



Journal of
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**FORUM ON AFFORDABLE HOUSING
AND COMMUNITY DEVELOPMENT LAW**

2022–2023

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From the Editor-in-Chief

Anika Singh Lemar

I am asserting some personal privilege in my introduction to this issue and using this space to recognize my colleague, J. L. Pottenger, Jr., who passed away on February 23, 2023.

Jay taught at Yale Law School for over forty years. Over that time, he and his students represented prisoners challenging inhumane conditions, tenants at risk of eviction and homeowners at risk of foreclosure, and advocates for fair and desegregated housing. In recent years, Jay focused his work on housing law. In addition to representing tenants and homeowners in litigation, he long taught the community development clinic at Yale, a clinic that was featured, shortly after its founding, in the Fall 1992 issue of this Journal. That article's authors described the clinic's work representing affordable housing developers and community loan funds and celebrated the fact that Yale students "were beginning to learn that they can practice law in the public interest without ever setting foot in a courtroom."¹



Anika Singh Lemar

Jay, however, never stopped going to court, even when he was balancing that work alongside closing deals. One place where he did a lot of his teaching and learning was Housing Court. Housing Court is crowded, oftentimes standing room only. It is loud, and the acoustics are very bad. Almost every landlord is represented by counsel. Nearly every tenant is not. Clerks and landlord lawyers alike, sometimes simultaneously, from opposite sides of the room, engage in cattle calls, yelling out tenants' names, pulling them into a small office or a hallway, doing their utmost to resolve a case, which, is to say, take a person's home away, without wasting the judge's time with facts, law, or argument.

If you had the immense privilege of being Jay Pottenger's student, you know that Jay did not believe that applying the law to the facts of a case was a waste of anyone's time. From discovery through appeals, students in Jay's Housing Clinic litigated the heck out of their clients' cases. Students and alumni describe the immense impact that the Housing Clinic has had on their lives. One student said that the clinic "set my entire career in motion" by being "by far the most formative and fulfilling component of my YLS experience."

His former students will, of course, always remember learning civil procedure and evidence and public benefits law in the real world in Housing Court. But I particularly relish a remembrance from a landlord's

1. James S. Rubin & Robert A. Solomon, *Learning and Serving the Community: Yale Law's Housing Development Clinic*, 2 J. AFFORDABLE HOUS. & CMTY. DEV. L. 15 (1992).

attorney who was not infrequently on the other side of Jay and his students, and I quote:

[Jay] was always a thoughtful problem solver, compassionate, and deeply knowledgeable. He sure wasn't hesitant to unleash the disproportionate resources of the Yale legal clinic in every case, turning a basic eviction into a "Supreme Court" case regularly. 50 pages of interrogatories and document production requests was normal for a complaint with 5 paragraphs... His legacy will live on in all the students he mentored who see the full playing field and how to judiciously apply coercive pressure.²

I had the pleasure of wrapping up one of Jay's longtime cases in the fall of 2022, when he was on medical leave. His students successfully defended an elderly tenant whose landlord tried to evict her five times over the course of a few years. When her landlord separately tried to sue her for money damages, Jay and his students filed counterclaims, and I'll leave it to you to guess which party wrote the settlement check and which party cashed it.

That kind of success in Housing Court—on behalf of poor tenants—does not come easily. Jay was constantly working. His work ethic was on full display almost until the day he died. In September, he was on the courthouse steps when our students filed suit against the Town of Woodbridge for housing policies that have perpetuated racial and economic segregation in contravention of Connecticut law.³ In November, he spoke at the groundbreaking of an affordable housing development that, over the last few years, has required two separate lawsuits against the Town of Branford's planning and zoning commission.⁴ That same month, his students, channeling his energy, took on an *amicus* brief in a civil rights case against the Town of Cromwell pending before the Second Circuit, and he worked with students and me to file that brief a few days late in December.

Those last few months are not just a window into the life of a workaholic; they are a window into a truly expansive career. Just looking at those last few months, Jay's work spanned extraordinary range, from federal civil rights litigation to transactional community development to eviction defense to disabilities law. In many ways, all of his experience culminated in his work chairing the board of the Open Communities Alliance.⁵ It is impossible for anyone practicing housing law in this state or this country

2. John L. "Jay" Pottinger, Jr., 72, NEW HAVEN INDEP. (Feb. 24, 2023), https://www.newhavenindependent.org/obituaries/john_l_jay_pottenger_jr_72.

3. *Clinics File Civil Rights Lawsuit Challenging Exclusionary Zoning in Connecticut*, YALE L. SCH. (Sept. 20, 2022), <https://law.yale.edu/yls-today/news/clinics-file-civil-rights-lawsuit-challenging-exclusionary-zoning-connecticut>.

4. "A Case Study in Perseverance": Homes Break Ground After Years of Help from Clinics, YALE L. SCH. (Jan. 27, 2023), <https://law.yale.edu/yls-today/news/case-study-perseverance-homes-break-ground-after-years-help-clinics>.

5. In 2022, the Open Communities Alliance was featured in this Journal in Volume 31, Issue 1, https://www.americanbar.org/content/dam/aba/publications/journal_of_affordable_housing/ahjournalv31n1.pdf.

not to notice segregation. For Jay, it was not enough to notice it, so he tackled it. Over the last few years, with Open Communities, Jay put all of his skills and expertise to work: representing tenants in substandard housing, changing the criteria that the State of Connecticut applies when deciding where to locate affordable housing, and suing the Trump administration's Department of Housing and Urban Development when it sought to roll back what little progress the Obama administration had made in addressing segregationist housing policies.

Books and reams of articles have been written on the ways in which community development practitioners underappreciate fair housing goals and the ways in which fair housing advocates underappreciate community development. Scholars and advocates love to point out the tensions, but Jay's career demonstrated pathways out of that tension. He understood what was at stake if our efforts to address housing injustice failed to tackle the segregated schools and parks and air quality and transportation infrastructure and job networks and youth sports that all come with segregated neighborhoods.

Jay accumulated many accolades over the years. To name just a few, he received the Elm-Ivy Award in 1998, the Connecticut Voices for Children's "Kid's First" Award in 2006, the Outstanding Advocate for Clinical Teachers from the Clinical Legal Educators Association in 2006, the Connecticut Fair Housing Center's George and Patricia Ritter Pro Bono Award in 2014, the New Haven Legal Assistance Association's Equal Access to Justice Award in 2016, and the Connecticut Bar Association's Tapping Reeve Legal Educator Award in 2022. He was posthumously awarded the William Pincus Award for Outstanding Service and Commitment to Clinical Legal Education, for which he was nominated by friends and colleagues from law schools across the country, in April 2023.

Jay's influence extended well beyond those awards. He supported clinicians and housing lawyers across the country and clinical faculty throughout the world, regardless of whether they had been his students. As I was writing these words, Michael Allen, an attorney and fellow member of this Forum, dropped me a note to tell me that he was keeping Jay's picture next to his home office desk to, and I quote, "remember daily what a mensch he was." I, too, will remember daily what a mensch he was and be grateful.

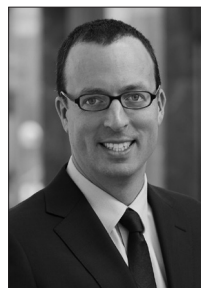
Thank you for the indulgence. Jay would have read this issue with great interest. All of the articles tackle the pivot from pandemic eviction emergency to permanent eviction emergency. We are seeing in real time the ways in which temporary pandemic policies intended to help renters survive the public health crisis can and cannot be adapted to permanent policies to help renters survive the housing affordability crisis. I hope you enjoy it and welcome your thoughts and feedback.

From the Chair

Ian Adams

Greetings from the Forum. . . .

I so enjoyed seeing so many of you at the 2023 Annual Conference in May. It was an exciting event filled with vital information and nourishing interactions. Special thanks go to the conference co-chairs, Jade Craig, Sarah Molseed, and Kelly Bissinger, along with materials co-chairs Rita Burns and Apps Akpofure. Their tireless efforts kept us on track and my anxiety in check. Additional thanks go to our generous conference sponsors, without whom the conference would not have been possible.



Ian Adams

In addition to the slate of panels on a wide range of topics, from “Hot Topics in Tax Exempt Bonds” to “Fairness in Resident Relocation,” we were particularly eager to hear from our plenary speakers. To kick off the program, the HUD General Counsel, Damon Smith, moderated a panel of HUD officials on the administration’s Housing Supply Action Plan, which aims to close the nation’s housing supply shortfall within five years.

The next day, we heard from Stanford Law Professor Michelle Wilde Anderson, whose book, *The Fight to Save the Town: Reimagining Discarded America*, details the efforts of leaders and residents to fight the effects or neglect and disinvest in four working-class cities and counties across the United States. Professor Anderson’s book is a must-read for those in the field of Community Economic Development, and a poignant reminder that the communities we serve are, simultaneously, both fragile and resilient.

I enjoyed catching up with both old and new colleagues from across the country during the conference. While it is exciting to welcome an increasingly diverse group of new lawyers into the practice, it is bittersweet to recognize that the new faces are slowly replacing the people that built the Forum and defined the “Affordable Housing” practice more than thirty years ago. It is not coincidental that the Forum was born during the same period that the Low-Income Housing Tax Credit (LIHTC) evolved from an obscure section of the Internal Revenue Code to the primary source of financing for new affordable housing in the United States.

Over the coming years, the attorneys that helped build the LIHTC juggernaut will begin to step away from their practices, and many have already done so. As in any maturing industry, it is incumbent upon the new generation to capture the wisdom of these pioneers before they retreat to well-deserved retirements. Call them, pester them, take them to lunch; don’t let them leave before we squeeze every ounce of knowledge from them. Although I am not a tax attorney, I nevertheless expect to have paid for several rounds of drinks by the time my term as chair has ended.



DIGEST OF RECENT LITERATURE*

The Digest of Recent Literature in the *Journal* is an opportunity for attorneys and law students new to the practice of affordable housing and community development law to participate in the *Journal* and the Forum. This feature of the *Journal* provides brief summaries of academic and nonprofit policy institute reports, federal government notifications and reports, social science publications, and law review articles that have been published in other sources and may be of interest to the *Journal's* readership. Each summary is accompanied by a citation and link for readers who would like to read the full article or report. Attorneys and law students interested in contributing to future Digests are welcome to contact Emily Blumberg at elblumberg@kleinhornig.com.

Tracing the Legacy of Redlining: A New Method for Tracking the Origins of Housing Segregation

Helen C.S. Meier, University of Michigan

Bruce C. Mitchell, National Community Reinvestment Coalition

(February 2022)

(<https://ncrc.org/redlining-score>)

During the time of rapid suburbanization in the United States, official and unofficial redlining policies denied non-Whites access to credit, newly developed suburbs, and, consequentially, the ability to build equity. Throughout its years of practice, redlining resulted in deeply racially segregated communities, many of which still exist today. The authors of this report sought to leverage previously unused data to better understand the modern impact of redlining in U.S. neighborhoods.

Between 1935 and 1940, the Home Owners' Loan Corporation created the HOLC maps, which rated neighborhoods from "A" to "D" in over 200 cities. Because the neighborhoods that received "D" (or "hazardous") ratings were often non-White neighborhoods, the authors argue that these maps are the most comprehensive source of delineating which neighborhoods were redlined during that time. The neighborhoods in the HOLC maps, however, do not match census tract boundaries, in which modern

*Editor: Emily Blumberg, Klein Hornig LLP. Contributors: Mark Iafrate, Klein Hornig LLP; Dimitri McDaniel, Klein Hornig LLP; Michaela McDowell, Law Student at George Washington University Law School; Kristin Niver, ArentFox Schiff; Prasanna Rajasekaran, Law Student at Boston University School of Law.

demographic data is grouped. To overcome this disparity, the authors overlaid the two maps sets and calculated the percentage of each HOLC rating in over 13,000 census tracts. In doing so, they sought to answer five questions:

1. How many people today live in the HOLC “D” or “hazardous” graded areas?
2. What is the demographic profile of “hazardous” areas contrasted with better graded “best” areas?
3. How many housing units are in “hazardous” areas?
4. What is the rate of vacancy for housing in “hazardous” areas? and
5. Are there significant differences in the race/ethnic composition of “hazardous” areas compared to non-hazardous areas?”

The authors found a continuing pattern of segregation in areas designed as “hazardous” by the HOLC maps. These areas have higher populations of Black, Hispanic, and other minority residents than other areas and also had increased levels of residential vacancies. Further, highly graded areas were, in 2020, largely made up of non-Hispanic, white neighborhoods. The authors argue that eighty years after the HOLC maps were produced, redlining maintains a visible scar on the demographics of our neighborhoods.

Can Affordable Housing Be a Safety Net? Lessons from a Pandemic.

Noah Kazis, University of Michigan Law School

132 Yale Law Journal Forum 412 (2022)

(available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4270720)

During the COVID-19 pandemic, economically disadvantaged families faced immense uncertainties including securing their basic necessities. Juggling these concerns, families were forced to rely on an inadequate welfare system to address a pressing problem—how to pay rent. “Can Affordable Housing Be a Safety Net? Lessons from a Pandemic” seeks to explain how federal affordable housing programs addressed (and in many cases fell short in responding to) pandemic housing insecurity for families distinctly unfamiliar with the labyrinth of administrative procedures present in U.S. welfare programs.

Professor Noah Kazis places a laser focus on the Emergency Rental Assistance program, the preeminent federal government response to pandemic housing insecurity. He further analyzes California’s Project Homekey, a program converting commercial buildings into affordable housing for individuals facing homelessness. Kazis seeks to answer “can affordable housing be a safety net?” not to explain the past, but to address future housing crises.

Tiny Homes: A Solution to American Housing Insecurity

Lisa T. Alexander, Boston College Law School

Harvard Law & Policy Review, Vol. 15, No. 2, 2022

(available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4111500)

The United States is on the brink of an unprecedented housing crisis that has only been exacerbated by the Covid-19 pandemic. Federal, state, and local governments have taken action to address the housing crisis, and, while these efforts have undeniably helped, they do not fully address the fundamental cause of American housing insecurity—an inadequate supply of affordable housing available to all income levels. The United States needs a greater supply of affordable and sustainable housing in order to effectively combat the housing crisis.

This article argues that a potential solution to America's inadequate supply of affordable housing lies in tiny homes, homes that are less than 400 square feet. Today, many public and private partnerships comprising local governments and nonprofits have developed tiny homes villages as affordable housing or emergency housing for housing insecure individuals, with some villages accommodating upwards of 350 tiny homes. When designed properly, tiny homes villages provide residents an affordable and efficient housing option while fostering community and human flourishing. Tiny homes will neither be the proper solution for every housing insecure individual, nor should tiny homes replace other existing forms of affordable housing; however, local governments should develop the processes necessary to make tiny homes and tiny homes villages legal, including altering building codes, zoning designations, approval processes, and land use categories. Tiny homes villages could be a big solution for America's housing crisis.

Bank Lending Outside CRA Assessment Areas

Laurie Goodman, Ellen Seidman & Ju Zhu

Urban Institute

(March 2022)

(<https://www.urban.org/sites/default/files/2022-03/bank-lending-outside-cra-assessment-areas.pdf>)

When the Community Reinvestment Act (CRA) was enacted in 1977, and even when the regulations were last substantially rewritten in 1995, most banks operated entirely within one state, and many had only one branch. This constraint made it easy to identify a bank's "assessment area" for purposes of evaluating if the bank was meeting the credit needs of its entire community, including low-income neighborhoods. However, given the increasingly national scope of bank lending, and given that many

“internet” banks have few or no branches, the three federal banking regulators—the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board—are revising the CRA regulations and are considering how to evaluate lending outside assessment areas.

The authors find that many banks are doing a significant amount of lending outside of assessment areas and conclude that lending outside assessment areas constitutes an important part of overall bank lending. As the federal bank regulatory agencies revise the CRA regulations, the authors suggest they may want to consider evaluating retail lending outside assessment areas more systematically. The authors encourage regulators to subject the banks that do a significant amount of their lending outside of assessment areas to a single national test for that lending.

California’s “Builder’s Remedy” for Affordable Housing Projects: A View from the Legislative History

Jordan Wright

UC Davis Journal of Environmental Law and Policy, Volume 46 (Spring 2023)

(available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4277018)

California’s Housing Accountability Act (HAA) allows a “builder’s remedy” through which affordable housing developments in a city without a compliant Housing Element can bypass local zoning requirements. Housing Elements require each city to build a certain number of affordable housing units based on state need. However, the builder’s remedy conflicts with the HAA’s “savings clause,” which allows cities to apply “development standards” to affordable housing projects. The author argues that uncertainty regarding the scope of the term “development standards” prevents developers from exercising the builder’s remedy; local zoning authorities may effectively shut down builder’s remedy projects by imposing onerous development standards.

The author discusses the legislative history of the HAA, finding that a 2004 amendment inadvertently created the present conflict between the builder’s remedy and the savings clause. Based on this fact and the HAA’s overriding purpose of promoting housing development, the author argues that courts should narrowly interpret “development standards,” either by deeming all such standards presumptively invalid or by waiving them if they undermine the proposed density of a builder’s remedy project.



ORGANIZATIONAL PROFILE

Austin Community Law Center

*Brian McGiverin**

The Austin Community Law Center (ACLIC) is a 501(c)(3) nonprofit law firm. Our mission is to make legal representation radically more affordable, invest in a stronger community, and fight for justice by serving clients who are unable to afford market-rate lawyers but are nevertheless ineligible for free legal services. Public and philanthropic funding for free legal services are not adequate to help everyone who needs help, and a key feature of our work is to address that problem.

For instance, eligibility for free legal services is too narrow to reach every family who needs help. The largest funder of free legal services, the Legal Services Corporation, only allows its grantees to serve people at or below 125% of the federal poverty guideline (FPG)—roughly 17.8% of the American population. But the federal poverty guideline is generally criticized as being set too low to accurately reflect poverty, in part because it fails to account for the cost of living.¹ The impact of using the cost of living standard is that “36% of all Americans have absolutely no savings at all, and another 19% have less than \$1,000 saved.”² Very few families have \$5,000 on hand to pay a law firm’s retainer, leaving a large chasm between families eligible for free representation and those that can comfortably afford market-rate representation.

Even for families below 125% FPG who are eligible for free legal services, legal aid organizations do not have enough funding to help every person who needs help. The Texas Access to Justice Commission estimates

* Founder and Executive Director of the Austin Community Law Center, <https://www.austincommunitylawcenter.org>.

1. For instance, in the United States, although the official poverty rate is only 11.6%, about one-third of all households are “cost burdened” in housing (meaning they spend more than a third of their income to pay for housing). Peyton Whitney, *Number of Renters Burdened by Housing Costs Reached a Record High in 2021*, JOINT CTR. FOR Hous. STUD. (Feb. 1, 2023), <https://www.jchs.harvard.edu/blog/number-renters-burdened-housing-costs-reached-record-high-2021>.

2. Christy Bieber, *Americans Do Not Have Enough Savings. Here’s What You Can Do About It*, NASDAQ (Jan. 2, 2023), <https://www.nasdaq.com/articles/americans-do-not-have-enough-savings-heres-what-you-can-do-about-it>.

that only 20% of people who qualify for civil legal services are able to get the legal help they need.³

Further, public funding for free legal services is precarious. The seeds of inspiration for ACLC germinated in the shadow of two funding crises: following the 2008 financial crisis, the revenue generated by interest on lawyers' trust accounts (IOLTA accounts) plummeted; and in 2012, Congress cut funding for the Legal Services Corporation, which resulted in layoffs of hundreds of legal aid staff across the country.⁴ Beyond those two examples, public funding for legal aid has waned many other times—due to the economy and the political climate—and foundations are generally less generous when the economy dips.

Finally, federal regulations arbitrarily exclude some clients who would otherwise be income-eligible for free representation—notably, the millions of people who are undocumented.⁵ People who are undocumented face the same risk of domestic violence, wrongful eviction, and fraud as everyone else, and it is obscene that funders prevent so many organizations from offering them critical legal services.

Pushing Back Against Scarcity

ACLC opened its doors in 2017 with one staff member. We have grown gradually and now have five full-time attorneys; two part-time attorneys; four paralegals; a legal assistant; a law clerk; a director of operations; a social services coordinator; and a communications manager. We have found that our model provides benefits both to our clients and to our organization.

With our model, we offer greater access to the legal system for families whose income is above the threshold for legal aid, but still below the level needed to comfortably afford market rate legal representation. ACLC serves clients up to 400% of the federal poverty guidelines.⁶ Our funding comes primarily from below-market-rate legal fees, supplemented by

3. *Pro Bono*, TEX. ACCESS TO JUST. COMM'N, <https://www.texasatj.org/pro-bono> (last visited Apr. 11, 2023).

Similarly, in criminal cases, despite *Gideon v. Wainwright*'s promise of free representation to any person who cannot afford an attorney, in practice many criminal defendants who cannot afford an attorney are still denied appointed counsel. See *The Cost Burden of Criminal Defense Representation*, AUSTIN CMTY. L. CTR., <https://www.austincommunitylawcenter.org/single-post/the-cost-burden-of-criminal-defense-representation> (last visited Apr. 11, 2023).

4. Congressional appropriations for the Legal Services Corporation did not return to 2011 levels until 2018. See CONGRESSIONAL APPROPRIATIONS, LEGAL SERVS. CORP. (2023), <https://www.lsc.gov/about-lsc/financials>.

5. See generally LEGAL SERVS. CORP., FACT SHEET (July 2018), <https://lsc-live.app.box.com/s/7qciuvhnd7cycsxe3ro8gdijbpd8jai8>.

6. See OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, U.S. HEALTH & HUM. SERVS., POVERTY GUIDELINES, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited Apr. 12, 2023).

modest funds from donors and grants. About 11.6% of our revenue in 2022 came from grants and donations. We can sustain ourselves with below-market fees primarily because we pay ourselves salaries comparable to other nonprofit organizations (i.e., well below salaries in private firms).

