCHA had the evidence to prove the violations of permanent exclusion. This is not accurate. In many cases cited in the report, the offender provided a NYCHA address, but we didn't find sufficient evidence that

the offender was actually living at NYCHA or we found evidence indicating that the offender was living elsewhere. For instance, the registered sex offender cited in the report listed an old NYCHA address with the State Sex Offender Registry. Upon investigating, we found no evidence he was living there; instead, we found evidence that he was living somewhere else.

Ultimately, we are guided by our responsibilities as a landlord, a provider of affordable housing to some of the city's neediest and most vulnerable families. It would be irresponsible and unconscionable to evict innocent grandmothers and children for the bad acts of friends or family – and doing so would often put them on the street or in a shelter. To illustrate: the report suggested that we should have evicted a 27-year-old mother and her two children, ages 7 and 1, because her partner, an unauthorized occupant, was charged with felony gun possession. This, we believe, would not solve the root problem of crime; it would destabilize communities rather than strengthen them.

That said, we acknowledge that there are areas where we can do better. In addition to the efforts I described to create a smarter, more efficient, and more transparent process that identifies the highest priority cases, we are reviewing our policies and procedures to see where we should act more aggressively on permanent exclusion violations. And we agree with several of the DOI report's other recommendations:

- When residents fail to show up for a hearing and seek to reopen their default, we should contest these applications more often and more systematically, when warranted by the evidence.
- When feasible and appropriate, we can do better in requiring tenants to transfer (for example, when members of the household are involved with a local gang).
- We will provide more training for our investigators (for example, in tactical safety and de-escalation strategies).

## **A Holistic Approach to Safety**

Creating safe and secure communities requires a holistic approach, with a focus beyond exclusions and evictions. Our permanent exclusion policies were developed as part of a comprehensive strategy that includes a host of other safety measures. Thanks to support from the Mayor, City Council, and Manhattan District Attorney's Office, we have invested more than \$130 million over the past three years on critical infrastructure upgrades at our developments, installing enhanced front entrance security systems and over 4,700 exterior safety lights, and bringing our total number of security cameras to more than 13,800. We launched a Public Safety Advisory Committee that enables residents, staff, the NYPD, and other partners to collaborate on creating safer communities. The Mayor's Action Plan for Neighborhood Safety brings together more than 10 City agencies with community groups and non-profits to reduce crime at 15 NYCHA developments through a variety of initiatives. Through our Family Re-Entry Program, we are working to stabilize families and communities and reduce recidivism by providing people with histories of justice involvement with the support and stable housing they need to succeed.

## **Conclusion**

Our mission is to provide safe, decent, and affordable housing that offers a vital pathway to opportunity for low-income New Yorkers. For many families, NYCHA is the difference between housing stability and homelessness. We are neither law enforcement nor the criminal justice system, but a landlord that must manage the balance of determining when eviction makes sense and when it does more harm than good, to the community and the city at large.

We're making good strides. Through enhanced collaboration with the NYPD and clearer guidelines, we're moving faster to exclude dangerous individuals. By getting smarter about who needs to be excluded and working to lift the exclusions



of those who don't pose a threat, we're promoting stability and directing our resources where they're needed most.

There are no simple, easy solutions here, but we will continue to work with residents, the NYPD, DOI, MOCJ, City Council, experts, and advocates to establish the best and most reasonable approach for the community.

Thank you for your support as we strive to fulfill our NextGeneration NYCHA vision of safe, clean, and connected communities. We are happy to answer any questions you may have.

Comments of Professor Fritz Umbach  
John Jay College of Criminal Justice  
City University of New York

Oversight Hearing of the Committee on Public Housing:

Examining the Department of Investigation's Report on  
NYCHA's Permanent Exclusion Policy

April 24, 2017

Good morning. My name is Fritz Umbach and I am Associate Professor at the John Jay College of Criminal Justice with the City University of New York. In the course of writing two books on crime and policing in New York's public housing—fifteen years of talking to residents, crunching statistics, and interviewing cops—it became clear to me what was true of policing in general was doubly true for public housing. The lessons police departments nationwide have been learning slowly in the past decade carry a special urgency for the New York City Housing Authority. Those are, first, the importance of targeted enforcement on specific crime patterns and places and, second, the inescapable value that a community's sense of police

legitimacy has for maintaining order. A wise use of NYCHA's policy of permanent exclusion can further both of those goals.

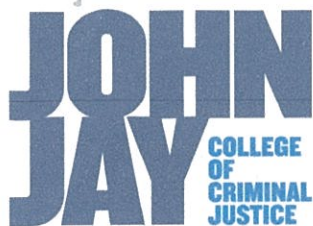
First, the value of targeted enforcement. Criminologists have consistently demonstrated that focusing on small hot spots of crime can reduce disorder without the costs to communities that dragnet policing can often bring. And gun violence in New York City clusters geographically near public housing complexes to a surprising degree

Tackling gun violence in New York will require addressing this very distinctive crime pattern. NYCHA's plan to focus its permanent exclusion policies on the crimes that contribute to gun violence is an essential component of that effort. And because NYCHA residents suffer from elevated—and at times astounding—levels of gun violence protecting some of our city's most vulnerable residents often requires excluding those who have brought pain and terror to their neighbors.

But maintaining order is never achieved through force alone; instead, governance requires the consent of the governed. And in my many conversations with police officers and public housing residents, it is clear that evicting innocent members of a household for the crimes of others violates the public housing community's sense of legitimate

exercise of authority. Such evictions might help win the battle today against a handful of offenders in a few NYCHA developments, but it could very well make winning the larger war against crime in public housing much harder for police officers and the Housing Authority itself. The police rely on the cooperation and compliance of the communities they serve, and so the possibility of wholesale evictions of households for the crimes of a few members is likely to make public housing residents *less* not more cooperative with law enforcement. Just as the police must target particular crimes rather than all forms of disorder, so too must NYCHA target its tenancy policies against particularly violent individuals rather than entire households.

I would like to thank the members of the New York City Council for the opportunity to provide testimony on an issue shaping one of the city's most valuable municipal assets: our public housing system. Please do not hesitate to contact me at the John Jay College of Criminal Justice by email ([gumbach@jjay.cuny.edu](mailto:gumbach@jjay.cuny.edu)) if I can be of further assistance.



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**Testimony of Alison Wilkey of The Prisoner Reentry Institute at  
John Jay College of Criminal Justice at the hearing on  
Oversight: Examining DOI's Report on NYCHA's Permanent Exclusion Policy of the  
New York City Council's Committee on Oversight and Investigations and  
Committee on Public Housing – April 24, 2017**

Good afternoon, Councilmembers. My name is Alison Wilkey and I am the policy director at the Prisoner Reentry Institute (PRI) at John Jay College of Criminal Justice. The mission of PRI is to spur innovation and improve practice in the field of reentry by advancing knowledge; translating research into effective policy and service delivery; and fostering effective partnerships between criminal justice and non-criminal justice disciplines.

PRI has a multi-faceted, multi-year focus on housing for the growing number of people with criminal records. PRI's work recognizes the link between homelessness and incarceration and the impact that both have on family preservation, health and well-being, the ability to support oneself and one's family, and on re-offending.

The recommendations in the report issued by the New York City Department of Investigation (DOI) in March 2017 regarding residents who are arrested is misguided and irresponsible. The recommendations work against the efforts of the City and City Council to reduce homelessness, reform the criminal justice system, and end the perpetual punishment that follows involvement in the justice system. These efforts represent shift in focus to rehabilitation and restoration, rather than a punitive approach.

The Prisoner Reentry Institute urges the City Council and NYCHA to reject all of the recommendations in the report. PRI coordinates a group of advocates, policy organizations, legal services, organizers, and service providers who have been long-concerned with the use of permanent exclusion. We issued a statement last week, endorsed by twenty-seven organizations, opposing DOI's recommendations; that statement is appended to this testimony.

DOI recommends a dangerous approach, urging NYCHA to evict families and widen the net of collateral consequences experienced by NYCHA residents involved in the criminal justice system. The entire report is based upon the fallacy that evicting or excluding NYCHA residents would make NYCHA safer. We know from research on reentry and recidivism that eviction and exclusion can fracture pro-social supports that help prevent future offending, undermine engagement with rehabilitative programming, and lead to greater insecurity and instability that may serve as a driver of future offending.

DOI failed to consult the body of evidence on reducing violence and facilitating successful reentry. We share DOI's concern with the rates of shootings in NYCHA developments, and want the problem addressed with proven methods of reducing violence. Projects such as those run by the National Network for Safe Communities at John Jay College and the Common Justice Project by the Vera Institute of Justice are aimed at preventing and addressing the harms of violence in

effective and long-lasting ways that improve the fabric of the community. The Mayor's Action Plan for Neighborhood Safety is a comprehensive strategy to reduce violence in public housing developments experiencing high rates of crime by improving the built environment, improving access to programming and jobs, and helping residents and city agencies interact to bring down crime. These are real solutions to violence and crime in NYCHA.

The recommendations in the Report will not prevent violence, but will wreak extensive harm. DOI wants to expand exclusion and increase evictions of families when a household member is arrested or convicted. New York is experiencing a severe housing crisis and the number of people and families living in shelters are at numbers never before seen. Pushing more individuals and families into shelter is irresponsible. Breaking apart families is counterproductive.

The problems with the Report are not simply in the recommendations; the methodology is flawed. First, DOI assumes that if a person arrested reports a NYCHA address, it is incontrovertible evidence that the person is living there. Residents, public housing stakeholders, and experts know that, for many people, using the address of a family member living in NYCHA is the most reliable way that they can be contacted. People who are unstably housed or living in shelters often use family addresses to get mail because it is the only way that they can be reached. Thus, when a law enforcement or government official demands an address, they use the best address at which they can receive a court notice or get a message, even when they are not living there.

The investigation is also flawed because the case examples cite only arrest reports, without regard to what occurred in the criminal courts, or the facts gathered by NYCHA or presented by the resident. They also cite the most sensational cases without providing data that would enable a reader to understand that these extreme cases do not represent the bulk of the cases that NYCHA handles. From the report, it seems clear that DOI did not speak to any residents or any experts.

In contrast to the approach taken by DOI, NYCHA has spent nearly two years evaluating its policies around permanent exclusion. This has included meetings with stakeholders, experts, and residents. Using the best evidence available on recidivism, they have come to the conclusion that exclusions should never be permanent and that, due to the harms to families, exclusion should be used as a last resort. Part of NYCHA's approach has been changing the culture in the law department at NYCHA to be thoughtful about use of exclusion, rather than using it as an automatic, mechanical unthinking, punitive response to an arrest or even a conviction. This kind of culture change takes time, it takes resources. NYCHA needs resources to support a reentry specialist to assist them. And residents needs resources to guide them through the administrative hearing process. The City Council is poised to make history by ensuring that all New Yorkers facing eviction have legal representation. Intro 214 must specifically also give NYCHA residents facing eviction in termination proceedings the same right to counsel.

The approach that DOI recommends represents a call to move backward, to regress into punitive policies that are proven failures. It puts sensationalism ahead of truth, and the desire to shock ahead of common sense. Lawmakers and agency officials must reject these recommendations, and instead support progressive policies and NYCHA's on-going efforts to address safety while supporting families and healthy communities.

April 19, 2017

**Coalition Statement Urging Rejection of the Recommendations  
of the New York City Department of Investigation's Report  
on NYCHA and Permanent Exclusion**

NEW YORK – The report issued by the Department of Investigation (DOI) on March 28, 2017 regarding the New York City Housing Authority (NYCHA) and its response to residents who are arrested represents a misguided and irresponsible approach to safety in NYCHA. The undersigned organizations urge the New York City Council and NYCHA to reject its findings and recommendations. Evicting families will not increase public safety, it will just create bigger problems. Putting armed investigators in NYCHA will not make residents feel safer, it will just raise tension with residents, and create the potential for the often tragic consequences of use of force. We are disturbed that the DOI report fails to recognize the complexities of this issue and its connections to other serious issues in the city like homelessness and alienation between the community and occupying forces.

Punitive policies, like evicting a family when someone in their household is arrested or convicted, do not protect public safety. They damage people, families and communities. When a person loses the place they live, they become homeless. Deprived of stability, they are driven toward desperation. They are separated from the family and community supports that are proven to reduce recidivism and help a person engage fully in rehabilitative programming. This approach is also at odds with research that says that violence is reduced when the connection between young people and the community is strengthened. DOI's recommendation that NYCHA pursue more evictions is another example of the failed criminal justice policies that have resulted in mass incarceration, marginalized communities, and the perpetual punishment experienced by poor people who come into contact with the law.

New York City is in the midst of an unprecedented housing crisis. Affordable housing is scarce and shelter use has reached the highest levels ever. When NYCHA excludes an individual or evicts a family, there are few other housing options. The City has been working hard to address the lack of affordable housing and devoting resources to keeping families in existing housing. It is surprising to see DOI working at cross-purposes to these efforts by recommending punitive policies that uproot families and contribute to homelessness.

While the DOI report gives numerous case examples of serious crime and failures of NYCHA to enforce past exclusions, these examples are designed to shock and instill fear at the expense of truth. DOI's case examples rely only on arrest records, without examining court records or tenant circumstances that may paint a different story. An arrest is not proof that a crime has been committed, and the U.S. Department of Housing and Urban Development has told public housing authorities that taking adverse action against tenants based only on arrest records violates Federal law. Yet, repeatedly, DOI cites cases of arrest allegations without reference to the court proceedings and whether there was a finding of guilt. This sensationalist approach to examining a complex issue ignores the full facts that should be considered by NYCHA in its decision-making process.

In many cases, the DOI asserts that a person arrested is living in NYCHA simply because they report a NYCHA address when arrested. Residents, public housing stakeholders, and experts know that, for many people, using the address of a family member living in NYCHA is the most reliable way that they can be reached. People unstably housed or living in shelters often use family addresses to get mail because it is the only way that they can be reached. Thus, when a law enforcement or government official demands an address, they use the best address at which they can receive a court notice or get a message, even when they are not living there.

NYCHA has been working earnestly with residents and stakeholders to refine their use of permanent exclusion to target individuals who pose an actual risk to the safety of tenants. They should be credited for their efforts to keep families together while contributing to resident safety. NYCHA recognizes the importance of keeping families together and preserving housing as it is addressing serious physical safety issues. DOI cavalierly criticizes NYCHA and promotes evictions, urging NYCHA to throw children, teenagers, parents, and grandparents out of their homes while their colleagues in city government are trying to find housing for and stabilize families. It doesn't make sense, and it doesn't build on what we know about effective approaches to reducing violence.

It does not appear, based on the report, that DOI spoke with any NYCHA residents or community members during its investigation. While it is true that the number of shootings on or near NYCHA developments is a matter of great concern, residents know better than anyone that NYCHA needs investments to fix broken locks at their buildings and increased economic opportunity in their communities. These are real solutions to the problem. DOI's senseless call to evict families and put people on the streets helps no one.

DOI calls for NYCHA investigators to be armed with bulletproof vests, despite the fact that they can cite no instance where an investigator faced any harm while doing an inspection. Again, if DOI had consulted with residents or given any thought to what residents want, they would know that residents don't want their buildings more militarized.

The approach that DOI recommends represents a call to move backward, to regress into punitive policies that are proven failures. It puts sensationalism ahead of truth, and the desire to shock ahead of common sense. Lawmakers and agency officials must reject these recommendations, and instead support progressive policies and NYCHA's existing efforts to address safety while supporting families and healthy communities.

#### Endorsing Organizations:

The Bronx Defenders  
Brooklyn Defender Services  
CASES (Center for Alternative Sentencing and Employment Services)  
Coalition for the Homeless  
College and Community Fellowship  
Community Service Society of New York



The Correctional Association of New York  
The Drug Policy Alliance  
Federal Defenders of New York  
The Fortune Society  
Friends of Island Academy  
FUREE (Families United for Racial and Economic Equality)  
GOLES (Good Old Lower East Side)  
Hour Children  
Housing Court Answers  
Housing+Solutions  
JustLeadershipUSA  
Legal Action Center  
The Legal Aid Society  
MFY Legal Services, Inc.  
New York Civil Liberties Union  
Office of the Appellate Defender  
Osborne Association  
The Prisoner Reentry Institute at John Jay College of Criminal Justice  
Urban Justice Center, Community Development Project  
VOCAL-NY  
Youth Represent



JUSTICE FROM COURTROOM TO COMMUNITY

**Written Comments of Charles Nuñez, Youth Represent  
New York City Council  
Joint Hearing of the Committee on Committee on Public Housing and the  
Committee on Oversight & Investigations  
Oversight: Examining DOI's Report on NYCHA's Permanent Exclusion Policy.  
Int. No. 1207: In relation to reporting on persons who have been permanently excluded from  
public housing.  
April 24, 2017**

Youth Represent is a holistic youth defense and advocacy organization. Our mission is to ensure that young people affected by the criminal justice system are afforded every opportunity to reclaim lives of dignity, self-fulfillment, and engagement in their communities. We provide criminal and civil reentry legal representation to young people age 24 and under who are involved in the criminal justice system or who are experiencing legal problems because of past involvement in the criminal justice system. Our interdisciplinary approach allows us to understand the full extent of our clients' legal and practical challenges so we can effectively represent them as they make the journey from courtroom to community. Thank you to the committee for the opportunity to provide testimony.

As a legal representation that has been representing families in New York City Housing Authority (NYCHA) termination hearings for a decade, Youth Represent knows the complex, sacrificial decisions families are forced to make during termination hearings, and the aftereffects these decisions have on clients, their families, and the community. Furthermore, as a Community Advocate for Youth Represent, who lived in NYCHA for almost 20 years, and personally experienced NYCHA's permanent exclusion policies, we assert that DOI's recommendations must be rejected.

On March 28, 2017 The City of New York Department of Investigations (DOI) released a follow up report on the "roles of the New York City Police Department ("NYPD") and the New York City Housing Authority ("NYCHA") in controlling violent and narcotics crime in public housing by removing criminal

offenders from NYCHA developments in order to protect public safety”.<sup>1</sup> The report includes multiple problematic recommendations, none of which are based on current research on public safety or crime control. In this testimony I will focus on three of those recommendations—that evictions should be more aggressive, extend to more people, and that the role of armed law enforcement should be expanded. These three recommendations completely contradict the City’s current initiatives to decrease the City’s homelessness epidemic, and enhance community and police relations, and furthermore completely contradict NYCHA’s current approach - and the consensus approach within the reentry community - towards reintegrating people with system involvement into our society.

## **Recommendations 5 & 7: Evict More Families from NYCHA Apartments**

*Recommendation 5* advises NYCHA to evict entire families when NYCHA identifies a that a resident has been *charged* with violent offenses in the past, and that the leaseholder “knew or should have known” of that person’s criminal activity.<sup>2</sup> *Recommendation 7* by the DOI, also advises NYCHA to evict entire households, but this time whenever an individual blatantly and repeatedly violates a Permanent Exclusion stipulation. Permanent Exclusion is a policy within NYCHA’s administration. NYCHA retains the right to evict an entire household based on the arrest of one member of the household, or even of a visitor. In these instances, NYCHA typically offers the head of household the option of avoiding eviction by signing a permanent exclusion stipulation, which effectively bans the person accused of a non-desirable act from the housing development for life.

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<sup>1</sup> Peters, Mark G. *DOI Finds Continued Failures to Remove Dangerous Criminal Offenders from Public Housing*. Rep. no. 10-2017. New York City: Department of Investigations, 2017. Print.

<sup>2</sup> Peters, Mark G. *DOI Finds Continued Failures to Remove Dangerous Criminal Offenders from Public Housing*.

Throughout DOI's report, DOI states that these new measures need to be taken in order to protect public safety. DOI is correct in identifying that there is an issue with crime in and around public housing. Statistics have shown that crime rates on or within 150 feet radius from NYCHA develops are much higher than crime rates for the rest of the city.<sup>3</sup> Therefore, DOI is correct in identifying a problem, but wrong on their suggestions on how to address that problem. DOI fails to cite research that connects increased eviction to increased public safety; but there are studies that link homelessness to an increase in crime.<sup>4</sup> A report conducted by New York City Criminal Justice Agency (CJA), tracked all 170,946 people arrested in NYC during 2013, and the 11,885 individuals who reported being homeless at time of arrest in 2013. CJA tracked all these people for a year after being released from custody – the defendants that were not released within 2013 or 2014, were not tracked because of their continued incarceration. Sixty percent of the people who reported being "street homeless" were rearrested within a year, and fifty percent of the people who reported being "shelter homeless" were rearrested within a year; while twenty percent of their non-homeless counter parts were rearrested. From CJA report, one can conclude that if DOI's recommendation was implemented, actually more crimes would be committed, instead of increasing public safety.

There is no evidence that the effect of DOI's recommendations, if implemented, would be decreased violent crime. But one effect is certain: countless families would become homeless. This is because entire families—including children as well as elderly and infirm adults—would be made homeless due to one tenant's encounters with the criminal justice system. DOI cited an instance in which a 29 year old "FV" was indicted on multiple federal charges along with 47 other people allegedly

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<sup>3</sup> Herrmann, Christopher. *Bullets in the Projects: New York City Public Housing as Gun Violence Hot Spots*. Rep. New York: CUNY John Jay College of Criminal Justice, 2016. Print.

