



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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

Presented before

The New York City Council Committee on Public Housing

**Oversight Hearing Examining NYCHA's Compliance with HUD's Admissions Regulations and
New Permanent Exclusion Policy**

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My name is Sergio Jimenez and I am the Director of the Civil Justice Practice at Brooklyn Defender Services (BDS). Our organization provides innovative, multi-disciplinary, and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy to more than 40,000 indigent Brooklyn residents every year. I thank the New York City Council Committee on Public Housing, and in particular Chair Ritchie Torres, for the opportunity to testify on New York City Housing Authority's (NYCHA) Permanent Exclusion policy.

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. 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 for low-income people who have had 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 Need to Reform NYCHA's 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 instead plans to take away more people's housing of last resort¹ through more aggressive eviction actions and increased use of Permanent Exclusion.

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.** Recent 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.

Recommendations:

- 1.) NYCHA should end the exclusion of New Yorkers except in the most serious cases, in which residents or prospective residents in question present a clear threat to the physical safety of their neighbors.
- 2.) NYCHA should immediately cease excluding residents based on arrests, after which a person is supposed to be presumed innocent, and instead limit criteria for exclusions to those required by federal law, or at least to serious felony convictions that are balanced against mitigating factors.
- 3.) Youth under the age of 21, seniors, and those with intra-household caregiver relationships should never be evicted from their homes for an arrest or conviction. If necessary, NYCHA should provide for the transfer of the entire household to another apartment to resolve conflicts in a particular building.

Background

¹ Matter of Featherstone v Franco, 269 AD2d 109, 111 [dissenting mem]; *see also*, Matter of Sanders v Franco, 269 AD2d 118; Mireya Navarro, *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>

As you may know, federal law requires public housing authorities to evict and exclude people from admission based on certain limited criteria, including 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.² 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 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 over-policing, 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. For example, the ongoing war on drugs continues to ensnare large numbers NYCHA residents and their family members. Likewise, the high unemployment rate among public housing residents—only 47.3% of families have one or more employed member³—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 property owner and residential dwelling manager, NYCHA should not evict them on such a discriminatory basis. This is particularly true given that NYCHA has been found to be “housing of last resort,” both by the courts and by the public.

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 NYCHA’s exclusion policy, which pushes individuals into shelter and tears apart families upon threat of evicting their entire household. This remains true when, as Commissioner Bratton stated in July of 2015, NYCHA is seeing a historically low level of crime.

² 24 CFR § 960.204

³ http://www.nyc.gov/html/nycha/downloads/pdf/res_data.pdf

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 \$2.50 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 NYCHA’s exclusion policy 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. Helping people stay in their homes is thus a matter of public safety.

The following client story exemplifies the problem:

Ms. C

BDS’ Criminal Defense Practice picked up Ms. C’s case following a single alleged purchase of drugs from her apartment. She was arrested more than a year after the incident, despite a statement by the confidential informant that described someone three inches taller and about fifty- seventy pounds heavier. Ms. C was released on her own recognizance and her charges have been progressively reduced as her case is going on its third year. Our office expects a full dismissal when the case is fully litigated. However, during the course of the determination of this criminal matter, NYCHA brought a termination of tenancy proceeding based on the allegations. Ms. C will not be able to defend herself at NYCHA without considerations to her criminal case, which places her housing of last resort in jeopardy. After bringing the initial charges, NYCHA is now threatening an additional charge that Ms. C’s brother, who suffers from mental illness, had a criminal record. There have been no incidents of violence through the entirety of Ms. C’s tenancy but now, Ms. C will have to make another terrible choice: risk her family’s housing or permanently exclude her extremely vulnerable brother. Asking families to make these choices as a result of questionable, non-violent allegations runs counter to the values espoused by HUD in their latest efforts at facilitating re-entry of tenants into NYCHA.

Real Reform

There are many ways to improve the process by which exclusions and evictions are determined. Residents sometimes unknowingly agree to prohibit a family member from ever visiting their apartment—a disturbing occurrence that NYCHA will not let them fix. They usually go through the proceedings *pro se* (without representation). They deal directly with NYCHA’s prosecuting attorneys, as opposed to receiving a hearing with an impartial officer, 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 five pages of legalese, which are 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 is planning to reinstate 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 homeless in New York are, at best, deeply problematic. Certainly, as one of the wealthiest cities in the world, 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 NYCHA's opaque and lop-sided exclusionary policies are 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 follow the federal government's recent example 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 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.