There are also clients who hire us even though they are financially eligible for free legal aid services because they are not among the 20% of income-eligible clients that legal aid has sufficient bandwidth to serve, or because they are excluded from federally funded representation due to their immigration status. Our model makes legal services in all of our practice areas more accessible to our clients. But even sliding-scale rates can still be a challenge for clients to afford for certain cases (e.g., time-intensive contested divorces). Paid representation is much more feasible in other areas of law. For instance, we perform eviction defense for a low flat fee.

Our funding structure also offers ancillary benefits. First, it makes us more resilient in turbulent economies because, unlike traditional legal aid organizations, we are not directly impacted by government budget cuts. And at the same time, as a 501(c)(3) organization, we are able to apply for and accept temporary grant funding for special projects.

Relying primarily on client fees also insulates us from some of the critiques of the “nonprofit industrial complex.” For instance, some commentators worry about nonprofits being accountable to funders rather than clients, because funders’ priorities are not always entirely in line with our client communities’ priorities. Others fear that funders inadvertently impact legal services by using metrics like the number of clients served rather than the quality of services provided, incentivizing superficial engagement. Our funding, in contrast, relies directly on our clients’ satisfaction with our work. With that being said—low fees pay the bills but without building reserves. As a nonprofit organization, we are tapping into our ability to seek grant and donor funding to pursue our mission and purpose.

The Scope of Our Work

The principle at the heart of ACLC’s work is that every person’s human rights include freedom from fear and having the means to live a fulfilling life. The legal system both intrudes on people’s lives and creates barriers to success. Every day, families fear losing their homes; children fear losing parents to jail; and parents fear losing children to divorce. They deserve robust legal protection. ACLC’s mission is to provide quality legal representation to families who cannot otherwise access it.

ACLC is a general practice. We go to trial, file appeals, advise self-represented litigants, and perform transactional law. Given that our funding model relies on fees, we pick the practice areas that inspire low- and modest-income clients to spend their money on legal counsel rather than their other priorities. Our cases involve the legal issues most commonly faced by our clients. They include family law, eviction defense, renters’ rights, criminal defense, creating business entities, drafting wills, probating estates, special education, bankruptcy, and several miscellaneous civil matters.

We also offer legal services to community enterprises, including local housing cooperatives, a resident-owned mobile home park, and nonprofit organizations that have modest revenue. Our theory is that by offering affordable legal services to these entities, who typically cannot afford market-rate legal assistance, we are indirectly furthering their social justice missions.

Our model involves leaving our offices to be active in the community. For instance, we organize free legal clinics for the parents of children enrolled in Title I schools. We have provided extensive legal consultation to grassroots movements pushing for increased police accountability and for reproductive justice. We are also currently engaged in an outreach effort to local food service workers, called "Servicing Justice," regarding their rights in the workplace.

Finally, we offer social-work case management. Many people are sucked into the legal system for reasons related to poverty, and, relatedly, many people can be pushed further into poverty because of their cases. Social-work case management addresses clients' underlying needs around housing, mental health, rehab, childcare, employment, transportation, and more. Providing clients with case management helps us achieve better outcomes in their cases and reduces their chances of involuntarily returning to court.⁷

Our Work Around Housing, and Lawyering in the Time of Coronavirus

The COVID-19 pandemic forced ACLC to add cases to our docket as the pandemic and social turmoil of the time created significant legal needs for low and moderate-income people. For example, Austin's housing crisis is well documented.⁸ ACLC has always helped renters thwart eviction and ensure that renters' living conditions are habitable, but the world turned upside down in March 2020. COVID-19 was declared a pandemic, and states began implementing widespread shutdowns. It was a disorienting time, to put it lightly.

We quickly announced that we would offer a low flat-fee structure to represent renters threatened with eviction. In Texas, all evictions must be filed before local Justices of the Peace,⁹ and renters can demand a jury trial. We began representing clients during this phase of their cases for a flat fee of \$300.

7. For further reading, see generally Thea Zajac, *Social Work and Legal Services Integrating Disciplines: Lessons from the Field*, LEGAL AID ASS'N OF CALIFORNIA, <https://www.laaonline.org/wp-content/uploads/Social-Work-and-Legal-Services-Integrating-Disciplines-Lessons-from-the-Field-1-1.pdf> (last visited Apr. 12, 2023).

8. See, e.g., Edgar Sandoval, *How Austin Became One of the Least Affordable Cities in America*, N.Y. TIMES (Nov. 27, 2021), <https://www.nytimes.com/2021/11/27/us/austin-texas-unaffordable-city.html>.

9. See TRAVIS CNTY., TEXAS, EVICTIONS (2023), <https://www.traviscountytx.gov/justices-of-peace/jp4/evictions>.

ACLCL also joined the chorus of advocates for local policy measures. In late March 2020, the City of Austin issued emergency orders prohibiting all evictions and, in May, renewed the orders preventing all evictions except when there was imminent threat of criminal activity or physical harm to another person.¹⁰

In May 2020, a caravan of demonstrators drove through downtown Austin to demand greater renter protections. The Austin Police Department arrested several of the participants on the accusation of obstructing traffic. ACLCL defended several of the demonstrators and secured dismissals of their charges.

Later in 2020, we received special funding to represent renters affected by COVID-19 in eviction proceedings filed across portions of South and West Texas—sometimes as far away as El Paso, nearly 600 miles from Austin. This wide-ranging work was made logistically possible by emergency orders from the Supreme Court of Texas that required court proceedings to be held virtually. Between late 2020 and mid-2021 when the CARES Act moratorium expired, we defended seventy-six families as part of this program.

In February 2021, in the midst of the COVID pandemic, Texas was struck by Winter Storm Uri, which left millions without access to electricity. In Austin, after the power came on about a week later, an immense number of homes were damaged by water pipes that burst, and we were contacted by dozens of renters whose homes had been rendered partially or fully uninhabitable. Under Texas law, most of those renters were entitled to terminate their leases without the necessity of judicial action; but their landlords, of course, typically disagreed and threatened to pursue them for breach of lease. We were able to help many renters exit without incident by contacting landlords to explain all the counterclaims we would bring if the landlords filed suit or reported the renters to credit bureaus.¹¹

Eviction Defense Today

In 2023, the eviction policies inspired by COVID have long since receded. The federal and local eviction moratoriums have expired; rental assistance programs have been exhausted; and courts have resumed in-person proceedings and summoning juries in the same manner that they did before the pandemic.¹²

10. See Tony Cantu, *Austin, Travis County Extends Tenant Protections Amid Coronavirus*, PATCH (Dec. 18, 2020), <https://patch.com/texas/downtownaustin/austin-travis-county-extends-tenant-protections-amid-coronavirus>.

11. For more on the storm and its impact, see CITY OF AUSTIN, YEAR IN REVIEW: WINTER STORM URI (2021), <https://data.austintexas.gov/stories/s/Year-in-Review-Winter-Storm-Uri/hpvi-b8ze>.

12. See EVICTION LAB, AUSTIN TEXAS, <https://evictionlab.org/eviction-tracking/austin-tx> (last visited Apr. 12, 2023) (showing that evictions are back to pre-pandemic levels in Austin, Texas).

Texas law provides vanishingly few rights for renters. They are, however, entitled to their day in court. And even in a case that a renter is in serious risk of losing, there are often opportunities to negotiate a settlement that avoids a formal judgment of eviction (and the impact it could have on their ability to rent in the future), for instance, in exchange for waiving potential counterclaims against the landlord or agreeing to vacate the unit more quickly than they could be forced to leave by a court.

Renters are still very much bearing the brunt of Austin's housing affordability crisis. Efforts to increase the amount of affordable housing have been variously frustrated by state law and NIMBY political opposition. Meanwhile, rents continue to skyrocket more quickly than mortgage payments, and renters are far more likely to be seriously cost-burdened than homeowners. As a result, renters are much more likely to be one paycheck (or one illness or one flat tire) away from being displaced, with all the deleterious impact it has on communities, families, and children.

Fair Chance Housing

In the United States, nearly one-third of working-age people have a criminal record¹³—roughly the same number people with who have graduated from a four-year college program—with a vastly disparate impact on people of color.

The 2015 Supreme Court case *Texas Department of Housing v. Inclusive Communities Project*¹⁴ officially recognized disparate impact as a valid claim under the Fair Housing Act (FHA), and the Department of Housing and Urban Development subsequently issued non-binding guidance for housing providers, to help them avoid disparate impact litigation based on unlawfully overbroad criminal record screening policies.

Many Austin rental properties, however, still include criminal history screening practices that are facially contrary to HUD's guidance, such as the following:

- automatically denying applicants with a prior arrest that did not result in a conviction;
- failing to distinguish convictions with no relevance to safety of other tenants and property; and
- including an excessive “look-back” period for criminal screening.

Our “Fair Chance Housing” campaign's goal is to identify properties with facially unlawful screening policies and compel their owners to adopt

13. POVERTY AND OPPORTUNITY PROFILE: AMERICANS WITH CRIMINAL RECORDS, SENTENCING PROJECT (2022), <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf#:~:text=As%20a%20result%2C%20between%2070%20million%20and%20100,that%20stand%20in%20the%20way%20of%20successful%20re-entry.>

14. See generally 576 U.S. 519 (2015).

lawful screen policies through tactics including public education and the threat of litigation. A longer-term strategy is to convince the City of Austin to deny discretionary public benefits to properties that cannot demonstrate they have adopted appropriate screening policies.

Our progress on this campaign has been slower than we would like. Until we cultivate a more expansive donor base, the project will lean heavily on the work of volunteers, which is a valuable but less robust resource.

As noted above, to continue growing our services and community programs, we are engaged in a development campaign to expand our base of individual donors, with the goal of increasing it to 30% of our total revenue. More donor revenue will allow us to improve amenities for staff (like longer periods of paid family leave) and to increase the resources that we devote to projects that do not generate fees, such as social work case management and our Fair Chance Housing campaign. Our combination of a truly affordable sliding scale fee model with entrepreneurial philanthropy is designed to sustain our long-term investment in individuals, family, and community, and our fight for justice.



ARTICLES

Addressing Housing Instability and Medical Debt: A Community-Based Approach to ARPA

*Allyson E. Gold**

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I. Introduction

In an effort to avoid tenant evictions during the COVID-19 pandemic and connect tenants with federal resources in the Emergency Rental Assistance Program (ERAP), Attorney General Merrick Garland issued a call to action for lawyers and—notably—law students to “apply their legal training to help [the] community” through ERAP assistance.¹ In the fall of 2021, Wake Forest Law heeded Attorney General Garland’s call to action and mobilized to prevent housing instability and homelessness.

This essay discusses the work of the Wake Forest Law Medical-Legal Partnership (MLP) Clinic to host ERAP workshops on-site at an outpatient

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1. Letter from Att’y Gen. Merrick Garland to Members of the Legal Cmty. (Aug. 30, 2021), https://www.justice.gov/d9/2022-12/attorney_general_letter_to_members_of_the_legal_community.pdf. Though outside the scope of this essay, Attorney General Garland’s call to action also encouraged lawyers and law students to volunteer with local legal aid providers and help with the implementation of eviction diversion programs.

health center that serves primarily low-income patients in Winston-Salem, North Carolina. An MLP is a model of care that integrates legal services into the healthcare setting to address underlying legal needs that negatively contribute to the health of individual and population health.²

II. Evictions, Health, and the Pandemic

Eviction has devastating consequences for tenants. In addition to housing loss, eviction negatively affects tenant health. Scholars consistently find that eviction increases a host of adverse health outcomes including, but not limited to, low birth weight, infant mortality, and poor physical and mental health for both children and adults.³ In addition, eviction is linked to food insecurity, worse educational outcomes, decrease in housing quality, and job loss.⁴ These effects are not evenly distributed; Black and Latina women are disproportionately affected by eviction.⁵

The COVID-19 pandemic exacerbated the United States' pre-existing affordable housing and eviction crises.⁶ The pandemic caused a spike in unemployment rates,⁷ hitting levels not seen since the Great Depression.⁸ Increases in unemployment, and corresponding decreases in income, threatened the ability of millions of tenants to pay their rents and remain

2. See VICKI GIRARD ET AL., GEO. UNIV. HEALTH JUST. ALL., THE ACADEMIC MEDICAL-LEGAL PARTNERSHIP: TRAINING THE NEXT GENERATION OF HEALTH & LEGAL PROFESSIONALS TO WORK TOGETHER TO ADVANCE HEALTH JUSTICE (2022), <https://medical-legalpartnership.org/download/academic-mlp-report>.

3. Grace Himmelstein & Matthew Desmond, *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic*, HEALTH AFFAIRS: CULTURE OF HEALTH 2–3 (Apr. 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/listitem/health-affairs-brief-housing-health-equity-himmelstein.pdf>.

4. *Id.*

5. Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 649 (2020).

6. A Harvard University report on the state of the nation's housing in 2019 reported that "low-rent [housing] stock has shrunk by four million units since 2011." JOINT CENT. HOUS. STUD. HARV. UNIV., THE STATE OF THE NATION'S HOUS. 2019, at 4 (2019). For information on eviction rates prior to the COVID-19 pandemic, see *On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable: Hearing Before the H. Comm. on Fin. Servs.*, 117th Cong. 3–4 (2020) (statement of Matthew Desmond, Maurice P. Durning Professor of Sociology, Princeton University).

7. GENE FALK ET AL., CONG. RSCH. SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC (2021); Press Release, U.S. Bureau of Lab. Stats., The Employment Situation—July 2020, at 14 (Aug. 7, 2020), https://www.bls.gov/news.release/archives/empisit_08072020.pdf (May, June, and July figures); Press Release, U.S. Bureau of Lab. Stats., The Employment Situation—September 2020 (Oct. 2, 2020), https://www.bls.gov/news.release/archives/empisit_10022020.htm.

8. U.S. Bureau Lab. Stats., *The Recession of 2007–2009*, SPOTLIGHT ON STATS. 2 (Feb. 2012), https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.

housed.⁹ This outcome was especially true for households whose housing affordability struggles predated the pandemic. During the pandemic, the Centers for Disease Control and Prevention (CDC) encouraged adherence to public health protocols—social distancing, handwashing, limiting gatherings, and self-quarantining, among others.¹⁰ Eviction precludes adherence with CDC guidelines and increases the spread of disease.¹¹ Unlike many jurisdictions, the United States recognizes *neither* a right to housing *nor* a fundamental right to healthcare. The COVID-19 pandemic tested federal and state government resolve concerning these issues.

The pandemic spurred never-before-seen action to protect tenants and to acknowledge the health impact of stable housing. Recognizing the relationship between unemployment, eviction, and the spread of COVID-19, governments took several critical steps to protect renters and slow disease transmission. In forty-three jurisdictions, state legislatures, governors, and courts promulgated moratoria to preclude most eviction proceedings.¹² Likewise, the CDC issued a federal eviction moratorium.¹³ After the federal moratorium lifted on July 31, 2021,¹⁴ evictions filings jumped to roughly double their pre-pandemic levels.¹⁵ According to a Census Bureau survey,

9. ELIZABETH KNEEBONE & CECIL MURRAY, U.C. BERKELEY TURNER CTR. HOUS. INNOVATION, ESTIMATING COVID-19'S NEAR-TERM IMPACT ON RENTERS (Apr. 24, 2020), <https://turnercenter.berkeley.edu/research-and-policy/estimating-covid-19s-near-term-impact-on-renters>.

10. MARGARET HONEIN ET AL., CTRS. DISEASE CONTROL & PREVENTION, SUMMARY OF GUIDANCE FOR PUBLIC HEALTH STRATEGIES TO ADDRESS HIGH LEVELS OF COMMUNITY TRANSMISSION OF SARS-CoV-2 AND RELATED DEATHS (Dec. 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6949e2-H.pdf>.

11. Emily Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1, 2 (2021) (noting that “eviction and housing displacement force families into transiency, homelessness, and crowded residential environments that increase new contact with others and make compliance with pandemic health guidelines difficult or impossible.”).

12. *Id.* at 6.

13. Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, 85 Fed. Reg. 55292 (Aug. 4, 2020).

14. Rachel Siegel, *Eviction Moratorium Expires as Renters Face Rising COVID Cases and Lack of Aid*, WASH. POST (July 31, 2021, 7:00 AM), <https://www.washingtonpost.com/business/2021/07/31/eviction-moratorium-expire-cdc/>.

15. Temporary Halt in Residential Evictions in Communities with Substantial or High Transmission of COVID-19 to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 43244 (Aug. 6, 2021), <https://www.federalregister.gov/documents/2021/08/06/2021-16945/temporary-halt-in-residential-evictions-in-communities-with-substantial-or-high-transmission-of>.

at the time of the eviction moratorium expiration, more than six million American households¹⁶ reported that they were behind on rent.¹⁷

In response to significant risks to health, safety, and housing stability Congress took action. In 2020, Congress enacted the Consolidated Appropriations Act. The Act took several steps to address the pandemic, including the creation of the historic Emergency Rental Assistance Program (ERAP). This program provided up to \$25 billion in funding to assist COVID-19 affected households with outstanding rental or utility payments.¹⁸ The Consolidated Appropriations Act was quickly followed by the American Rescue Plan Act (ARPA) of 2021, which provided up to \$21.55 billion for emergency rental assistance, later known as ERA2.¹⁹

ERAP funds were distributed directly to states, U.S. territories, and local governments to provide rental and utility assistance.²⁰ Households were eligible if one or more individuals in the home met the following criteria:

1. has qualified for unemployment benefits or for (a) ERA1, can attest in writing that they have experienced a reduction in household income, incurred significant costs, experienced other financial hardship due, directly or indirectly, to the pandemic, or for (b) ERA2, has experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the pandemic.
2. can demonstrate a risk of experiencing homelessness or housing instability; and
3. for ERA1, has a household income below 80% [area median income (AMI)], or for ERA2 is a low-income family as defined by the United States Housing Act of 1937 (families with a household income below 80% AMI, as determined by the HUD Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80% of AMI).²¹

16. For context, in the third quarter of 2021, there were roughly forty-four million renter households. JOINT CENT. HOUS. STUDIES HARV. UNIV., *THE STATE OF THE NATION'S HOUS.* 2019 AT 9 (2022).

17. U.S. CENSUS BUREAU, *HOUSEHOLD PULSE SURVEY: AUGUST 4–AUGUST 16* (Aug. 25, 2021), <https://www.census.gov/data/tables/2021/demo/hhp/hhp35.html>.

18. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 501, 134 Stat. 1182, H.R. 133 (2020); see also U.S. Dep't Treas., *Emergency Rental Assistance Program*, TREASURY.GOV, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited Jan. 18, 2023). ERAP funding under the Consolidated Appropriations Act was known as ERA1.

19. American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201, 135 Stat. 4, H.R. 1319 (2021). ERAP funding under ARPA was known as ERA2.

20. U.S. Dep't Treas., *supra* note 15. Additionally, ERA1 funds were distributed to Indian tribes.

21. DISASTER HOUS. RECOVERY COAL., *FREQUENTLY ASKED QUESTIONS: TREASURY'S EMERGENCY RENTAL ASSISTANCE (ERA) PROGRAM 1* (July 2022), https://nlihc.org/sites/default/files/FAQs_Emergency-Rental-Assistance.pdf.

Eligible households could use ERAP funds to pay for outstanding rental and utility payments.²²

The creation of a national emergency rental assistance program under the Consolidated Appropriations Act and APRA was a historic milestone for the United States. While the federal government has funded benefits programs, such as the Supplemental Nutrition Assistance Program (SNAP), Temporary Aid for Needy Families (TANF), and Supplemental Security Income (SSI) for decades, never before had there been federal funding expressly to provide financial assistance to vulnerable renters.

III. The Wake Forest MLP Clinic

The Wake Forest MLP Clinic is a partnership between the Wake Forest University School of Law, Wake Forest University School of Medicine, Legal Aid of North Carolina, and the Downtown Health Plaza (DHP). The MLP Clinic partners with DHP healthcare providers to identify legal issues that negatively contribute to the health of low-income patient-clients.

Once a DHP provider identifies a patient experiencing a social determinant of health,²³ the patient is referred for legal intervention through the electronic medical record. Wake Forest MLP Clinic students, under the close supervision of the faculty director, develop an interprofessional strategy to overcome barriers to health justice. As one DHP health provider noted,

As health care providers, we increasingly recognize that unmet legal needs negatively affect patient and family health, including housing instability and eviction. Lawyers are important members of our health care team. The Medical-Legal Partnership has expanded our toolbox to not only provide more effective health care to all children and families, but better equip medical students, residents, and faculty with the knowledge and skills to address health-harming legal needs.²⁴

The Downtown Health Plaza is an outpatient clinic of North Carolina Baptist Hospital serving Winston-Salem, North Carolina, and the greater Forsyth County, North Carolina community.²⁵ Many DHP patients are

22. *Id.*

23. The World Health Organization defines a social determinant of health as “the non-medical factors that influence health outcomes. They are the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life. These forces and systems include economic policies and systems, development agendas, social norms, social policies and political systems.” World Health Org., *Social Determinants of Health*, WHO.INT, https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1 (last visited Jan. 18, 2023).

24. Amelia Kennedy, *White House Convening Recognizes Collaboration Between Wake Forest’s Law and Medical Schools to Address the Eviction Crisis in the Wake of COVID-19*, WAKE FOREST SCH. L. NEWS & EVENTS (Feb. 1, 2022), <http://news.law.wfu.edu/2022/02/white-house-doj-recognize-wake-forest-eviction-prevention>.

25. Atrium Health Wake Forest Baptist, *Locations: Downtown Health Plaza*, WAKE-HEALTH.EDU, <https://www.wakehealth.edu/locations/facilities/downtown-health-plaza> (last visited Jan. 18, 2023).

marginalized community members that are uninsured or underinsured, receive Medicaid, identify as racial or ethnic minorities, and may otherwise lack access to vital health care services and treatment.²⁶ Many patients are best served in Spanish.