<sup>4</sup> Peterson, Richard R. *Re-Arrests of Homeless Defendants in New York City*. Rep. no. 39. New York : New York City Criminal Justice Agency, 2016. Print.

affiliated with a gang. FV was arrested in his grandmother's apartment, where he was an authorized occupant. NYCHA proceeded to Permanently Exclude FV, from his grandmother's apartment, but DOI finds this action insufficient. DOI believes the grandmother should become homeless because of her grandson's actions.<sup>5</sup> This action would not only be inhumane, but would be disastrous for our city. As of January 2016, over 403,00 people reside in NYCHA Developments, "37.6% of households are headed by persons age 62 or older" and 27.3 percent of people living in NYCHA were younger than 18 years old.<sup>6</sup> Given these statistics and the lack of affordable apartments in the city, we can infer that if NYCHA resorts to evicting entire households because of the action of one occupant, many elderly New Yorkers, and children, would become homeless, financially lacking any options for housing other than the shelter system.

## **Recommendation 9: NYPD Conducting Permanent Exclusion Searches and Investigations**

As a NYCHA resident for almost 20 years, and as someone who has two brothers currently Permanently Excluded, recommendation 9 by the DOI, is one of the most disturbing. DOI recommends that NYCHA transfer the duties of their Field Investigators—the Investigators who search the apartments of every household that has signed a Permanent Exclusion stipulation—to NYPD, or to allow Field investigators to carry bulletproof vest, radios and guns. DOI suggests that this is necessary because NYCHA Field Investigators are under staffed, under protected, and because Field Investigators cannot

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<sup>5</sup> Peters, Mark G. *DOI Finds Continued Failures to Remove Dangerous Criminal Offenders from Public Housing*

<sup>6</sup> Facts About NYCHA." *Facts About NYCHA*. New York City Housing Authority, 11 Apr. 2016. Web. 20 Apr. 2017. <<http://www.citationmachine.net/mla7/cite-a-website/manual>>.

arrest or physically remove Permanently Excluded individuals from the apartment. This recommendation is extremely disturbing for three reasons.

First, these searches are already conducted with a lack of respect for tenants residing in the apartments being searched. They are intrusive and the investigators show complete disregard for personal privacy. If adopted, DOI's recommendations would amplify the intensity and aggression of these searches, plus add the element of a firearm into the equation. As a former NYCHA resident who has personally experienced over 5 of these searches, I know how inhumane they can be. They start with two NYCHA Field Investigators aggressively knocking on the apartment doors. Once an individual opens the door they pull out a sheet of paper, with a mugshot of the Permanently Excluded individual, and state that they are there to search for the excluded person. They move living room furniture. They open kitchen cabinets – with no permission or forewarning. Once they arrive to a bedroom, that's really where personal privacy is totally ignored. They open closets and sometimes push clothing to the ground. Twice I personally got into an argument with investigators for opening my drawers – highlighting to them that my brother couldn't possibly fit there. Both instances followed with the Investigators conceding to my request, but with remarks that they have the authority to search the whole apartment under NYCHA regulations.

The second reason implementing this recommendation is problematic, is because it would create scenarios where a NYCHA resident can possibly be shot or killed by a NYPD officer or armed NYCHA Field Investigator. As stated earlier these searches are already contentious, but if we allow the NYPD, who have shown to lack community relations and respect for the Black and Latino community – who as of January 2016 make up 90.1% of NYCHA's population<sup>7</sup> – tensions are bound to rise even more.

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<sup>7</sup> Facts About NYCHA." *Facts About NYCHA*. New York City Housing Authority, 11 Apr. 2016. Web. 20 Apr. 2017. <<http://www.citationmachine.net/mla7/cite-a-website/manual>>.

This recommendation makes me recall a time when two field investigators mistakenly identified me as my brother who is permanently excluded. My mother let the investigators into our apartment. Once they saw me they asked if I was my bother. Upon telling them no, they deliberated amongst themselves and requested I show them identification. My height and weight matched the height and weight the investigators had listed on the paper with my brother's mugshot. At this point they began threatening my mother and I that I had to leave the premise, and that they would have to report this to NYCHA. My mother was hysterical, began crying, and insisted that the investigators view the family portraits in the living room to prove that most of my brothers and I have a high resemblance to each other. Viewing the various family portraits they began to believe us a little, and asked for me to show them another set of identification. I proceeded to show them all the Identifications in my wallet while my mother retrieved my passport. At this point they believed us, and apologized for the accusation. I'm sure that's not the first time a sibling was mistakenly identified as the excluded individual, and if NYPD was conducting the search, I'm not so sure that things would have ended in our favor.

Finally, DOI does not cite any instance where a Field Investigator was attacked during a search, or any other facts that might support the need for searches to be conducted by an armed NYPD officer or armed NYCHA Field Investigator. DOI has recently criticized how NYPD interacts with people with mental health needs, yet they're suggesting that the NYPD search over 5,000 apartments, where it is highly likely they will encounter some people with mental health issues.<sup>8</sup> We have seen this go terribly wrong, in the case of Deborah Danner who was shot by an NYPD officer who entered her home.

## **Conclusion**

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<sup>8</sup> Peters, Mark G., and Philip K. Eure. *Putting Training Into Practice: A Review of NYPD's Approach to Handling Interactions with People in Mental Crisis*. Rep. New York City: Department of Investigations, 2017. Print.

Ultimately, without considering the extensive research that has been conducted on people returning home after contact with the criminal justice system, or speaking to a variety of stakeholders – residents, housing advocates, neighbors, legal organizations, advocacy organizations – DOI based their recommendations from arrest reports.<sup>9</sup> This narrow view led to outrageous recommendations that would put vulnerable people at risk of homelessness or possibly even fatal interactions with investigators. DOI’s recommendations, and the process they used to construct these recommendations, are the opposite of the approach research has shown to decrease recidivism and promote public safety. Furthermore, DOI’s process in developing their recommendations also contradicts the steps NYCHA is taking to address the same issues DOI is attempting to address - public safety. NYCHA’s process has been thoughtful and has taken into account input from all stakeholders. They worked with independent researchers who used the most current academic research on recidivism and desistance to develop policy recommendations. We don’t agree with all of the policies that came out of this process, but we respect that they are the result of research and deliberation, not a reaction to isolated events. The recommendations from DOI must be rejected for the reasons stated above, and collectively we need to build on the policies reform NYCHA is currently constructing.

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<sup>9</sup> Peters, Mark G. *DOI Finds Continued Failures to Remove Dangerous Criminal Offenders from Public Housing.*



**TESTIMONY OF LEGAL SERVICES NYC  
IN SUPPORT OF INTRO 1207 OF 2016**

**New York City Council  
Committee on Public Housing  
Committee on Oversight & Investigations**

April 24, 2017

Good morning. My name is Maura McHugh Mills. I am a deputy director of the Housing Unit in the Brooklyn office of Legal Services NYC, the largest provider of free civil legal services in the country. Spread throughout the five boroughs, with an emphasis on direct legal services and broad-based litigation arising from community involvement and feedback, Legal Services NYC represents thousands of families and individuals with a host of legal problems, including housing, family law, domestic violence, education, immigration, foreclosure, consumer law, and public benefits. We regularly provide assistance, advocacy, and legal representation to community groups and individuals, including those referred by the courts, community partners, and elected officials. Many of our clients reside in NYCHA public housing, and thus are affected by NYCHA's tenant termination and permanent exclusion policies. We welcome the opportunity to testify before the Committees on Public Housing, and on Oversight and Investigations to address the impact of these policies.

I would like to thank Committee Chairs Torres and Gentile, as well as the various Committee members, for the opportunity to testify today. Your leadership on Public Housing and Oversight issues is appreciated by the staff and advocates of Legal Services NYC and residents throughout the City. I also would like to specifically thank Council Members Gibson, Torres, Chin, Rosenthal, and Mendez, for their sponsorship of the bill that is the subject of this hearing.

Legal Services NYC is glad that the Council is addressing the need for NYCHA to provide publicly available reports related to permanent exclusions. Such reports would provide much needed data on the effects of NYCHA's policies and practices in this area. This data is particularly needed to ensure that future NYCHA policy is based on facts and not on the punitive assumptions underlying DOI's misconceived and ill-considered recent report.

We are deeply troubled by the DOI's recommendation that NYCHA should more aggressively prosecute tenancy terminations and evict more families from public housing. Using numbers based on arrest allegations alone and ignoring the negative impacts of homelessness on stability and safety, the DOI completely disregards the complex issues surrounding the safety and community of public housing residents.

The DOI's recommendations are dangerous for the NYCHA community since they push swifter, more punitive action based on an alleged crime without examining any criminal court

records or waiting for a determination that any crime was committed. In the past, and often still, NYCHA imposes permanent exclusion against individuals for minor offenses and even when criminal charges have been dropped. While an individual is entitled to free legal counsel in the criminal case, because no such right exists in the eviction proceeding most tenants proceed unrepresented. When NYCHA residents are navigating this process alone, they often forgo a hearing and stipulate to exclusion of the individual implicated before any determination of guilt.

At Legal Services NYC, we serve many New York City Housing Authority residents and their families to help them battle the collateral civil consequences that can result from mere contact with the criminal justice system. We have represented countless clients whose criminal cases have been quickly resolved or the charges have been dropped. In these instances, when we can slow the proceeding down enough for the criminal case to come to resolution, NYCHA will settle the case, appropriately, without permanent exclusion based on the determination that this alleged offender did not commit a crime. While this used to be the case for only those tenants who were fortunate enough to have legal representation, NYCHA has recognized the limitations of this practice and has made a point to move away from exclusions based solely on allegations. DOI should defer to NYCHA who is already deliberately working on improving its process rather than illogically encouraging more aggressive prosecution.

DOI is also pushing for an increase in NYCHA's power to investigate and police with a recommendation that NYCHA investigators be armed. DOI's suggestions do not reflect any discussion with the NYCHA communities, residents, or tenants-rights advocates. Had DOI talked to residents or advocates, they likely would have discovered that an influx of armed officers do not make residents feel secure. While there's no showing in the report that the investigators are under any threat that requires weapons, it is common sense that an increase in weapons can lead to an increase in fatal confrontations. We at Legal Services NYC believe that this militarizing NYCHA will do nothing to increase the safety of the public housing residents, but will undoubtedly break down the trust between NYCHA and the community, increase NYCHA's over-reporting of alleged crimes and, consequently, result in more arrests and over-imposition of permanent exclusion.

Certainly NYCHA has a valid interest of ensuring the safety of its residents, and we support that interest. Further, we are cautiously trusting NYCHA's insistence that it is challenging itself to think more holistically before pushing permanent exclusion. While DOI clearly ignores the value of balancing the complex needs of the community, its report gives no indication that NYCHA's current permanent exclusion policy achieves the goal of making the community safer, let alone the stricter and punitive policy it suggests. Further, it fails to causally link the increase in alleged crime in NYCHA projects to its failure to impose permanent exclusion. It also neglects to compare the outcome for families who are put on probation vs. those who are subject to permanent exclusion, and ignores the devastating and documented impacts of excluding individuals without a real determination as to whether or not the offense negatively impacts the safety of the community. Instead, the DOI attempts to intimidate

NYCHA into adopting a more punitive approach by relying on flawed data to suggest that crimes are on the rise.

Militarizing NYCHA in hopes of evicting more residents does not make communities feel safe. But, by failing to engage in a discussion that considers the negative consequences of increased evictions and permanent exclusion, namely: increasing homelessness in a city already experiencing a housing crisis, breaking up families with no referral to services or other supports, and forcing NYCHA residents to live under the fear of armed inspectors banging on their doors for the duration of their tenancies, the DOI has irresponsibly advocated for a policy change that would make the community less safe and create more instability.

### **Intro 1207**

With all of this in mind, I will now turn to the substance of Intro 1207. This bill addresses the pressing need for transparency in NYCHA's eviction proceedings for non-desirability. This bill addresses the pressing need for transparency in NYCHA's eviction proceedings for non-desirability. However, if the bill were passed as it is currently written, NYCHA would be required to produce incomplete reports lacking in needed context because Intro 1207 only requires data on permanent exclusions. Significantly, permanent exclusion is only one of several possible outcomes of a tenancy termination proceeding. These proceedings can result in total eviction, probation, permanent exclusion of one or more family members, a referral to social services, or dismissal. Thus, a full evaluation of the effect of tenancy termination proceedings for non-desirability would require information about NYCHA's use of each of these remedies. However, even with a full reporting of the numbers, without additional comparative data showing the effect of exclusion or termination on these families after the exclusion occurs, it is impossible to accurately evaluate its effectiveness. Numbers can be spun either way. To actually measure the effect on the community and its safety would require comprehensive studies on the effects of permanent exclusion on families, on re-offending, and on crime levels.

Legal Services NYC welcomes the proposed reporting requirements because they will be an essential tool to hold NYCHA accountable for its policies and practices. But we are also concerned that these reports will be used unfairly to impeach the judgment of NYCHA's law department and independent hearing officers, as the DOI did with its recent reports. Without considering the totality of the circumstances and including detailed data beyond arrest reports and facts regarding rehabilitation, it's impossible to gauge the level of effectiveness of NYCHA's policies.

Ultimately, we hope that the council appreciates that NYCHA's use of permanent exclusions as an alternative to termination is not a sign of weakness. Make no mistake, permanent exclusions evict New Yorkers who most need the stability that public housing and strong families provide. As such, permanent exclusion is a drastic remedy that should be

employed judiciously. Excluded tenants do not disappear; they are cast out onto the streets and into desperate circumstances.

The Final Report on the Governor's Commission on Youth Public Safety and Justice, issued in response to Governor Cuomo's 2014 call to improve the justice system for youth offenders while promoting community safety, recommends that the State to develop a continuum of effective community-based services at the local level to maintain more high-risk youth in the community and reduce recidivism. We commend NYCHA for its pilot program to reintegrate offenders as a step in the right direction to effectively balancing the many interests at stake.

At a time when the federal government is returning to the discredited, punitive policies of the past, it is vital for New York City to uphold the humane values that have evolved over the past 8 years. Unlike the DOI, NYCHA understands the necessity in balancing the interests of the community and must be empowered to continue to make decisions that recognize the importance of keeping families intact while keeping the community safe.

Respectfully submitted,

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**TESTIMONY OF THE LEGAL ACTION CENTER**

Joint Public Hearing  
Committee on Oversight and Investigations and  
Committee on Public Safety  
Examining DOI's Report on NYCHA's Permanent Exclusion Policy

April 24, 2017

Hello, my name is Sebastian Solomon. I am the Director of New York State Policy at the Legal Action Center. The Legal Action Center is the only public interest law and policy organization in New York and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from substance use disorders, individuals living with HIV/AIDS, and people with criminal records. I am also the co-chair of the Coalition of Reentry Advocates, a group of organizations that seeks to eliminate barriers that keep too many people with criminal records out of jobs and housing and a member of the steering committee for the “NYCHA Permanent Exclusion Working Group,” which has been collaborating with the New York City Housing Authority (NYCHA) on changes to its “permanent exclusion” policy through which NYCHA has barred thousands of individuals from living in or even visiting NYCHA properties, often based on an arrest or low-level conviction.

I want to thank the Committees for organizing a hearing on this important topic. I am here to express my support for NYCHA and all the work that they have done and to strongly disagree with DOI’s recommendations. Over the last several years, NYCHA has, commendably, taken steps to reduce some of the harm caused by its policies towards those accused or convicted of involvement in the criminal justice system. The first step came in 2014 with the creation of the family reentry pilot. The pilot allows individuals released from incarceration in the prior three years to rejoin their families in NYCHA apartments as long as they engage in at least six months of social services. Although individuals on the permanent exclusion list were not initially allowed to participate, The pilot has been an obvious success. None of those who have participated in the program has been convicted of a new crime. This underlines both that most people who may have engaged in criminal behavior in the past do not continue to do so and that receiving housing and the support of family and of services, where needed, can help to ensure a successful reentry into society.

Then, almost two years ago, NYCHA agreed to meet with and listen to advocates opposed to its permanent exclusion policy. As a result of these discussions, NYCHA realized that many of its permanent exclusion practices were counterproductive, poorly carried out and harmful to families. In response to this realization, NYCHA did what many government (and other) entities are loath to do – it fully opened itself up to researchers, who were allowed to examine the current policies and how these policies were being carried out. It let these researchers publish what they found. NYCHA is using these recommendations to develop new policies regarding its handling of permanent exclusion. Throughout this process, NYCHA continued working with advocates, seeking their input and allowing them to respond to and comment on any new proposals. While the developing proposals do not go as far as we and others might like, we are happy to see that NYCHA has opted to move away from its prior practice of excluding individuals for even minor offenses, choosing instead to focus only on those it deems a threat to the NYCHA community.

In its report, the Department of Investigation (DOI) seems to want NYCHA to go in the opposite direction, not only excluding anyone arrested for a crime, no matter how minor and without concern for whether the individual was convicted, but even terminating the tenancy of entire families because of the alleged behavior of one of its members, even where the family had no involvement in the alleged criminal activity. To support its argument, DOI uses a limited number of extreme examples, rather than the realities involved in most cases.

DOI also wants the NYPD to report every arrest to NYCHA, no matter where it occurred and whether it poses a threat to the NYCHA community, seemingly with the goal of terminating the tenancy of even more families. Families would again be cruelly and unnecessarily kicked out of their

homes based on the fact that the individual who was arrested gave the police a NYCHA address. Yet, there are many examples of individuals using a NYCHA address even if they no longer live in the apartment.

DOI's recommendations may also place NYCHA in violation of guidance issued in November 2015 by the U.S. Department of Housing and Urban Development (HUD) informing public housing authorities and owners of federally-assisted housing that arrest records alone could not be the basis for denying admission, terminating assistance or evicting tenants, and to remind these entities of their obligation to safeguard the due process rights of applicants and tenants and to comply with the civil rights requirements in the Fair Housing Act (FHA).<sup>1</sup> Current permanent exclusion practices may already run afoul of this guidance but DOI's proposals would make it even more likely that NYCHA was violating its tenants' rights under the FHA.

Furthermore, DOI's recommendation to increase the number of exclusions and terminations underlines their lack of understanding of the factors that can prevent criminal activity. Separating individuals from their families and pushing them into unstable housing does not increase public safety. It merely shifts the problem elsewhere while, at the same time, removing the social supports, such as family, that have been repeatedly demonstrated to reduce the likelihood of continued criminal behavior. At the same time, such policies can serve to destabilize families who may lose caretakers or others sources of support.

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<sup>1</sup> <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>



DOI's recommendation that NYCHA more aggressively enforce stipulations also demonstrates a lack of interest in the realities of these violations. While there are various ways in which stipulations are violated, those who work with tenants and their excluded relatives know of many instances in which individuals violated their exclusion in order to provide assistance to family members in times of need. At other times, these violations occur because families agree to stipulations without representation and without fully understanding the meaning of what they are agreeing to. NYCHA understands these nuances and, therefore, uses its discretion to determine whether violations of exclusion might in fact increase the risk to other tenants before seeking to terminate the tenancy of more families.

Separately, DOI is also recommending that enforcement of permanent exclusion be conducted by law enforcement agents or that NYCHA agents be equipped with guns and bulletproof vests. Yet, there is no evidence of field investigators having been attacked or placed at risk under the current policies. Enacting DOI's recommendation would result in NYCHA residents feeling even more under siege than many already do. It would reinforce the view that residents are more dangerous than other New Yorkers and so must be monitored much more aggressively. Home visits looking for excluded individuals are already incredibly intrusive as field investigators comb through entire apartments looking for evidence that an excluded individual is living there illegally. Tenants who have excluded relatives must endure such visits for the rest of their tenancy, even when there is no evidence of any wrongdoing. Yet, DOI wants families who have done nothing wrong to feel even more like criminals and wrongdoers.

People who have been involved with the criminal justice system face a number of significant obstacles. These obstacles prevent them from succeeding as full community members by limiting

their access to essential needs and benefits, including family, shelter, work, education, civic participation, and financial stability. Finding and securing quality, stable housing is among the most difficult challenges faced by this population. In a City that already suffers from a significant lack of safe, stable affordable housing, those who have been involved in the criminal justice system are often among the populations least able to find a safe place to live. While New York State has had laws protecting people with criminal records from discrimination in employment and licensing for nearly forty years,<sup>2</sup> no such protections exist for housing. As a result, landlords regularly deny housing to applicants with criminal records irrespective of the severity of their crime, the time that has elapsed since it was committed, or evidence of rehabilitation. In fact, landlords in New York can even deny an individual housing based solely on an arrest that did not result in a conviction.

As a result, people with criminal records often end up in unsafe housing conditions, such as three-quarter houses, or in the shelter system. In fact, analyses of the NYC Department of Homeless Services shelter populations indicate that 20 to 23% of homeless adults have been incarcerated at some point in the two years prior to entering shelter and about 19% of persons released from NY State prisons listed shelters as their first known address.<sup>3,4</sup> Yet, safe, stable housing is essential to the ability of individuals to participate in society and is a key component in avoiding recidivism. Housing enables individuals to achieve the stability that they need to find and maintain employment. Housing also enables people to take care of their health, which in turn also contributes significantly to their ability to work. This impact is particularly significant for the large numbers of individuals

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<sup>2</sup> Governor Hugh L. Carey's Memoranda Approving Article 23-A, McKinney's Session Laws 1976, p 2458, "The great expense and time involved in successfully prosecuting and incarcerating the criminal offender is largely wasted if upon the individual's return to society his willingness to assume a law-abiding and productive role is frustrated by senseless discrimination."

