



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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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

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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 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.^{1,2} 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 resort³ based on unsubstantiated and even dismissed criminal allegations.

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

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

³ *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.⁴ 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 member⁵—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.

Housing as a Matter of Justice and Public Safety

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>

⁴ 24 CFR § 960.204

⁵ http://www.nyc.gov/html/nycha/downloads/pdf/res_data.pdf

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.