The MLP Clinic determined that connecting DHP families with ERAP assistance was the most direct and timely avenue to protect families from the threat of eviction. To do so, the MLP Clinic implemented a multi-faceted approach:

- (1) we partnered with Forsyth County, North Carolina's ERAP specialists to receive training in online enrollment;
- (2) we created ERAP flyers in English and Spanish to distribute at DHP to increase the program's visibility;
- (3) we trained medical providers to identify patients at risk for eviction and refer them to the MLP for ERAP assistance and legal representation; and
- (4) we collaborated with students from the Wake Forest School of Medicine and the Wake Forest University College of Arts and Sciences to hold interdisciplinary ERAP workshops on-site at DHP to help at-risk tenants apply for ERAP in real time.

Additionally, the Wake Forest Law Pro Bono Project collaborated with Legal Aid of North Carolina to develop know-your-rights flyers and a housing law manual for tenants and pro bono attorneys. Together, these efforts resulted in 64 students dedicating 820 hours to help 110 households to access their rights under the ARPA's emergency rental assistance program.

Building on the work of our community health center-based ERAP workshops, the MLP Clinic partnered with Kaiser Health News to examine the relationship between medical debt and housing instability. The study enrolled adult clients referred to the MLP Clinic through existing channels for legal assistance with a housing law issue (e.g., eviction defense, emergency rental assistance, foreclosure, substandard housing conditions). The purpose of the study was to help the MLP Clinic identify and evaluate the factors affecting the DHP patients who sought ERAP assistance so that the Clinic can more effectively serve our community.

IV. Community-Based Workshops to Overcome Barriers to ERAP Enrollment

The MLP Clinic's ERAP workshops at DHP increased awareness about the existence of ERAP and eligibility, and helped tenants submit applications to the program in real time. Students from Wake Forest University's

26. Atrium Health Wake Forest Baptist, *Downtown Health Plaza Clinic*, WAKEHEALTH.EDU, <https://communityimpact.wakehealth.edu/tiles/index/display?id=220633632014443133> (last visited Jan. 18, 2023).

Law School, School of Medicine, and College of Arts & Sciences staffed the workshops. Students were supervised by the faculty director of the Wake Forest MLP Clinic. During the workshops, students provided information about ERAP and met one-on-one with tenants to submit applications. The MLP Clinic supplied all necessary supplies: computers, blank paper copies of application forms, and a scanner so that paper copies could be uploaded. In addition to students and a faculty supervisor, interpreters were on hand to assist Spanish-speaking tenants. Finally, the MLP Clinic notary notarized documents as needed. In addition to assisting tenants to apply for rental assistance funds, the workshops also surfaced, and ultimately overcame, barriers to accessing ERAP assistance. These included (1) tenants self-screening out of the program prior to applying, (2) logistical restraints, and (3) navigating ongoing reporting requirements, appeals, and pending evictions.

A. Negative Self-Selection

Many tenants we spoke to at the DHP workshops had no knowledge of ERAP, while others believed they would not qualify. For the former, the workshops were successful in raising awareness of the program and encouraging applications. For the latter, the workshops were instrumental in challenging assumptions about program eligibility. The most frequent assumptions about program eligibility reported to MLP Clinic advocates concerned immigration status, what it meant to be “impacted” by COVID-19, and evidentiary criteria.

Immigration Status: Many tenants—understandably, although erroneously—assumed that ERAP incorporated similar immigration status requirements as other government benefit programs like the Supplemental Nutrition Assistance Program, Temporary Aid to Needy Families, and Supplemental Security Income. In actuality, ERAP was not subject to the immigration restrictions of Section 214 of the Housing and Community Development Act of 1980.²⁷ Nor did the U.S. Department of Treasury issue guidance or impose restrictions based on immigration status.²⁸

As a result, the MLP Clinic workshops were able to address a common misconception among DHP patients regarding their ERAP eligibility. Several tenants reported that they would not have applied for ERAP benefits were it not for an MLP Clinic advocate specifically addressing their immigration status concerns. The results were striking.

At one workshop, the MLP Clinic met with a father whose work at a construction company was affected by the COVID-19 pandemic, resulting in decreased hours and a drop in income. With fewer hours and decreased wages, he was unable to keep up with monthly rental payments. However,

27. 42 U.S.C. § 1436 (a)–(b).

28. U.S. DEP’T TREAS., EMERGENCY RENTAL ASSISTANCE FREQUENTLY ASKED QUESTIONS, <https://home.treasury.gov/system/files/136/ERA-FAQ-7.27.22.pdf> (last modified July 27, 2022).

he had not applied for ERAP because he believed that this immigration status disqualified his eligibility. During the workshop, an MLP Clinic student explained that he was eligible for the program and helped him to submit an application that day. He was approved for rental assistance, eliminating the threat of displacement for his family.

Impacted by COVID: During workshops and community education events, MLP Clinic advocates met with many tenants who were at risk of eviction but who had not applied for ERAP assistance because they did not believe that they met the definition of being impacted by the COVID-19 pandemic. ERAP funds were available to individuals that “experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the coronavirus pandemic.”²⁹ Many people who attended the MLP Clinic ERAP workshops interpreted this to mean that a COVID-19 infection was a prerequisite to receive ERAP assistance. At the workshops, MLP Clinic advocates explained that, in fact, the guidelines were much broader. Rather than needing to have experienced COVID-19 infection directly, people could qualify if they were indirectly affected by the pandemic.

For example, MLP Clinic advocates counseled a tenant whose employer cut hours due to the pandemic; a mother who was forced to withdraw from work after her children’s school pivoted to remote education, resulting in her small children being home every day; and a caregiver who had to reduce her hours of employment to care for her elderly mother after the senior center halted in-person services. In each case, the client did not personally experience a COVID-19 infection, but circumstances produced by the pandemic created a reduction in household income and threatened housing insecurity. It is likely that were it not for in-person counseling, these tenants would not have applied for ERAP assistance, despite meeting the eligibility criteria.

Evidentiary Requirements: Finally, confusion about evidentiary requirements initially prevented tenants from applying for ERAP assistance. During the workshops, MLP Clinic advocates met with tenants who had chosen not to apply because they believed they lacked the necessary documentation. For example, several tenants only had oral lease agreements or oral employment contracts. According to U.S. Treasury Guidance, written leases and employment contracts were *not* required; indeed, tenants were *encouraged* to submit self-attestation forms to demonstrate their eligibility for the program and expedite applications.³⁰ In these cases, the ability of an advocate to meet personally with a tenant to navigate the self-attestation process was a key factor that led to a successful ERAP application, thereby preventing eviction and displacement.

29. *Id.* at 2.

30. *Id.* at 3 (emphasis added).

B. Logistical Constraints

Forsyth County, North Carolina, provided two avenues to apply for ERAP assistance. Tenants could apply online through the county's application portal; alternatively, tenants could schedule an in-person appointment at the Department of Social Services to meet with an ERAP specialist.³¹ The Wake Forest MLP Clinic provided a third. Our health center-based community workshops provided patients with personalized ERAP assistance, in a manner that sidestepped common logistical barriers such as lack of Internet access, language, and lack of reliable transportation.

Internet Access: In Forsyth County, North Carolina, sixteen percent of households do not have Internet access and ten percent do not have a computer in the home.³² These households are likely to be low-income and rent burdened and therefore could benefit greatly from ERAP. However, the lack of technology in the home made it difficult, if not impossible, to submit an application for rental assistance. Several tenants who attended the MLP Clinic's ERAP workshops reported that their only source of Internet access was through a smartphone. For these households, meeting with MLP Clinic advocates at DHP circumvented challenges presented by lack of technology at home. Two tenants represented by the clinic at the workshops did not have established email address, a necessity to apply through the county's online portal. For these households, the MLP Clinic student advocates spent additional time to help them set up and learn to use an email account.

Language Access: Given the patient population of DHP, many of the tenants who attended the MLP Clinic ERAP workshops were Spanish-speaking. Anticipating this issue, the MLP Clinic workshops included Spanish interpreters who partnered with the law students and lawyers to provide personalized advocacy to DHP patients.

Transportation and Timing: A large benefit of the MLP Clinic's ERAP workshops at DHP was convenience. Being able to come to one location for primary health services and, during the same visit, meet with legal experts to complete an application for rental assistance, was beneficial to tenants with transportation challenges. This interprofessional and holistic approach to service effectively—and efficiently—addresses patient-clients' multifaceted goals.

31. See generally FORSYTH CNTY., N.C., *Emergency Rent/Utilities Assistance for Low-Income Residents*, <https://www.forsyth.cc/ERAP> (last visited Jan. 18, 2023).

32. FORSYTH CNTY. DIGIT. EQUITY COMM., *REGIONAL PROFILE FOR DIGITAL EQUITY 1* (July 1, 2021), <https://static1.squarespace.com/static/60548d7fea3b1c55bb3bb7dc/t/61126e48b3e98e1d1cd6d3ad/1628597840754.pdf>. Moreover, "twenty-two percent of minorities in Forsyth County do not have internet access." *Id.* at 2.

C. Navigating Ongoing Reporting, Appeals, and Pending Evictions

For some tenants, accessing ERAP benefits required support beyond the initial application submission. In these cases, an ongoing relationship with the MLP Clinic was essential.

Ongoing Reporting Requirements: Because of the volume of applicants, ERAP applications in Forsyth County, North Carolina, often took months for the Department of Social Services (DSS) to process and make a determination. During the lag between time of submission and time of determination, the tenant applicant would often fall further behind in rent and utility payments, placing them at risk of eviction and disconnection. By the time DSS was able to process the application, the tenant applicant could have several thousand dollars more owed in outstanding rental and utility payments. This required the tenant to submit updated documentation (e.g., bills from utility providers, new statements from landlords, and/or self-attestations) reflecting the new balances owed on the accounts. DSS would often message tenant applicants through the application platform or send an email to request updated information. Because the MLP Clinic maintained ongoing relationships with tenants until a determination was made on the ERAP application, an advocate was able to help the tenant respond to the inquiry and submit further documentation in a timely manner. When tenants were approved, they received assistance not only for the outstanding payments at the time of the initial application, but also for additional balances that accumulated during the interim between submission and processing.

Pending Evictions: Tenants who attended the MLP Clinic's ERAP workshops were at risk of housing displacement while their applications were being considered. After the expiration of the national eviction moratorium,³³ landlords could evict tenants for nonpayment, even if the tenant had a pending ERAP application. These tenants were vulnerable to displacement while waiting for a determination on their rental assistance applications. To address this threat to housing stability, MLP Clinic advocates represented tenant-applicants in negotiations with their landlords to prevent an eviction filing while the ERAP applications were pending. This was critical not only to prevent immediate displacement, but also to avoid a dispossession action being filed against the tenant. Scholars have noted that merely naming a tenant in an eviction serves as a "Scarlet E," making it difficult for the tenant to find replacement housing in the future.³⁴

33. Siegel, *supra* note 14.

34. Kathryn A. Sabbeth, *Erasing the "Scarlet E" of Eviction Records*, THE LAB (Apr. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records>. Sabbeth asserts that "[a]ny eviction filing creates a "Scarlet E" that can haunt a tenant for years. Private companies collect and sell housing court data, culling court records for names of defendants in eviction proceedings—whether they win or not—and then compiling them to profit off the tenants' misfortune. Prospective landlords will purchase the information or pay tenant-screening companies to assess prospective tenants on the

MLP Clinic advocates were successful in preventing eviction filings against ERAP applicants. In several cases, MLP Clinic advocates negotiated directly with landlords to educate them about ERAP, including logistics about the application process and when to expect outstanding rental payments. Crucially, these conversations were effective in helping landlords understand how a tenant's successful application aligned with the landlord's goal of being paid for back rent.

In one case, the MLP Clinic contacted a landlord after the tenant-applicant received a notice to cure or quit.³⁵ At this stage, the tenant is put on notice that there is an outstanding rental balance and they have statutorily determined amount of time to remedy the issue. After the expiration of this statutory period, the landlord can file a dispossession action in eviction court.³⁶ In this case, the MLP Clinic explained that our office was helping the tenant to apply for ERAP funds and that, in our professional opinion, we believed the tenant met the eligibility criteria to receive rental assistance funds. In support of this statement, we sent the landlord documentation proving that the client had in fact submitted an ERAP application. Based on this conversation and relying on our office's assessment of the tenant's eligibility for ERAP, the landlord voluntarily withdrew the notice to quit or cure and promised to refrain from further dispossession action until DSS made a final determination on the tenant's ERAP application. In cases like this one, ongoing support from the MLP Clinic enabled the tenant to not only access ERAP resources but, just as critically, avoid an eviction filing that could have long-term consequences for the family's housing and health.

Navigating Appeals: The MLP Clinic continued to assist workshop attendees until the resolution of their applications. This meant that tenants had access to legal resources in the event that they were denied ERAP assistance. *Pro se* litigants encounter challenges and barriers to success in well-established benefit programs. The newness of ERAP exacerbated these issues. Unlike with other administrative appeals (e.g., SNAP and TANF), the jurisdiction did not have well-defined processes for handling an appeal following the denial of an ERAP application. The absence of clear steps made it even more difficult for *pro se* ERAP applicants to navigate an appeal following denial.

The lack of a clear and published appeals process disadvantaged tenants, particularly those with nuanced applications. For example, the MLP Clinic represented a Spanish-speaking client who was denied ERAP funds

basis of these records. With many landlords, a prior eviction will be a complete bar to accepting a rental housing application. Others consider it as one of several factors or use it as a basis to charge a higher deposit." *Id.* (emphasis original).

35. Allyson Gold, *How Eviction Courts Stack the Deck Against Tenants*, THE LAB (Apr. 13, 2021), <https://theappeal.org/the-lab/explainers/how-eviction-courts-stack-the-deck-against-tenants>.

36. N.C. GEN. STAT. § 42-26 (2022).

because the Department of Social Services improperly determined that she was not a tenant, and therefore not entitled to assistance under the program. In actuality, the client was living in her home pursuant to a month-to-month oral lease agreement with the estate of her deceased ex-husband, who owned the home in fee simple absolute at the time of his death. Under the terms of the oral lease agreement, the client made monthly rental payments directly to the mortgagee.

The MLP Clinic appealed the denial, outlining the details of the lease agreement, and arguing that because the client had no ownership interest in the property, she met the definition of tenant under ERAP. The argument was successful, and the client ultimately received desperately needed rental and utility assistance. It is important to note, too, that during the pendency of the appeals process, the client's water service was nearly disconnected,³⁷ adding stress and urgency to an already precarious situation. Without representation from the MLP Clinic it is likely that the client would not have been able to successfully appeal her initial ERAP denial. However, the workshop's community-based approach to service combined with ongoing legal advocacy resulted in an ERAP award of more than seven-thousand dollars, allowing the family to remain housed and with access to essential utilities during the pandemic.

V. Housing Instability and Medical Debt

The MLP Clinic's ERAP workshops on-site at DHP raised larger questions about the relationship between housing instability and medical debt. More than 100 million people in America hold medical debt.³⁸ Studies have found that medical debt disproportionately affects Black Americans living in racially segregated neighborhoods and that medical debt is a driver of foreclosure and racial disparities in homeownership.³⁹ A 2007 study explored the relationship between medical debt and the ability of low-income families to own, rent, or maintain their homes.⁴⁰ Twenty-seven percent of study participants reported that medical debt led to housing

37. The MLP Clinic contacted the water utility company to provide notification of the pending ERAP appeal and delay disconnection until the resolution of the application. As a result, the household never lost water utility service.

38. Noam Levey, *100 Million People in America Are Saddled with Health Care Debt*, KAI-SER HEALTH NEWS (June 6, 2022), <https://khn.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt>. This includes forty-one percent of all adults.

39. See, e.g., BERNETA HAYNES, NAT'L CONSUMER L. CTR., *THE RACIAL HEALTH AND WEALTH GAP IMPACT OF MEDICAL DEBT ON BLACK FAMILIES* (Mar. 2022), <https://www.nclc.org/images/pdf/medical-debt/RacialHealth-Rpt-2022.pdf>; Craig Pollack & Julia Lynch, *Health Status of People Undergoing Foreclosure in the Philadelphia Region*, 10 AM. J. PUB. HEALTH 1833, 1833 (2009).

40. Robert Seifert, *Home Sick: How Medical Debt Undermines Housing Security*, 51 ST. LOUIS. U. L.J. 325, 342 (2007).

problems.⁴¹ Likewise, a 2015 study found a positive relationship between worsening health and risk of default and foreclosure.⁴²

The COVID-19 pandemic intensified these issues, combining a public health crisis, increased unemployment rates, and the highest inflation in decades. Following the ERAP workshops, the Wake Forest Law MLP Clinic partnered with Kaiser Health News to investigate the relationship between medical debt and housing instability among medical-legal partnership clients. The purpose of this study was to identify and document the relationship between medical debt and housing instability. The study enrolled adult clients who were referred to the MLP Clinic through its existing channels for legal assistance with a housing law issue (e.g., eviction defense, emergency rental assistance, foreclosure, substandard housing conditions). Participants were then asked to complete a survey (see Appendix A, Medical Debt Survey, *infra*), following these steps:

1. Clients were referred to the Medical-Legal Partnership Clinic for assistance with a housing issue.
2. After completing the legal intake process via phone, clients were asked if they were interested in participating in a survey.
3. Clients interested in participating were mailed a consent form explaining the purpose of the study, including risks to the client.
4. After receiving the consent form, clients were contacted via phone and consented verbally.
5. MLP Clinic students administered the survey over the phone.
6. At the end of the survey, participants were asked if they consented to having their name and contact information sent to Kaiser Health News for a follow up interview.

The study enrollment period ran from February 14, 2022–May 14, 2022. During this time, twenty-one DHP patients met the survey criteria and indicated openness to participating. The MLP Clinic mailed the consent form to the household and attempted to follow-up via phone. Of this group, MLP Clinic advocates interviewed and collected data from ten adult DHP patient-clients. One of the respondents started to participate but decided to withdraw from the study before the survey was completed. While the number of participants is too low to draw causal relationships, the information collected provides context for the circumstances affecting DHP tenants who sought ERAP assistance, as well as raises questions for further study.

Demographics: All survey respondents were tenants, and all who completed the survey were women. The one man who was surveyed elected to

41. *Id.* at 337.

42. Jason Houle & Danya Keene, *Getting Sick and Falling Behind: Health and the Risk of Mortgage Default and Home Foreclosure*, 69 J. EPIDEMIOLOGY & CMTY. HEALTH 382 (2015).

withdraw prior to completion. All stated that they had children. All participants reported household income below thirty thousand dollars annually, while six participants reported annual household income of less than ten thousand dollars. Nearly all participants were between ages eighteen and forty-nine. One study participant was between age fifty and sixty-five.

A. Survey Findings

Of the survey participants, six were at risk of eviction or unable to make rental payments, three were living in substandard housing conditions, and one was experiencing homelessness. The majority of respondents (seven of ten) reported that they had medical or dental bills that they were unable to pay. In two cases, the medical and/or dental debt had been transferred by the service provider to a collection agency. Of the respondents with outstanding medical and/or dental debt, five were on a payment plan. None of the respondents had paid for their debt on a credit card, instead opting to work directly with a provider or collection agency to make payments.

All participants who completed the survey reported having some type of health insurance coverage.⁴³ Two respondents reported debt in between \$1000 and \$5000. Three reported debt less than \$500. Three reported their debt exceeded \$5000, with two participants carrying medical debt loads of \$10,000 or more. The majority of participants who completed the survey felt that medical debt had an effect on their housing instability. Three participants believed that their medical and/or dental debt played a small role in their housing instability, while two participants felt it had a major effect. Participants' perceptions of the relationship between the medical debt and housing issues are consistent with the aforementioned research in this area. This suggests that programs and policies that decrease household medical debt will also positively affect housing stability. In fact, a recent study found that Medicaid eligibility expansion is positively associated with a decrease in local eviction filings.⁴⁴

However, the existence of a benefit program alone is not enough. Taken together with the MLP Clinic's experience conducting community-based ERAP workshops, programs aimed at medical debt reduction will be most successfully when they are designed to overcome common barriers to their use. In order to reach populations at risk of housing loss and displacement, the program must educate tenants to avoid negative self-selection and address common logistical restraints. The most successful

43. The study did not ask participants about the type of health insurance they carried. However, given household income and the presence of children in the home, many participants likely received Medicaid under North Carolina's program for families and parent caretakers. See North Carolina Medicaid, *Eligibility*, NC.gov, https://ncgov.service-nowservices.com/sp_beneficiary?id=bnf_eligibility (last visited Jan. 18, 2023).

44. Sebastian Linde & Leonard Egede, *Association Between State-Level Medicaid Expansion and Eviction Rates*, 6 JAMA OPEN NETWORK, Jan. 11, 2023, at 1, 10.1001/jamanetworkopen.2022.49361.

programs will not only provide assistance at the time of application, but also ongoing support to navigate reporting requirements and appeals. This can be accomplished by collaborating with community partners—such as law school clinical programs and legal services providers—who have the expertise and capacity to take on representation and provide holistic, client-centered services.

VI. Looking Beyond the Pandemic

The MLP Clinic’s ERAP workshops combined an interprofessional approach with community-based services to help tenants access ERAP funds. The success of the program hinged on personalized assistance with continuing representation to overcome additional obstacles. This multifaceted intervention can serve as a model for future efforts to connect tenants at risk of eviction with benefits designed to prevent housing instability. Furthermore, the MLP Clinic’s empirical work on the relationship between housing and medical debt underscores the benefits of this approach. Many tenants at risk of eviction are also experiencing other significant problems, such as medical debt. Achieving stability will require holistic and ongoing representation to address multifaceted health and housing issues experienced by clients. Proactively partnering with a community-based health-care provider, rather than placing the onus of seeking representation on individual tenants, contributes to greater housing stability and ultimately improved health outcomes.