<sup>3</sup> Burt et al. 1999; Eberle et al. 2001; Kushel et al. 2005; Schlay & Rossi 1992

<sup>4</sup> Navarro, Mireya. November 14, 2013. Ban on Former Inmates in Public Housing Is Eased. The New York Times.

who have been involved in the criminal justice system who suffer from chronic health conditions such as HIV/AIDS, substance use disorders and mental disorders. When this population is unable to take care of its health, it is more likely to use expensive resources such as hospitals and detox facilities. It is also more likely to have further involvement with the criminal justice system.

In the New York housing context, where the City is working desperately to increase the number of affordable housing units and decrease the record numbers of individuals in shelter, NYCHA is one of the few already existing stocks of affordable housing stock. Rather than supporting recommendations that would push more people into shelters, New York should support NYCHA's efforts to reform permanent exclusion by making it more humane and much more focused on preserving the safety and well-being of tenants, as is their obligation as a landlord, rather than acting a law enforcement agency, punishing people for low-level arrests and for behavior that does not negatively impact the well-being of the NYCHA community.

DOI's recommendations are also the antithesis of New York's criminal justice policies over the last 25 years. A number of recent reports, including "A More Just New York City" from the Independent Commission on New York City Criminal Justice and Incarceration Reform (also known as the Lippman Commission) and "Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety" have applauded New York for the incredibly successful way in which it has responded to illegal activity. While the rest of the country resorted to mass incarceration to confront crime, New York went in the opposite direction. Even as crime rates in New York City saw massive decreases, New York City's jail population decreased from a high of 21,688 in 1991 to an average of 9,790 during FY16, a 55% reduction. Meanwhile, the State as a whole saw a decrease in its prison population from 72,899 in 1999 to 51,744 at the beginning of

2016, a drop of 29%. The vast majority of this reduction came from New York City, which saw the number of people it sends annually to state prison drop by more than 60% from its high. These reports, in particular the Lippman Commission report emphasize the success of strategies such as alternatives-to-incarceration and other behavioral health and employment strategies as much more successful in improving public safety than the more punitive approaches used elsewhere.

DOI's proposals also run counter to all that the City Council (and the Mayor's Office) has sought to accomplish over the last three years. Over this period, the Council has taken a host of actions to reduce incarceration and assist those with prior involvement in the criminal justice system to successfully reintegrate into the community, including: establishing the Independent Commission on New York City Criminal Justice and Incarceration Reform and widely endorsing its recommendation for closing Rikers, decriminalizing low-level offenses, greatly increasing support for alternatives-to-incarceration and reentry services, creating a city-wide bail fund, introducing reforms to increase the likelihood of bail, pushing to improve conditions on Rikers and to clear low-level warrants, and passing the Fair Chance Act, among others.

Instead of investing in more aggressive enforcement tactics, NYCHA and New York City should be investing in improving the physical conditions of NYCHA buildings and in bringing social services and opportunities for advancement to developments and the communities in which they are located. Current policies already make many NYCHA residents feel like NYCHA and the City do not value them. Making investments of this kind could help change this reality. Policies of this sort would be much more successful in increasing public safety than the tactics of aggressive enforcement being recommended by DOI.

We urge NYCHA and the Council to reject a return to the failed aggressive enforcement policies that DOI is recommending. These would take New York in a direction from which it long ago moved away. Instead, the City must continue on the path of investing in fair policies that improve conditions in public housing, increase dignity of tenants, and that maintain the safety of individuals, the NYCHA community, and all New York City residents without unfairly penalizing individuals and families and limiting access to stability and safe housing.

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URBAN JUSTICE CENTER  
COMMUNITY DEVELOPMENT  
PROJECT

Date: April 24, 2017

123 William Street, 16<sup>th</sup> Floor  
New York, NY 10038

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To: New York City Council  
Committee on Public Housing  
Committee on Oversight & Investigations

From: Fransini Alberto-Vasquez, CUNY Service Corps Intern  
Diana Chacon, CUNY Service Corps Intern  
Rajiv Jaswa, Staff Attorney

Re: **Oversight: Examining DOI's Report on NYCHA's  
Permanent Exclusion Policy.**

**Int. No. 1207: In relation to reporting on persons  
who have been permanently excluded from public  
housing.**

Thank you to the Joint Committees on Public Housing and Oversight & Investigations for providing this opportunity to testify on the Department of Investigation's March 2017 Report titled, *NYCHA is Still Failing to Remove Dangerous Criminals from Public Housing*.

The Community Development Project (CDP) was started in 2001 as a project of the Urban Justice Center. CDP supports grassroots and community-based groups in New York City in the areas of capacity building, consumer justice, housing justice, neighborhood change, participatory research and policy, and workers' rights. Our mission is to strengthen the work of grassroots and community-based groups in New York City to dismantle racial, economic and social oppression.

CDP supports NYCHA's ongoing collaboration with numerous stakeholders—including residents, community-based organizations, legal services providers, and social sciences experts—to revise its Permanent Exclusion Policy. These stakeholders have invested time and resources working with NYCHA to develop a revised policy that responsibly accounts for not only public safety, but also HUD's fair housing guidance,<sup>i</sup> residents' due process rights, their interests in family and community stability, and the importance of reentry opportunities for formerly incarcerated individuals.<sup>ii</sup>

Amidst stakeholders' good faith efforts to draw upon actual social science research and data, and to help modernize NYCHA's approach to Permanent Exclusions,<sup>iii</sup> DOI has interjected with sensationalistic and somewhat misleading reports. The March 2017 Report reads as a maverick attempt by an outside agency, ostensibly charged with investigating graft and corruption, seeking to ensure NYCHA remains entrenched with the punitive policies of bygone administrations. The implicit premise is that, for the problems facing low-income communities of color, punishment is still the primary solution.

***DOI's Report misleadingly presents statistical and narrative data to augment the appearance of criminality among public housing residents***

The Report opens with statistics contrasting the decline in reported crime activity across New York City with the slight statistical increase in major index crimes at NYCHA developments.<sup>iv</sup> From the outset, DOI seems to be invoking the retrograde stereotype of public housing residents as having a heightened criminal propensity. The Report asserts that "violent crimes continue to be disproportionately concentrated in public housing,"<sup>v</sup> without acknowledging that such statistical disparities may also be attributable, in part, to the discriminatory policing practices at NYCHA developments that

resulted in a 2015 class-action settlement,<sup>vi</sup> as well as underlying racial and economic disparities between public housing residents and New Yorkers that tend to strongly correlate with markedly higher arrest and incarceration rates.<sup>vii</sup>

Both the statistics and individual termination cases cited throughout DOI's Report belie its titular premise—that *NYCHA Is Still Failing to Remove Dangerous Criminals from Public Housing*. In fact, much of the report reveals a rather different preoccupation: DOI wants NYCHA to more aggressively pursue evictions against the *family members* of criminal defendants, as opposed to merely removing individual criminal defendants from public housing.

The Report cites numerous termination cases brought against residents who themselves appear to be law-abiding citizens, but who DOI believes should have been evicted solely because someone in their family was arrested and then inaccurately provided a NYCHA address to the arresting officers. DOI calls specific attention to four cases at Ingersoll Houses where NYCHA withdrew termination charges against leaseholders “because of a lack of demonstrated ties between the [criminal] defendants and the subject NYCHA apartments.”<sup>viii</sup>

Indeed, many of the most sensational narratives in the Report involve circumstances which could not have been avoided by NYCHA more aggressively pursuing eviction proceedings. Nearly two pages are devoted to describing criminal incidents involving family members of former Van Dyke Houses resident Tanya Jones; in a footnote, DOI then acknowledges that the reason NYCHA “failed” to terminate her tenancy was because she apparently had already moved to Nazareth, Pennsylvania years before many of the criminal incidents in question.<sup>ix</sup>

Such cases are indicative of a broader pattern: between January and October 2016, 936 or 67% of all termination proceedings involving



alleged criminal activity “were unsubstantiated or found to be less serious than originally believed and settled with tenancy probation or withdrawn.”<sup>x</sup>

*DOI's Report effectively blames NYCHA for “failing” to violate its residents' due process rights*

If anything, the statistics and case outcomes cited by DOI show that NYCHA is failing to violate its residents' due process rights.

NYCHA's Termination of Tenancy procedures developed through a series of federal consent decrees that incrementally brought agency adjudications into conformity with basic due process requirements.<sup>xi</sup> The *Escalera* and *Tyson-Randolph* consent decrees remain so central to the procedural architecture that full citations to both cases appear in the Form NYCHA still sends to every tenant along with any notice of termination charges.<sup>xii</sup>

Among the critical due process protections implemented by the *Tyson-Randolph* consent decree was that:

where the charges against the tenant are based on nondesirable acts of a person other than the tenant, it is the Housing Authority's responsibility to prove that the offender occupied the premises at the time of the offense. If this is proven, the tenant may still show that the offender has permanently moved out by the time of the hearing.<sup>xiii</sup>

Amazingly, DOI managed to produce an entire report scrutinizing the efficacy of NYCHA's termination procedures without even a passing reference to “due process,” or the *Escalera* and *Tyson-Randolph* consent decrees. Reading it, one may easily forget that

NYCHA's power to deter criminal activity through stiff penalties remains subject to constitutional limits. But as Courts have repeatedly reminded us: "Combatting the drug crisis infesting the City's housing projects is an important objective. It can, and should be, accomplished, however, without violating or disregarding the due process rights of the tenants."<sup>xiv</sup>

*The Report's second-guessing of individual case outcomes raises significant legal concerns*

DOI also directs unwarranted criticism towards NYCHA's Impartial Hearing Officers for their purported leniency when residents violate a Permanent Exclusion. The Report seems to intimate that such leniency contravenes judicial precedent, and that Courts independently endorse termination as an appropriate penalty. But the case law cited merely affirms a general principle of judicial *deference*, not judicial *endorsement* of any specific punishment—a Hearing Officer's decision "must be upheld unless it shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law."<sup>xv</sup>

Unlike New York's Courts, DOI shows little regard for the discretion, expertise, or impartiality of Hearing Officers. The Report's presentation of a few sensational incidents seems designed to erode Hearing Officers' legally mandated impartiality, and embarrass them into becoming more punitive.

*NYCHA appropriately declined to follow DOI's recommendations to the extent they overemphasize punitive approaches*

While there have clearly been problems with NYCHA's past implementation of its Permanent Exclusion policy, contrary to DOI's recommendations, more punishment is not the solution. The Vera

Institute's February 2017 Report proposes recommendations informed by actual social science research, and which should be pursued regardless of DOI's sensationalistic interjections. We would like to conclude by calling specific attention to the Vera Report's proposal for "Alternatives to Exclusion" in cases involved young adults:

Young adults who are actively engaged in diversion programs or probation by the justice system should be considered for a probationary disposition by NYCHA instead of exclusion, pending completion of the program. Though statistics on recidivism support the unique treatment of young adults, there is a compelling moral argument for avoiding punishing young adults as if they are adults. Preventing exclusions when possible allows young people to rebuild credibility with NYCHA while remaining home with their families. When young adults are involved in a program, they not only demonstrate an effort to avoid criminal behavior but are also under an additional layer of supervision that can help mitigate against offending in the future. Conversely, justice system involvement and a destabilization or loss of housing can make successful transition to adulthood much more difficult, increasing the likelihood of future criminal activity.<sup>xvi</sup>

Rather than indulging DOI's calls for increased funding to enforce Permanent Exclusions, we urge City Council to consider helping NYCHA develop and fund "Alternatives to Exclusion" programs that have been proven to achieve better outcomes in all regards.

Thank you for considering our testimony.

Sincerely,

Fransini Alberto-Vasquez  
*Intern*  
*CUNY Service Corps*

Diana Chacon  
*Intern*  
*CUNY Service Corps*

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*Staff Attorney*  
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<sup>i</sup> See Dep't of Housing & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate-Related Transactions* (April 4, 2016), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=hud\\_ogcguidappfhastandcr.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf).

<sup>ii</sup> See M. diZerega et al., Vera Institute of J., *Report to the New York City Housing Authority on Applying and Lifting Permanent Exclusions for Criminal Conduct* (Feb. 8, 2017) at 4, available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/report-to-the-new-york-city-housing-authority-on-applying-and-lifting-permanent-exclusions-for-criminal-conduct/legacy\\_downloads/nycha-lifting-permanent-exclusions-for-criminal-conduct-v3.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/report-to-the-new-york-city-housing-authority-on-applying-and-lifting-permanent-exclusions-for-criminal-conduct/legacy_downloads/nycha-lifting-permanent-exclusions-for-criminal-conduct-v3.pdf).

<sup>iii</sup> See *id.*, at 10–17 (citations omitted), proposing evidence-based risk assessment and harm reduction criteria to inform NYCHA's prioritization of cases for Permanent Exclusion and evaluation of applications to lift existing Permanent Exclusions.

<sup>iv</sup> M. Peters, Commissioner, NYC Dep't of Investigation, *NYCHA Is Still Failing to Remove Dangerous Criminals from Public Housing* (March 2017) at 2, available at [http://www1.nyc.gov/assets/doi/downloads/pdf/2017-Press\\_Release/10NYCHAMOU03-27-17wreport.pdf](http://www1.nyc.gov/assets/doi/downloads/pdf/2017-Press_Release/10NYCHAMOU03-27-17wreport.pdf).

<sup>v</sup> *Id.*

<sup>vi</sup> See generally Stipulation of Settlement and Order, *Davis et al. v. City of New York et al.*, No. 10 Civ. 0699 (S.D.N.Y. 2015).

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vii “Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration.” HUD, *Guidance on Application of Fair Housing Act Standards*, *supra* note i, at 3 (citations omitted).

viii M. Peters, *supra* note iv, at 21 n.105.

ix *See id.* at 15–17, n.73.

x *Id.* at 9–10.

xi *Escalera, et al v. New York City Housing Authority*, 425 F. 2d 853, *certiorari denied*, 400 U.S. 853 (1970), consent decree on remand docketed March 25, 1971, 67 Civ. 4307 (S.D.N.Y. 1971, D.J. Mansfield); *Joseph Tyson Sr. v. New York City Housing Authority and Myrdes Randolph v. New York City Housing Authority*, 73 C 859, 74 C 1856, 74 C 2556, 74 C 2617 (S.D.N.Y 1976, Metzner, J.).

xii *See* New York City Housing Authority, *Grievance Procedures* (NYCHA 040.302 [Rev. 8/97]), at 3, *available at*

[https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure\\_040302.pdf](https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf).

xiii *Robinson v. Finkel*, 194 Misc.2d 55, 70 (Sup. Ct., N.Y. County 2002) (citing *Randolph* consent decree, ¶ 6[a]).

xiv *Brown v. Popolizio*, 166 A.D.2d 44, 57 (1st Dep’t 1991).

xv *Featherstone v. Franco*, 95 N.Y.2d 550, 554 (2000) (citations omitted).

xvi M. diZerega et al., *supra* note 2, at 10–11.

## Comments of the Vera Institute of Justice

### Oversight Hearing of the Committee on Public Housing: Examining the Department of Investigation's Report on NYCHA's Permanent Exclusion Policy

April 24, 2017

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Good morning. My name is Margaret diZerega and I'm a project director within the Center on Sentencing and Corrections at the Vera Institute of Justice (Vera).

Beginning in 2016, the New York City Housing Authority (NYCHA) partnered with Vera and Professor Umbach from John Jay College of Criminal Justice to assist with NYCHA's internal review of its permanent exclusion (PE) policy.<sup>1</sup> The review sought to understand how NYCHA could better balance its commitments to the safety of the community, the stability of its tenants' families, and the successful reentry of formerly incarcerated people. The process culminated in a release of a report to NYCHA with 12 recommendations on new approaches to the application and lifting of PE (full report appended). The recommendations, which were informed by an extensive review of existing policies and practices around PE, interviews with NYCHA staff, meetings with NYCHA residents, and social science research on risk mitigation and future offending, include:

- limiting permanent exclusion policies to focus only on violence or conduct that involves a serious threat to safety;
- defining how people become eligible for lifting permanent exclusions through demonstrating a reduced risk of recidivism or waiting a certain amount of time; and
- clarifying and communicating the process for getting an exclusion lifted.

I'll be focusing on a few of the recommendations today.

Through this process, we learned a great deal about permanent exclusion cases and its impact. Permanent exclusion cases are complex, with more to the story than the underlying criminal charges, and affects the excluded person, their family members, and the community at-large. As it is often the case with matters related to the criminal justice system, there are many nuances and gray areas with PE cases. A thorough review of all facts and evidence as well as discretion is necessary when reviewing a PE case to produce the greatest outcome that inflicts the least amount of harm.

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<sup>1</sup> For more related to the review of NYCHA's permanent exclusion policy, see Margaret diZerega, Gregory "Fritz" Umbach, and John Bae, *Report to the New York City Housing Authority on Applying and Lifting Permanent Exclusions for Criminal Conduct* (New York: Vera Institute of Justice, 2017).

Permanent exclusion has many implications, but its connection to homelessness is a central concern. NYCHA utilizes PE to limit the number of families who are subject to eviction because of the actions of one individual who—in many instances—is not a member of the household.<sup>2</sup> Increasing the use of evictions would destabilize countless families, place them on a path to the City's overburdened shelter system, and create more problems as families are torn apart and deprived of safety and security that a home provides.

NYCHA is very interested in improving the safety of its residents. The approach that NYCHA has taken to revise the way PE can be lifted is one example. Providing additional paths for people to lift their permanent exclusions and return home after incarceration helps to reduce recidivism rates, reduces the likelihood of homelessness amongst a vulnerable population, and reunites families. For people returning to our communities from prison or jail, returning home decreases their chances of recidivating. With a stable place to live, they are more likely to find employment, further their education, and, most importantly, have the support of their family members as they adjust back into society. Another approach is NYCHA's Family Reentry Program, which reunites formerly incarcerated people with their loved ones in NYCHA. The program has received praise nationally for its innovation and success: since 2013, only two people recidivated among 101 participants.<sup>3</sup>

Over the last five years, I've seen a shift in NYCHA's orientation around matters related to criminal justice and the safety of its residents. NYCHA's approach improves the lives of the families in NYCHA instead of passing hasty judgments without the foresight of consequences. In keeping with our recommendations, NYCHA understands the importance of making this policy more transparent for its residents, legal service providers, and others, and is taking steps to implement it successfully. We have worked closely with NYCHA to help them think through their plan for operationalizing these changes and to educate residents about these changes. They are seeking guidance and partnership from residents, as evidenced by extensive engagement sessions NYCHA has held around the PE policy with NYCHA's Citywide Council of Presidents and Youth Advisory Boards and with other stakeholders. Improving relationships results in better communication, impacting how residents and NYCHA can collaborate to improve public safety. Increasing the use of evictions will only thwart any progress that has been made.

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<sup>2</sup> NYCHA reviewed a sample of permanent exclusion cases in 2015 and found that nearly 65 percent of permanently excluded people were unauthorized residents, see diZerega, et al., 2017, 8.

<sup>3</sup> For more information about NYCHA's Family Reentry Program, please see John Bae, Margaret diZerega, Jacob Kang-Brown, Ryan Shanahan, and Ram Subramanian, *Coming Home: An Evaluation of the New York City Housing Authority's Family Reentry Program* (New York: Vera Institute of Justice, 2016). At the time of the evaluation, only one person out of 85 people was convicted of a new charge during their participation in the program.

I would like to thank the members of the New York City Council for the opportunity to provide testimony on an issue that impacts the City's most vulnerable residents and communities. I welcome further opportunities to provide assistance and insight on this matter. Please do not hesitate to contact me at the Vera Institute of Justice via phone (212-376-3082) or email (mdizerega@vera.org) if you would like any further information.



February 2017

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# Report to the New York City Housing Authority on Applying and Lifting Permanent Exclusions for Criminal Conduct

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*Margaret diZerega, Gregory "Fritz" Umbach, John Bae*

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(212) 334-1300. An electronic version of this report is available for download on Vera's web site, [www.vera.org](http://www.vera.org).

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## Acknowledgments

Gregory "Fritz" Umbach is an Associate Professor of History at the City University of New York John Jay College of Criminal Justice. The authors would like to acknowledge the work of Kayla Robinson and Ivy Kough in the development of this report, and the leadership of Dan Hafetz at NYCHA.

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# Introduction

The New York City Housing Authority (NYCHA) is conducting an internal review of one aspect of its termination of tenancy policies: applying and lifting permanent exclusions (PE) for criminal conduct on NYCHA grounds or involving NYCHA residents. Permanent exclusion occurs when a NYCHA tenant—rather than risk eviction—agrees to enter into a stipulation that those associated with the resident who have engaged in non-desirable behavior are barred from entering the apartment. It also occurs as a result of an administrative hearing where NYCHA seeks to terminate the tenancy, but the hearing officer opts to preserve the tenancy and bars the offending person from the apartment. The policy review and reform comes on the heels of recent efforts in conjunction with New York City Mayor Bill de Blasio's administration to improve the safety of NYCHA residents. It also aligns with guidance and opinions from the United States Department of Housing and Urban Development (HUD), which prohibits the use of arrests without further investigation as evidence of criminal activity when determining admissions to public housing, and which calls for individualized assessments of a person's criminal conduct or dangerous behavior.<sup>1</sup>

NYCHA partnered with the Vera Institute of Justice (Vera) and an Associate Professor of History at John Jay College of Criminal Justice, Gregory "Fritz" Umbach, to gain a deeper understanding of how NYCHA might better balance its varying commitments to the safety of the public housing community, the stability of its tenants' families, and the successful reentry of formerly incarcerated people. This partnership began in January 2016. This report addresses permanent exclusion for criminal activity and does not consider NYCHA's use of permanent exclusion for other forms of non-desirable conduct as defined by NYCHA which may include nuisance conduct and threats to health. The authors reviewed the existing policy on PE, the practices associated with applying and lifting PE, and the social science research on future offending and risk mitigation. This report is also informed by the perspectives of NYCHA residents who were knowledgeable of the PE process, NYCHA staff involved in applying and lifting PE, legal service providers, and community organizers.

# Summary

This report aims to guide NYCHA as it revises its policies and practices around PE proceedings. The following recommendations reflect an extensive review of existing policies and practices around PE, interviews with NYCHA staff, a meeting with NYCHA residents, and social science research on risk mitigation and future offending.

Based on the findings, the authors recommend the following:

## ***Permanent exclusion process (on page 10)***

1. Restructure prioritization of PE cases to focus on drug dealing and violent cases, and be more transparent about new priorities moving forward.
2. Clarify what ages, crimes, and mitigating factors will be relevant in disfavoring and/or deferring PE proceedings, to the extent that distinctions by age do not violate federal, state, or city law.

## ***Lifting permanent exclusion (on page 12)***

3. When NYCHA moves to exclude a person, documents associated with the disposition (e.g., PE stipulation, hearing disposition, or other informational materials) should include clear language describing the process for lifting the exclusion.
4. Implement two paths to lift PE based on evidence of reduced risk of future violence.
5. Create a mechanism for NYCHA's investigator to contact the head of household to let him or her know that lifting PE on the grounds of "passage of time" alone may be a viable option. This outreach should initially focus on households that signed PE stipulations prior to the policy changes that NYCHA is currently considering.
6. Revise forms and documents associated with PE so that they are written in clear and accessible language. NYCHA documents and communications associated with PE should also be available in the multiple languages commonly spoken by NYCHA's residents.
7. Revise the current application form for a lifting of PE so that it contains explicit reference to the two pathways available for the lifting of PE: providing evidence of reduced risk of future violence or passage of time as sufficient evidence of reduced risk.
8. If NYCHA denies a request to lift a PE, NYCHA should make available its reasoned decision for its judgment and create an avenue for appeal and review.

## ***Transparency and accountability (on page 19)***

9. Launch a communications campaign to help tenants understand PE and the corresponding lifting process and make documents available online.

10. Ensure the NYCHA staff involved in applying PE and reviewing applications to lift PE have the appropriate training and knowledge to make informed decisions.
11. Offer implicit bias training for NYCHA staff working on the PE process as the new policies and procedures are implemented.
12. Assist the public in understanding the new PE process by providing relevant statistics on the types of termination of tenancy actions NYCHA initiates; the outcomes of those actions; the number of applications made to lift exclusions; and the outcomes of such applications.

## Background

As a landlord, NYCHA must take into account strategies to address the distinct crime challenges facing its developments that threaten the safety of its tenants.<sup>2</sup> Tenants and other neighborhood stakeholders not only consistently express elevated fear of crime in surveys, but also make demands to NYCHA and public officials for increased efforts to ensure their safety.<sup>3</sup> Certain forms of violent crime—particularly those related to narcotics trafficking—pose a security risk to public housing communities. As an extensive body of research makes clear, tackling such crimes can produce real security gains and are not simply a futile game of “whack-a-mole.”<sup>4</sup> However, these crimes cannot be adequately addressed through regular police enforcement and may require other mechanisms to safeguard communities, such as through exclusion and eviction.

When residents are found to be in violation of their tenancy because of criminal behavior, NYCHA has procedures in place to remove such residents. However, NYCHA cannot act capriciously. Households subject to termination of tenancy proceedings are afforded certain rights. Significantly, through *Escalera v. New York City Housing Authority*, tenants facing termination of tenancy have due process protections.<sup>5</sup> Since 1974 through the *Tyson-Randolph* consent decrees, NYCHA must also offer alternative sanctions other than full termination of tenancy to innocent tenants faced with evictions based on the independent criminal behavior of family members no longer in the household.<sup>6</sup>

Concerned with increasing crime rates on its developments, NYCHA moved to modify the *Escalera* requirements in the early 1990s. In particular, NYCHA sought to utilize New York State’s Bawdy House Law—statutes that allow landlords and public officials to evict tenants using their property for illegal purposes—to evict residents involved or engaged in drug trafficking more swiftly.<sup>7</sup> Although the Legal Aid Society of New York challenged the modifications, claiming that its broad application violates the “rights of innocent family members,” NYCHA prevailed.<sup>8</sup>

At the national level, changes in eviction policy for public housing residents further broadened the class of people at risk of eviction. In 1998, Congress amended the Anti-Drug Abuse Act of 1988 to allow housing authorities nationally to evict residents for:

“any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control.”<sup>9</sup>

In 2002, the U.S. Supreme Court’s decision in *HUD v. Rucker* confirmed the law’s broad reach, supporting housing authorities’ ability to evict tenants for the drug-related criminal activity of anyone in their household, regardless of what efforts a tenant might have made to stop the behavior or where the offense might have taken place. Although *Rucker* and the amended Anti-Drug Abuse Act grant housing authorities broad eviction powers, neither requires that housing authorities oust tenants for the lawless behavior of household members.<sup>10</sup> Thus, NYCHA attempts a balanced approach by offering “permanent exclusion” to residents: rather than evict an entire household when confronted with serious criminal behavior, NYCHA generally has made the head of household’s lease conditional on the offending individual’s exclusion from that apartment, an exclusion that can be lifted.<sup>11</sup> Lifting an exclusion only means that the formerly excluded person may now visit that apartment—for the person to live in the apartment, the head of household must apply to add that person to the lease.

## The process of being permanently excluded

When NYCHA has deemed a person’s action to be “non-desirable,” NYCHA has the authority to initiate termination of tenancy proceedings. While NYCHA may prefer excluding one individual to evicting the whole family, it must still bring a termination action against the entire household associated with the person found to have engaged in “non-desirable” actions. NYCHA defines non-desirability as an action by a tenant or person occupying the premises of a tenant, which can include:

- an action that poses a danger to the health and safety of other tenants;
- conduct on or in NYCHA that is in the nature of a sex or morals offense;
- behaviors or actions that are a source of danger or can cause damage to NYCHA employees, premises, or property;
- behaviors or actions that are hazardous to the occupation of other tenants; or
- a common law nuisance.<sup>12</sup>

Permanent exclusion is a potential *outcome* of termination of tenancy proceedings and effectively removes the person who has engaged in non-desirable behavior while protecting the rest of the household members from losing their NYCHA apartment. While the majority of permanent exclusions result from a person's alleged criminal behavior, NYCHA's role as landlord means it is often able to make exclusion decisions based on a holistic consideration of the evidence before the criminal justice system—which has different procedural considerations, institutional goals, and social functions—renders a criminal judgment or reaches a final disposition.

NYCHA works closely with the New York City Police Department (NYPD), which refers information regarding people arrested on or near NYCHA grounds for serious crimes to NYCHA for further investigation. Many of these cases will lead to termination of tenancy actions—but not all. Although NYCHA investigates all cases referred by the NYPD, it does not proceed toward termination on every case. NYCHA may decide not to proceed on a case for a variety of reasons, including:

- NYCHA determines that it cannot establish a connection between the alleged perpetrator and the tenant of record;
- there is insufficient proof of the offense to warrant proceeding;
- duplication of cases (i.e., there was already a termination of tenancy case pending); or
- NYCHA does not deem the crime or the individual perpetrator to be a substantial enough risk as to warrant action.

If NYCHA brings a termination action based on a person's non-desirable activity, it can offer the household a settlement. Settlement options include: (1) probation; (2) permanent exclusion; or (3) permanent exclusion with probation. PE stipulations reached by settlement include consent by the tenant to permit inspections by NYCHA to ensure compliance with the terms of the PE. If the matter proceeds to a hearing, the potential dispositions a hearing officer can reach include: (1) termination of the tenancy; (2) a finding that the tenant is eligible to continue their residency; (3) a finding that the tenant is eligible to continue their residency subject to probation; or (4) a disposition of the permanent exclusion of a person, who may not be an authorized resident. A permanent exclusion disposition by a hearing officer does not permit NYCHA to conduct inspections to ensure compliance. It is important to note that a case can be withdrawn at any point after the termination action is initiated. (See Figure 1 on page 9 for a flow of cases that result in a permanent exclusion.)

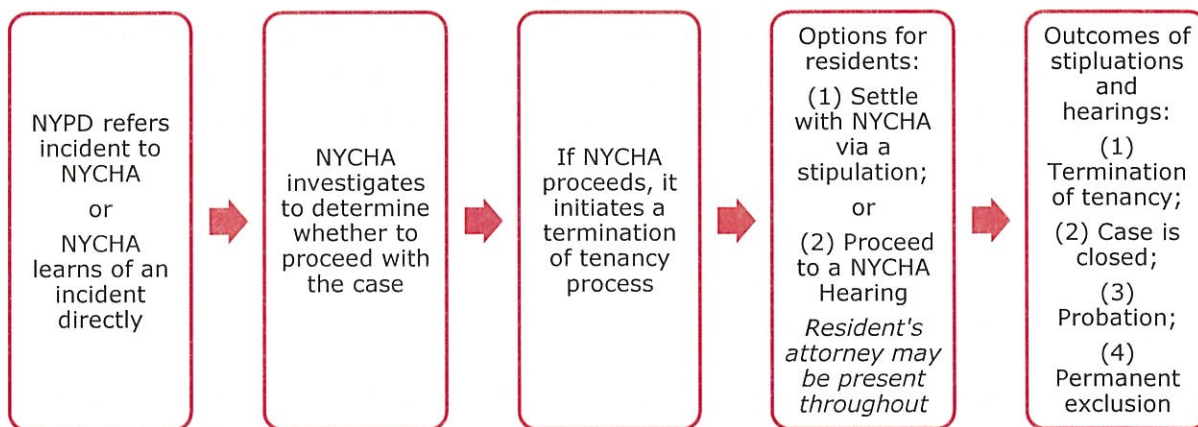
In 2014, out of over 1,321 non-desirability cases closed, more than half were closed after investigation and before a tenant was even charged. Moreover, in a sample of cases reviewed by NYCHA in 2015, approximately 65 percent of people excluded were unauthorized occupants at the time of the exclusion. And while the authors are recommending improving the process for lifting PE, some residents have been



successful in navigating the current process. In 2014, 200 people applied to lift a PE and 85 (43 percent) were lifted.

**Figure 1.**

**General flow of cases that result in a permanent exclusion**



## Guiding principles

NYCHA should ground its policies and procedures on principles that take into account its role as a landlord and its commitment to the safety of all its residents. Accordingly, the recommendations in this report aim to adhere to the following principles:

1. Policies and practices should honor NYCHA's obligations to provide safe housing for tenants through a focus on reducing the risk of violent harm to the public housing community. NYCHA's policies and practices should not be shaped by a desire for punishment, moral judgment, or concern over criminal activity that poses little risk of violence.
2. Policies and practices should follow, where possible, the best available social science research and research on risk.
3. Policies and practices should recognize minors and young adults have unique needs, and PE for younger residents must be handled differently than the PE of adult residents, where permitted by law.

4. Policies and practices should be clearly stated, be made broadly and readily available, and be transparently applied. Likewise, this principle argues that NYCHA should collect, preserve, and make public statistics regarding its use of PE.
5. Policies and practices should aim to use PE only as a policy of last resort.
6. Policies and practices should reflect the fact that PE is a civil rather than criminal remedy. Accordingly, legitimate policies and practices that contribute to NYCHA's ability to meet its obligations as a landlord will vary, at times, from those of the criminal justice system.
7. Policies and practices should reflect that NYCHA's first obligation is as a landlord to its tenants of record and that PE is an alteration to the lease-based relationship with those tenants.

## Recommendations

### Permanent exclusion process

Recommendation 1: Restructure prioritization of PE cases to focus on drug dealing and violent cases, and be more transparent about new priorities moving forward.

NYCHA should prioritize cases for exclusion that involve drug dealing and violence. Drug dealing can be a catalyst for violence for the seller, the buyer, and bystanders. In particular, drug dealers' vulnerability to robbery encourages them to arm themselves and so narcotics markets often increase the risk of violence broadly in a neighborhood by increasing the number of guns in a community. Moreover, even when no actual drug crimes are being committed, the crowds of armed people that accompany drug markets often instill fear into neighbors, discouraging the informal social control necessary to keep communities safe.<sup>13</sup> Responding to such threats wisely requires NYCHA to consider a number of factors, including the person's level of involvement with the criminal enterprise, the nexus between the drug dealing and NYCHA property or apartments, the frequency of the drug dealing, and the extent to which the drug dealing involves or poses a risk of violence.

Gang involvement associated with drug dealing should be given particular consideration in PE proceedings and should be prioritized when NYCHA is considering exclusions in an attempt to minimize and/or mitigate future violence. Social science research has established links between gang involvement, drug dealing, and increased violence. For example, gang members who sell drugs engage in violence at a higher rate than gang members who do not sell drugs and drug sellers who are not gang involved.<sup>14</sup> Factors in assessing relevant gang involvement include the nature of the conduct the gang engages in (e.g., violent or intimidating conduct or drug dealing), and the extent and nature of the offenders' involvement with a gang.

Additionally, NYCHA should consider the number of prior convictions a person has when making decisions on permanent exclusion. Prior convictions are associated with higher rates of recidivism, with people with lengthier and more serious criminal offense histories posing a greater risk than people with shorter and minor criminal histories.<sup>15</sup>

This effort is meant to preserve public safety and minimize residents' risk of harm. It is also meant to maximize efficiency in NYCHA's exclusion process for serious cases so that people who pose significant threats to public safety are removed from the development quickly, minimizing the risk for future violence to occur. These recommendations align with Mayor de Blasio's strategy to boost safety in NYCHA housing. In December 2015, Mayor de Blasio called for a streamlined exclusion process that would expedite removing the most dangerous people from NYCHA and improve communication between NYCHA and the NYPD to accurately and quickly identify people whose criminal act warrants exclusion.<sup>16</sup>

**Recommendation 2: Clarify what ages and crimes will be disfavored and/or deferred for PE proceedings to the extent that distinctions by age do not violate federal, state, or city law.**

It is important that NYCHA informs its approach toward exclusion based on research showing that young adults—defined here as people between the ages of 16 and 24—have unique needs.<sup>17</sup> Recent behavioral and neuroscience research confirms that our brains continue to develop into our early 20s, particularly the prefrontal cortex which regulates impulse control, reasoning, and decision-making.<sup>18</sup> This can lead to a “maturity gap” where young adults have more similarities to adolescents in thought and behavior, yet may have fully developed adult bodies.<sup>19</sup> During this time, young adults have difficulty regulating emotions in intense situations, leading to risk-seeking behavior and decisions made with little heed for the future.

As a large body of research makes clear, criminal offending peaks in the mid-to late-teenage years and then rapidly declines in the early 20s.<sup>20</sup> Although the timing of such peaks vary by gender, reporting source, crime type, and socio-economic status, criminologists broadly agree the age-curve matters for offending.<sup>21</sup>

When a young adult is being considered for permanent exclusion, NYCHA should defer the exclusion when possible. Young adults who are actively engaged in diversion programs or probation by the justice system should be considered for a probationary disposition by NYCHA instead of exclusion, pending completion of the program. Though statistics on recidivism support the unique treatment of young adults, there is a compelling moral argument for avoiding punishing young adults as if they are adults. Preventing exclusions when possible allows young people to rebuild credibility with NYCHA while remaining home with their families. When young adults are involved in a program, they not only demonstrate an effort to

avoid criminal behavior but are also under an additional layer of supervision that can help mitigate against offending in the future. Conversely, justice system involvement and a destabilization or loss of housing can make successful transition to adulthood much more difficult, increasing the likelihood of future criminal activity.

However, there may be legal barriers preventing NYCHA from taking age into account, such as anti-discrimination laws. Instead, NYCHA should consider creating a policy that, regardless of age, takes a person's participation in diversion or alternatives-to-incarceration programs, or other risk-reducing programs, into account when determining whether to seek exclusion.

### Lifting permanent exclusion

Recommendation 3: When a stipulation is decided, include clear language in the stipulation or in associated documents describing the process for lifting the exclusion.

The process to lift PE should be more transparent and accessible for tenants, particularly given potential differences in the NYCHA charge and the criminal justice case disposition charge and the timing of those decisions. Materials given to tenants should include language explaining when the excluded person is likely to qualify to have a PE lifted based on the amount of time that has passed (see Path 2 on page 14).

Recommendation 4: Implement two paths to lift PE based on evidence of reduced risk of future violence.

NYCHA should consider instituting two primary paths toward the lifting of a PE. Both paths would be based on demonstrated evidence of significantly reduced risk for future violent crime posed by the excluded person. With the support of the head of household, people would be eligible to apply under either path.

The first of these paths would allow residents to demonstrate that excluded people have transformed their lives and no longer pose an elevated risk of violence to the NYCHA community; the second would allow a resident to point to the passage of time with no criminal justice system contact by the excluded person to make such a demonstration. This dual-path approach contains key advantages for the excluded person and for NYCHA. Path 1 permits the lifting of PE sooner where merited and provides guidance on the kinds of relevant factors that NYCHA will consider as part of a holistic analysis. Path 1 would be an available option any time after the exclusion.

Path 2 alleviates the burden of proof for the applicant when the excluded person has not committed crimes for a number of years. The factors and frameworks NYCHA selects under the proposed paths should serve as guidance, not strict rules. Path 2 would become a viable option once the threshold of time with no criminal conduct is met; it would not be automatic.

### **Path 1: Evidence of reduced risk of future violence**

NYCHA should allow excluded people to demonstrate that they have turned their lives around in a sustained fashion to such a degree that they no longer pose a heightened risk of violence to the NYCHA community. Such applications for the lifting of a PE through this path should be considered by NYCHA at any time after a PE's imposition.

Examples of such evidence include:

- a positive record while incarcerated (e.g., program participation, low rates of incidents, etc.);
- completion of a higher education degree or vocational program;<sup>22</sup>
- steady employment or holding of a position of meaningful responsibility for at least two years in the case of adults or one year in the case of minors;<sup>23</sup>
- steady school attendance and passing grades with no adverse school events (suspension or other disciplinary action) for one year for minors;<sup>24</sup>
- successful completion of established drug rehabilitation program;<sup>25</sup>
- completion of a restorative justice program;<sup>26</sup>
- completion of an anger management program;<sup>27</sup>
- letters of support from community groups, parole officers, employers, or other responsible parties in a position to vouch for the excluded person. Such letters should be written using a letter template made readily available by NYCHA in order to insure both the verifiability and relevance of this support to NYCHA's consideration of the application;
- assuming a sustained, significant, and primary caregiver role for an ailing family member given the impact of taking on such responsibilities in changing one's behavior and self-identity;<sup>28</sup>
- having been selected for or having completed a New York State Department of Corrections and Community Supervision work release program; or
- a determination by the criminal justice system that someone else committed the crime underlying NYCHA's PE action.

NYCHA should make clear to applicants, however, that no one piece of evidence will be considered as sufficient to justify the lifting of a PE and that NYCHA's assessment will consider the totality of evidence made available to NYCHA by the applicant.

## **Path 2: Evidence of reduced risk of future violence through passage of time**

Although significant empirical research has demonstrated recidivism by the formerly incarcerated generally occurs fairly quickly after release, it is equally true that, with the passage of time, the risk of violent reoffending by those with a criminal record approaches that of the risk posed by those without a record.<sup>29</sup> NYCHA's policies and procedures related to applying and lifting a PE should reflect both of these realities.

NYCHA should create "look-back" periods for excluded people that reflect the period of time without justice involvement before their statistical risk of arrest for a violent offense approaches that of a member of the general population. Should an excluded person remain free of justice system involvement for the length of their respective look-back period, NYCHA should—as a matter of policy—look favorably upon an application for a lifting of PE.

Because PE is a civil action, NYCHA can and should base its decisions regarding the offense underlying a PE—and therefore, the appropriate look-back period—on all legally available evidence rather than simply the disposition of the criminal justice system. Such a holistic approach to a person's risk of violence is appropriate and necessary given NYCHA's obligations as a landlord to maintain the safety of its tenants.

Finally, look-back periods should be different for young people, given the special housing needs and recidivism risks associated with this population. (See Recommendation 2.) As noted before, however, anti-discrimination case law may render impossible such a recommendation.

### **Criminal record factors influencing recidivism**

Knowing whom NYCHA should keep out, and whom (statistically) they can safely let back in is no easy actuarial task. Any such calculation of risk carries weight and meaning only to the degree it reflects the demographics of the excluded and the nature and frequency of their offenses. The young, for example, recidivate more frequently than the old; people convicted of theft more than people convicted of murder; and those with longer criminal histories more than people with one prior criminal conviction.

Unfortunately, no existing empirical study or statistical dataset closely mirrors the population that NYCHA has excluded.