* * *

Appendix A

Medical Debt Survey

1. Are you seeking assistance with home foreclosure, eviction, or some other housing-related issue?
 - a) Eviction
 - b) Home foreclosure
 - c) Some other housing issue
Please specify:
 - d) None

2. Please think about any money you currently owe or debt you have due to medical or dental bills. This may include bills for your own medical or dental care or someone else's care, such as a child, spouse, or parent.
Do you currently have (choose any that apply):
 - a) Any medical or dental bills you are unable to pay? – Y/N
 - b) Any medical or dental bills you are paying off over time directly to a provider? – Y/N
 - c) Any debt you owe to a collection agency that includes debt from medical or dental bills? – Y/N
 - d) Any medical or dental bills you have put on a credit card and you are paying off over time? – Y/N

3. What is the total amount of medical debt you would say you have, including debt in collections, medical bills that remain on your credit card balance, other loans and outstanding balances for any payment plans you have arranged with a hospital, physician, or other medical provider? (choose one)
 - a) Less than \$500
 - b) \$500 to less than \$1,000
 - c) \$1,000 to less than \$2,500
 - d) \$2,500 to less than \$5,000
 - e) \$5,000 to less than \$10,000
 - f) \$10,000 or more

-
4. Did medical debt play a major role, a minor role, or no role at all in your home foreclosure, eviction or other housing issue? (choose one)
 - a) Major role
 - b) Minor role
 - c) No role
 5. Do you have health insurance? (Y/N)
 6. Gender
 - a) Male
 - b) Female
 - c) Non-binary
 - d) Prefer not to answer
 7. What is your age?
 - a) 18–29
 - b) 30–49
 - c) 50–65
 - d) Over 65
 8. Do you have children? Y/N
 9. Approximately what is your family income?
 - a) Less than \$10,000
 - b) \$10,000–30,000
 - c) \$30,000–\$50,000
 - d) \$50,000–\$75,000
 - e) \$75,000–\$100,000
 - f) More than \$100,000
 - g) Prefer not to answer
 10. Would you be willing to speak with a reporter from Kaiser Health News about your experiences? – Y/N

If yes, please provide your contact information.

Name:

City and state of residence:

Telephone:

Email:

Facing Emergencies with Equity: Adopting ARPA’s Emergency Rental Assistance Eligibility and Documentation Standards for Undocumented Individuals as a Model for Housing Stability

*Gregory M. Zlotnick**

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IV. The Way Forward: Pathways to Continued Undocumented
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Demand for federally funded housing programs vastly outpaces supply.¹ Moreover, the supply of those programs has been limited in their scope: namely, to U.S. citizens and certain legal residents. A patchwork of federal statutes and regulations, stitched together over years, made clear that undocumented individuals—a group estimated to number around 11,000,000 in 2022²—are ineligible for various kinds of federally subsidized housing.

As a result, undocumented individuals—an already-vulnerable class of residents—were even more vulnerable to housing instability when the COVID-19 pandemic reached the United States in 2020. Ineligible for short-term resources, such as unemployment benefits, as well as longer-term supports, such as housing choice vouchers, undocumented and other ineligible immigrants were poised to bear the brunt of the “eviction tsunami” that experts predicted would follow the economic disruptions of 2020.

But a funny thing happened on the way to the courthouse. Federal policy properly acknowledged housing instability as an acute crisis worthy of an expansive response inclusive of all residents, regardless of citizenship or authorization. American Rescue Plan Act of 2021 (ARPA) funding for emergency rental assistance (ERA) did not require recipients to demonstrate either U.S. citizenship or, critically, lawful presence. In this way, ARPA ERA funding mirrored other emergency funding programs, rather than flagship federal housing or income support programs.

Empowered to reach all members of their communities, states and cities conducted meaningful outreach with trusted stakeholders and facilitated streamlined assistance applications accessible to citizens, immigrants with lawful status, and undocumented residents alike. Even in jurisdictions with landlord-friendly eviction laws, public officials worked quickly and creatively to disburse ERA funds regardless of immigration status. These efforts, combined with eviction moratoria, expanded right to counsel in eviction proceedings, and undocumented individuals being overrepresented in essential workforce positions,³ contributed to a drop in evictions.⁴

1. See, e.g., Sonya Acosta & Erik Gartland, *Families Wait Years for Housing Vouchers Due to Inadequate Funding*, CTR. ON BUDGET & POL’Y PRIORITIES, (July 22, 2021), <https://www.cbpp.org/sites/default/files/7-22-21hou.pdf>.

2. *Profile of the Undocumented Population: United States*, MIGRATION POL’Y INST., <https://www.migrationpolicy.org/data/ unauthorized-immigrant-population/state/US> (last visited Feb. 13, 2023)

3. Testimony of Tom Jawetz to the U.S. House Judiciary Subcommittee on Immigration and Citizenship (Sept. 28, 2020), <https://www.americanprogress.org/article/immigrants-essential-workers-covid-19>.

4. Yulia Panfil & David Spievack, *What Happened to the Eviction Tsunami?*, FIVETHIRTYEIGHT.COM, (Jan. 11, 2022), <https://fivethirtyeight.com/features/what-happened-to-the-eviction-tsunami>.

This equitable and inclusive approach to ERA eligibility should be a model for rental assistance programs well beyond the pandemic. As experts have noted, the eviction crisis in America predated the COVID-19 pandemic. And with the depletion of ARPA funding for ERA—as well as the expiration of eviction moratoria—evictions are rising once again across the country. The housing crisis remains a rolling, ongoing emergency for millions. Policymakers should continue to make aid available to all residents to mitigate the damage not only to individuals and families, but also to their communities.

Part I surveys eligibility requirements for federal housing and income assistance programs, establishing federal policy's baseline exclusion of undocumented residents from non-emergency programs that promote housing stability. Part II documents the shift towards expanded eligibility in COVID-19 relief programs and in ARPA, focusing on ERA's availability to non-citizens and undocumented residents. Part III highlights the city of San Antonio's effective approach to promoting, processing, and disbursing ERA funds. Part IV argues for the continued need for expansive ERA eligibility to combat housing instability beyond ARPA and the COVID-19 pandemic, as both inflation and limited housing supply impact residents regardless of immigration status.

I. Eligibility for Federal Housing and Income Assistance Programs

A. Before COVID, PRWORA

In 2020, a bipartisan consensus emerged during the COVID-19 crisis: massive—indeed, unprecedented—federal intervention in economic life was critical to mitigating the worst impacts of the economic disruption the pandemic wrought. Big Government, in other words, was back. Nearly a quarter-century earlier, an equal yet opposite bipartisan consensus had coalesced around the principle that “the era of Big Government [was] over.”⁵ Accompanying that thinking was agreement over not only the size of federal spending on social safety net programs (and, in particular, direct cash transfers), but also over who merited access to these restricted funds. This, too, would be a concept that would lose influence in the decades to come.

President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) into law in 1996. Best known as “welfare reform,” PRWORA allowed President Clinton to claim a campaign promise kept: “To end welfare as we know it.”⁶

And it did. The controversy over PRWORA's passage and signing focused largely on the conversion of Aid to Families with Dependent

5. President William Jefferson Clinton, State of the Union Address (Jan. 23, 1996), <https://clintonwhitehouse4.archives.gov/WH/New/other/sotu.html>.

6. *Clinton-Gore Accomplishments: Reforming Welfare by Promoting Personal Responsibility*, CLINTON WHITE HOUSE ARCHIVES (Dec. 15, 2000), <https://clintonwhitehouse4.archives.gov/WH/Accomplishments/welfare.html>.

Children (AFDC), which had been structured as a federal entitlement program, to Temporary Assistance for Needy Families (TANF), a time-limited, block-grant-funded program. In addition, PRWORA significantly restricted noncitizen access to public benefits. Title IV of the law “established restrictive, uniform rules that would apply” across federal housing, nutritional, income support, and health care programs.⁷

At his signing ceremony, President Clinton defended the bill, describing it as “an historic chance, where Republicans and Democrats got together and said, we’re going to take this historic chance to try to re-create the Nation’s social bargain with the poor.” He minimized his disagreements with the bill’s restrictions on safety access to legal immigrants, describing it as having “nothing to do with the fundamental purpose of welfare reform.”⁸

Clinton’s signing of PRWORA triggered the resignation of multiple administration officials, including leading antipoverty advocate Peter Edelman, at the time the acting assistant secretary for planning and evaluation at the Department of Health and Human Services. Edelman, unlike Clinton, did not minimize the severe impact of the bill on noncitizens. In an article for *The Atlantic* written months after PRWORA’s adoption, Edelman emphasized the disproportionate impact eligibility changes would have on noncitizens. “Many elderly and disabled noncitizens who have been in the United States a long time,” wrote Edelman, “will be thrown out of their homes or out of nursing homes . . . that are no longer reimbursed for their care.”⁹

So broad were PRWORA’s restrictions that even Edelman’s incisive and prophetic analysis did not fully anticipate their reach. In November 2020, the Congressional Research Service outlined the framework for eligibility in a report discussing the interplay between PRWORA restrictions and eligibility for COVID response programs and policies.¹⁰ As a general matter, PRWORA states that noncitizens who are not “qualified aliens” are ineligible for public benefits. 8 U.S.C. § 1641 provides a comprehensive definition of qualified aliens. While the definition does include many noncitizens beyond legal permanent residents, it does not include aliens without authorization.¹¹ Moreover, even Deferred Action for Childhood Arrivals (DACA) recipients and Temporary Protected Status (TPS) holders—two designations with which noncitizens can obtain Social Security numbers

7. BEN HARRINGTON, CONG. RSCH. SERV., R46510, PRWORA’S RESTRICTIONS ON NONCITIZEN ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS: LEGAL ISSUES 2 (2020).

8. Remarks on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and an Exchange with Reporters, 2 PUB. PAPERS 1325, (Aug. 22, 1996).

9. Peter Edelman, *The Worst Thing Bill Clinton Has Done*, ATL. MONTHLY (Mar. 1997), <https://www.theatlantic.com/magazine/archive/1997/03/the-worst-thing-bill-clinton-has-done/376797/>.

10. See generally HARRINGTON, *supra* note 7.

11. 8 U.S.C. § 1641.

and work authorizations—are excluded from the “eligible alien” designation under PRWORA. To paraphrase Edelman’s analysis, “The immigration provisions are strong stuff.”¹²

B. Pre-existing Limitations on Immigrant Access to Housing Programs

PRWORA defines the “federal public benefits” to whom access is restricted to citizens and certain legal residents:

any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefits, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.¹³

In the context of federal housing programs, however, PRWORA reinforced pre-existing restrictions on noncitizens adopted in the Housing and Community Development Act of 1980.¹⁴ Section 214 of that Act, codified at 42 U.S.C. § 1436a, restricts eligibility for housing-related financial assistance to certain categories of noncitizens. Here, too, undocumented individuals fall outside of eligibility.

Section 214 restrictions cover public housing; Section 8 Housing Choice Vouchers; Section 8 Project-Based Housing; Section 236 Housing; Section 235 Homeownership Housing; and Section 23 Leased Housing Assistance Program.¹⁵ These categories represent the vast majority of HUD’s annual budget. For example, in HUD’s 2021 enacted budget, these programs represented over \$47 billion of the Department’s nearly \$56 Billion budget.¹⁶

C. Exempt Programs, and Exceptions to Exemptions

Many other HUD programs fall outside of Section 214’s descriptions. These programs include Community Development Block Grant (CDBG); Emergency Solutions Grant (ESG); HOME; Housing Opportunities for Persons with AIDS (HOPWA); Section 202 Housing; Section 811 Housing; Sections 221(d)(3) and (d)(5); the McKinney-Vento Act; Rental Rehabilitation; and HOPE 2.¹⁷ However, if financing is, as is often the case, layered and a program receives Section 8 or other restricted funding, then it, too, is not accessible to undocumented residents.¹⁸

12. Edelman, *supra* note 9.

13. 8 U.S.C. § 1611(c)(1).

14. *Overview: Immigration Status and Federally Assisted Housing*, HOUSING JUSTICE (Nat’l Housing Law Project) Jan. 2010, at 1, https://nhlp.org/files/Jan%202010%20Newsletter%20FINAL_0.pdf (hereinafter *Overview*).

15. *Id.*

16. *See generally* DEPT. HOUSING & URBAN DEV., BUDGET OUTLAYS BY PROGRAM COMPARATIVE SUMMARY, FISCAL YEARS 2020–2022, https://www.hud.gov/sites/dfiles/CFO/documents/3_2022CJ_FY2022BudgetOutlayTableFinal.pdf.

17. *Overview, supra* note 14, at 1.

18. *Id.* at 1–2.

Further, there is uncertainty regarding PRWORA's "catch-all" applicability to these exempt programs.¹⁹ Undocumented individuals are not eligible to access these programs if decision makers (be they agency administrators or courts) determine those programs to be "similar" to the federal benefits that PRWORA defines.²⁰ Housing rights organizations such as the National Low Income Housing Coalition and the National Housing Law Project have put out guidance stating, variously, the lack of specific eligibility requirements in these and other programs or the eligibility for certain sub-programs within these projects.²¹ However, because "public or assisted housing" is specifically listed in PRWORA, a certain lack of clarity remains regarding immigrant eligibility. Even PRWORA's own exceptions do not conclusively answer the eligibility questions that often arise in everyday situations faced by low-income people and housing providers.

II. Emergency Aid, COVID, and ARPA: A Pathway to Housing Stability

A. PRWORA's Permission for Emergency Relief Availability Without Regard to Immigration Status

Despite its broad-based approach to restricting noncitizen access to federal public benefits, PRWORA nevertheless contained a critical exception, one that applied to the federal government's response to the COVID-19 pandemic. 8 U.S.C. § 1611(b)(1)(B) specifically states that PRWORA's "eligible alien" restrictions do not apply to "short-term, non-cash, in-kind emergency disaster relief." Additionally, the statute subsequently provides that programs delivering in-kind services, through either public or nonprofit agencies, that do not condition assistance on income or resources and are necessary for life and safety are also exempt from PRWORA's noncitizen restrictions.²²

Historically, this has meant that in-kind assistance from agencies, such as FEMA, following natural disasters are available to all residents, regardless of citizenship status.²³ While direct cash assistance programs provided in response to natural disasters are subject to PRWORA's citizenship restrictions,²⁴ PRWORA specifically makes available federally funded emergency and life-saving aid, such as temporary shelter, soup kitchens, and crisis counseling programs to all individuals, regardless of citizenship status.²⁵

19. See HARRINGTON, *supra* note 7, at 7, 14–15.

20. See *id.*

21. See generally *Overview*, *supra* note 14; see also *Frequently Asked Questions: Eligibility for Assistance Based on Immigration Status*, DISASTER HOUS. RECOVERY COAL. (Apr. 2022), https://nlihc.org/sites/default/files/FAQs_Eligibility-for-Assistance-Based-on-Immigration-Status.pdf (hereinafter FAQ).

22. 8 U.S.C. § 1611(b)(1)(D).

23. See HARRINGTON, *supra* note 7, at 13.

24. *Id.*

25. 8 U.S.C. § 1611(b)(1)(D).

B. Congress, CARES, and COVID: A Precursor to ARPA

In its immediate response to the COVID-19 pandemic, Congress adopted measures that further decreased restrictions on noncitizen access to emergency housing assistance. Prior to the passage of the American Rescue Plan Act, bipartisan legislation implemented measures that stabilized housing for noncitizens and citizens alike. This action created a framework for rental assistance programs available to all residents.

Perhaps the most lasting legacy of the CARES Act was the nationwide mandate that property owners receiving some form of federal subsidy or insurance must not proceed with eviction proceedings without first giving residents thirty days' notice to vacate the unit.²⁶ Undocumented individuals are ineligible to receive the benefits of many federal subsidies, including those included within the CARES Act's definition of "covered properties." However, this protection applied to private houses and apartment buildings whose mortgages are backed by federally sponsored enterprises Fannie Mae and Freddie Mac.²⁷ Given this inclusion, undocumented individuals living in private residences not receiving a direct federal subsidy still received the benefit of this regulation. Further, the CARES Act also either implemented new funding streams that did not specify eligibility restrictions, or enhanced funding to existing federal programs that did not specify restrictions based on immigration status.²⁸

New funding included \$150 billion for the Coronavirus Relief Fund (CRF), which state and local governments could use to "cover necessary expenditures incurred" in the aftermath of the COVID-19 pandemic.²⁹ Many localities used CRF to establish rental assistance programs prior to the establishment of the federal ERA program (which itself would receive funding through CRF).³⁰

Similarly, localities used enhanced CDBG funding to establish rental assistance programs.³¹ CDBG funds have been exempt from the restrictions found in Section 214 of the Housing and Community Development Act.³² These funds, along with additional money dedicated to the ESG—used widely to fund emergency shelter operations—made housing stability considerably more accessible to non-citizens than the pre-COVID baseline.

26. 15 U.S.C. § 9058 *et seq.*

27. *Id.*

28. See generally FAQ, *supra* note 21.

29. See *id.*

30. GRANT A. DRIESSEN, MAGGIE MCCARTHY, & LIBBY PEARL, CONG. RSCH. SERV., R46688, PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM 1.

31. *Id.*

32. See *supra* note 14.

C. ERA Further Expands Housing Stability Access for Undocumented Individuals

The establishment of the federal ERA program—one with federal oversight and local administration—dramatically stabilized the housing crisis feared when the COVID-19 pandemic began. It is credited for halting, in part, the “eviction tsunami” that was feared to hit renters in 2020 and 2021.³³ According to eviction expert Matthew Desmond, “Government aid in the form of rental relief was entirely responsible . . . [for] historic reductions in residential instability.”³⁴ With \$47 billion in emergency rental and utility assistance appropriated through ERA, Congress made available funds that rivaled and even surpassed its investments in historic housing affordability programs like public housing, Section 8 vouchers, and project-based rental assistance.

Moreover, Congress did so within a framework that made such funding available to undocumented individuals. Certain pandemic-era income supports, such as Pandemic Unemployment Assistance, expanded Supplemental Nutritional Assistance Program payments, and Economic Impact Payments, were subject to PRWORA restrictions on non-citizen eligibility.³⁵ However, ERA’s structure, along with its statutory silence on eligibility, enabled access for undocumented individuals. This approach—particularly as implemented in successful jurisdictions, such as San Antonio—creates a framework for expansive housing stability that merits implementation far past emergency measures.

D. ERA Funding and Eligibility

1. Funding ERA

ERA funding came in two tranches. The first \$25 billion—ERA-1—came through the Consolidated Appropriations Act of 2021.³⁶ The appropriation for this tranche came from the CRF. While state and local governments had previously used CRF funding to establish rental assistance programs,³⁷ this appropriation directed funding to the Treasury Department for subsequent obligations to state, local, tribal, and territorial governments.³⁸ A second, \$21.55 billion round of funding came through the American Rescue Plan

33. See, e.g., Francesca Mari, *What’s Between 30 Million Americans and an Eviction Tsunami?*, N.Y. TIMES, Dec. 3, 2020, at A23.

34. “*The Rent Eats First*”: *How Renters and Communities Are Impacted by Today’s Housing Market*, *Before the U.S. S. Comm. on Banking, Hous., & Urb. Affs.*, 117 Cong. 10 (Aug. 2, 2022), <https://www.banking.senate.gov/imo/media/doc/Desmond%20Testimony%208-2-22%20.pdf> (statement of Prof. Matthew Desmond, Princeton Univ.) [hereinafter Desmond Testimony].

35. See generally FAQ, *supra* note 21.

36. See DRIESSEN ET AL., *supra* note 30, at 2.

37. See *supra* Part II.B.

38. See DRIESSEN ET AL., *supra* note 30, at 2.

Act of 2021.³⁹ Known as ERA-2, ARPA again went to support state, local, and tribal governments, with certain funds set aside for high-need matters (ERA-2 High Need).⁴⁰

2. ERA Eligibility and Documentation

ERA eligibility requirements became broader between ERA-1 and ERA-2. In ERA-1, households must be renters; at or below 80% of the area median income (AMI) as determined by HUD; experiencing financial hardship resulting from the pandemic, as demonstrated by unemployment benefit receipt or written attestation; and having at least one household member at risk of homelessness or housing instability.⁴¹

ERA-2 kept the renter and 80% AMI requirement but removed two components. First, it removed the requirement that financial hardship be related to the pandemic. Rather, financial hardship during the pandemic alone would suffice. Second, ERA-2 removed details about evidence of risk of homelessness or housing instability.⁴²

The Treasury Department emphasized the need for greater eligibility flexibility in guidance revised on May 7, 2021.⁴³ This guidance, in the form of Frequently Asked Questions, strongly encouraged, in multiple places, grantees to implement flexible standards “consistent with the statutory requirement for the funds to be used to provide financial assistance to eligible households.”⁴⁴

And, throughout its guidance, as well as in the authorizing statutes themselves, ERA-1 and ERA-2 did not refer to eligibility restrictions on the basis of citizenship or immigration status. In alignment with PRWORA’s carve-out for noncitizen eligibility for non-cash emergency aid, emergency rental assistance was available to all.

E. ERA Documentation Requirements: Further Support for Undocumented Residents

As with eligibility, the Treasury Department “strongly encourage[d]” grantees to employ flexible, expansive standards for acceptable documentation.⁴⁵ To be clear, the Treasury Department did address the need for fraud prevention. “Grantees are expected,” the Department wrote, “to apply reasonable fraud-prevention procedures and to investigate and address potential instances of fraud.”⁴⁶ However, documentation requirements [provided]

39. *Id.* at 3.

40. *Id.*

41. *See id.* at 11.

42. *See id.*

43. *See generally* U.S. DEPT. OF TREAS., EMERGENCY RENTAL ASSISTANCE FREQUENTLY ASKED QUESTIONS (rev. May 7, 2021), <https://home.treasury.gov/system/files/136/ERA2FAQs%205-6-21.pdf> [hereinafter ERA FAQ].

44. *See id.* at 14.

45. *See id.* at 2.