Because of the countless factors associated with criminal reoffending, NYCHA cannot simply pull a study off the shelf to conclude which people are most likely to reoffend. Accordingly, rather than

recommend one study over another, the following are addressed: (1) factors that the recidivism literature emphasizes as significantly influencing the statistical likelihood of reoffending, and (2) three possible approaches and their respective limitations.

The severity of people's convictions, their nature, and their frequency influence the statistical likelihood of a person committing another crime. However, the impact of these factors is not always aligned with popular notions of "hardened criminals" versus "non-violent" offenders. As one study reveals, "the current offense one commits is a very poor predictor of the next offense."<sup>30</sup> There is little evidence to conclude that a person arrested for a non-violent drug crime is somehow unlikely to commit a violent offense the next time; similarly, very few people paroled who were convicted of murder in New York State go on to commit another crime or re-commit the same crime type.<sup>31</sup> However, a person's criminal history profoundly predicts their statistical likelihood of being re-arrested. For example, in a 2016 U.S. Sentencing Commission study of 25,431 people released in 2005 from federal correctional institutions, rates for re-arrest within eight years varied from 30.2 percent for first-timers to 80.1 percent for those with extensive criminal histories.<sup>32</sup> With these considerations in mind, three factors were identified for NYCHA to consider in evaluating a person's continued risk when they apply to lift a PE.

#### Risk Factor 1: Crime type

Recidivism varies by both the initial and subsequent crime types. The likelihood of recidivism for people who commit crimes for the first time will depend on the nature of their first offense; likewise, people recidivate at different rates for violent and non-violent crimes. In all cases, the likelihood of recidivism goes down with time. Because NYCHA's primary concern is violent crime, its policies should be shaped by research documenting the statistical hazard for future violence rather than simply non-violent recidivism. For example, in New York State, after 8.8 years from the date of arrest, the risk to society for violence from a first-time, non-violent drug offender approaches society's risk of violence from someone without a record.<sup>33</sup>

#### Risk Factor 2: Prior convictions

Prior convictions powerfully predict the statistical likelihood of future violence.<sup>34</sup> NYCHA's efforts to provide safe housing for its tenants must consider the extent of excluded people's criminal histories when calculating look-back periods. Treating people with one criminal conviction in the same vein as those with lengthy criminal histories ignores social science research on recidivism, as does overlooking a record of past offenses. Available research can help NYCHA understand and calculate the additional statistical risk that prior convictions reveal for the possibility of future violence.

#### Risk Factor 3: Age

To the extent permissible by law, NYCHA's look-back periods should take age into account so that the formerly excluded are held to the risk threshold of their age group rather than the general population. Research indicates that the likelihood of engaging in criminal behavior decreases as people get older and because the general population includes many who, by virtue of being older, are less crime-prone, any risk threshold referencing that population will be lower than a risk threshold for a younger cohort.<sup>35</sup> Such a schema has the advantage of shortening look-back periods for many of the excluded.

### **Recommended approach to determining time periods**

The authors recommend that NYCHA build hazard coefficients using the studies by Blumstein and Nakamura and Shawn Bushway to quantify key factors, including age, number of prior convictions, and crime type, to determine appropriate look-back periods. Blumstein and Nakamura studied the relationship between the types of crimes for people's first arrest and the crime type of possible subsequent arrests.<sup>36</sup> Bushway estimated the time that needs to lapse before someone can be considered to be unlikely to commit another crime. His estimates of "redemption times" are based on age and number of prior convictions at the time of the offense.<sup>37</sup>

Research on risk does not map perfectly onto NYCHA's policy context, and thus there is no hard and fast application. Nevertheless, NYCHA can use risk research to develop a heuristic to help guide decision-makers and inform policy on how to weigh and apply relevant risk factors. Using this approach involves an exercise where different risk factors have values as guidance only when they are considered relative to each other.

Bushway's "redemption times" can be turned into "look-back coefficients" by calculating the difference between the redemption times for the various age/conviction combinations in the study. A similar process can be done for the redemption times proposed by Blumstein and Nakamura, which looks at age and crime type. While each study uses two different risk factors, the research in both studies is presented in such a way as to enable the isolated use of individual factors. For example, while Blumstein and Nakamura look at both crime type and age, their research can be used to approximate the elevated risk level for crime type only.

A risk coefficient itself could be based on the rate of increased risk of recidivism relative to other iterations in that risk factor. For example, a risk coefficient could be assigned to "one prior conviction" that is an expression of the increased risk of recidivism of *one prior* conviction relative to *no prior* convictions. So if the risk of recidivism goes up by 15 percent, 15 percent could be adapted as a risk coefficient. The same could be done for other factors.

This model would use these coefficients to generate look-back periods that would start at the point of release from incarceration or final disposition, whichever is more recent. To take risk coefficients into



account, look-back periods would have to have a base-line number of look-back period of months or years. The coefficients then would function to either raise or lower the amount of time of that base-line number.

This model would be consistent with current approaches that calculate look-back periods from the point of release from incarceration. Such a look-back period policy would be consistent with several principles: it could be tailored to crime type, allowing a risk assessment based on risk of recidivism for violent crime; and it would be grounded in research on risk and take into account the most salient risk factors, including the number of prior convictions. Below are examples of this approach.

- Model 1: Age/Number of convictions: After setting a baseline look-back period, look-back periods will vary by age and number of convictions by the same proportions as those in the Bushway study.
- Model 2: Age/Number of convictions/Crime type: This model builds on Model 1, factoring in an additional coefficient based on crime type constructed from the look-back periods in Blumstein and Nakamura.
- Model 3: Number of convictions/Crime type: This a variation of Model 2 but removes age as a factor in the event use of age is prohibited or disfavored by law.

Limitations of these models include:

- The Bushway study examines risk of general recidivism, not violent recidivism. NYCHA's focus, as noted above, should be on the risk of future violence rather than chance of simply violating the law (or the condition of parole or probation supervision).
- The Bushway study measures look-back periods from date of conviction, not release. Thus, it does not provide a basis for choosing a baseline look-back period, or for mooring the look-back period to release rather than arrest or conviction.
- The models above rest upon statistical studies that look at populations that vary in significant ways from those NYCHA has excluded. In particular, unlike the cohorts of the above studies, NYCHA's PE population is overwhelmingly people of color, frequently has multiple convictions, and has often been incarcerated. As a consequence, true recidivism rates for the NYCHA PE cohort could likely be higher—and so fully reflective look-back periods would be longer—than such studies might suggest.

Recommendation 5: Create a mechanism for the NYCHA division responsible for investigating apartments with permanent exclusions to contact Heads of Households at the end of the look-back periods discussed under Path 2 to let them

know that lifting PE is an available option. NYCHA can focus initially on PE stipulations signed prior to the policy changes that NYCHA is currently considering.

When sufficient time has passed to meet the eligibility criteria for lifting an exclusion based on passage of time alone, a NYCHA investigator should notify the head of household that an application to lift PE based on passage of time alone might be viable. This mechanism would ensure that the head of household's sense of safety is protected and prioritized should they prefer to keep the exclusion in place. If, however, the head of household would like to apply to lift the exclusion, but was uncertain as to when sufficient time would have passed for Path 2 to become a viable option, this mechanism would assist the head of household in applying as soon as they became Path 2 eligible. This mechanism, accordingly, empowers the heads of household to make the decision they believe is best for their household.

Recommendation 6: Revise forms and documents associated with PE where necessary so that they are written in clear and understandable language. NYCHA documents and communications associated with PE should also be available in the multiple languages commonly spoken by NYCHA's residents.

Recommendation 7: Revise the current application form to lift PE so that it contains explicit references to the two pathways available for the lifting of PE.

It is difficult to find information about how to lift a PE. For example, the current NYCHA website and tenant handbook lack information about the process of lifting an exclusion. Additionally, the stipulation documents provided at the time of exclusion have insufficient information on how to lift an exclusion, stating merely: "The Tenant may apply in writing to the Office of Impartial Hearings for removal of the Permanent Exclusion at any time a substantial positive change has occurred concerning the excluded person." Though this language does inform tenants that PE is not always permanent, it does not provide specific information on what conditions or time period would qualify someone for a lifting. The stipulation should be amended to include further guidance, or the application form and any documents about the process of lifting a PE should accompany both a stipulation and a final determination imposing a PE by NYCHA's Hearing Office.

Recommendation 8: If the lifting request is denied, NYCHA must make available its reasoned decision for the denial and create an avenue for appeal and review of the decision.

As the process for lifting exclusions is clarified and made more user-friendly, so too should the appeals process in the event that a previously excluded tenant's request for lifting is denied. It is important that tenants and excluded people are clear about the specific ways they can demonstrate a lifting is appropriate and be better prepared for the process.

## Transparency and accountability

**Recommendation 9:** Launch a communications campaign to help tenants understand PE and the lifting process and make the relevant documents available online.

Currently, there is no information online about the PE policy or about how to apply to lift an exclusion. Likewise, the tenant handbook provides little helpful information. For this process to be understandable to tenants and to legal service providers who may represent them, there needs to be information—including a Frequently Asked Questions list—and forms available online and guidance on who in NYCHA to speak with for more information or where to turn in forms. A communications campaign will be extremely helpful to spread the word on the updated policies. Proposed methods include flyers and information displayed in NYCHA developments, presentations to tenant advisory boards, and media exposure.

**Recommendation 10:** Ensure the NYCHA staff involved in applying PE and reviewing applications to lift PE have the appropriate training and knowledge to make informed decisions.

Given NYCHA's interest in having a policy informed by the best available social science research, its decisions about staffing should be similarly rigorous. NYCHA should consider having a reentry specialist or a staff person with similar expertise involved in reviewing cases that are on the border and are being considered for a PE or for lifting of a PE. By involving staff with appropriate knowledge and expertise on prison and jail reentry, rehabilitative programs, and the social service landscape in New York City, NYCHA can make more informed decisions.

**Recommendation 11:** Offer implicit bias and cultural competency training for NYCHA staff working on the PE process as the new policies and procedures are implemented in order to foster a more fair system.

Implicit bias can be defined as unconscious stereotyping or attitudes that can affect our understanding, actions, and decisions independent of declared beliefs.<sup>38</sup> There has been considerable attention recently by criminal justice actors such as law enforcement, jurors, and judges on the role of implicit bias given the discretion they have in decisions shaping a person's trajectory through the justice system.<sup>39</sup> NYCHA staff—notably attorneys and hearing officers—may benefit from implicit bias training, in part because implicit bias is so pervasive, but largely due to the high volume of cases NYCHA staff process and the repetitive nature of the task. Proposing such training is not a direct reflection of staff performance, but rather an acknowledgement of the nature of their work.<sup>40</sup>

**Recommendation 12:** Assist the public in understanding the new PE process by providing relevant statistics on the types of termination of tenancy actions NYCHA initiates; the outcomes of those actions; the number of applications made to lift exclusions; and the outcomes of such applications.

NYCHA is committed to transparency and accountability and has an existing platform for sharing data online with the public in fact sheets and reports. NYCHA should continue this trend and publish annual statistics on the exclusion, termination, and lifting processes. This will help build trust and credibility between the community and NYCHA and clarify misinformation.

## Conclusion

The authors are encouraged by NYCHA's willingness to reconsider the policies related to applying and lifting permanent exclusions. In developing the report, Margaret diZerega, Fritz Umbach, and John Bae have benefited from conversations with community organizers, legal service providers, NYCHA residents, and others who have a stake in the safety of public housing in New York City. Their stories and perspectives have provided helpful context to the policy and implementation considerations. The authors welcome the opportunity to assist NYCHA in finalizing and implementing any of the recommendations described above.

## Endnotes

<sup>1</sup> For guidance on the use of arrests in determining admissions to public housing, see U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, "Guidance for Public Housing Authorities (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrests in Housing Decisions," Notice PIH 2015-19 (Washington, DC: HUD, November 2, 2015), 1-7, <https://perma.cc/UP78-DVSH>.

<sup>2</sup> As John Jay professors Chris Hermann and Fritz Umbach learned during research conducted for this report, nearly one-quarter of all rapes in New York City and more than one-third of all of its shootings occur on, or within 500 feet, of a NYCHA development. These figures stand out, in part, because NYCHA residents represent only between 5 and 10 percent of the city's population (depending on estimates of NYCHA's unofficial resident population).

<sup>3</sup> In 2010, NYCHA's Safety and Security Task Force surveyed 10,000 households across 12 developments to understand the safety and security issues faced by NYCHA residents on a daily basis. Of the 1,100 surveys that were completed, 59 percent reported serious crime in their development in the past 12 months, and three of four respondents reported being very or somewhat fearful of crime in their development. For more on the survey, see NYCHA, "Resident Safety and Security Survey Committee," *Safety and Security Task Force Report* (New York, NY: NYCHA, 2011), 2. In 2012, another survey was conducted for 520 NYCHA residents living in 10 developments in Lower Manhattan. Sixty-five percent of the respondents did not feel there were sufficient protections against trespassers, and 49 percent thought there was not enough police presence in their building; see Scott Stringer, Daniel Squadron, and Brian Kavanagh, *Protecting NYCHA Communities* (New York, NY: Offices of the Manhattan Borough President Scott M. Stringer, State Senator D. Squadron, and State Assemblyman Brian Kavanagh, 2012), 5-6.

<sup>4</sup> As many criminologists have observed, low-level drug arrests—unless sustained over long periods with significant police presence—rarely disrupt drug markets and the violence they produce. The reason is simple: arrested participants are quickly replaced. But winnowing out the most violent of dealers can disrupt the "conduct" of markets to make them less dangerous; similarly, incapacitating higher-level participants and sustained crackdowns can disrupt such markets because buyers and sellers stop expecting the other to be present. As the criminologist David Boyum and his co-authors note, the notion that disrupted markets are quickly replaced is not supported "by either theory or evidence." See David Boyum, Jonathan Caulkins, Mark Kleiman, "Drugs, Crime, and Social Policy" in

*Crime and Public Policy* edited by James Q. Wilson and Joan Petersilia (New York, NY: Oxford University Press, 2011).

- <sup>5</sup> *Escalera v. New York City Housing Authority*, 425 F.2d 853 (1970).
- <sup>6</sup> Robert S. Golden, "Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing," *Yale Law & Policy Review* 17, 1 (1998): 551.
- <sup>7</sup> The Bawdy House laws allows landlords and public officials to evict tenants using their property for illegal purposes, see Scott Duffield Levy, "The Collateral Consequences of Seeking Order Through Disorder: New York's Narcotics Eviction Program," *Harvard Civil Rights-Civil Liberties Law Review* 43, no. 2 (2008): 543-544.
- <sup>8</sup> Golden, 1998, 550-551; Fritz Umbach, *The Last Neighborhood Cops: The Rise and Fall of Community Policing in New York Public Housing* (Newark, NJ: Rutgers University Press, 2010), 65, 149-156
- <sup>9</sup> 42 U.S.C. § 1437(d)(1)(6) (1994 ed. Supp. V).
- <sup>10</sup> Umbach, 2010, 156-160.
- <sup>11</sup> Umbach, 2010, 156-160.
- <sup>12</sup> NYCHA, "Grievance Procedures," (New York: NYCHA, August 1997), 4, <https://perma.cc/YL8Q-FNR9>.
- <sup>13</sup> For a discussion on drug dealing and violence, see Patrick Seffrin and Bianca Domalhid, "The Drug-Violence Nexus: A Systematic Comparison of Adolescent Drug Dealers and Drug Users," *Journal of Drug Issues* 44, no. 4 (2014): 394-413; Beth Huebner, Sean Varano, Timothy Bynum, "Gangs, Guns, and Drugs: Recidivism Among Serious, Young Offenders," *Criminology and Public Policy* 6, no. 2 (2007): 187-222.
- <sup>14</sup> For more on gang violence, drugs, and disadvantaged neighborhoods, see Paul E. Bellair and Thomas L. McNulty, "Gang Membership, Drug Selling, and Violence in Neighborhood Context," *Justice Quarterly* 26, no. 4 (2009): 644-669.
- <sup>15</sup> For discussions on prior convictions and risk of reoffending, see Cassia Spohn and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders," *Criminology* 40, no.2 (2002): 333. In New York City, parolees who were re-arrested, re-convicted, or had their parole revoked had longer criminal histories and more prior convictions than those who did not recidivate, see Bryn Herrschaft and Zachary Hamilton, *Recidivism Among Parolees in New York City, 2001-2008* (New York, NY: Center for Court Innovation, 2011), 5.
- <sup>16</sup> The City of New York Office of the Mayor, "De Blasio Administration Announces Improvements to Permanent Exclusion Process to Protect NYCHA Residents," press release (New York, NY: Office of the Mayor, December 2, 2015). <https://perma.cc/2UGZ-CYHE>.

- <sup>17</sup> Young adults who are involved in the criminal justice system may be classified as people between the ages of 18 and 24. However, in some jurisdictions such as New York, people as young as 16 will be referred to the adult criminal justice system following an arrest. See The Council of State Governments Justice Center, *Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems* (New York: The Council of State Governments Justice Center, 2015).
- <sup>18</sup> Recent studies conclude that the brain is still developing for young adults up to the age of 24 or 25, and may impact their decision-making capacity and impulsivity. See Vincent Schiraldi, Bruce Western and Kendra Bradner, "Community-Based Responses to Justice-Involved Young Adults," *Bulletin 1: New Thinking in Community Corrections* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2015, NCJ 248900) 3-4.
- <sup>19</sup> For more on the gap between cognitive and psychosocial capacities in adolescents, see Terrie Moffitt, "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy," *Psychological Review* 100, no. 4 (1994): 674-701.
- <sup>20</sup> Most research suggests that criminal activity peaks between the ages of 15 and 19, and declines in the early 20s. The figures gathered from self-reports resulted in earlier peaks while those using official measures such as police contacts, arrests, and convictions resulted in later peaks. For more on research examining criminal activity prevalence and age, see Alex Piquero, David Hawkins, Lila Kazemian, and David Petechuk, *Bulletin 2: Criminal Career Patterns - Study Group on the Transitions Between Juvenile Delinquency* (Washington, DC: U.S. Department of Justice; prepared under award number 2008-ICJ-CX-K402, 2013), 1-6.
- <sup>21</sup> For more on the factors that influence peaks in criminal activity, see Piquero, et al., 2013; and Rolf Loeber, David Farrington, and David Petechuk, *Bulletin 1: From Juvenile Delinquency to Young Adult Offending - Study Group on the Transitions between Juvenile Delinquency and Adult Crime* (Washington, DC: U.S. Department of Justice, 2013; prepared under award number 2008-IJ-CX-K402).
- <sup>22</sup> This study lists various programs and opportunities that prevent against future violence involvement for people who are at a high risk of being involved in violence. See Steven Sumner, James Mercy, Susan Hillis, Matthew Maenner, and Christina Socias, "Elevated Rates of Urban Firearm Violence and Opportunities for Prevention—Wilmington, Delaware," Final report for the Delaware Department of Health and Social Services (Washington, DC: Centers of Disease Control and Prevention, 2015), 13-14.
- <sup>23</sup> Ibid.
- <sup>24</sup> Ibid.
- <sup>25</sup> Ibid.