46. *See id.* at 14.

for various means of documentation so that grantees may extend this emergency assistance to vulnerable populations without imposing undue documentation burdens."⁴⁷

Read in combination with the Treasury Department's strong encouragement for flexible eligibility standards, federal agency guidance aligned with a permissive statutory structure to serve residents facing housing instability, regardless of citizenship status. Treasury Department guidance, in naming "vulnerable populations" who may not have access to certain forms of documentation, made concrete the challenges that many undocumented residents have in obtaining identifying documents.⁴⁸ Further, the Treasury Department cautioned against documentation requirements that "are likely to be barriers for eligible households, including those with irregular incomes . . . or gig workers whose income is reported on Internal Revenue Service Form 1099."⁴⁹

Here again, the federal government described forms of work common to undocumented individuals: day labor; cash payments; part-time, irregular employment. Explicitly and implicitly, the ARPA-funded ERA created a regime for direct housing assistance to undocumented immigrants. This system not only permitted, but also empowered, state and local governments to provide critical housing support to some of the most vulnerable, and most often overlooked, residents of their communities.

III. "If you don't have anything... Call 210-207-5910. We can talk you through your options." San Antonio as a Case Study for Accessible Housing Assistance

A. Roadblocks to Rental Assistance

Despite record amounts of federal funding committed to rental assistance, and despite explicit and implicit agency guidance encouraging swift dissemination of funds, challenges emerged nationwide in the implementation of ERA following ARPA. In September 2021, well after ERA-2 came online, *Politico* reported widespread state and local challenges to disbursing rental aid.⁵⁰ Despite Treasury Department directives informing grantees of the threat of recapture if funds went unspent, only seventeen percent of federal rental assistance had been spent by the time the CDC eviction moratorium was halted in August 2021.⁵¹ Whether due to

47. *See id.* at 2.

48. Cf. Gregory Zlotnick, *Picking the Lock: A Proposal for a Standard Fee Waiver in Texas for Identification Documents*, 22 *THE SCHOLAR* 345 (2020) (identifying common barriers to accessing identifying documents).

49. *See ERA FAQ*, *supra* note 43, at 2.

50. Katy O'Donnell, *Most Rental Aid Went Unspent in August, Sparking Treasury Warning*, *POLITICO* (Sept. 24, 2021, 11:06 AM), <https://www.politico.com/news/2021/09/24/august-rental-aid-unspent-514094>.

51. *Id.*

logistical challenges,⁵² onerous documentation requirements,⁵³ or austere fiscal practices,⁵⁴ many states struggled to spend grant funding received to assist with rental payments.

B. *Success in the Heart of Texas*

Texas, by and large, was not one of those states. Despite partisan differences between Texas and federal elected officials, the Biden administration “tried to highlight how Texas . . . used data and contracted with community nonprofits” to lead the country in rental assistance disbursed by late 2021.⁵⁵

Leading the way in Texas was San Antonio. In September 2021, the White House hosted a webinar on emergency rental assistance best practices.⁵⁶ The session featured San Antonio Mayor Ron Nirenberg, who shared how the city had spent ninety-two percent of ERA-1 funds, and was continuing to address rental assistance needs with ARPA-provided funding.⁵⁷ Months before, in July 2021, the Texas Low Income Housing Information Service (Texas Housers) issued a report that ranked San Antonio first among Texas cities in administering emergency rental assistance programming.⁵⁸

San Antonio had a critical advantage: it already had a municipal mechanism in place for rental assistance. Prior to the pandemic, the city had created a Risk Mitigation Fund to assist renters and homeowners at risk of losing their homes.⁵⁹ By the time COVID-19 arrived in the city, this fund housed \$25 million in city funding as early as April 2020,⁶⁰ and later

52. Glenn Thrush, *Treasury Shifts \$377 Million Among States as Pandemic Housing Aid Dries Up*, N.Y.TIMES, Mar. 17, 2022, at A18.

53. Sarah Whites-Koditscheck, *Alabama Losing Millions in Federal Rental Assistance Due to Delays*, AL.COM (Feb. 23, 2022, 8:39 AM), <https://www.al.com/news/2022/02/alabama-losing-millions-in-federal-rental-assistance-due-to-delays.html>.

54. Amelia Ferrell Knisely, *West Virginia Stockpiled \$110 Million in Welfare Funds Despite Pandemic, Soaring Hunger Numbers*, MOUNTAIN STATE SPOTLIGHT (Feb. 14, 2022), <https://mountainstatespotlight.org/2022/02/14/wv-stockpiled-110-million-tanf-welfare-money>.

55. Katy O'Donnell, *Why the White House Loves the Texas Renter Rescue*, POLITICO (Sept. 4, 2021 7:00 AM), www.politico.com/news/2021/09/04/white-house-texas-renter-rescue-509546.

56. Steven Santana, *White House Highlights San Antonio Rental Assistance Efforts*, CHRON.COM (Sep. 10, 2021), <https://www.chron.com/news/local/article/White-House-highlights-San-Antonio-rental-program-16448862.php>.

57. *Id.*

58. See generally Erin Hahn, *Evaluating the Effectiveness of the Emergency Rental Assistance Program in Texas*, TEX. LOW INCOME HOUSING INFO. SERV. (July 13, 2021), <https://texashousers.org/wp-content/uploads/2021/07/ERAP-Report-7-13.pdf>.

59. See Iris Dimmick, *City Ramping Up Efforts in Affordable Housing Plan*, SAN ANTONIO REP. (Dec. 12, 2018), <https://sanantonioreport.org/city-ramping-up-efforts-in-affordable-housing-plan>.

60. Sara Cline, *City Council Approves \$25 Million to Help Struggling San Antonio Residents Pay for Gas, Groceries, Utilities, and Housing*, SAN ANTONIO EXPRESS-NEWS (Apr. 23, 2020 10:31 PM), <https://www.expressnews.com/news/local/article/City-approves-25-million-to-help-San-Antonio-15221705.php>.

included federal CARES Act funding. By the time ARPA funding arrived in 2021, elected and appointed city officials were familiar with effective practices for disbursing rental assistance. As the Congressional Research Service has noted, “Jurisdictions that had already established an administrative process to distribute rental assistance and had experience doing so may have been in a better position to begin distributing” ERA funds.⁶¹

One of San Antonio’s most effective practices was making available clear, attainable standards for required documentation. The city’s Neighborhood Housing Services Division (NHSD), which had developed and implemented the Risk Mitigation Fund prior to the pandemic, was responsible for administering ERA funds. On its website and over a dedicated hotline, NHSD published a simple, one-page, plain language grid for required documents.⁶² The chart had columns highlighting the most common, or fairly common, forms of documenting identity, income, and hardship. For identity documentation, the NHSD chart included under “common submission,” “tax return that lists everyone,” Employment Authorization Document, and Matricular Consular—a form of identification foreign consulates issue to citizens of their countries. Listing these documents, which many undocumented individuals possess, made tangible the availability of rental assistance regardless of citizenship or immigration status. San Antonio residents did not have to interpret the silence of ARPA on citizenship eligibility, or sift through Congressional Research Service analysis, to determine whether their immigration status would determine whether they could access funding to stay in their home.

Moreover, NHSD included a third and perhaps most helpful column: one titled, “If you don’t have anything” Under that title, in most boxes, the telephone number for the assistance program was given, along with a simple instruction: “Call . . . and we will walk you through your options.” Here, in text, was a municipality acknowledging that crises do not always—indeed, often do not—occur when paperwork is in order. By being accessible by telephone; by opening an online portal; by making information available in English and in Spanish, San Antonio’s methods of receiving and responding to rental assistance applications mirrored the categorical openness of federal funding to stabilize the housing of citizens and immigrants of all statuses during the pandemic.

61. See DRIESSEN ET AL., *supra* note 30, at 1.

62. City of San Antonio Neighborhood & Housing Serv. Dept, Required Docs for Assistance, <https://www.sanantonio.gov/Portals/0/Files/NHSD/Programs/FairHousing/RequiredDocsForAssistance.pdf>.

IV. The Way Forward: Pathways to Continued Undocumented Individual Eligibility for Housing Assistance

While certainly not without challenges,⁶³ San Antonio's implementation of ERA funds—befitting of a city that identifies itself as a compassionate city⁶⁴—demonstrates how culturally sensitive and responsive local government can make policy work for all stakeholders: tenants and landlords, citizens, and immigrants. Similarly, federal rental assistance policy can continue to follow the ARPA/ERA model to expand housing stability to undocumented individuals and others ineligible for traditional rental programs. Since the federal government “built, essentially from scratch,” this level of commitment to rental assistance during the COVID-19 pandemic, it is unclear whether, and how, such a commitment could continue. Separate and apart from issues of funding priorities and adequate scale, permanent rental assistance funding would likely, at some point, need to address ongoing eligibility for undocumented individuals. As noted below, several regulatory pathways could facilitate this continued eligibility.

Repeal of Immigration Restrictions in the Housing and Community Development Act and PRWORA. Perhaps the most elegant way to expand pathways to housing stability would be—to borrow from President Clinton—to end Section 214 and PRWORA as we know them. Rather than creating restrictive housing policies that functionally discriminate on the basis of national origin, repealing the “eligible alien” sections of these fundamental social safety net laws would ensure that one of the most basic needs of all residents could be more readily met. Further, it would relieve the possibility of statutory ambiguity that has arisen since the COVID-19 pandemic.⁶⁵ With their repeal, a presumption of eligibility would replace the presumption of immigrant ineligibility for public benefits.

Continued Emergency Funding. Absent PRWORA's repeal, its exemption for short-term, non-cash emergency disaster relief provides a sound basis for continued emergency rental assistance funding. Matthew Desmond, in August 2022 testimony before the Senate Committee on Banking, Housing, and Urban Affairs, stated that “we should not use our softer voices in times of emergency” in urging the Senate to expand rental assistance. As he testified, “[S]ince 1985, rent prices have outpaced income gains by 325 percent.”⁶⁶ Further, in a January 2023 white paper titled, *Blueprint for a Renter Bill of Rights*, the Biden administration identified housing insecurity as a long-standing problem exacerbated, from 2021–2022, in a stunning

63. See, e.g., Matthew Desmond, *The Rent Eats First, Even During a Pandemic*, N.Y. TIMES, Aug. 30, 2020, at SR6. (describing a San Antonio's resident's difficulties accessing rental assistance in the face of eviction).

64. See, e.g., CITY OF SAN ANTONIO, COMPASSION IN SA (2023), <https://www.sanantonio.gov/humanservices/FaithBased/compassionSA>.

65. See generally HARRINGTON, *supra* note 7.

66. See Desmond Testimony, *supra* note 34, at 13.

17.2% increase in average rents.⁶⁷ Such conditions constitute emergency measures; rental assistance funding could operate under this exemption.

Lest this be considered an undue expansion of emergency powers, the federal government construed the ongoing COVID-19 pandemic as such an emergency through May 11, 2023—a period lasting over three years.⁶⁸ Moreover, many states and localities, including conservative-led Texas, are operating under emergency conditions as well, whether citing COVID-19⁶⁹ or high levels of homelessness.⁷⁰ Indeed, on May 15, 2023—just four days after the federal state of emergency ended—Texas Governor Greg Abbott renewed his COVID-19 disaster proclamation.⁷¹ While the Proclamation concerns itself largely with preventing local governments from taking public health-related measures such as vaccine mandates, masking requirements, and/or business closures, it also “[authorizes] the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.”⁷² Such broad approaches to emergency response from across the partisan spectrum suggest an openness to revisiting long-held understandings of these procedures.

Modifications to Eviction Procedures to Encourage Obtaining Rental Assistance. One branch of Texas state government has continued to use its rulemaking power in creative ways to attempt to cope with the ongoing eviction crisis: the Texas Supreme Court. In so doing, it models a pathway for incorporating rental assistance into the rules and regulations governing eviction proceedings. In May 2023, the state’s court of last resort for civil matters issued an emergency order regarding the Texas eviction diversion program.⁷³ Similar to its gubernatorial counterpart, the TEXAS Supreme Court used this order to renew a prior emergency order addressing evictions. Citing Governor Abbott’s COVID-19 emergency declaration, the court modified portions of Texas Rule of Civil Procedure 510, the rule governing eviction proceedings in Texas justice courts.⁷⁴

Certain modifications require changes to the citation the justice court issues to defendants upon commencement of the lawsuit in both English

67. DOMESTIC POL’Y COUNCIL & NAT’L ECON. COUNCIL, *THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS 4* (Jan. 2023).

68. *E.g.*, Zeke Miller & Amanda Seitz, *President Biden to End COVID Emergencies on May 11*, ASSOC. PRESS (Jan. 30, 2023), <https://apnews.com/article/biden-united-states-government-district-of-columbia-covid-public-health-2a80b547f6d55706a6986debc343b9fe>.

69. *E.g.*, Emer. Order Regarding the Texas Eviction Diversion Program, Misc. Docket No. 23-9024 (Tex. Apr. 28, 2023).

70. *E.g.*, Proclamation of Existence of a Local Emergency for Homelessness by the Los Angeles County Board of Supervisors (Jan. 10, 2023).

71. Proclamation by the Governor of the State of Texas (May 15, 2023).

72. *Id.*

73. Emer. Order Regarding the Texas Eviction Diversion Program, Misc. Docket No. 23-9024 (Tex. Apr. 28, 2023).

74. *Id.*

and Spanish, itself an acknowledgment of the language and national-origin diversity of parties to eviction lawsuits.⁷⁵ Other modifications require judges to permit legal aid representatives to be present in court to assist eligible parties.⁷⁶ And one modification deals specifically with rental assistance funding: an explicit procedural mechanism to abate cases for all parties seeking rental assistance.⁷⁷

Under the emergency order, judges at eviction trials are required to ask whether landlords are themselves seeking rental assistance for the tenant they are seeking to evict, or have provided “any information or documentation to a rental assistance provider involving the defendant-tenant.”⁷⁸ That mandatory measure is one most frequently honored in the breach, based on the observations of tenant attorneys.⁷⁹ However, the emergency order goes beyond that requirement, stating that judges “should” affirmatively inquire about landlords’ and tenants’ willingness to seek rental assistance.

If landlords are seeking rental assistance funding; have provided information to rental assistance providers; or along with the tenant express an interest in seeking available rental assistance, then the emergency order requires something remarkable for a summary eviction proceeding: the court must abate the action for at least sixty days.⁸⁰ Further, the emergency order requires the immediate sealing of all records, files, and information related to the eviction action.⁸¹ And, if the landlord does not file and serve a motion to reinstate the eviction suit, then the judge must dismiss the suit with prejudice on the day after the abatement period’s expiration, leaving all records sealed.⁸²

These changes to the rules governing eviction procedures do not distinguish between citizen and non-citizen landlords and tenants. Rather, they encourage and invite all litigants to seek out available rental assistance funds, and do so in a positive-sum manner: making landlords whole, allowing tenants the chance to avoid eviction, while limiting burdens on busy court dockets. Inclusive court proceedings, paired with inclusive approaches to rental assistance, can provide a holistic response to tenants facing eviction: not only during the proceeding itself, but well afterward through mandatory record-sealing and dismissals. And this relief, with its integration of both procedural and substantive support for both landlords

75. *Id.* at 3(a).

76. *See id.* at 3(b).

77. *See id.* at 3–9.

78. *Id.* at 3(b)(ii).

79. As the supervisor for our Center’s Housing Rights Project, I regularly attend hearings in justice courts in Bexar County. While many justices of the peace do ask whether landlords and tenants would like to seek rental assistance, they typically do not, as a formal matter, ask landlords the questions as prescribed in 3(b)(ii) of the emergency order.

80. *See id.* at 3(b)(iv), 4.

81. *Id.*

82. *Id.* at 6.

and tenants, could be explicitly adopted in the permanent rules of procedure governing eviction proceedings in jurisdictions nationwide.

Flexible Documentation Standards. Regardless of the statutory or regulatory framework under which undocumented eligibility for rental assistance continues, implementation must continue to rely upon expansive documentation standards such as those the Treasury Department encouraged. Permitting various forms of identifying personal documents, as well as proof of lost income or risk of homelessness, must become the norm, rather than the exception, for any housing stability program committed to equity. After all, while “undocumented” may be most commonly applied to immigrants unable to prove their lawful presence, plenty of American-born residents also have difficulty documenting their identity.⁸³ By widening the scope of acceptable documentation, federal housing policy can eliminate bottlenecks and meet residents where they are, alleviating the threat of displacement while making property owners whole on back rent.

Conclusion: Strength in Inclusive Policymaking

Matthew Desmond’s 2020 call for a nationwide eviction moratorium bore the memorable title, “The Rent Eats First, Even in a Pandemic.”⁸⁴ With the support of expansive funding, and similarly expansive approaches to eligibility and documentation, Americans regardless of immigration status were able to feed that “greediest of bills,” if only for a few additional months, and stave off displacement and despair.⁸⁵

That precedent—one of a federal government actively and inclusively attempting to meet its residents’ most basic needs—is, to paraphrase Peter Edelman, the “strong stuff” that is needed to make a more equitable society. Rather than cuts to immigrant eligibility that “are just mean, with no good policy justification,”⁸⁶ policymakers have, in ARPA and ERA, a model that is both compassionate *and* has sound policy justifications. As inflationary pressures compound an already restricted affordable housing market, permanent establishment of federal rental assistance available, regardless of immigration status, will make an immediate impact in blunting the rolling eviction crisis. As Desmond testified:

We need to increase the supply of affordable housing by deepening investments in development and expanding public housing offerings. But we can’t build our way out of this because families need relief now—not three years from now, when developers finally break ground after clearing all the red tape, not seven years from now when the doors finally open—but today.⁸⁷

83. See Zlotnick, *supra* note 48, at 347 (noting that approximately eleven percent of Americans do not have identifying documents).

84. See Desmond, *supra* note 63.

85. *Id.*

86. See Edelman, *supra* note 9.

87. Desmond Testimony, *supra* note 34, at 10.

Those families in need of relief are American citizens and undocumented individuals; legal permanent residents and asylum seekers. ARPA and the ERA met the needs of those families. If one legacy of the COVID-19 pandemic is worth continuing, surely it is this: a policy response worthy of the Statue of Liberty's inscription to "send these, the homeless, tempest-tost to me,"⁸⁸ and secure for them their homes in this nation.

88. Emma Lazarus, *The New Colossus*, NAT'L PARK SERV. (Nov. 2, 1883), <https://www.nps.gov/stli/learn/historyculture/colossus.htm>.

Ending Evictions: The Lived Case For Replacing the Violence of Eviction with the Humanity of a Safety Net

*Sam Gilman**

The COVID-19 pandemic nationalized the issue of renter displacement. Suddenly, eviction, the state and local process to displace tenants who cannot pay rent, became a national political issue. When COVID-19 shut down the economy, millions faced the risk of eviction. When the pandemic hit, states like Massachusetts banned “non-essential” evictions—those triggered by non-payment and those where the landlord did not have just cause. The federal and state governments placed a moratorium on evictions, and governments allocated billions in emergency rental assistance. This piece starts by analyzing the history, economic conditions, and legal structure of state-sanctioned displacement that has historically disproportionately impacted Black and brown communities. It turns to the two pandemic years where we lived through an alternate reality where these interventions dramatically reduced displacements, especially among Black and brown communities, and offered a win-win-win for tenants, landlords, and society. This piece’s central contribution is showing that we can (temporarily did) and should again live in a society that prohibits eviction without just cause, including in cases for non-payment. It also offers the how. Through several case studies, it applies best practice models for implementing eviction-prevention programs that combine rental assistance and legal aid in local contexts. At the micro level, these case studies will help advocates and policymakers create effective eviction prevention systems

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for their local contexts in a resource-constrained world. At the macro level, the historic decline in eviction and the operational feasibility of best practice models implemented during the pandemic provide a vision for a more just and equitable future, where we replace the violence of the eviction system with the humanity of a social safety net.

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I. Introduction

In America, we have words for things that everyone should have. We call them rights, and we fund them as entitlements. Americans have a right to health care, social security income, and food. Society must pay for every citizen who needs the services and qualifies for the entitlement programs that support these rights. Housing is as important as food, healthcare, or income. It creates shelter, safety, and identity—requirements for survival and existing in the modern economy.¹ It is essential: the “rent eats first” because families will forgo everything to maintain a roof over their heads.² Yet, Americans have no entitlement or right to housing.³ The closest thing is a right to shelter in a small number of jurisdictions, including New York City.⁴ In contrast to Americans having no right to housing or shelter, property owners have rights to leverage the police power of the state to swiftly evict their tenants for non-payment or no reason at all—regardless of the consequences to the tenant household.⁵

Eviction—the legal process that enables landlords to remove tenants from their homes—is harmful to evicted families and society as a whole.⁶ An evic-

1. See, e.g., RACHEL G. BRATT, MICHAEL E. STONE & CHESTER HARTMAN, WHY A RIGHT TO HOUSING IS NEEDED AND MAKES SENSE: EDITORS' INTRODUCTION, THE AFFORDABLE HOUSING READER 53–71 (2013).

2. See MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 302 (2016); see also Matthew Desmond, *The Rent Eats First, Even During a Pandemic*, N.Y. TIMES (Aug. 29, 2020), <https://www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html>; WHITNEY AIRGOOD-OBRYCKI, ALEXANDER HERMANN, SOPHIA WEDEEN, THE RENT EATS FIRST: RENTAL HOUSING UNAFFORDABILITY IN THE US, JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV. (Jan. 2021), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_rent_eats_first_airgood-obrycki_hermann_wedeen_2021.pdf.

3. JENNY SCHUETZ, FIXER UPPER: HOW TO REPAIR AMERICAS BROKEN HOUSING SYSTEMS 61–63 (2022).

4. See, e.g., Callahan v. Carey, No. 79-42582, N.Y. L.J., Dec. 11, 1979, at 10, col. 5 (Super. Ct. Dec. 10, 1979) (order granting preliminary injunction and the right to housing for men experiencing homelessness); Eldredge v. Koch, 98 A.D. 2d 675 (N.Y. App. Div. 1983) (extending the right to housing to women experiencing homelessness); McCain v. Koch, 117 A.D. 2d 198 (N.Y. App. Div. 1987), *rev'd in part*, 70 N.Y.2d 109. (establishing a right to shelter for homeless families in New York). Ruth Bourquin, *Basic Shelter Rights (Emergency Assistance)*, MASSLEGALHELP (Jan. 2011), <https://www.masslegalhelp.org/income-benefits/basic-shelter-rights> (describing Massachusetts's limited right to shelter).

5. See, e.g., COLO. REV. STAT. § 13-40-104(1)(d) (describing grounds for nonpayment eviction); COLO. REV. STAT. § 13-40-107(1) (describing grounds for eviction without cause); Mass. G.L. c. 189 (providing the grounds for terminating the tenancy for non-payment); MASS. GEN. LAWS ch. 239, § 1A (providing that a landlord may initiate a no-fault eviction).

6. See Part V *infra* (citing data on the serious individual and social consequences of eviction).

tion nearly immediately causes displacement and can lead to the experience of homelessness.⁷ The formal legal process also creates the broader context for informal eviction.⁸ Some renters seeking to avoid the known costs and consequences of a formal eviction often leave before a court filing. Others, who may not understand that the law provides a temporary legal right to remain, leave at the first provocation from their landlord.

Formal and informal evictions have catastrophic consequences. They have been linked with a spiral of poor health, economic hardship, and educational outcomes for individuals, families, and communities.⁹ The consequences disproportionately impact Black and brown households and families with children,¹⁰ building on top of America's history of racial harm in housing through segregation, predation, and divestment in communities of color.¹¹ On top of causing unnecessary human suffering, the displacement and resulting homelessness is expensive for society.

During the pandemic, our society developed a new perspective on the things everyone must have, using the term "essential." We described workers who provided goods and services necessary to the functioning of society as "essential."¹² Essential workers went to work; essential services

7. See Part IV *infra* (describing the legal process of eviction in Colorado and Massachusetts that details the mechanism for displacement within weeks of tenants not being able to pay rent); see also COLO. REV. STAT. § 13-40-104 *et seq.* (providing Colorado's laws against eviction).

8. See Matthew Desmond & Tracey Schollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751 (2015) (defining the problem of forced moves including informal evictions).

9. See also Part V *infra* (citing data on the serious individual and social consequences of eviction).

10. See, e.g., Carl Romer, Andrew M. Perry & Kristen Brody, *The Coming Eviction Crisis Will Hit Black Communities the Hardest*, BROOKINGS (Aug. 2, 2021), <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest>, analyzing EvictionLab records by zip code to find a disproportionate rate of eviction in Black zip codes with 3.4 times higher eviction filing rates and 2.6 times higher judgment rates than the share of the population; Dan Immergluck et al., *Evictions, Large Owners, and Serial Findings: Findings from Atlanta*, 35.5 HOUS. STUD. 903 (July 14, 2019) (finding that race and particularly residence in Black neighborhoods predict the likelihood of non-serial eviction); Romer, Perry & Brody, *supra*; Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting off a Chain of Hardship*, MACARTHUR FOUND. (Mar. 2014), https://www.macfound.org/media/files/hhm_research_brief_poor_black_women_are_evicted_at_alarming_rates.pdf.

11. See, e.g., RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, 576 U.S. 519 (2015); Metro. Hous. Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977).

12. See, e.g., Celine McNicholas & Margaret Poydock, *Who Are Essential Workers? A Comprehensive Look at Their Wages, Demographics, and Unionization Rates*, ECON. POL'Y INST. (May 19, 2020), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive>

continued. Non-essential workers had a right to stay home. Non-essential services stopped.

Housing was essential. People had a right to stay home. Indeed, many were required to do so. In Massachusetts, the Housing Court specifically decided that no eviction—unless necessary to address health or safety—could occur.¹³ The federal government (in addition to many states) created a temporary right to housing, regardless of the ability to pay, by banning evictions¹⁴ and funding a \$46 billion emergency rental assistance program to keep renters and landlords whole.¹⁵ While the protections were not absolute¹⁶ and the funding was not an entitlement (aid was not guaranteed), the intention to keep renters housed was clear. For the first time, the United States articulated a near right to housing and a near entitlement to fund it. These protections waned in 2022 as rental inflation accelerated, putting American housing policy for low-income renters at a crossroads.¹⁷

This piece mobilizes evidence from the pandemic response to show us that we can (and temporarily did) and should again live in a society that prohibits eviction without just cause, including in cases for non-payment. At the values level, the pandemic taught us that eviction and displacement are non-essential. At the policy level, the pandemic also taught us how to change laws and mobilize resources to keep people in their homes. At the operational level, the pandemic taught us how to implement these programs. Of course, these solutions are not a panacea; they do not solve a small minority of tenants' structural inability to pay rent, which must be supported with permanent entitlements that lower rents.¹⁸ They do not build more affordable housing. And we cannot address the systemically racist and economically segregated history of American housing policy.¹⁹

-look-at-their-wages-demographics-and-unionization-rates (describing the industries that comprised essential work).

13. Danny McDonald, *Boston Housing Authority Stops Pursuing "Non-Essential" Evictions Amid Pandemic*, Bos. GLOBE (Mar. 12, 2020), <https://www.bostonglobe.com/2020/03/13/metro/boston-housing-authority-stops-pursuing-non-essential-evictions-amid-pandemic>; Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency, 2020 Mass. Acts ch. 65.

14. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

15. H.R. 133, 116th Cong. (2020) [hereinafter Consolidated Appropriations Act]; see American Rescue Plan Act of 2021, P.L. No. 117-2.

16. Peter Hepburn, Olivia Jin, Joe Fish, Emily Lemmerman, Anne Kat Alexander & Matthew Desmond, *Preliminary Analysis: Eviction Filing Patterns in 2021*, EVICTIONLAB (Mar. 8, 2022), <https://evictionlab.org/us-eviction-filing-patterns-2021/> (describing eviction patterns in 2021 where evictions were down but still continued during the eviction moratorium).

17. *Id.* (charting the decline in protections over the course of 2021).

18. See, e.g., SCHUETZ, *supra* note 3, at 61.

19. See, e.g., ROTHSTEIN, *supra* note 11; Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, 576 U.S. 519 (2015); Metro. Hous. Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977).

without systemic solutions.²⁰ Nevertheless, the eviction problem—deeply associated with but legally and economically distinct from the affordable housing crisis and America’s history of housing discrimination—needs its own solutions.²¹ These solutions must respond swiftly to the financial shocks that often push tenants over the eviction cliff and must offer help in time to prevent the consequences of a lightning-fast eviction.

In the following sections, the piece makes the values, political, and operational case for ending non-payment eviction. Part II starts with the stories of families facing eviction and subsequently describes the consequences of eviction. Part III offers the history of eviction and our social responses to it. The Part leverages data analysis to highlight the effectiveness of the interventions, using four case studies of best-practice pandemic responses from Philadelphia, Pennsylvania; Houston, Texas; Colorado; and Massachusetts to apply the data. These case studies show how ending non-payment eviction is possible in a variety of contexts. Part IV illustrates the eviction process in detail, demonstrating the need for stabilization solutions and how best practice models can be calibrated to respond to the lightning-fast eviction timeline. Part V considers the underlying economics of eviction to demonstrate the benefits and limitations of emergency stabilization policy. The piece concludes with the aspirational: it argues that we have the tools and resources to replace the violence of eviction with the humanity of a safety net.²²

II. The Human Case for Preventing Eviction

To understand the importance of the article to follow, we must start with people. Who faces eviction and how does eviction and displacement impact people and broader society?

A. *The Lived Experience of Eviction, Displacement, and Resistance*

Girma Tsegay is a resident of Aurora, Colorado, where he lives with his three children.²³ He was always timely on rent until May 2022 when he contracted COVID-19. Despite receiving assurances from his landlord that

20. See generally MATTHEW DESMOND, *POVERTY, BY AMERICA* (2023) (Describing a variety of longer-term solutions that might include substantially more units of permanently affordable housing, a reduction in renter cost burdens, systems that strengthen political power for low-income people and people of color, wealth building in communities of color, social investment from wealthier people).

21. See Part V *infra* (describing the distinctions between the underlying causes of eviction including income and expense shocks that are economically separate from housing affordability challenges, despite impacting low-income individuals at higher rates).

22. See, e.g., Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53.1 SETON HALL L. REV. 1 (2022) (describing the racist and classist history of evictions, the speed of summary process, and the violence of eviction).

23. Robert Tann, *Arapahoe County's Eviction Clinic Sees High Demand: 'We Often Have to Turn People Away'*, ROCKY MOUNTAIN PBS (Aug. 14, 2022), <https://www.rmpbs.org/blogs/news/arapahoe-countys-eviction-clinic-sees-high-demand-we-often-have-to-turn-people-away>.

everything would be fine, his landlord declined to accept his July rent and instead filed an eviction. The landlord attested to having used his June rent to pay for a lawyer to evict Mr. Tsegay. But Mr. Tsegay was lucky. He went to court and got help. He received legal aid from a Colorado Legal Services in-court legal clinic funded by the American Rescue Plan. In partnership with legal aid, Mr. Tsegay received financial assistance through the Colorado Stability Fund of the COVID-19 Eviction Defense Project—a program that used federally funded emergency rental assistance to prevent evictions.²⁴ Taking advantage of a new law, the landlord was required to accept rental aid because it was paid prior to Mr. Tsegay’s hearing.²⁵ While Mr. Tsegay avoided eviction through financial and legal aid, out of dozens facing eviction during his week in court, he was one of nine (of dozens) who got comprehensive legal and financial aid.

Consider the story of Annie Gordon of Massachusetts.²⁶ Ms. Gordon is a sixty-nine-year-old Black retiree on a fixed income and multi-decade resident of a Mattapan neighborhood. Recently, a commuter rail stop opened near Ms. Gordon’s home after years of her neighborhood’s exclusion from transit—an exclusion that occurred all too often in redlined Black neighborhoods.²⁷ Before the stop came in, Mattapan was more than seventy percent Black and sixteen percent Hispanic.²⁸ Ms. Gordon advocated for that stop, and she faced eviction for the increase in value in her neighborhood caused by the new transit.²⁹ Two months after the opening of the new rail stop, a new landlord purchased her apartment building.³⁰ The landlord’s investment thesis revolved around purchasing transit-accessible “underutilized properties” and turning over properties (forcing tenants out) to maximize value with new higher-paying tenants.³¹ They renamed the property and

24. See Part III *infra* (describing the COVID-19 Eviction Defense model).

25. COLO. REV. STAT. § 13-40-115(4) (requiring the landlord to accept rent paid to the court or to the landlord in full until the trial date).

26. Jenifer B. McKim & Stefania Lugli, ‘They Want to Push Us Out’: Mattapan Renters Fear Eviction As New Rail Stops Drive Rent Increases, WGBH (Dec. 14, 2020), <https://www.wgbh.org/news/local-news/2020/12/14/they-want-to-push-us-out-mattapan-renters-fear-eviction-as-new-rail-stops-drive-rent-increases>.

27. See Part III *infra* (describing the history of segregation in Boston and redlining practices).

28. Mattapan, Bos. Plan. & Dev. Agency Rsch. Div. (July 2017), <http://www.bostonplans.org/getattachment/f93dc9a5-9285-48d6-a8eb-3f2a3eac8e1c>.

29. *The State of Race: The Housing Gap—The Story of Annie Gordon, A Boston Woman Facing Eviction*, WGBH (Feb. 1, 2021), <https://www.wgbh.org/programs/2021/02/01/the-state-of-race-the-housing-gap-the-story-of-annie-gordon-a-boston-woman-who-faces-eviction>.

30. *Id.*

31. Jenifer B. McKim & Stefania Lugli, ‘They Want To Push Us Out’: Mattapan Renters Fear Eviction As New Rail Stops Drive Rent Increases, WGBH (Dec. 14, 2020), <https://www.wgbh.org/news/local-news/2020/12/14/they-want-to-push-us-out-mattapan-renters-fear-eviction-as-new-rail-stops-drive-rent-increases>.

increased rents by double digits; the \$2,085 in rent (up from \$1800) promised to break Ms. Gordon's budget, costing more than eighty-three percent of Ms. Gordon's monthly budget. These expenses placed her among the twenty-five percent of American renters who are extremely cost burdened by their rental housing.³² She refused to sign the new lease and was fined \$500, funds she did not have. Ms. Gordon stopped her eviction by teaming up with City Life / Vida Urbana, an anti-displacement group in Massachusetts.³³ While she avoided eviction, many tenants in Ms. Gordon's position are displaced. Some are evicted without cause, others get evicted for non-payment of rent and fees, while others adapt their lives to pay nearly every dollar they have to stay in place.

These stories highlight that rental housing—like food, healthcare, and other basics—is both a commodity for owners and a home for people, an asset and a basic need, an investment and a community tie. Renters pay whatever they must to stay, and sometimes cannot, due to expense or income shocks with enormous consequences. Mr. Tsegay almost lost his home because COVID-19 impacted his ability to pay rent on time. But for financial and legal aid, he would likely have been evicted though he was back on his financial feet within weeks of his illness. For Ms. Gordon, expense shocks were triggered by dramatically increasing rents, outside investment, and fines levied by a new landlord. These shocks threatened her ability to remain in her home and community.

*B. Consequences of Eviction: A Lose, Lose, Lose for Tenants,
Landlords, and Society*

Whether formal or informal, evictions lead to intergenerational trauma and poverty. Evictions place families at risk of extended homelessness, food insecurity, COVID-19 contraction, exacerbated health issues, lack of school,³⁴ and even deaths of despair.³⁵ Evictions are also associated with

32. See Part III.A (describing the percentage of Americans who are extremely cost burdened).

33. Since its founding in 1978, CLVU has organized to keep thousands in their homes through direct action, organizing, and strategic negotiations. See David Bloom Robinson, *The Stability Gap: Evictions and the Legacy of Housing Segregation in Boston's Communities of Color 54* (May 2020) (M. City Plan. dissertation. Mass. Inst. Tech., <https://dspace.mit.edu/bitstream/handle/1721.1/127630/1193561388-MIT.pdf?sequence=1&isAllowed=y> (describing the history of City Life Vida Urbana); see also CITY LIFE/VIDA URBANA, 2018 ANNUAL REPORT (2018), https://www.clvu.org/annual_reports; Sasha Abramsky, *Fighting Foreclosure in Boston: An Unlikely Grassroots Coalition Is Keeping Residents in Their Homes, One Property at a Time*, THE NATION (June 15, 2011), <https://www.thenation.com/article/archive/fighting-foreclosure-boston>.

34. Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46 (2016); ROBERT COLLINSON & DAVIN REED, THE EFFECTS OF EVICTIONS ON LOW-INCOME HOUSEHOLDS (2018), https://economics.nd.edu/assets/303258/jmp_rcollinson_1_.pdf.

35. See Katherine A. Fowler et al., *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings from 16 National Violent Death Reporting System States, 2005–2010*, 105 AM. J. PUB. HEALTH 311 (2015).

numerous physical and mental health conditions, negative health outcomes for women (including domestic violence, negative outcomes for children), and additional substandard living conditions when families move.³⁶ And, as sociologist and Principal Investigator at EvictionLab, Matthew Desmond often highlights, they can often be causes in addition to consequences of poverty and lead to negative employment outcomes.³⁷ For renters who find new housing after eviction, they often force renters to move into lower-quality housing and neighborhoods with worse conditions, including crime, poverty, and declining housing stock.³⁸ Often, the “Scarlet E,” a term for an eviction record, makes it even more difficult for tenants to find affordable, high-quality housing.³⁹ Moreover, experimental and simulation studies directly tied eviction to increased incidences of COVID-19 and COVID-19 deaths during the pandemic due to the risk of contraction of the virus outside the home.⁴⁰ These extreme impacts are disproportionately felt by Black and brown renters, especially women with children.⁴¹

Granted, landlords face financial costs related to non-payment of rent or opportunity costs from rents set lower than the market will bear. Unpaid rent and evictions mean lost income and can mean unpaid mortgages and unpaid property taxes, especially for mom-and-pop landlords. Multiple analyses of the costs of eviction on landlords place the costs and opportunity costs in the thousands of dollars, including the actual cost of the eviction (legal fees, court fees, and sheriffs’ fees), unpaid rent, vacancy time, and reletting costs.⁴²

The financial costs of an eviction to individuals and the system are also enormous. A variety of cost-benefit analysis studies have attempted to identify the public and social costs avoided by eviction prevention

36. Emily Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1, 8 (2021).

37. Desmond & Gershenson, *supra* note 34.

38. *See id.*

39. *See The Scarlet E*, WNYC STUDIOS (June 6, 2019), <https://www.wnycstudios.org/podcasts/otm/scarlet-e-unmasking-americas-eviction-crisis>.

40. *See* Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* 3–4 (Nov. 30, 2020); Kay Jowers et al., *Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties 1* (Nat’l Bureau of Econ. Research, Working Paper No. 28,394 2021).

41. *See* Part II.A *infra* (describing the incidence of eviction disproportionately occurring in Black neighborhoods and affecting Black households).

42. *See, e.g.*, Andrea Collatz, *The True Cost of an Eviction*, TRANSUNION (Nov. 2, 2018), <https://www.mysmartmove.com/SmartMove/blog/true-cost-eviction.page>; *How Much Will It Cost to Evict My Tenants?*, AM. TENANT SCREEN, <https://americantenantsscreen.com/how-much-will-it-cost-to-evict-my-tenants>.

interventions,⁴³ including one by this author.⁴⁴ Specifically, evictions increase public costs for rapid rehousing, shelter, foster care, hospital care, chronic health care, mental health care, job loss and job retraining, foster care, criminal system involvement, and the costs of COVID-19; they also increase costs incurred by households for rehousing, job searches, and new security deposits.⁴⁵ While none of the studies makes causal claims, they gesture and likely understate the public and social costs of evictions because of the catastrophic, traumatic, and intergenerational effects that the displacements, moves to lower resourced neighborhoods, and resulting homelessness can have on families. None of the referenced studies, for example, quantifies the educational impact of an eviction on children, but it undoubtedly has one.

III. A Brief History of Displacement and Anti-Displacement in the United States: From the Founding to the Pandemic

Since the country's founding, eviction has been the formal legal remedy for property owners to remove renters who cannot pay the rent. It has also created the legal conditions that facilitate informal displacement—forced moves outside the legal system, whether or not tenants have somewhere to go. This Part has four subsections. First, it outlines the nineteenth century foundations of eviction law and provides a brief twentieth century history of America's racialized housing policy. Second, it considers the pre-pandemic twenty-first century context of renter displacement using Eviction Lab's tracking tools.⁴⁶ Third, it highlights the pandemic eviction crisis and its response. Fourth, it includes case studies on effective responses to eviction. This Part establishes the article's principal dilemma: Do we return to a pre-pandemic society that accepted the financial and social costs of eviction, or do we advance to a more humane society that prioritizes the most successful anti-displacement interventions?

43. STOUT RISIUS ROSS, INC., THE FINANCIAL COST AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL IN EVICTION PROCEEDINGS UNDER INTRO 214-A (2016), <https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/SRR%20Report%20-%20Eviction%20Right%20to%20Counsel%20%203%2016%2016.pdf>; NEIL STEINKAMP, COST-BENEFIT ANALYSIS OF PROVIDING A RIGHT TO COUNSEL TO TENANTS IN EVICTION PROCEEDINGS 68 (2019), https://info.stout.com/hubfs/PDF/Eviction-Reports-Articles-Cities-States/Los%20Angeles%20Eviction%20RTC%20Report_12-10-19.pdf; NEIL STEINKAMP, ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS 44 (2018), https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/Philadelphia%20Evictions%20Report_11-13-18.pdf.

44. Sam Gilman, *The Return on Investment of Pandemic Rental Assistance: Modeling a Rare Win-Win-Win*, 18 IND. HEALTH L. REV. 293 (Apr. 30, 2021), <https://journals.iupui.edu/index.php/ihlr/article/view/25459/23766>.

45. *Id.* at 320.

46. National Eviction Map: National Data 2000–2016, EVICTIONLAB, <https://evictionlab.org/map/#/2016?geography=states&type=er> (last accessed May 2, 2022).

A few points of context are important. We lack good historical and even contemporary data on formal evictions and especially informal evictions.⁴⁷ Where we have data, it is not generalizable across states and geographies, so this article focuses on places that the author knows well: Colorado and Massachusetts. Nevertheless, the data and place-based histories help us see historical trends: evictions used to be rare, and they are becoming less rare,⁴⁸ increasingly harming tenants who are disproportionately Black and brown.⁴⁹ Evictions occur in a broader historical context of redlining and reverse redlining—racist exclusion and predatory inclusion—and the resistance to such racist and classist policies at the center of the law and political economy of housing in the United States.⁵⁰

*A. Pre-Pandemic History of Eviction and Anti-Displacement Policy
in the United States*

American eviction law derives from colonial England. Laws emerged to reduce self-help violence that would arise when landlords attempted to regain possession of their property from non-paying tenants.⁵¹ Many American eviction laws, like Colorado's eviction statute, still carry the name "Forcible Entry and Detainer,"⁵² as the first eviction laws were designed to

47. See, e.g., Yulia Panfil, Sabiha Zainulbhai, Tim Robustelli, *Why Is Eviction Data So Bad*, NEW AM. (Apr. 20, 2021), <https://www.newamerica.org/future-land-housing/reports/why-is-eviction-data-bad>; Sabiha Zainulbhai & Nora Daly, *Informal Evictions: Measuring Displacement Outside the Courtroom*, NEW AM. (Jan. 20, 2022), <https://www.newamerica.org/future-land-housing/reports/informal-evictions-measuring-housing-displacement-outside-the-courtroom>.

48. DESMOND, *supra* note 2, at 3.

49. Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53 SETON HALL L. REV., 1, 5 (2022).