- <sup>26</sup> For a discussion on the effects of restorative justice interventions on offending, see Hennessey Hayes and Kathleen Daly, "Youth Justice Conferencing and Reoffending" *Justice Quarterly* (2003) no. 20(4), 725–64; and Jeff Latimer, Craig Dowden, & Danielle Muise, "The effects of restorative justice practices: a meta-analysis" *The Prison Journal*, no. 85(2) (2005): 127–144.
- <sup>27</sup> For meta-analytic reviews of anger control interventions, see Nana Landenberger and Mark Lipsey, "The positive effects of cognitive-behavioral programs for offenders: a meta-analysis of factors associated with effective treatment," *Journal of Experimental Criminology* (2005) no.1: 451-476; and Craig Dowden and D.A. Andrews, "Effective correction treatment and violent reoffending: a meta-analysis," *Canadian Journal of Criminology*, no. 42 (2000): 449-467.
- <sup>28</sup> Some scholars have attributed desistance from crime as a result of people severing, or "knifing off," ties to harmful environments, negative social networks, or the past as it relates to criminal behavior. Other opportunities and events, such as assuming the role of a provider or parent, impacts one's desistance from crime even if people remain in the same environment. See Shadd Maruna and Kevin Roy, "Amputation or Reconstruction: Notes on 'Knifing Off' and Desistance from Crime," *Journal of Contemporary Criminal Justice* 23 no. 1 (2007): 116, 120.
- <sup>29</sup> More than a third of people released from prison who were rearrested within five years were arrested within the first six months of release, with more than half being arrested by the end of the first year, see Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, (Washington, DC: Bureau of Justice Statistics, 2014), 1, 7. Within the first year after being released from federal prison, more than 16 percent of those released were rearrested. The number of people who were arrested upon release decreased in subsequent years, see Kim Hunt and Robert Dumville, *Recidivism Among Federal Offenders: A Comprehensive Overview* (Washington, DC: U.S. Sentencing Commission, 2016), 16. In New York State, the risk to society for violence from a first-time, non-violent drug offender approaches society's risk of violence from someone without a record after several years have passed, see Alfred Blumstein and Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of State Arrests, and Racial Differences* (Washington, DC: U.S. Department of Justice; prepared under award number 2009-IJ-CX-0008, 2012).
- <sup>30</sup> For a discussion on the challenges of predicting future criminal offending, see Robert J. Sampson, "The Incarceration Ledger: Toward a New Era in Assessing Societal Consequences," *Criminology and Public Policy* 10, no.3 (2011): 823.
- <sup>31</sup> Six out of 368 people convicted of murder who were granted parole between 1999 and 2003 returned to prison for a new felony conviction. See Mike Brodheim, "Paroled Killers Rarely Re-Offend," *Prison Legal News*, July 15, 2011, <https://perma.cc/MEC3-7WXY>

- <sup>32</sup> People with longer criminal histories had an increased likelihood of recidivating, see Hunt and Dumville, 2016, 5, 24.
- <sup>33</sup> Blumstein and Nakamura, 2012. See table 12 with a "C1" of "drugs" and a "C2" of "violent."
- <sup>34</sup> For more on the influence of criminal history on a person's redemption time, see Shawn D. Bushway, Paul Nieuwebeerta, and Arjan Blokland, "The Predictive Value Of Criminal Background Checks: Do Age And Criminal History Affect Time To Redemption?" *Criminology* 49, no. 27 (2011).
- <sup>35</sup> For a discussion on the impact of age on recidivism, see Hunt and Dumville, 2016, 5; United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guideline* (Washington, DC: U.S. Sentencing Commission, 2004), 12, 28.
- <sup>36</sup> Blumstein and Nakamura, 2012.
- <sup>37</sup> Bushway and his colleagues reviewed a cohort of Dutch males over the age of 12 with criminal histories varying from zero to more than seven prior convictions. The article estimated redemption times based on age and number of prior convictions. The major insights are (1) hazard of re-conviction decreases by age and increases by number of convictions and (2) convictions increase redemption time exponentially the older a person was at time of the measuring conviction. See Bushway, et al., 2011.
- <sup>38</sup> For a detailed explanation on implicit bias, see Kirwan Institute for the Study of Race and Ethnicity, "Understanding Implicit Bias," <https://perma.cc/F4LY-J5PQ> .
- <sup>39</sup> For a discussion on the role of implicit bias in the criminal justice system, see Jessica Eaglin and Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails, Recommendations for Local Practice* (New York, NY: Brennan Center for Justice at New York University School of Law, 2015).
- <sup>40</sup> For more on the various types of implicit biases, see Howard Ross, *Everyday Bias: Further Explorations into How the Unconscious Mind Shapes Our World at Work* (Silver Spring, MD: Cook Ross, 2014).

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April 24, 2017

**Testimony for the Committee on Public Housing and Committee on Oversight and Investigations  
on the Examination of DOI's Report on NYCHA's Permanent Exclusion Policy**

In its recommendations to NYCHA, the Department of Investigations recommends that the Authority terminate the tenancies of families when there has been the allegation of criminal activity. DOI also recommends that NYCHA vigorously prosecute cases through the hearing stage, and require tenants to raise a meritorious defense and good cause before re-opening defaults. While NYCHA currently files about 10,000 termination cases a year (according to the latest information we have), if followed, the DOI recommendations would greatly increase the number of cases that go to formal hearings.

Keeping in mind that the hearing officer is not an impartial judge but a NYCHA employee, how does the average person without an attorney, and without any legal background, raise a meritorious defense in these one-sided hearings? Currently, most termination proceedings are settled before a formal hearing with a binding agreement permanently excluding the arrested family member, and puts the tenant on probation, agreeing to be "terminated" if the excluded person is allowed to return. DOI is recommending that NYCHA skip this step and go straight to the hearing stage. For those cases that go to a formal hearing, once a decision is made, the tenant has four months to appeal if they lose. During that period, the agency starts a holdover proceeding in Housing Court to obtain the warrant of eviction. The Housing Court judge is powerless to overturn the decision made by the agency, and can only delay the process if the tenant is filing an appeal in State Supreme court – a process that few unrepresented tenants can do on their own.

An overwhelming majority of NYCHA residents go through the termination process without legal representation. Mayor de Blasio and Speaker Mark-Viverito recently promised Universal Access to an attorney for tenants facing eviction – paid for by the city if the family's income is below 200% of the federal poverty level. However, administrative proceedings, including the NYCHA termination

**HOUSING COURT ANSWERS**

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cases we are discussing today, will not be covered by the new right to counsel program. Today, the legal service programs assisting low income tenants facing eviction cover a tiny minority of residents in NYCHA termination proceedings.

The Coalition for the Homeless reports that over 10,000 families apply for shelter each year, and that there are over 62,000 people sleeping in city shelters tonight. We know that NYCHA is the most affordable and stable housing that the city provides for low income residents. And we know that a family evicted from a NYCHA apartment has no affordable alternatives. Other members of the Permanent Exclusion Working Group will be testifying on the criminal justice aspects of the DOI recommendations and how unjust they are.

Housing Court Answers would like to go on record with the position that until NYCHA families accused of crimes worthy of evicting them and making them homeless get an attorney and the opportunity to raise an adequate defense, NYCHA should resist the DOI recommendations.



**Testimony by The Legal Aid Society**

**Before the New York City Council Committee on Oversight and Investigations,**

**Jointly with the Committee on Public Housing**

**Oversight Hearing: Examining DOI's Report on NYCHA's Permanent Exclusion Policy**

**April 24, 2017**

**Introduction**

The Legal Aid Society (the Society) is the oldest and largest provider of legal assistance to low-income families and individuals in the United States. Operating from 26 locations in New York City with a full-time staff of more than 2,000, the Society handles approximately 280,000 individual cases and legal matters each year. The Society operates three major practices: the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life - housing, health care, food, and subsistence income or self-sufficiency; the Criminal Practice, which serves as the primary provider of indigent defense services in New York City; and the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as young people facing charges of misconduct. The Society is counsel on numerous class-action cases concerning the rights of public housing residents and is a member of the New York City Alliance to Preserve Public Housing, a local collaboration of New York City Housing Authority ("NYCHA") resident leaders, advocates and concerned elected officials.

The Legal Aid Society also has a Community Justice Unit. The Unit is funded through the City Council Task Force to Combat Gun Violence to provide legal support to organizations engaged in the Cure Violence model of interrupting violence at its root as part of the New York City Crisis Management System.

We appreciate the opportunity to testify before the City Council's Committee on Oversight and Investigations and the Council's Public Housing Committee. We greatly appreciate the leadership of Committee Chair Ritchie Torres and his commitment to public housing residents.

### **Laws Governing NYCHA's Eviction of Households from their Homes**

As a result of a number of lawsuits brought by The Legal Aid Society against the Housing Authority in the 1970s, procedures have been established that govern NYCHA's practices in connection with its termination of leases and evictions. NYCHA is obligated to follow these rules as a matter of State and Federal law.

NYCHA's termination of a tenancy for grounds other than non-payment of rent is governed by a federal consent decree in the case of Escalera v. New York City Housing Authority, which was later modified by the Tyson-Randolph cases. Escalera mandates that before a tenancy in public housing can be terminated, the tenant must be accorded a trial-type administrative hearing held by an impartial Hearing Officer, on specific written charges of which the tenant must have had prior notification. Witnesses may be produced both by NYCHA and the tenant and may be examined and cross-examined.

The Consent Decree in Tyson-Randolph established the policies that are in place today in connection with termination of tenancy on grounds of non-desirability and in particular, expanded the dispositional options for the Hearing Officer where after a hearing, a charge of non-desirability has been proven. Significantly, in the case of non-desirability, a Hearing Officer may decide to permit a tenancy to continue "subject to permanent exclusion of one or more persons in the household" so that the tenancy of the rest of the family can be preserved. The Consent Decree further requires that where an offending person is no longer residing in the household at the time of the hearing, the Hearing Officer is not permitted to terminate the tenancy and is limited to imposing an order of permanent exclusion.

In practice, the majority of permanent exclusion orders that are imposed are the result of the terms of agreement between NYCHA and a tenant and are spelled out in a stipulation of settlement. A person who is permanently excluded is prohibited from living in *or even visiting* the subject apartment for the remainder of the tenancy. Additionally, those households with a permanent exclusion order must agree to random, unannounced and intrusive visits from

NYCHA's investigators to inspect the apartment to see if the excluded person is present. Violation of a permanent exclusion order can subject a tenant to further termination of tenancy proceedings.

### **Permanent Exclusion in Practice**

Over the decades, thousands of permanent exclusion orders have been imposed, banishing persons from their homes forever. In 2016 alone, NYCHA imposed 633 permanent exclusion orders, up from 505 in 2015. Everyone in New York City has a right to be safe in their homes— this right applies to residents of both public and private housing. However, research shows that NYCHA's current permanent exclusion policy does not make communities safer— in many cases it only relocates and exacerbates the problem. The City and NYCHA must focus on policies that address the safety of NYCHA residents rather than over-policing a community already living in fear of both crime and police.

In past years, people have been permanently excluded for minor offenses, such as jumping the subway turnstile, trespassing and mere possession of marijuana— offenses wholly unrelated to violence. Permanent exclusion is routinely imposed after an arrest and without a criminal conviction and in many instances, even where the criminal case is dismissed. Permanent exclusion has been used on minors and young adults, notwithstanding research that shows that the instability of being homeless puts youth at greater risk of many poor outcomes, including physical and mental health conditions, decreased prospects for education and employment, justice system involvement and recurring future homelessness.

What we do know about permanent exclusion is that it erodes family and community ties, contributing to housing instability and necessarily increases homelessness. These consequences can make communities less safe by driving future reoffending because family support fosters desistance from future offending and successful engagement in rehabilitative programming. Swift and automatic exclusions based on criminal allegations are ineffectual for increasing public safety.

NYCHA's current permanent exclusion policy does not provide for a nuanced approach to assessing offense seriousness and the risks such offenses pose to NYCHA residents. Research has demonstrated the need for evidence-based decision-making because the types of subjective assessments that have traditionally been used, including by NYCHA, have been shown to over-

estimate risk. Without a tailored application to those who pose the highest risk of harm to other tenants, permanent exclusion is a punitive measure that can inadvertently increase the risk to safety by fracturing the support provided by family and community that reduce recidivism.

### **The Working Group on Permanent Exclusions and NYCHA's Reform of the Permanent Exclusion Policy**

In 2014, the Prisoner Reentry Institute at John Jay College of Criminal Justice convened a Working Group on Permanent Exclusions (the Working Group) whose members include tenant organizers, reentry advocates and legal services attorneys, for the purpose of examining NYCHA's permanent exclusion policies and to work to secure changes to the policy. The Legal Aid Society is a member of the Working Group. Fortunately, we found in NYCHA, a willingness to revisit its permanent exclusion policies and practices that NYCHA also acknowledges have turned out to be too sweeping and which are harmful to individuals, families and communities.

During the course of the past couple of years, the Working Group has met with NYCHA staff to discuss our concerns with the way in which permanent exclusion has been used in practice and to offer our recommendations to inform NYCHA's review and revision of the permanent exclusion policy— it is our long-standing position that the use of exclusion should be tailored to support safe NYCHA developments and not be used as a punitive measure. The Working Group asked NYCHA to adopt nuanced and research informed changes to ensure that any new policy successfully protects against a specific risk of harm by assessing offense seriousness and the risks such offenses pose to NYCHA residents. Additionally, we have recommended that exclusions have a sunset date so that families can plan for reunification.

As part of its thoughtful approach to reviewing and reconsidering the use of permanent exclusion for tenants accused of criminal conduct, NYCHA hired Margaret DiZerega, from the Vera Institute of Justice and Fritz Umbach, of the John Jay College on Criminal Justice, to issue a report on applying and lifting of permanent exclusions, which was issued in February, 2017. The Report issues a number of recommendations, including criteria for NYCHA to use when imposing and lifting permanent exclusion.

### **The DOI Report on NYCHA's Permanent Exclusion Policy**



On March 28, 2017, the New York City Department of Investigation (DOI) issued a Report entitled “NYCHA Is Still Failing To Remove Dangerous Criminals from Public Housing” which contained its investigative findings and a number of policy and procedure recommendations. The report failed to acknowledge any of the work done by the Working Group and NYCHA over the last number of years. The Legal Aid Society urges the City and NYCHA to reject the DOI’s findings and recommendations which represent a misguided and irresponsible approach to safety in NYCHA– evicting families will not increase public safety, it will uproot families and contribute to homelessness at a time when the City faces an unprecedented homelessness crisis.

In its Report, the DOI urges NYCHA to be more aggressive in its handling of termination of tenancy cases by seeking evictions of entire households instead of settling proceedings with the permanent exclusion of a single household member. Directing NYCHA to throw children, teenagers, parents and grandparents out of their homes is not only cruel and inhumane, but in many instances will violate Federal law. In reaching its position, the DOI highlights eight case examples that it had reviewed. In many of the examples however, the tenant of record was able to show that at the time of the hearing, the offending person was not residing in the apartment which by law prohibits a hearing officer from evicting the entire household and mandates the imposition of a permanent exclusion order. The other examples that it relies on to support its recommendations highlight the flawed nature of the investigation, as the DOI merely relies on arrest records without examining court records or tenant circumstances that may paint a different story. For instance, in one case, the DOI recommends that a young mother and her child should have been evicted because the father of the child told the NYPD that he lived in her NYCHA apartment at the time he was arrested. The DOI simply took the offender at his word, that he lived in the apartment, without any further investigation. The DOI’s findings and recommendations demonstrate that the authors of the report fail to recognize the complexities of the issue and lack a basic understanding of the law that governs NYCHA’s termination of tenancy proceedings.

In addition to recommending that NYCHA evict families from their homes, the DOI calls for NYCHA’s unarmed civilian investigators to be replaced with armed law-enforcement officials, despite the fact that they can cite no instance where an investigator faced any harm while doing an inspection. Not only would the implementation of this recommendation likely

bring back the unconstitutional discriminatory policing practices that were the basis of the Davis lawsuit, but will create the potential for the often tragic consequences of use of force.

## CONCLUSION

NYCHA's current permanent exclusion policy does not make communities safer. NYCHA has been thoughtful and deliberate in its review and consideration of changes to the policy which we hope, once fully crafted and implemented, will be more effective at assessing risk and addressing safety issues. Along with reforming its permanent exclusion policy, NYCHA should focus on repairing the extensive conditions that exist throughout NYCHA's developments, such as un-lit stairwells, defective intercom systems, broken door locks and elevators that are routinely out of order, that make tenants feel unsafe in their homes. We can achieve safety in many ways, but it does not need to be through the over-policing of NYCHA residents. Indeed, safety does not have to come at the expense of the residents' constitutional rights. We urge the City and NYCHA to reject in its entirety the findings and recommendations contained in the DOI Report and instead to support NYCHA's efforts to address safety while supporting families and healthy communities. Thank you again for the opportunity to testify.

Respectfully Submitted:

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**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Sergio Jimenez – Director, Civil Justice Practice  
BROOKLYN DEFENDER SERVICES**

**Presented before**

**The New York City Council Committees on Public Housing and Oversight & Investigations**

**Oversight Hearing Examining DOI's Report on NYCHA's Permanent Exclusion Policy**

**April 24, 2017**

My name is Sergio Jimenez and I am the Director of the Civil Justice Practice at Brooklyn Defender Services (BDS). Our organization provides multi-disciplinary, and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 40,000 cases involving indigent Brooklyn residents every year. I thank the New York City Council Committees on Public Housing and Oversight & Investigations, and in particular Chairs Ritchie Torres and Vincent Gentile, for the opportunity to testify on DOI's investigation of New York City Housing Authority's (NYCHA) Permanent Exclusion policy and Councilmember Gibson's reporting legislation.

BDS is fortunate to have the support of the City Council, as well as other elected officials and the Office of Court Administration, to supplement the services we provide as the public defense office in Brooklyn for people who have been arrested, those who are facing child welfare allegations, and those who are facing deportation, with civil legal support. Through both legal advocacy in court and direct advocacy with various agencies, we assist people in fighting evictions, maintaining their public benefits, staying in school, keeping their jobs, and protecting their consumer rights. Our Civil Justice Practice aims to reduce the so-called collateral consequences of interactions with the criminal, family or immigration justice systems. We also assist criminal defense attorneys and their clients by identifying potential civil ramifications of guilty pleas and strategizing ways to minimize the risk of eviction, loss of employment, and educational consequences as a result of a criminal conviction. We serve many clients who might otherwise be left to navigate these challenges alone. Finally, in addition to our in-house work, we

engage with the community and hold external educational clinics in close partnership with community-based organizations and elected officials.

## The DOI Report

The March 2017 report by the New York City Department of Investigation (DOI), entitled “NYCHA Is Still Failing to Remove Dangerous Criminals from Public Housing,” is at least a decade out of date. Long ago, we as a city began to move away from the inflammatory rhetoric and belligerent strategies espoused by DOI. The “aggressive” imposition of civil collateral consequences to criminal court involvement, which we call “perpetual punishment,” is precisely the opposite of what individuals and experts across the political spectrum are now advocating in the interest of justice and public safety. Frankly, this report is utterly confounding to those of us who work with NYCHA residents. As the report notes, crime rates in both NYCHA and the city as a whole are at historic lows. After years of misusing its eviction and exclusion powers, NYCHA has begun to move in the *right* direction in protecting both the safety and tenancy rights of its residents, engaging in a thoughtful process that includes consultation with residents, advocates and legal service providers. It is unclear what prompted this report, and who its recommendations are intended to benefit. It cites no evidence or indication that increasing evictions—i.e. driving more of New York’s extremely low-income residents into overcrowded and unstable housing or shelters in neighborhoods throughout the City—actually improves public safety, either locally or citywide. In reality, there are many ways in which heeding DOI’s recommendations could make NYCHA’s residents *less* safe.

A serious public safety plan would address the issues underlying broader inequalities, including but not limited to rates of violence, in public housing. In an era of potentially unprecedented cuts in federal funding for public housing, with many urgent capital and operating funding needs, DOI instead urges NYCHA expend scarce resources on increasing its Special Investigations Unit staff to aid in enforcement of its Permanent Exclusions. DOI also recommends authorizing investigators to carry firearms to backup this enforcement—a dangerous and alarming idea that does not appear to follow any particular incident of violence against staff. In the alternative, DOI recommends that NYCHA transfer these duties to the New York Police Department, with whom many residents already have an acrimonious relationship. Moreover, DOI ignores the serious risks of adding deadly weapons, regardless of who carries them, to fraught situations in which government actors use invasive searches to justify evictions of marginalized people from their housing of last resort.

The tragic death of Akai Gurley, who was shot and killed by a rookie police officer while peaceably descending the stairs in Louis H. Pink houses, illustrates the dangers of armed law enforcement agents simply patrolling residential buildings. (The elevator was broken and the lights were out, both of which represented unmet funding priorities.) Police-led eviction procedures would only intensify community distrust of law enforcement. The New York City Council deserves a lot of credit for spearheading a series of important reforms curtailing the NYPD’s use of the Nuisance Abatement Law; putting the police back in the business of residential evictions would be a major step in the wrong direction.

These recommendations would also aggravate the harm done by the Drug War through compounding the already substantial and counterproductive criminal court sanctions with long-term housing displacement—not only for the accused, but also for her family and support network. Likewise, they would respond to allegations of violent behavior by individuals with aggressive, violent and potentially deadly removals of families from their homes and communities, by armed NYCHA investigators or police. The report further calls on NYCHA to evict more people by offering fewer settlements. Specifically, the report calls on NYCHA to “aggressively prosecute” violations of Permanent Exclusion, which, in my experience, would require ignoring mitigating circumstances, and result in long, acrimonious, and expensive legal and administrative battles that are in no one’s interest. Altogether, these recommendations represent a significant entrenchment or expansion of the collateral consequences the City Council has been studying and working to undo in recent years.

Lastly, it must be said that DOI’s approach treats court-involved New Yorkers as the undeserving poor, ignoring the reality that housing is a legal right in this city. The report fails to mention that New York City is in the midst of a “housing emergency,” with the vacancy rate most recently estimated at 3.45 percent and rents rising the fastest in the poorest neighborhoods.<sup>1,2</sup> People who are evicted from NYCHA are at extreme risk of ending up homeless. I appreciate the Council’s thorough consideration of this report today, but the primary question, as I see it, is what is the endgame?

## **Int. 1207 - 2016**

BDS supports Int. 1207, sponsored by Council Member Vanessa Gibson. The bill would require reporting on NYCHA’s Permanent Exclusion practices, including demographic information on affected individuals and the nature of the criminal allegation or conviction prompting the punitive action. This information will help to inform effective changes to Permanent Exclusion.

## **The Continuing Need to Reform NYCHA’s Termination of Tenancy and Permanent Exclusion Policy**

There are many ways in which residents of NYCHA live a Tale of Two Cities. Nearby schools are often very segregated. Urgent repairs in public housing are subject to long delays with no meaningful accountability, while private landlords face enforcement action from the City. And while the New York City Council is working to lift people out of the homelessness crisis and expand affordable housing options, NYCHA continues to pursue evictions against people from their housing of last resort<sup>3</sup> based on unsubstantiated and even dismissed criminal allegations.