50. See generally ROTHSTEIN, *supra* note 11 (describing the history of segregation and the complicity of the federal government in the process); KEEANGA-YAHMATTI TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP (2019) (defining predatory inclusion and detailing redlining and reverse redlining efforts that led to segregation, predation, extraction, and limited wealth accumulation in Black communities). For a few stories of resistance to segregation and displacement see, for example, Bloom Robinson *supra* note 33 (describing resistance to eviction and displacement in Boston); Donna Bryson, *In the '60s, Denver Decided to Replace This Community with the Auraria Campus. Here's What It Lost*, DENVERITE (Nov. 5, 2018), <https://denverite.com/2018/11/05/denver-auraria-history-displacement> (describing resistance to displacement in the mid twentieth century in Denver); Hilal Bahcetepe, *Colorado Is One of the Worst States for Renters, but Is It Getting Better?*, WESTWORD (Dec. 27, 2021), <https://www.westword.com/news/colorado-rates-low-for-renters-rights-but-its-getting-better-12967694> (offering a recent evaluation of anti-displacement efforts in Colorado).

51. See, e.g., Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 773 (1994) (describing the development of eviction law in the United Kingdom).

52. See, e.g., COLO. REV. STAT. § 13-40-101 *et seq.*

stop violent “forcible entry” self-help actions.⁵³ They were also designed by and for white male property owners—the only voters and elected officials in our early republic—who sought the tools of the state to recover property quickly without self help.⁵⁴ For much of the colonial period and nineteenth century, tenants who could access the courts had tort remedies for personal or property injuries sustained during self-help evictions.⁵⁵

During the first half of the twentieth century, redlining and policies promoting homeownership for white families were driving segregation and concentration of poverty in renter communities in non-white neighborhoods. Between the *Buchanan* decision in 1917⁵⁶ and the 1950s, racially restrictive covenants bloomed, prohibiting Black and brown people from moving in next to white neighbors.⁵⁷ As a part of the New Deal response to the Great Depression, the federal government incentivized homeownership—for white households—through the Federal Housing Administration (FHA), which underwrote home loans.⁵⁸ The FHA encouraged both racially restrictive covenants and underwrote loans only in white neighborhoods, prohibiting what it called “risky” lending in redlined communities of color. In Boston, for example, the Homeowners Loan Corporation, which drew the redlined maps, deemed Roxbury “hazardous” and Dorchester, Mattapan, and Hyde Park “declining.”⁵⁹ This classification created a divergence between largely white homeowner communities and largely renter communities of color. As Desmond noted about the broader redlining trend, “The districts where Black families could live were written into law and enforced by the police.”⁶⁰

Desmond also finds that “evictions used to be rare” and were contested by tenants.⁶¹ Famously, Americans resisted mass eviction during the Great Depression.⁶² In a little-known history, during World War II and immediately after, the federal government instituted rent stabilization measures.⁶³

53. Gerchick, *supra* note 51, at 774–75.

54. Scherer, *supra* note 49, at 54–57 (describing the early foundations of eviction law in America).

55. *Id.* (citing ROBERT S. SCHOSHINSKI, *AMERICAN LAW OF LANDLORD AND TENANT* § 6:5 (1980); *Newton v. Harland*, 133 Eng. Rep. 490 (C.P. 1840); *Beddall v. Maitland*, 17 Ch. D. 174 (1881) (Eng.)).

56. See *Buchanan v. Warley*, 245 U.S. 60 (1917).

57. *Id.*; see also ROTHSTEIN, *supra* note 11, at 59–75; *Shelley v. Kraemer*, 334 U.S. 1 (1948).

58. ROTHSTEIN, *supra* note 11, at 59–75.

59. Bloom Robinson, *supra* note 33, at 44–45.

60. DESMOND, *supra* note 20, at 64.

61. DESMOND, *supra* note 2, at 3.

62. See, e.g., Anne Jaffee, *The Tenant Movement in New York City 1904–1984*, 1 N.Y.L.S. J. HUM. RTS. 4 (Fall 1986), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1074&context=journal_of_human_rights.

63. Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANN. REV. L. & SOC. SCI. 15, 16 (2015) (citing RM Blook & MF Newman MF, *Rent control*, *Annu. Survey Mass. Law* 22 (1974)).

The measures were lifted quickly due to counter-mobilization by organized real-estate interests.⁶⁴

While we have limited data on forced moves in the mid- to late-twentieth century, the economic story can be traced through urban revitalization policy and its resistance.⁶⁵ Urban renewal programs in the 1950s and 1960s, as well as anti-blight projects in the 1970s and 1980s, have resulted in the displacement and segregation of largely Black and low-income households across the country.⁶⁶ These policies led to segregation, underinvestment, extraction, poverty, and displacement.⁶⁷ Desmond writes, “Ghetto landlords had a captive tenant base, and because they could charge more, they did,” with Black renters often being charged more for worse housing than white renters.⁶⁸ Where Black families could buy homes instead of renting, for example, they were often given predatory mortgages in segregated neighborhoods that were designed to fail.⁶⁹ Non-white renting families paid an estimated twelve percent more for the same housing as white families in 1963, and their housing was lower quality.⁷⁰

In the 1950s and 1960s, in the face of government-sponsored “Urban Renewal,” tenant resistance against mass displacement and community destruction led to the creation of modern landlord-tenant law. In opposition to urban renewal, Black and low-income organizers led what Desmond refers to as the “Second Tenants’ Rights revolution” in the 1960s and 1970s. Tenant organizers secured rent stabilization policies in 170 municipalities.⁷¹ Through the courts, tenants secured the right to live in a habitable home as a defense to eviction.⁷² But tenants still face access to justice issues as they seek to access rights earned in the 1970s.⁷³

By the 1980s and 1990s, states and localities experienced renewed urban displacement while limiting tenant protections. Around the same time, “urban core revitalization” efforts brought investment, gentrification, and

64. *Id.*

65. Desmond & Bell, *supra* note 63, at 15, 23 (citing PETER H. ROSSI, *WHY FAMILIES MOVE* (2d ed. 1980)).

66. Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law’s Inner-City Crisis*, 54 HARV. C.R.-C.L. L. REV. 629, 654 (2019).

67. *Id.*

68. DESMOND, *supra* note 20, at 64–65.

69. See generally KEEANGA-YAHMATTI TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (2019).

70. Bloom Robinson, *supra* note 33, at 47.

71. Desmond & Bell, *supra* note 63, at 15, 16.

72. *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970).

73. See, e.g., Burton A. Nadler et al., 2021 *Changes to Colorado Landlord-Tenant Law*, COLO. LAW. (Nov. 2021), <https://cl.cobar.org/features/2021-changes-to-colorado-landlord-tenant-law> (detailing the 2022 changes in Colorado landlord-tenant law including a removal of the bond requirement to access the right to live in a habitable home as a defense to eviction for indigent tenants); Part IV *infra* (describing the access to justice issues with claiming tenant rights).

subsequent displacement of tenants who lived in segregated inner cities to the suburbs, as the cities became more popular,⁷⁴ a trend that has accelerated in recent years. For example, landlord groups rolled back rent-stabilization legislation in all but four states.⁷⁵ As a legacy of the rollback, most states ban rent control and preempt localities from implementing the policy.⁷⁶ Only in the late 2010s, did rent stabilization return to the political agenda.⁷⁷ Similarly, in many states, landlords imposed other access-to-justice limitations on tenants. For example, until 2021 in Colorado, tenants needed to pay a bond to access the warranty of habitability, essentially precluding those without available cash from asserting their rights to live in a safe home as a defense to eviction.⁷⁸

Beginning in the early 2000s, researchers returned to tracking eviction and displacement data. The research illustrates an epidemic of displacement impacting low-income renters, disproportionately renters of color,⁷⁹ and especially Black⁸⁰ female headed households.⁸¹ For example, in 2012, one in nine Cleveland renters were filed against.⁸² As another example, between 2004 and 2007 Milwaukee averaged 16,000 evictions in a city of 105,000 renter households.⁸³ Statistically, Black women with children are the most likely demographic to be evicted.⁸⁴ Households with children are nearly three times as likely to be evicted than adult-only households, while controlling for rental debts, income, and other factors.⁸⁵

The rates of eviction increased during the 2000s and 2010s. On average, landlords filed 3.6 million eviction cases per year according to Eviction Lab,⁸⁶ up twenty percent from three million filed per year in 2000.

74. Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis*, 54 HARV. C.R.-C.L. L. REV. 629, 654 (2019).

75. Desmond & Bell, *supra* note 63, at 15, 16.

76. NAT'L MULTIFAM. HOUS. COUNCIL, RENT CONTROL LAWS BY STATE (Feb. 28, 2022), <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state>.

77. Anna Bauman, Sydney Wertheim & Meghna Chakrabarti, *These States Are Turning to Rent Control: How It Affects Affordable Housing*, WBUR (June 20, 2019), <https://www.wbur.org/onpoint/2019/06/19/new-york-rent-control-laws-oregon-california>.

78. See, e.g., Nadler et al., *supra* note 73. But see Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 29.1 J. AFFORDABLE HOUS. 29, 54 (2020) (indicating that these protections have limited effectiveness even when lawyers are involved).

79. Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUS. POL'Y DEBATE 461, 467 (2003).

80. See, e.g., Romer, Perry & Brody, *supra* note 10; Immergluck et al., *supra* note 10.

81. Desmond, *supra* note 10.

82. Desmond & Bell, *supra* note 63, at 15, 24.

83. *Id.*

84. See, e.g., Desmond, *supra* note 10.

85. Matthew Desmond et al., *Evicting Children*, 92 SOC. FORCES 303-27 (2013), <https://scholar.harvard.edu/mdesmond/publications/evicting-children-0>.

86. *National Estimates: Eviction in America*, EVICTION LAB (May 11, 2018), <https://evictionlab.org/national-estimates>.

Studies estimate that more than seventy percent of evictions occur due to non-payment of rent,⁸⁷ often for debts of less than \$600 and primarily for amounts less than \$3,000.⁸⁸ It is important to note that all filings are not the same. In some states like Maryland, landlords' resort to evictions every month as a rent collection tool due to the low costs of filing, even if they do not plan to evict.⁸⁹ On average, 3.6 million filings lead to 1.5 million judicially ordered evictions per year.⁹⁰

Informal evictions may be an even greater problem. Desmond and fellow sociologist Tracey Shollenberger found that for every formal eviction that led to forced displacement there were an additional two households that left their homes due to informal evictions.⁹¹ Extrapolating from their local data to a national number suggests that more than ten million formal or informal evictions occur during a normal, non-pandemic year,⁹² affecting approximately twenty percent of renter households (assuming a single forced move per household per year).⁹³

More broadly, race is a driver of eviction.⁹⁴ Studies find that the share of Black renters in a neighborhood is closely tied to eviction filing rates "above and beyond the effects of poverty rate, median household income, or rent burden" in a given neighborhood.⁹⁵ For example, seventy per-

87. See, e.g., Chris Salviati, *Rental Insecurity: The Threat of Evictions to America's Renters*, APARTMENT LIST (Oct. 20, 2017), <https://www.apartmentlist.com/research/rental-insecurity-the-threat-of-evictions-to-americas-renters#fn-4>; COLLINSON & REED, *supra* note 34.

88. Emily Badger, *Many Renters Who Face Eviction Owe Less Than \$600*, N.Y. TIMES (Dec. 12, 2019), <https://www.nytimes.com/2019/12/12/upshot/eviction-prevention-solutions-government.html>.

89. See, e.g., Kyle Nelson et al., *Evictions: The Comparative Analysis Problem*, HOUS. POL'Y DEBATES (Mar. 4, 2021), <https://www.tandfonline.com/doi/full/10.1080/10511482.2020.1867883?src=> (describing the challenges in evaluating evictions across jurisdictions).

90. Ashley Groomis, *Eviction: Intersection of Poverty, Inequality, and Housing*, UNITED NATIONS (May 22, 2019), https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/GROMIS_Ashley_Paper.pdf.

91. Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1761 (2015).

92. See *id.* (extrapolating from the ratio of one formal eviction to two formal evictions in Milwaukee and applies it across the country and noting that this extrapolation is not deduplicated by household, as many households get filed against multiple times per year).

93. AMERICA'S RENTAL HOUSING 2022, JOINT CTR. FOR HOUSING STUD. HARV. U. 9 (JAN. 2022). https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf.

94. DAVID ROBINSON & JUSTIN STEIL, EVICTIONS IN BOSTON: THE DISPROPORTIONATE EFFECTS OF FORCED MOVES ON COMMUNITIES OF COLOR 8 (2020), https://d3n8a8pro7vhmx.cloudfront.net/themes/5eee7e564445ea4f9a6f3080/attachments/original/1592786979/EvictionReport_Final_Spreads.pdf?1592786979.

95. *Id.* at 49; see also ELORA RAYMOND ET AL., FED. RESERVE BANK OF ATLANTA, CORPORATE LANDLORDS, INSTITUTIONAL INVESTORS, AND DISPLACEMENT: EVICTION RATES

cent of Boston's market-rate evictions were filed in census tracts where the majority of residents are people of color, despite accounting for only half of the city's rental housing.⁹⁶ A Brookings Institute analysis of EvictionLab records found eviction filing rates of 3.4 times and judgment rates of 2.6 times the population share of Black households in "Black-majority neighborhoods."⁹⁷

B. Evictions and Anti-Displacement Efforts During the Pandemic

The COVID-19 pandemic triggered a complete economic shutdown that could have sparked one of the most severe human and economic crises of the past hundred years, especially for low-income renters.⁹⁸ Early on, advocates secured a patchwork of eviction moratoria and rental assistance funds that protected millions from displacement, homelessness, and the virus.⁹⁹ States and the federal government put in place a patchwork of eviction protections¹⁰⁰ and allocated four billion dollars¹⁰¹ in emergency assistance in early 2020. These policies depressed eviction filings and kept millions in their homes.

The risk of displacement was enormous. In August 2020, the Aspen Institute estimated that between thirty to forty million Americans would be at risk of eviction by the end of 2020 (with this author contributing to the study).¹⁰² By then, the early-pandemic protections described above had lapsed, and the displacement crisis accelerated with eviction filings reaching up to four times their historical weekly averages.¹⁰³ Advocates

IN SINGLE FAMILY RENTALS (2016), <https://www.frbatlanta.org/-/media/documents/community-development/publications/discussion-papers/2016/04-corporate-land-lords-institutional-investors-and-displacement-2016-12-21.pdf>.

96. DAVID ROBINSON & JUSTIN STEIL, *supra* note 94, at 8.

97. Romer, Perry & Brody, *supra* note 10.

98. See, e.g., SARAH STROCHAK ET AL., HOW MUCH ASSISTANCE IS NEEDED TO SUPPORT RENTERS THROUGH THE COVID-19 CRISIS? (2020), https://www.urban.org/sites/default/files/publication/102389/how-much-assistance-is-needed-to-support-renters_1_1.pdf (finding more than 20 million individuals lived in renter households who suffered a COVID-19 related job loss early in the pandemic).

99. Emily Benfer et al., *supra* note 36, at 11.

100. *Id.*

101. REBECCA YAE ET AL., NAT'L LOW INCOME HOUS. COAL., NLIHC RESEARCH NOTE: EMERGENCY RENTAL ASSISTANCE PROGRAMS IN RESPONSE TO COVID-19 1, 5 (2020), <https://nlihc.org/sites/default/files/Emergency-Rental-Assistance-Programs-3.pdf>.

102. Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk>; see also Katherine Lucas McKay et al., *National Eviction Risk Projections*, ASPEN INST. (Aug. 10, 2020), <https://www.aspeninstitute.org/publications/national-eviction-risk-projections/> (offering the lower bound of the two analyses underlying the Aspen Institute study); Benfer, *supra* (offering the upper bound analysis).

103. *Eviction Tracking System*, EVICTION LAB, <https://evictionlab.org/eviction-tracking> (last visited Feb. 2, 2022).

responded. They secured a historic mobilization of policy and resources to keep tenants in their homes.¹⁰⁴ For example, in Massachusetts, City Life/Vida Urbana—the organization that helped Ms. Gordon—helped shut down the housing courts and sustained the eviction moratorium.¹⁰⁵ In Kansas City, a tenants' union shut down eviction court.¹⁰⁶ The National Low-Income Housing Coalition helped organize a national network of impacted individuals and advocates to push for billions in rental assistance and a national eviction moratorium.¹⁰⁷

In September 2020, the federal government responded. The Centers for Disease Control and Prevention (CDC) issued an eviction moratorium for renters who attested to economic hardship during COVID-19, met certain income qualifications, and affirmatively declared their right to protection reprieve from eviction.¹⁰⁸ Several other states issued more comprehensive eviction protections that have supplemented the CDC moratorium.¹⁰⁹

But rental debt, the underlying economic problem putting Americans at risk of eviction, continued to worsen. A later Aspen Institute analysis (by this author and a broader team) in December 2020 found that eighteen percent of renters, nineteen million individuals in eight million households owed rent, placing them at risk of eviction.¹¹⁰ More than thirty million Americans lived in households that had low confidence in their ability to pay the next month's rent.¹¹¹ Together, renters owed an estimated \$57.3 billion through January 2021.¹¹² Black and Latine households were more than twice as likely to be behind on rent as white households. A similar

104. See, e.g., Press Release, National Low Income Housing Coalition, New Legislation and New Analysis on the Need for \$100 Billion in Emergency Rental Assistance (May 8, 2020), <https://nlihc.org/news/new-legislation-and-new-analysis-need-100-billion-emergency-rental-assistance>.

105. See, e.g., Homefries Matthews, *We're Demanding That Boston Housing Court Close During COVID-19 Crisis*, CITY LIFE/VIDA URBANA (Mar. 11, 2020), https://www.clvu.org/covid_19_evictions (detailing CLVU's demands to close down the housing courts).

106. Jodi Fortino, *Tenants' Group Chains Themselves to Jackson County Courthouse to Shutdown Evictions*, KCUR (Oct. 15, 2020), <https://www.kcur.org/news/2020-10-15/tenants-group-chains-themselves-to-jackson-county-courthouse-to-shutdown-evictions>.

107. See, e.g., Press Release, *supra* note 104.

108. See Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

109. See, e.g., Colo. Exec. Order No. D 2020 227 (Oct. 21, 2020).

110. Katherine Lucas McKay, Sam Gilman & Zach Neumann, *Emerging Best Practices for COVID-19 Emergency Rental Assistance Programs*, ASPEN INST. (Dec. 22, 2020), (citing Week 20 Census Bureau Household Pulse Survey).

111. *Id.*

112. JIM PARROTT & MARK ZANDI, *AVERTING AN EVICTION CRISIS 3* (2021), <https://www.moodysanalytics.com/-/media/article/2021/averting-an-eviction-crisis.pdf>.

ratio held for households with children compared to households without children.¹¹³

Policy makers once again responded. The federal government funded an Emergency Rental Assistance (ERA) Program to the tune of forty-six billion dollars.¹¹⁴ States and localities implemented other access to justice policies. For example, several jurisdictions passed access-to-counsel laws, guaranteeing attorneys for any tenant facing eviction.¹¹⁵ California passed civil debt conversion legislation transforming rental debt into non-evictable debt.¹¹⁶ Texas and Massachusetts integrated emergency rental assistance with their state courts, facilitating mediated settlements before allowing cases to go to trial. Philadelphia required mediation for all tenants facing eviction.¹¹⁷

C. Effectiveness of Pandemic-Related Eviction Prevention Initiatives

In general, these pandemic-induced eviction prevention initiatives worked.¹¹⁸ Because of these initiatives, the worries of thirty to forty million displacements did not materialize during the deadliest phases of the pandemic.¹¹⁹ The Eviction Lab estimates that at least 1.36 million fewer eviction cases occurred in 2021 than would otherwise have occurred without moratoria and emergency rental assistance in a typical year.¹²⁰ While in operation, the ERA program succeeded in reaching the lowest income renters, as eighty percent of assistance payments went to those making less than fifty percent of AMI, and more than sixty percent of aid went to

113. McKay, Gilman & Neumann, *supra* note 110 (citing Week 20 Census Bureau Household Pulse Survey).

114. H.R. 133, 116th Cong. (2020); see American Rescue Plan Act of 2021, P.L. No. 117-2.

115. See, e.g., Maddie O'Neill, *Maryland's Access to Counsel in Evictions Program Readies to Launch with New Funding*, MD. DAILY REC. (Apr. 13, 2022), <https://thedailyrecord.com/2022/04/13/marylands-access-to-counsel-in-evictions-program-readies-to-launch-with-new-funding>; Ginny Monk, *Connecticut Renters Facing Eviction Can Get Free Legal Services in 2022*, CONN. INSIDER (Nov. 16, 2021), <https://www.ctinsider.com/realestate/article/Connecticut-renters-facing-eviction-can-get-free-16624539.php?src=ctipromostrip>.

116. 2020 Cal. Legis. Serv. ch. 37 (A.B. 3088) (West) (passing civil debt conversion to transform rental debt into civil debt, which removes the landlord's right to evict the tenant on the basis of that debt during March to August 2020).

117. See Part VI *infra* (describing the integration of rental and legal aid in these systems).

118. Peter Hepburn, Olivia Jin, Joe Fish, Emily Lemmerman, Anne Kat Alexander & Matthew Desmond, *Preliminary Analysis: Eviction Filing Patterns in 2021*, EVICTIONLAB (Mar. 8, 2022), <https://evictionlab.org/us-eviction-filing-patterns-2021>.

119. See, e.g., Jerusalem Demsas, *Why So Many COVID Predictions Were Wrong*, ATLANTIC (Apr. 7, 2022), <https://www.theatlantic.com/ideas/archive/2022/04/pandemic-failed-economic-forecasting/629498>.