<sup>1</sup> <http://www1.nyc.gov/site/hpd/about/press-releases/2015/02/24.page>

<sup>2</sup> <https://www.nytimes.com/2017/03/03/realestate/south-bronx-rent-increases-greatest-in-the-city.html>

<sup>3</sup> *Matter of Featherstone v Franco*, 269 AD2d 109, 111 [dissenting mem]; *see also*, *Matter of Sanders v Franco*, 269 AD2d 118; Mireya Navarro,

While the Permanent Exclusion policy might be well-intended and arises from the legitimate concerns of many residents and agency officials, it is among the starkest examples of our government's counterproductive approach to crime and social problems. **There is no evidence or indication that increasing evictions—and exacerbating our City's homelessness crisis—improves public safety.** Past statements by the Administration, the report by the New York City Department of Investigation, and media reports all apparently presume the efficacy of evictions in reducing crime; none have provided any justification for this approach.

## Background

As you may know, federal law requires public housing authorities to evict and exclude people from admission based on certain limited criteria: those convicted of “drug-related criminal activity for [the] manufacture of methamphetamine on the premises of federally assisted housing” and those subject to lifetime inclusion in State sex offender registries.<sup>4</sup> While those are the only two mandatory exclusions, NYCHA has created a discretionary model that builds on these criteria and excludes people arrested—not convicted, but arrested—even for low-level, non-violent offenses, regardless of the dispositions of their cases.

Arrests do not tell us anything about a person. First and foremost, that person is presumed innocent unless convicted, and thus any statutory consequence in public housing calls for questions of constitutionality. Secondly, in New York, many targeted communities, particularly low-income people of color, find interactions with law enforcement to be a regular occurrence, despite no wrongdoing. This is especially true in public housing, where police officers regularly question residents' right to be in their own buildings. Moreover, despite recent reforms, our City, State, and Country continue to rely on mass arrests, mass incarceration and long-term supervision in lieu of effective policies and programs to address mental illness, poverty, addiction, homelessness, and widespread invidious discrimination. These issues disproportionately impact NYCHA residents and their families. Likewise, the high unemployment rate among public housing residents—only 47.3% of families have one or more employed member<sup>5</sup>—tells us residents are particularly vulnerable to arrest for crimes of poverty, such as turnstile jumping or petit larceny. In fact, an estimated 7.1 million people in New York State, or 36%, have RAP sheets. This statistic exemplifies the enormous reach of the dragnet of our criminal justice system. As a society, we must not define people by their criminal histories. As a landlord and safety net, NYCHA should not evict them on such a discriminatory basis.

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*As New York Rents Soar, Public Housing Becomes Lifelong Refuge*, THE NEW YORK TIMES (Aug. 3, 2015) available at <http://www.nytimes.com/2015/08/04/nyregion/as-new-york-rents-soar-public-housing-becomes-lifelong-refuge.html>

<sup>4</sup> 24 CFR § 960.204

<sup>5</sup> [http://www.nyc.gov/html/nycha/downloads/pdf/res\\_data.pdf](http://www.nyc.gov/html/nycha/downloads/pdf/res_data.pdf)

## **Housing as a Matter of Justice and Public Safety**

Many NYCHA residents are understandably frustrated by higher crime rates in their developments relative to the City at large, and as community leaders, Council Members are best positioned to facilitate an honest, intergenerational conversation about evidence-based approaches to public safety. Stable housing and healthy support networks are two key elements in any person's ability to overcome the multifaceted challenges of being poor in New York. Housing is essential to educational continuity, finding and keeping jobs, adhering to physical and mental health care regimens, and accessing critical services including drug rehabilitation and therapy, all of which impact crime rates and recidivism. Likewise, robust support networks help us get by and hold us accountable. Both are shattered by Permanent Exclusions, which push individuals into shelter and tear apart families upon threat of evicting their entire household. NYCHA's efforts to restrict the use of Permanent Exclusion should therefore be recognized as a move to improve public safety.

The lack of viable housing options that is endemic to our city results in increased rates of crime and recidivism, and taking housing from those who have it only exacerbates this problem. Our City and State criminalize poverty in general and homelessness in particular. People are sent to Rikers at a cost to taxpayers of more than \$500 per day for skipping a \$2.75 fare they likely cannot afford. They are arrested for "feet on the seat," often for sleeping on the train, or trespassing for sleeping in a stairwell. However, the displacement and marginalization caused by Permanent Exclusion can also lead to more serious crimes that impact public safety. For example, disruptions in psychopharmacological drug and therapy regimens, which are extremely difficult to follow while moving from shelter to shelter at irregular hours, can lead to violent incidents. DOI's recommendations represent a threat to public safety.

### **The following client story exemplifies the problem:**

#### **Ms. C**

BDS' Criminal Defense Practice represented Ms. C's following a single alleged purchase of drugs from her apartment. She was arrested more than a year after the alleged incident, despite a statement by the confidential informant that described someone three inches taller and about seventy pounds heavier. Ms. C was released on her own recognizance and her charges were progressively reduced as her case was going on its third year. Finally, upon the Assistant District Attorney's motion, the criminal case was fully dismissed. However, during the course of the determination of this criminal case, NYCHA brought a termination of tenancy proceeding based on the allegations. Ms. C was asked to defend a case that had already been litigated and dismissed in criminal court—a more appropriate venue to consider these allegations—placing her housing of last resort in jeopardy. There were never any allegations of violence through the entirety of Ms. C's tenancy but now, Ms. C faces the loss of housing of last resort, stemming from a dismissed criminal case.

## **Real Reform**

There are many ways to improve the process by which exclusions and evictions are initiated. Residents sometimes, without counsel and advice, unknowingly agree to prohibit a

family member from ever visiting their apartment. While we applaud NYCHA's efforts at making the process to be removed off these lists more transparent and user friendly, this process must not be abused as it has been historically. Because tenants usually go through the proceedings *pro se* (without representation), the outcomes are often opaque and couched in impenetrable legalese. Tenants deal directly with NYCHA's prosecuting attorneys without being informed of the attorneys' role in the matter. Those with limited English proficiency do not receive adequate translation services. Troublingly, these agreements are long and dense and often not thoroughly explained to tenants agreeing to them. Certainly, providing additional funding for civil legal service providers to represent every NYCHA resident facing termination proceedings and providing robust translation services would improve case outcomes. Already, the Council provides funding for pro se help by funding Housing Court Answers to set up information booths, which deserves praise. That said, the mere fact that NYCHA reinstated its public "Not Wanted List" should be a clear indicator to the Council that this policy is informed by stigma and not sound judgement. Simply improving the process is insufficient. The primary driver of reform should be dramatically reducing the number of people forced from their homes through changes in NYCHA policy to make eviction an absolute last resort.

## Conclusion

The soaring rates of poverty and homelessness in an extremely wealthy city like New York are inexcusable and we can do better. We are in crisis. Indeed, many of New York's elected and appointed officials in every level of government consider expanding housing opportunities to be among their top priorities. Yet DOI's push to amplify NYCHA's exclusionary policies is an anomaly that endures only because of a misunderstanding about what makes us safe. Given the adverse impacts of unstable housing on individuals, communities, and our city as a whole, I respectfully urge Council Members to turn away from this dangerous instinct and work to expand re-entry in public housing authorities. This effort would require initiating conversations with the public housing communities in your districts about the problems with the broad-based exclusion of fellow residents, including those who have made mistakes, and helping to empower those who have been directly impacted by this policy to help lead the fight for reform.





**L E G A L  
S E R V I C E S**

**INCORPORATED**

**TESTIMONY REGARDING:**

**T2017-5852: EXAMINING DOI'S REPORT ON  
NYCHA'S PERMANENT EXCLUSION POLICY**

**PRESENTED BEFORE:**

**THE NEW YORK CITY COUNCIL'S  
COMMITTEE ON PUBLIC HOUSING  
AND  
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**PRESENTED BY:**

**ARIANA MARMORA  
STAFF ATTORNEY  
MFY LEGAL SERVICES, INC.**

**APRIL 24, 2017**

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**MFY LEGAL SERVICES, INC., 299 Broadway, New York, NY 10007  
212-417-3700 [www.mfy.org](http://www.mfy.org)**

## **I. Introduction**

MFY Legal Services, Inc. envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised or have disabilities. We do this through providing the highest quality direct civil legal assistance, providing community education, entering into partnerships, engaging in policy advocacy and bringing impact litigation. We assist more than 20,000 New Yorkers each year.

MFY annually serves more than 3,600 tenants, including more than 850 NYCHA tenants. MFY is committed to working with NYCHA and the City Council to protect the safety and accessibility of public housing for low-income New Yorkers so they can continue to be an integral part of New York City communities. As a member of the Right to Counsel Coalition, MFY Legal Services also supports the inclusion of NYCHA termination proceedings as part of the City's commitment to provide universal access to counsel for tenants facing eviction.

This testimony is submitted in response to the Department of Investigation's (DOI) report and recommendations on permanent exclusion of residents of the New York City Housing Authority (NYCHA). DOI's recommendations are misguided and blind to the real needs of NYCHA residents. They are based on a superficial and misleading consideration of the wrong data with no interviews with NYCHA residents or other stakeholders. They would result in arbitrary displacement of residents and families who pose no danger to their communities. Finally, they contradict the Council's, Mayor's, and federal government's stated commitment to increasing affordable housing opportunities for people with criminal justice involvement.

## **II. Our Clients' Experiences**

As advocates for public housing tenants facing eviction, including as a direct result of the ineffectiveness of the current NYCHA permanent exclusion policy, we feel that reformation of the policy is desperately needed. Our clients' stories demonstrate how permanent exclusion often results in the unnecessary division of families and has no real bearing on public safety.

Despite DOI's cherry-picking of a few sensational examples, the NYCHA residents MFY meets every day have had family members excluded for nonviolent, often low-level offenses. Strict enforcement of permanent exclusion orders would often be disproportionate to the actual seriousness of the situation and the realities of the violation.

For example, Ms. W. agreed to the permanent exclusion of her brother, George, in the 1990s after he was arrested for drug possession. Over the next decade and a half, Ms. W. submitted to countless invasive apartment inspections, none of which showed any sign of George's presence, until one afternoon when inspectors found George at Ms. W.'s apartment babysitting her three children. Ms. W. had suffered a heart attack that morning at work, and from the emergency room called the only person she could find who was available on short notice to be there when her children came home from school. Hospital records confirmed Ms. W.'s story. A nurse confirmed that George had come to the emergency room that morning to retrieve the apartment key from Ms. W. George's girlfriend confirmed that he lived with her in a shared apartment in

Fort Greene. NYCHA began termination of tenancy proceedings against Ms. W. for her violation of the permanent exclusion agreement, but after reviewing the evidence settled for a one-year probation, which Ms. W. completed successfully. Ms. W. and her children still live in their NYCHA apartment and have not been accused of any wrongdoing since then.

Ms. W.'s story did not make the front pages of DOI's report, but she is in there. She is counted, anonymously, as one of NYCHA's "failures" to strictly enforce its permanent exclusion policy. DOI did not bother to learn the facts of her story, or of the thousands of stories like hers, and urges NYCHA to ignore those facts as well. (Notably, DOI did not interview any NYCHA residents in compiling its report.) Fortunately for Ms. W., her children, her employer, and her neighbors, NYCHA did examine the facts of Ms. W.'s case. NYCHA did weigh Ms. W.'s violation against the exigencies of her situation. NYCHA did make an individualized determination of the remote danger George posed to his sister's neighbors. NYCHA did exercise its discretion to make an obviously decent, common-sense decision.

MFY and NYCHA often disagree about how the balance should be struck and the agency's discretion exercised in particular cases. But MFY and NYCHA agree that the decision should always be made based on the specific facts of each case after careful examination of the totality of the evidence. DOI disagrees and laments that Ms. W. was not evicted in the name of public safety.

### **III. Flaws in DOI's Report**

NYCHA residents do not need willfully blind, one-size-fits-all policies that ignore the realities of their communities. They do not need more tough-on-crime grandstanding. They need more of the painstaking work that NYCHA has begun in listening to stakeholders and crafting a more rational, transparent exclusion policy. That work is still in progress, and MFY and NYCHA disagree on some points, but we applaud NYCHA's willingness to do the hard work of talking not only with residents, but also with legal advocates, workers, experts, and other stakeholders.

This is work that DOI did not do, which may be why its report is riddled with errors and misperceptions, including its reliance on bare arrest records without any other evidence of criminal conduct. The Department of Housing and Urban Development (HUD) has made clear that an arrest, by itself, cannot be used as evidence that a crime has occurred in bringing charges against public housing residents. *HUD Notice H 2015-10*, November 2, 2015 (found at <https://portal.hud.gov/hudportal/documents/huddoc?id=15-10hsgn.pdf>). HUD has also stated that blanket bans against residents with criminal conviction histories violate the Fair Housing Act (FHA), and that public housing authorities must conduct individualized determinations before excluding residents for criminal conduct. *HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, April 4, 2016, p. 6 (found at [https://portal.hud.gov/hudportal/documents/huddoc?id=hud\\_ogcguidappfhastandcr.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf)). DOI's recommendations would likely violate federal law on both counts.

DOI also naively accepts without question that arrest records accurately reflect arrestees' actual home addresses. Had DOI spoken with NYCHA residents, the agency would quickly have

learned that excluded family members do not rush to change the addresses on their government identification when they become homeless, and that they are likely to give their stably housed relatives' addresses for lack of a better answer when interrogated by police. "Where do you live" is not a simple question for homeless and precariously-housed people. DOI's ignorance of the basic realities of NYCHA residents' lives undermines the relevance and reliability of its conclusions.

The DOI's recommendations also fail to consider the resulting increased burden on New York City's already severely overcrowded shelter system. At a time when the Mayor and Council have made extensive and unprecedented commitments to protecting affordable housing and fighting homelessness in the City, the DOI's proposals are out of step and counterproductive. Triggering a surge in homelessness among the City's most vulnerable families will not improve public safety.

#### **IV. Recommendations**

MFY supports the direction in which NYCHA has begun to move with its proposed reforms of its permanent exclusion policy. Those reforms would base the policy on research and data; would shift focus towards violent conduct; would increase transparency for residents; and would improve the process by which tenants can apply to lift exclusions when excluded family members have demonstrated rehabilitation. These are important steps towards better balancing resident safety with NYCHA's mission to "increase opportunities for low-and-moderate income New Yorkers by providing safe, affordable housing and facilitating access to social and community services."<sup>1</sup>

MFY urges the City Council and NYCHA to reject DOI's recommendations, which, if adopted, will exacerbate homelessness and hardship among NYCHA families while doing nothing to increase public safety.

Rather than encouraging NYCHA to more aggressively pursue evictions of entire families in cases where mere arrests may have occurred in the household, resources would be better allocated to support community services and programs that enrich the lives of NYCHA tenants, or to improving the quality of life of residents, including efficient access to repairs related to public safety (such as securing buildings with working locks or increasing light in buildings and on grounds).

For these reasons, MFY strongly supports the reformation of NYCHA's permanent exclusion policy along the lines of the proposals that NYCHA has developed through painstaking reflection and consultation with numerous stakeholders and communities. MFY strongly opposes DOI's recommendations, which would have devastating practical impact on our clients and result only in the superficial appearance of safety.

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<sup>1</sup> New York City Housing Authority: About NYCHA, <http://www1.nyc.gov/site/nycha/about/about-nycha.page>. Accessed April 18, 2017.

## **V. Conclusion**

MFY Legal Services strongly recommends that the City Council carefully consider the consequences of adopting the DOI's recommendations regarding reformation of NYCHA's permanent exclusion policy, and commends the Council for its continuing efforts to support safe, affordable housing for all New Yorkers.

**FOR THE RECORD**

**TESTIMONY OF**

**Karl Kumodzi**  
***BYP100***

**PRESENTED BEFORE**

**The New York City Council Committee on Public Housing and the Committee on  
Oversight and Investigations**

**Examining DOI's Report on NYCHA's Permanent Exclusion Policy**

**April 24, 2017**

Good morning, my name is Karl Kumodzi and I'm a member of BYP100. We're a member-based organization of Black 18-35 year olds dedicated to creating freedom and justice for all Black people through transformative leadership development, direct action organizing, advocacy, and education. We organize with a Black Queer Feminist lens, meaning we work to bring the people most marginalized in our communities to the center of our work.

One of the most unifying experiences across our membership of young Black New Yorkers is that of criminalization, and our experience tells us that the plain and simple truth is that the list of recommendations put forth by the DOI in this report is nothing more than a strategy to increase the criminalization and surveillance of NYCHA residents, their families, and their friends, under the guise of being in the interest of NYCHA residents. We want to believe and strongly hope that Council Member Torres who grew up in public housing, Council Member Gibson who has been adamant about ending homelessness, and others on the Committee on Public Housing

have the best interests of NYCHA residents in mind, and I'm operating from that assumption as I deliver my remarks to you today.

Although this report frames the directing of more money towards NYPD & NYCHA enforcement of permanent exclusion as being in the interest of safety for NYCHA residents, it fails to consider that these resources could instead be directed to improving conditions in NYCHA buildings - which residents badly want and helps them feel safe. Many NYCHA building main doors don't work, residents don't have buzzers, community centers are in disrepair and inaccessible, disabled tenants can't rely on elevators, and it takes years for NYCHA to address reported repairs. If this is truly an issue of the safety of NYCHA residents, why have these needed repairs gone unaddressed, in some places for several years? All of these things, in addition to investments in good jobs, mental and physical healthcare, and drug rehab programs are proven to actually reduce crime and help residents feel safer without ripping families apart and increasing homelessness, which permanent exclusion does. The only conclusion we can draw from this is that the DOI is not genuinely invested in the well being of NYCHA residents, but rather is making the pretense of being invested to justify hyper policing.

Even the language of this report serves to affirm and revive the types of racist policing and abuse we're famous for in New York. Building on the violent and inaccurate legacies of fears of 'superpredators' and policies like broken windows policing, the DOI report starts by dehumanizing NYCHA residents - many of whom are Black - as a way to justify destabilizing and divesting from low income communities. This report literally opens up with the sentence: "The New York City Housing Authority ("NYCHA") continues to allow criminals – including gang members, drug traffickers, and violent offenders – to reside in public housing." This report is just

another example of how NYCHA and the NYPD play a major role in steering a false narrative about the reality of crime in New York City. Crime is decreasing, and in fact we've seen all time lows in recent years, but the hyper criminalization of Black & brown NYCHA residents is ever increasing, which doesn't make sense.

In conclusion, I just want to remind the people in this room, especially the representatives of NYPD and the people who contributed to this report, that NYCHA housing is people's homes. It's not a handout, it's not a jailhouse, and it's not a zoo. Human beings live in NYCHA, people's children grow up there, full human beings facing all the ups and downs and challenges and complexities of life live in NYCHA housing. NYCHA residents are not criminals. Black youth are not criminals. The New York Police Department are criminals for killing and harassing and tearing families apart and adding to the homeless population. When officials responsible for making crucial needed repairs in NYCHA housing fail to do so even after unspeakable number of complaints, they're criminal.

This report dehumanizes Black NYCHA residents in order to justify laying out a set of recommendations that would increase homelessness in the city, tear apart families, strip people of their rights and dignity by increasing surveillance, and waste resources on throwing people away when we've seen over decades of evidence that removing people from their communities doesn't make safer communities. There is zero evidence that increasing evictions—and exacerbating our City's homelessness crisis—improves public safety. Instead, building strong communities makes safer communities, and we believe strong communities are ones that have investments in good jobs, quality housing, strong education, mental and physical health care, and other things that help people live full, healthy, thriving lives. We implore NYCHA



administrators and Council Members to continue to resist policies and recommendations outlined in this report that propose to divert sorely needed resources away from the well being of tenants and towards their surveillance and ultimate displacement.

Thank you.

Written Testimony by Runa Rajagopal<sup>1</sup>, The Bronx Defenders  
NYC City Council

Committee on Public Housing jointly with the Committee on Oversight & Investigations  
**Oversight:** Examining DOI's Report on NYCHA's Permanent Exclusion Policy & Int. No. 1207:  
In relation to reporting on persons who have been permanently excluded from public housing.

Monday, April 24, 2017 at 10:00 am

My name is Runa Rajagopal. I am the Managing Director of the Civil Action Practice at The Bronx Defenders. The Bronx Defenders thanks the Committee for the opportunity to submit comments and testify with our client, Maria Lopez, regarding the New York City Department of Investigation's Report on NYCHA's Permanent Exclusion Policy and on Int. No 1207.

#### **About The Bronx Defenders**

Founded in 1997, our organization is nationally renowned for providing holistic and comprehensive legal services, which include civil, criminal and family defense, social services and community programs to approximately 35,000 low-income families in the Bronx each year. Our innovative, interdisciplinary, team-based model operates on multiple levels to address how an arrest and criminal charge alone can have a devastating impact on a person's life. In New York State, indicative of the rest of the nation, more than 1 in 3 people arrested are never convicted of any crime or offense, yet they suffer drastic so called "collateral" legal consequences and enmeshed penalties as a result of their arrest. This collateral damage, and the instability that results, can be far more devastating than any of the direct penalties that accompany the criminal conviction.

The Civil Action Practice is designed to defend against the many enmeshed civil penalties that arise out of a person's arrest. We fight for our clients, the majority of whom are poor or working poor men, women and youth of color who are overpoliced and disproportionately arrested and incarcerated, *not* to be defined by and punished simply for an arrest or a conviction. Alleged criminal conduct in public housing can lead to a whole host of devastating civil consequences, not only for the person who stands accused but for her entire family. Every year, we represent hundreds of public housing residents facing evictions on the basis that they themselves or a family member was involved in alleged criminal activity. In addition to the legal services we provide, we are a member of the permanent exclusion coalition, and have been working with NYCHA, alongside community based reentry organizations, tenant groups, legal services providers and other stakeholders to reform NYCHA's permanent exclusion policies.

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<sup>1</sup> With support from Karen Cornelio & Sharitza Lopez-Rodriguez, Civil Action Practice.

**We Urge the Council and NYCHA to Reject the Department of Investigation's Report Recommendations.**

On March 28th, 2017, the New York City Department of Investigation (DOI) issued a misleading and misguided follow-up report on the New York City Housing Authority (NYCHA), concluding that it is “failing” to remove “dangerous criminals” from public housing. The one sided Report pushes for a one size fits all, punitive approach to questions of public safety in NYCHA and makes recommendations that call for the ineffective and draconian policies of years past that **are antithetical to current criminal justice reform and reentry efforts across the country**. These recommendations include: increased NYPD policing of public housing residents, evicting more families for purported connection to family members accused of a crime on or off the premises, whether the family member actually lives in public housing or not, and increasing enforcement of harsh permanent exclusion and other punitive policies, including expanding NYCHA's trespass policy, making it harder for unrepresented tenants to vacate a default judgment and mandatory transfers to downsize to smaller apartments.

The report is problematic on several fronts. Though it is written under the guise of making the public housing community safer for those who live there, no residents, community members, advocates or other experts were interviewed or consulted for this report; in particular, for the cases that were cherry picked as examples of the failure of the current practice, the parties to those cases were not interviewed or consulted. It also assumes, without asking and without any evidence or research that permanently excluding an individual or evicting a family is effective for increasing public safety. It also assumes that aggressive pursuit of permanent exclusion outweighs all of the immense costs to individuals and families.

All contentions of the report and case examples are based on arrest reports and paper files, and the report assumes that everything in the arrest report is true. No consideration is given to the criminal court process that happens after an arrest, the rights of the accused or the dispositions of criminal cases. All in all, the Report fails to fully investigate or recognize the needs and interests of public housing residents or their priorities.

**Increasing Evictions of Families and Individuals when a Family Member is arrested or convicted of a crime does not make communities safer, but rather, would only worsen NYC's homelessness crisis.**

The DOI assumes that evicting more families like Ms. Lopez's will make public housing safer. However, there is no evidence that indicates displacing families will do anything except exacerbate NYC's housing and homelessness crisis. On the contrary, research has shown that housing is one of the most fundamental building blocks of a stable life and it has been proven that lack of access to housing and homelessness actually *increases* the risk of incarceration and

subsequent re-incarceration.<sup>2</sup> Housing stability, family support and strengthened community ties reduce recidivism and aid in an individual's rehabilitation and reentry. That is what actually makes communities safer.

**Reject the “Once an Offender, Always an Offender” Stereotype Put Forth by the DOI.**

The Bronx Defenders represents countless individuals and families in the Bronx who call NYCHA home. Like Ms. Lopez, because of their contact with the criminal justice system, tenants and their families face termination and eviction from public housing and a whole host of other enmeshed, unfair consequences. Even after the family member has served his debt to society- like Ms. Lopez's son- formerly incarcerated individuals and their families continue to be punished in perpetuity due to lack of access to housing, employment and other resources. Changes in the laws<sup>3</sup> and recognition of the barriers to reentry are slowly changing this reality, however, the DOI's report represents a step back in its call for punitive policies, perpetuating the stigma of criminal justice contact and pathologizing individuals with convictions.

**NYCHA should maintain its discretion to make individualized determinations about safety and the DOI's recommendation for a One Strike Approach should be rejected.**

The U.S. Department of Housing and Urban Development (HUD) gives public housing authorities broad discretion in establishing and adopting written policies for admission of tenants and for screening family behavior and suitability for tenancy. *See* 24 C.F.R. § 960.202(a); § 960.203 (c)(1). HUD permits public housing authorities to consider a person's criminal history involving physical violence to persons or property and other acts that would adversely affect the health safety or welfare of other tenants. In fact, there are only two explicit bans<sup>4</sup> based on criminal convictions for which a public housing authority must deny admission. *See* 24 C.F.R. § 960.205(b)(3). Beyond these restrictions, HUD encourages public housing authorities to consider all relevant information, including factors that indicate a reasonable probability of favorable future conduct and evidence of rehabilitation, to allow individuals who have paid their debt to society to rejoin their families. *See* HUD Letter to Public Housing Directors, dated June

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<sup>2</sup> Guidance on Housing Individuals and Families Experiencing Homelessness Through the Public Housing and Housing Choice Voucher Programs, HUD PIH Notice 2013-15(HA), 8 (June 10, 2013), available at <http://1.usa.gov/1afx3vy>.

<sup>3</sup> The NYCHA reentry project, the NYC Fair Chance Act, the Mayor's Announcement re: investment in Reentry and Mental Health Services for those released from Rikers, in addition to alternatives to incarceration and workforce development all represent progressive policies and programs in NYC that recognize the need for services, housing and other supports for successful rehabilitation and reentry.

<sup>4</sup> Individuals found to have manufactured or produced methamphetamine on the premises of federally assisted housing and Sex offenders subject to a lifetime registration requirement under a State sex offender registration program. *See* 24 C.F.R §§ 960.204, 982.553; 982.553.

17, 2011. Moreover, HUD gives public housing authorities specific directions in its November 2, 2015 Guidance to Public Housing Authorities on excluding the use of arrest records in housing decisions and states, among other things, that PHAs are not required to adopt one strike policies, that arrests alone are not evidence of criminal activity to support denial of admission or eviction, that the due process rights of applicants of tenants should be protected.<sup>5</sup>

As the largest landlord in the country whose mission is to increase opportunities for low income New Yorkers and also to provide safe, affordable housing, NYCHA has procedures<sup>6</sup> and programs in accordance with Federal Law and HUD Guidance to make case by case decisions regarding an individual's or family's suitability to continue to live in public housing based on alleged criminal conduct and should continue to maintain its discretion to do so.

Under NYCHA's procedures, after a housing manager makes the initial assessment of whether a tenant should face termination because she or a family member is accused of criminal conduct, the tenant's file will be forwarded to the Legal Department and 250 Broadway for prosecution. There, NYCHA attorneys make another individualized assessment based on the facts or context of the case, family circumstances and other information/evidence and either will offer a settlement or move the case forward for a hearing. With a settlement, the NYCHA attorney will offer a probationary period, we have seen anywhere from 1 year to 5 years, as in the case of Ms. Lopez, a permanent exclusion and other terms, like a transfer of apartments. At the hearing, a NYCHA Impartial Hearing Officer hears the facts and evidence of the case and first decides whether the charges are sustained. If they are, the Hearing Officer must decide the proportionate disposition: whether the tenant should be placed on probation, whether the "wrongdoer" family member should be permanently excluded or whether the tenant should face the ultimate punishment of termination and thereafter, eviction.

It is important to note the context of terminations and permanent exclusions. Unlike in criminal court, tenants facing eviction or termination have no right to counsel. Like Ms. Lopez, a tenant may be in the predicament of fending for herself in all her housing cases, even if she or her family member has an attorney in the criminal case, the facts of which gave rise to the other housing consequences. Tenants are also not afforded any of the greater constitutional protections

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<sup>5</sup> HUD PIH Notice 2015-19(HA) (November 2, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>

<sup>6</sup> NYCHA's Management Manual, General Memoranda and termination procedures, as governed by the Federal Consent decrees under *Escalera, et al v. New York City Housing Authority*, 425 F. 2d 853, certiorari denied, 400 U.S. 853 (1970), consent decree on remand docketed March 25, 1971, 67 Civ. 4307 (S.D.N.Y. 1971, D.J. Mansfield), and the consent judgements of January 26, 1976 in the United States District Court for the Southern District of New York cases of *Joseph Tyson Sr. v. New York City Housing Authority* and *Myrdes Randolph v. New York City Housing Authority*, 73 C 859, 74 C 1856, 74 C 2556, 74 C 2617 (S.D.N.Y 1976, Metzner, J.), all set forth the procedures and policies to make an individualized, case by case assessment when there is an allegation of undesirable or criminal conduct whilst balancing the due process rights of tenants.

that exist in criminal court when facing eviction, including the higher burden of proof beyond a reasonable doubt, as the burden in most civil proceedings is the lowest standard of preponderance of the evidence, the presumption of innocence until proven guilty, the right to confront witnesses, the right against self-incrimination or the right to a jury, to name a few.<sup>7</sup> By facing concurrent cases (criminal and housing), as was the case for Ms. Lopez, Tenants or their family members are at risk of jeopardizing their criminal case by making statements against their own interest or risk an adverse presumption lodged against them for remaining silent. Additionally, with the incredible backlog in criminal court, a tenant may be in the position of losing his home or some other punishment, like probation or exclusion of a family member, prior to ever getting his day in criminal court or even if the criminal case is dismissed.

It is not uncommon for tenants to be confused by the termination process and moreover, to misunderstand or be unclear of the terms and conditions of settlement stipulations. Ms. Lopez was on her own when she faced termination- going from office to office but unable to secure legal representation, despite her best efforts. In 1995, she signed a 5 year probationary period and permanent exclusion of her son, before he was convicted of any crime. In 2012, when she faced termination again because of the purported violation of her permanent exclusion agreement, she still was unable to find counsel and was forced to represent herself. The Hearing Officer decided to terminate her tenancy. It was only thereafter that she connected with our office. Despite our best efforts on appeal, we lost. Thereafter, NYCHA did another review of Ms. Lopez's case and used their discretion to reverse her termination and reinstate her tenancy on condition that her son continue to be permanently excluded.

Though we believe NYCHA could assert its discretion more, as they did with Ms. Lopez, we applaud NYCHA's current efforts to tailor and contextualize alleged criminal conduct, to improve its permanent exclusion practices and to target its efforts on those who actually pose risks. The Council and NYCHA should reject the DOI's recommendation to follow the cruel, one strike approach as held in *HUD v. Rucker* or the "known or should have known" standard, and continue to make individualized assessments to secure the safety of public housing.

**Permanent Exclusion should be more narrowly applied.**

NYCHA's policy of permanently excluding the offending family member when the "bad actor" is not the tenant of record is a disproportionately punitive and highly invasive policy that rips apart families. It is the policy of effectively evicting the person allegedly engaging in the offensive conduct from the household, permanently, so that the rest of the family can continue to keep their home. For the life of the tenancy, in the current apartment or any apartment the tenant

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<sup>7</sup> See Mary M. Cheh, *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction*, 42 *Hastings L.J.* 1325, 1325-28 (1991)

moves to thereafter, the excluded individual cannot reside in or even visit the apartment. To make sure the tenant complies with this exclusion, NYCHA will conduct surprise inspections of the entire apartment, any time between 9 am and 7 pm. If the individual is found on premises, NYCHA will move to terminate the tenancy for violation of permanent exclusion. Further, if the tenant fails to open the door to inspectors, NYCHA will also move to evict the tenant and her family. Because this exclusion is permanent, Tenants have to affirmatively move to remove it, even if it is based on conduct by a family member from ten or twenty years ago.

It is not unusual for tenants to regularly make the difficult decision to permanently exclude their sons and grandsons from their homes to safeguard the rest of their family, even if the criminal case is still pending and there has been no conviction of guilt. The punishment of permanent exclusion needs to change for many reasons.

First, focusing on interventions on low-risk people can actually increase their likelihood of recidivism and can decrease public safety. Permanent Exclusion, in particular, can increase risk by removing a person from their family, and thus from family and community supports that are proven to reduce recidivism. Additionally, excluding residents from NYCHA rarely addresses the low risk to public safety-it only relocates the problem. Moreover, any new permanent exclusion policy must narrowly tailor the use of exclusion to support safe NYCHA developments, but curtail its use as a punitive measure. We encourage the practice of capturing good data on termination proceedings and its periodic review to both ensure NYCHA's compliance with its own policies and to reflect on the effectiveness of NYCHA practice. Lastly, research shows that a person's risk of recidivism declines quickly over time. HUD, the federal government, and New York State all recognize the importance of second chances for people who have been involved in the criminal justice system.

NYCHA has been working with our permanent exclusion coalition and we applaud their efforts to reform their permanent exclusion practices to balance the rights of tenants and to keep families together while continuing to preserve resident safety. NYCHA recently released a new form to allow residents to lift permanent exclusion bans based on the passage of time or evidence of rehabilitation and it is much easier for tenants to understand. We credit NYCHA for these changes that are headed in the right direction and ask them and the Council to reject the DOI recommendations for stricter enforcement of permanent exclusion.

**More Law Enforcement, policing and criminalization of residents is not the answer**

We urge NYCHA and the Council to reject the call for more policing of the public housing community, for NYCHA investigators to be armed and provided bulletproof vests and to broaden the categories of trespass notices. There are no cited instances where an investigator faced harm to necessitate more armed policing. Additionally, given the history of overpolicing and discriminatory policing of residents of color in NYCHA and the already strained relationships between the NYPD and housing residents, such steps to increase militarized interactions and opportunities to prosecute and incarcerate would not enhance but would hurt efforts to ensure the safety and health of the community.

**CONCLUSION**

The DOI's call for regressive and punitive policies to increase evictions, policing and incarceration of public housing residents should be rejected by the Council and NYCHA in its entirety. Rather, we want to encourage an evidence based, case by case approach to public safety problems to ensure a balance is struck regarding the goal of protecting the community and protecting the fundamental, constitutional rights of tenants and their families. NYCHA needs to use the broad discretion it has to make fair and just assessments regarding who is eligible for a lease and for the ability of families to remain housed, despite having members who have had contact with the criminal court system. Additionally, practice of permanent exclusion must continue to be reformed, as NYCHA plans to, to tailor this practice to those who actually pose a risk to the community. Moreover, NYCHA residents are in need of greater government investment in infrastructure to improve the quality of living conditions in public housing.<sup>8</sup> Such financial and other investments would do more to improve the health and safety of public housing residents.

We hope to work with Council, NYCHA and other community stakeholders to ensure our most vulnerable communities continue to have access to safe, affordable housing and to meet these goals. Thank You.

Submitted by,  
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<sup>8</sup> See "Public Housing: New York's Third City" By Victor Bach, Community Service Society, March 2017.



### Written Comments By Maria Lopez, 40 yr + NYCHA resident

My name is Maria Lopez. I live in the Bronx. I am 64 years old. I am a retired nurse's aide. I am disabled.

I have lived in my NYCHA apartment for most of my life. 40 years. As a single mom, this is the home where I raised my 9 children. This is the home where my 21 grandchildren celebrated their birthdays and the holidays. My home was always the heart of our family life.

But this changed when NYCHA banned one of my sons from our home.

As a teenager, my son was sent to prison. At that time, I had to make the impossible decision to exclude him, even though I believed he was innocent. I had no lawyer. I was on my own. I had no idea that it meant he could never ever come back.

This was a very painful time for ALL of us. The experience nearly destroyed him. When he came out, after 14 years, he needed all the support he could get, starting with a place to live. But I could not help him.

Imagine being a mother and knowing that your son has been sleeping in a stairwell because he had nowhere else to go. That's what this policy of permanent exclusion means for many families like mine.

A short time after my son's release, his uncle died. His uncle had been like a father to him and his siblings. The day of the funeral I was very sick and was admitted to the hospital because of my asthma.

In my absence, my son went into my apartment with one of his brothers to borrow clothes for the funeral. Little did they know that a NYCHA investigator had been watching them.

Because of this incident, we were nearly evicted. I was a good tenant, paid my rent and never gave anyone any trouble. My son had paid his debt to society. But it did not matter. He is still being treated like a criminal. And because he set foot in my apartment, we all had to be punished.

Thankfully, after finding a free lawyer and many appeals, NYCHA decided to use its discretion. We were allowed to stay on condition that my son never returned.

We no longer gather at my home for special events or holidays. We're a close family and we want my son to be a part of our life, so we have to go other places. I know my family is not the only one in this situation.

A few weeks ago, I learned about a report from the city's Department of Investigation. It says NYCHA should evict entire families if a member is arrested and accused of a crime. In other words, they don't think permanent exclusion is punishment enough.

**This is cruel and unfair.** Think about my story. Who benefits from these policies? Did it make anyone safer for my son to be homeless after coming out of prison? Would it make anyone safer for my family to lose their home? If you want to improve safety what people need are jobs, stable homes and their families, not the opposite.

I urge the members of the council to reject the recommendations in this report. Thank you for your time.

4/23/2017

Good morning my name is Taquan Pugh, youth organizer at GOLES. As a lifelong NYCHA resident I am highly disappointed with the statement released by the DOI in regards to permanent exclusion. When we speak about criminal activity and violence within public housing we cannot ignore how the system we have in place perpetuates these conditions. Lack of affordable housing, redlining, economic deprivation, and poor living conditions heavily contribute to the issue of violence within public housing. How can one speak of concern about the safety of public housing but at the same time advocate for armed officers to inspect apartments and evicting innocent children and elderly people. The permanent exclusion policy lacks integrity because of the unethical and illegitimate policing within our communities. Policies and initiatives that disproportionately affect black and brown people such as stop and frisk, broken windows, and solitary confinement have been statistically proven ineffective in keeping our communities safe. Your establishment has actually made efforts in ending these policies and initiatives because we have come to the realization that these are not conducive solutions to safety. The same energy we use to advocate for the evictions of people whom are arrested, we need to use it to speak out against budget cuts for NYCHA or against or the inhumane conditions that many NYCHA residents live in. You can evict as many so called 'criminals' from NYCHA as you want but until you address the TRUE root causes of these issues, the issue of violence in NYCHA will not cease.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: APR 27, 2017

(PLEASE PRINT)

Name: Greg ("Fritz") UMBACH

Address: 205 WARREN 2-G 11201

I represent: CITY UNIVERSITY OF N.Y.

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Deputy Inspector Howard Gottesman

Address: 12 Police Plaza

I represent: NYPA

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition (OOI Report)

Date: 4/24/17

(PLEASE PRINT)

Name: RUNA RAJAGOPAL

Address: 360 E 161 Street Bronx NY 10451

I represent: The Bronx Defenders

Address: (w/Client Maria Lopez, same panel)

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition (OOI Report)

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Maria Lopez (tenant)

Address: \_\_\_\_\_

I represent: w/ The Bronx Defenders

Address: (same panel @ Runa Rajagopal)

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: William Johnson-Peterkin

Address: 90 Church St NYC

I represent: NYCHA

Address: 90 Church St NYC

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

[ ]

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 04/24/2017

(PLEASE PRINT)

Name: Sergio Jimenez

Address: \_\_\_\_\_

I represent: Brooklyn Defender Services

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Alison Wilkey

Address: 524 W. 59th St, Bklyn 10019

I represent: Prisoner Reentry Institute at John Jay College

Address: 524 W. 59th St, Bklyn 10019

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Gerald Nelson

Address: \_\_\_\_\_

I represent: NYCHA

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: David Farber

Address: \_\_\_\_\_

I represent: NYCHA

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Dan Hafetz

Address: NYCHA

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Margaret diZerega

Address: 233 Broadway, 12<sup>th</sup> Floor

I represent: Van Institute of Justice

Address: 233 Broadway 12<sup>th</sup> Floor

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 2017 Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: ARIANA MARMORA

Address: 299 HUNROD ST. APT. 3R, BK NY 11237

I represent: MFY Legal Services, Inc.

Address: 299 Broadway, 4<sup>th</sup> Fl, NY NY 10007.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Sebastian Solomon

Address: to: 225 W 27th St 10001

I represent: Legal Action Center

Address: 225 Varick St, NY NY 10014

D.F.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Genesis Aquino

Address: 50 Broad St # 1104

I represent: Housing Court Answers

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Lucy Newman

Address: \_\_\_\_\_

I represent: The Legal Aid Society

Address: 199 Water St 3rd Fl NY NY



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1207 Res. No. 2016  
 in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: MAURA MCHUGH MILLS, BROOKLYN LS

Address: 900 FULTON ST. BK, NY 11238

I represent: LEGAL SERVICES NYC

Address: 40 WORTH ST, 614 TEL, NY NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Toguen Pugh

Address: 279 East 4th Street

I represent: GOLFES

Address: 279 East 11th St 10014

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 4/24/17

(PLEASE PRINT)

Name: Charles Nunez

Address: 11 Park Place

I represent: Knith Represent

Address: 11 Park Place

O.F.

# THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: April 24th, 2017

(PLEASE PRINT)

Name: Diana Charon

Address: 32nd 123 William Street, 16th floor NY, NY 10038

I represent: Urban Justice Center, Community Development Project

Address: \_\_\_\_\_

▶ Please complete this card and return to the Sergeant-at-Arms ◀

O.F.

# THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Fransia Alberto

Address: 123 William Street, 16th floor, NY, NY, 10038

I represent: Urban Justice Center, Community Development Project

Address: \_\_\_\_\_

▶ Please complete this card and return to the Sergeant-at-Arms ◀

of.

# THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: April 24th, 2017

(PLEASE PRINT)

Name: RAJIV JASWA

Address: 123 William Street, 16th Floor, NY, NY 10038

I represent: URBAN Justice Center, Community Development Project

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms ◆

# THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Greg UMBACH (FRITZ)

Address: 205 WATERGW 2G 1124

I represent: John Jay College

Address: 899 10<sup>th</sup> AVE

◆ Please complete this card and return to the Sergeant-at-Arms ◆