120. Hepburn et al., *supra* note 118.

Black and Latine families.¹²¹ ERA contributed to the decline in evictions, with more households receiving ERA in 2021 than the number of eviction filings in a typical year.¹²² And evictions were down Black or Latine neighborhoods.¹²³

The interventions worked because emergency rental assistance addresses the root cause.¹²⁴ Legally, rental aid—that arrives before a tenant’s right to cure rental debt expires—stops an eviction.¹²⁵ Prior to the end of a cure period, landlords have a legal requirement to accept rental aid. More importantly, basic economics argue that landlords also have a financial incentive to accept the aid. Eviction diversion initiatives further facilitated stabilizations because they create a structure to facilitate negotiation, the acceptance of rental aid, and debt resolution.¹²⁶

The outcomes are backed up by literature. A small but growing body of evidence finds that rental assistance has a high return on investment (ROI). Economist Boaz Abramson published a recent study that finds rental assistance can lower tenant’s risk of defaulting on rent, reducing homelessness by 45% and evictions by 75%.¹²⁷ Elior Cohen’s 2020 analysis on the effect of rental assistance on individuals experiencing homelessness in Los Angeles found that rental assistance was associated with a 20% recidivism rate to homelessness compared to 40% for those who do not receive rental assistance.¹²⁸ An evaluation of emergency aid in Chicago found a 76% decrease in homeless shelter use.¹²⁹ Theoretical work by this author in 2021 found that the ROI of sustained multi-month rental assistance during the COVID

121. Press Release, U.S. Treasury, New Treasury Data Shows Over 80% of Emergency Rental Assistance Delivered to Lowest-Income Households (Feb. 24, 2022), <https://home.treasury.gov/news/press-releases/jy0606>.

122. *Id.*

123. *Id.* (demonstrating that ERA was distributed primarily to women and renters of color with 60%+ of recipients identifying as Black or Hispanic).

124. See ANDREW AURAND ET AL., NAT’L LOW INCOME HOUS. COAL., NLIHC RESEARCH NOTE: THE NEED FOR EMERGENCY RENTAL ASSISTANCE DURING THE COVID-19 AND ECONOMIC CRISIS (2020), <https://nlihc.org/sites/default/files/Need-for-Rental-Assistance-During-the-COVID-19-and-Economic-Crisis.pdf>.

125. See Part IV *infra* (describing the legal process for eviction and the ways in which financial assistance can stabilize households).

126. See Part III.B *infra* (describing the structure of Philadelphia’s program); see also McKay, Gilman & Neumann, *supra* note 110, at 11 (discussing the effective implementation of rental assistance and the mutually reinforcing nature of rental assistance and policy to slow or prevent eviction).

127. BOAZ ABRAMSON, THE WELFARE EFFECTS OF EVICTION AND HOMELESSNESS POLICIES 1 (Nov. 7. 2021).

128. See Elior Cohen, *Housing the Homeless: The Effect of Housing Assistance on Recidivism to Homelessness, Economic, and Social Outcomes* 3 (Oct. 19, 2020) (working paper).

129. William Evans, James Sullivan & Melanie Wallskog, *The Impact of Homelessness Prevention Programs on Homelessness*, 353 SCIENCE 694 (2016), <https://pubmed.ncbi.nlm.nih.gov/27516600>.

period to be between 208% to 466%.¹³⁰ Taking into account the public and social costs of homelessness and rehousing, adjusting for the fact that some who receive rental aid will still experience homelessness, and accounting for avoided health, labor, welfare, criminal system, and legal system costs, my prior analysis found emergency rental assistance is far more economical than the costs of not providing it.

Of course, there are legitimate counterarguments. Critics argue that a universal or near-universal emergency rental assistance program creates moral hazard, is expensive, and drives inflation. The moral hazard argument suggests that tenants will be less likely to pay rent with a social safety net to catch them.¹³¹ But, as Desmond often reminds us, “[T]he rent eats first.”¹³² In short, the consequences of eviction and the experience of homelessness are so extreme that people have proven unlikely to forego rent even when assistance programs are available. The moral hazard argument holds less weight because many low-income family budgets cannot balance housing and non-housing costs; limited housing assistance merely unlocks funding for other essential non-housing costs.¹³³ Program designers aiming to mitigate moral hazard could reduce the number of times that a family can qualify for assistance.¹³⁴

Critics also might raise additional well-founded concerns around inflation and expense. Landlords may charge higher rents, knowing that the public sector will cover short-term instability. Indeed, research from places that have raised minimum wages demonstrates that rental markets adjust to higher wages by raising prices.¹³⁵ They likely would adapt to

130. Gilman, *supra* note 44, at 293.

131. Ingrid Gould Ellen, Amy Ganz & Katherine O’Reagan, *A Renter Safety Net: A Call for Federal Emergency Rental Assistance*, ASPEN INST. ECON. STRATEGY GRP. (Dec. 3, 2020), <https://www.economicstrategygroup.org/wp-content/uploads/2020/12/Emergency-Rental-Assistance-1.pdf> (describing the moral hazard argument and ways to mitigate it).

132. DESMOND, *supra* note 3, at 302.

133. Whitney Airgood-Obrycki, Alexander Hermann & Sophia Wedeen, *The Rent Eats First—Rental Housing Unaffordability in the US*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV. (Jan. 2021), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_rent_eats_first_airgood-obrycki_hermann_wedeen_2021.pdf (finding that sixty-two percent of renter households of working age are housing burdened after accounting for non-housing essentials); Ellen et al., *supra* note 131 (describing the moral hazard argument and ways to mitigate it); Jeff Larimore & Jenny Schuetz, *Assessing the Severity of Rent Burden on Low-Income Families*, FED. RESRV. (Dec. 22, 2017), <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.htm> (finding residual income is declining due to declining real incomes and rising rents).

134. Ellen, Ganz & O’Reagan, *supra* note 131.

135. See Sumit Agarwal, Brent W. Ambrose & Moussa Diop, *Do Minimum Wage Increases Benefit Intended Households? Evidence from the Performance of Residential Leases*, FED. RESERVE BANK OF PHILA. (July 2019) <https://www.philadelphiafed.org/consumer-finance/mortgage-markets/do-minimum-wage-increases-benefit-intended-households>.

abundant rental aid. However, given broader housing market trends with double digit rent increases and higher profitability renting in low-income neighborhoods,¹³⁶ it is unlikely that rental assistance alone would drive rental inflation.¹³⁷ The high costs of homelessness also answer the expense argument. Even if the costs of housing increase, the costs of homelessness and displacement far exceed the cost of multi-month rental assistance.¹³⁸

In addition, pre-pandemic studies have shown that access-to-counsel in eviction cases can deliver significant benefits for tenants and society.¹³⁹ Studies find that represented clients experience disruptive displacement at lower rates.¹⁴⁰ While access to counsel improves outcomes for tenants, the success of legal aid varies based on the features of underlying state law as well as access to emergency assistance. For example, in Boston, tenants with access to full legal representation have a sixty-six percent chance of staying in their homes.¹⁴¹ In Seattle, the figure is twenty percent.¹⁴²

Critics argue that the benefits of counsel are overstated. Abramson suggests that “Right-to-Counsel” lowers debt payments to landlords and lengthens the eviction process.¹⁴³ Because of this consequence, he posits that it will drive up rent and therefore price the most price-sensitive renters into homelessness.¹⁴⁴ While a plausible economic theory, Abramson’s statistical model of homelessness fails to account for the extent to which low-income renters go to avoid experiencing homelessness. Abramson’s own eviction moratorium model suggests that moratoria buy valuable time for tenants to recover economically or access aid.¹⁴⁵ The same logic holds for access to counsel, as lawyers elongate eviction proceedings, buying time for economic recovery or social-service uptake. Nevertheless, Abramson has a point: legal aid alone reallocates risk between landlords and tenants. Emergency rental assistance, in contrast, offers benefits to both landlords and tenants. Certainly, the combination of counsel and rental aid mitigate

136. See DESMOND, *supra* note 20, at 66 (highlighting the high profitability of renting in low-income neighborhoods and the relatively small difference in rents paid by low-income renters and middle-income renters).

137. See Part V *infra* (describing the drivers of costs in the rental housing market).

138. See, e.g., Gilman, *supra* note 44, at 293.

139. *Eviction Right to Counsel Resource Center*, STOUT, <https://www.stout.com/en/services/transformative-change-consulting/eviction-right-to-counsel-resources> (last visited Feb. 4, 2022).

140. *Id.*

141. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 927 (2013).

142. See TARA COOKSON ET AL., *LOSING HOME: THE HUMAN COST OF EVICTION IN SEATTLE* (2018), <https://www.kcba.org/Portals/0/pbs/pdf/Losing%20Home%202018.pdf>.

143. Abramson, *supra* note 127.

144. *Id.*

145. *Id.* at. 48–50.

Abramson's concerns. This combination resolves rental debts and pays attorney's fees, stabilizing tenants and reducing the landlord costs.

Engagement with the research and legitimate counterarguments shows us that rental assistance works. Access to counsel is helpful. In tandem, they work even better. However, implementation matters. Informed by qualitative and quantitative analyses of the effectiveness of rental assistance and legal aid, as well as lived experience during the pandemic, this article turns next to successful eviction prevention programs.

D. Best Practice Strategies and Case Studies for Stopping Evictions with Rental and Legal Aid

While all emergency rental assistance programs promise to cure rental debts, only some are designed to prevent evictions. A variety of institutions have captured best practices for these programs, including Urban Institute,¹⁴⁶ the University of Pennsylvania,¹⁴⁷ the Aspen Institute,¹⁴⁸ National Low Income Housing Coalition¹⁴⁹ and the Furman Center.¹⁵⁰ The U.S. Treasury also highlights best practices for grantees of federal funds.¹⁵¹ And the American Bar Association published a report to guide eviction prevention

146. See, e.g., THE RENTERS AND RENTAL MARKET CRISIS WORKING GROUP, URB. INST. (Apr. 2022), <https://www.urban.org/renters-and-rental-market-crisis-working-group>; Mark Treskon et al., *Eviction Prevention and Diversion Programs: Early Lessons from the Pandemic*, URB. INST. (Apr. 2021), https://www.urban.org/sites/default/files/publication/104148/eviction-prevention-and-diversion-programs-early-lessons-from-the-pandemic_0_0.pdf.

147. Claudia Aiken et al., *Emergency Rental Assistance (ERA) During the Pandemic: Implications for the Design of Permanent ERA Programs*, HOUS. INITIATIVE AT PENN & NLIHC (Mar. 2022), https://nlihc.org/sites/default/files/HIP_NLIHC_2022_3-10_FINAL.pdf; Claudia Aiken et al., *Treasury Emergency Rental Assistance Programs in 2021: Preliminary Analysis of Program Features and Spending Performance*, HOUS. INITIATIVE AT PENN & NLIHC (Dec. 2021), https://www.housinginitiative.org/uploads/1/3/2/9/132946414/2021_treasury_era_program_features_and_spending_report.pdf.

148. KATHERINE LUCAS MCKAY ET AL., EMERGING BEST PRACTICES FOR COVID-19 EMERGENCY RENTAL ASSISTANCE PROGRAMS, ASPEN INST. (Dec. 22, 2020), <https://www.aspeninstitute.org/publications/emerging-best-practices-for-covid-19-emergency-rental-assistance-programs>.

149. See Aiken et al., *supra* note 147; KIM JOHNSON & REBECCA YAE, BEST PRACTICES FOR STATE AND LOCAL EMERGENCY RENTAL ASSISTANCE PROGRAMS, NLIHC (Dec. 2021), <https://nlihc.org/sites/default/files/Best-Practices-for-State-and-Local-Emergency-Rental-Assistance-Programs.pdf>.

150. Claudia Aiken et al., *Learning from Emergency Rental Assistance Programs: Lessons from Fifteen Case Studies*, N.Y.U. FURMAN CTR. (Mar.1, 2021), <https://nlihc.org/sites/default/files/ERA-Programs-Case-Study.pdf>.

151. U.S. TREASURY, PROMISING PRACTICES FOR ERA PROGRAMS, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices/eviction-diversion> (last visited May 5, 2022).

and diversion programs.¹⁵² The reports highlight an imperative: from both humanitarian and financial ROI perspectives, aid should be designed to prevent evictions, displacement, and homelessness.

According to these reports, best-practice eviction-prevention models prioritize equity, scale, speed, and diversion.¹⁵³ They have the scale to distribute rental aid efficiently, offer eviction diversion and integration with the courts,¹⁵⁴ require participation in mediation,¹⁵⁵ prioritize and make overnight payments for the most urgent cases, limit means testing,¹⁵⁶ focus on racial equity,¹⁵⁷ and integrate service delivery to maximize the benefits of rental, legal, and case management assistance. Best-practice eviction-diversion models include those with broad, multi-sectoral support led by the judiciary, feature rental aid, legal representation, mediation, and self-help resources, and prioritize upstream interventions.¹⁵⁸

Of course, huge variations exist in political contexts and state laws, and best practices emerge out of these variations. Some models may only be achievable in tenant-friendly jurisdictions under current political conditions; other models that emerged to create stability despite landlord-friendly contexts might be achievable anywhere. This section evaluates four case studies against the best practice criteria with an eye towards local context. It concludes by proposing a model program that is calibrated to prevent the most evictions, applying lessons that emerged from tenant-friendly and landlord-friendly contexts alike. The case studies first establish local contexts, including political and judicial participation in eviction prevention during the pandemic, tenants' rights, and access to counsel. Next, they evaluate the pandemic diversion systems and their requirements.

152. AM. BAR ASS'N, *DESIGNING FOR HOUSING STABILITY: BEST PRACTICES FOR COURT BASED AND COURT ADJACENT EVICTION PREVENTION AND/OR DIVERSION PROGRAMS* (June 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-covid19-dpp-best-practices.pdf.

153. Aiken et al., *supra* note 147.

154. *See, e.g.*, Treskon et al., *supra* note 146.

155. *See* Part VI.B.i *infra* (describing the benefits of mandatory mediation in Philadelphia).

156. Sam Gilman, *Using Community Income Levels Help Tenants Get Emergency Rental Assistance*, HARV. JOINT CTR. ON HOUS. (Oct. 28, 2021), <https://www.jchs.harvard.edu/blog/using-community-income-levels-help-tenants-get-emergency-rental-assistance>.

157. Katherine Reynolds et al., *Building Racial Equity into Emergency Rental Assistance Programs*, URB. INST. (Aug. 18, 2021), https://www.urban.org/sites/default/files/2021/08/18/building_racial_equity_into_emergency_rental_assistance_programs.pdf; Emily Bramhall et al., *Equity Trade-Offs in the Design of COVID-19 Emergency Assistance*, URB. INST. (July 28, 2021), <https://www.urban.org/research/publication/equity-trade-offs-design-covid-19-emergency-assistance>; Ingrid Gould Ellen et al., *Advancing Racial Equity in Emergency Rental Assistance Programs*, N.Y.U. FURMAN CTR. (Mar. 2021), <https://furmancenter.org/research/publication/advancing-racial-equity-in-emergency-rental-assistance-programs>.

158. *See* AM. BAR ASS'N, *supra* note 152, at 3–4.

Third, they review the rental assistance efficacy and innovation. Fourth, they evaluate the integration of the program with other services.

Philadelphia provides the gold standard. Houston demonstrates the power of good management and court-system participation in a state with landlord-friendly eviction laws. Colorado offers an approach to emergency stabilization that combines tenant protection without political consensus. Massachusetts leveraged strong existing infrastructure and tenant protections with a mediation system to delay evictions and facilitate the acceptance of rental assistance. Table 1 highlights the comparison.

While this piece intends to add a helpful application of best practices to local context, those closer to community and systems will always know better. I want to name my bias: I know Massachusetts and Colorado better because I have lived and worked in eviction prevention systems in those places, including helping to design the COVID-19 Eviction Defense model in Colorado. Even in my home locations, there are nuances and other best practices that I do not know about. By offering local nuance, this piece intends to invite further discussion, richness, and complexity to system design and implementation conversations beyond what is written here.

TABLE 1: Comparison of Eviction Diversion Case Studies

	Houston, TX	Colorado	Philadelphia, PA	Massachusetts
Local Context				
Political Participation	LOW	LOW	HIGH	MEDIUM
Judicial Participation	HIGH	LOW	HIGH	HIGH
Tenants Rights Facilitate Rental Aid	LOW	HIGH	HIGH	MEDIUM
Publicly Funded Access to Counsel	NO	NO	YES	TEMPORARY
Eviction Diversion System				
Mediation	YES - Encouraged	NO	YES - Required	YES - Semi Required
Required ERA Application to Evict	NO	NO	YES	NO
No Eviction while ERA App Pending	YES	NO	YES	YES
Eviction Record Sealing	NO	YES	NO	NO
Rental Assistance Innovations				
Overall Scale & Pace of ERA	HIGH	MEDIUM	HIGH	HIGH
Limit Means Testing with Self-Attestation	YES	YES	YES	YES
Overnight Checks	UNKNOWN	YES	UNKNOWN	NO
Prioritization of Eviction Cases	HIGH	MEDIUM	HIGH	NO
Focus on Equity	HIGH	MEDIUM	HIGH	MEDIUM
Integration with Other Services				
Community Participation (trust)	HIGH	MEDIUM	HIGH	MEDIUM
Integration between Rental and Legal Aid	MEDIUM	HIGH	HIGH	MEDIUM
Rehousing Options for Displaced Individuals	UNKNOWN	YES	YES	UNKNOWN

i. Philadelphia, Pennsylvania

Philadelphia built a gold-standard housing-stabilization system. The city made enormous strides towards ending non-payment eviction while keeping tenants housed and landlords whole. Cited as a best practice by the

Urban Institute,¹⁵⁹ the Department of Housing and Urban Development,¹⁶⁰ the U.S. Treasury,¹⁶¹ and the National Low Income Housing Coalition,¹⁶² the program had an over ninety percent success rate¹⁶³ and has reduced evictions by seventy-five percent over pre-pandemic totals.¹⁶⁴

Locally, political and judicial actors teamed up to implement a comprehensive eviction-diversion system.¹⁶⁵ The City Council legislatively extended the Housing Court's requirement that landlords apply for ERA before moving to evict tenants for non-payment.¹⁶⁶ This requirement buys tenants time and reduces the number and speed of evictions by default. Even local landlords have supported the program.¹⁶⁷ While having medium legal protections for tenants pre-pandemic, the judicially imposed and legislatively endorsed requirement that landlords apply for ERA before evicting offers maximum tenant protections. While Philadelphia does not have

159. See Treskon et al., *supra* note 146, at 11.

160. Dana Goplerud & Craig Pollack, *Evictions*, EVIDENCE MATTERS, 19, 19–23 (Summer 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/EM-Newsletter-Summer2021.pdf>.

161. Press Release, U.S. Treasury, In Pennsylvania, Deputy Secretary of the Treasury Wally Adeyemo Highlights Emergency Rental Assistance Programs with Governor Wolf and Philadelphia Mayor Kenney (Mar. 10, 2022), <https://home.treasury.gov/news/press-releases/jy0649>.

162. Jade Vasquez et al., *Tenant Protections and Emergency Rental Assistance During and Beyond the Covid-19 Pandemic*, NAT'L LOW INCOME HOUS. COAL. 5 (Jan. 2022), https://nlihc.org/sites/default/files/Tenant-Protections_Emergency-Rental-Assistance-during_beyond_COVID-19_Pandemic.pdf#page=7&zoom=100,0,0.

163. Maggie Mancini, *Philadelphia Ends Emergency Rental Assistance Program Due to Lack of Funds*, PHILLY VOICE (Jan 6, 2022), <https://www.phillyvoice.com/philadelphia-covid-19-emergency-rental-assistance-program-closure>.

164. Michaëlle Bond, *Philly's Program for Preventing Evictions Is a National Model. Lawmakers Want to Make It Permanent*, PHILA. INQUIRER (Dec. 8, 2021), <https://www.inquirer.com/real-estate/housing/rental-assistance-philadelphia-eviction-diversion-program-20211208.html>.

165. Treskon et al., *supra* note 146, at 11.

166. Associated Press, *City Council Votes to Extend Philly's Eviction Diversion Program*, NBC PHILA. (Dec. 17, 2021), <https://www.nbcphiladelphia.com/news/local/broke-in-philly/philadelphia-council-votes-extends-eviction-diversion/3080808>.

167. Michaëlle Bond, *Philly's Program for Preventing Evictions Is a National Model. Lawmakers Want to Make It Permanent*, PHILA. INQUIRER (Dec. 8, 2021), <https://www.inquirer.com/real-estate/housing/rental-assistance-philadelphia-eviction-diversion-program-20211208.html>.

record-sealing laws,¹⁶⁸ its access to counsel program offers additional protections for tenants.¹⁶⁹

Through their diversion system, every tenant is assigned a housing navigator who facilitates a mediation alongside the ERA application, and landlords cannot evict until that step takes place.¹⁷⁰ The program was so successful that the City Council extended it through 2022 pending the availability of rental assistance.¹⁷¹

Philadelphia also implemented best-practice rental-assistance innovations, distributing nearly all of its federal allocation of ERA before July 2022.¹⁷² They limited means testing by allowing tenants without documents to self-attest for income and pandemic impact, and their system prioritized eviction cases by the nature of its integration with the courts.¹⁷³ While it is unknown whether the Philadelphia rental assistance system has the functionality to overnight checks, the forced mediation reduces the urgency of payment.

The City designed its program in conjunction with local legal aid and non-profit partners. The City itself implements the ERA, working closely with Community Legal Services of Philadelphia and other non-profits to implement the housing navigation and eviction diversion.¹⁷⁴ While the extent of the rehousing operation has not been covered extensively, the integration with long-standing community partners suggests a focus on service connection.

In sum, jurisdictions with the political consensus and local infrastructure should look to Philadelphia for a model eviction diversion program. Those without it, should build towards this model. Philadelphia's seventy-five percent reduction in evictions during 2021 shines a very bright light towards a future with far fewer evictions. The city's results indicate that

168. See Vasquez et al., *supra* note 162, at 15 (describing the states with record sealing laws).

169. See CITY OF PHILADELPHIA, *STAYING HOME: EVICTION PREVENTION AND RESPONSE PROGRESS REPORT* (Mar. 2021), <https://www.phila.gov/media/20210324152559/EvictionPreventionReport-March2020.pdf>.

170. Treskon et al., *supra* note 146, at 11.

171. Maggie Mancini, *Philadelphia Ends Emergency Rental Assistance Program Due to Lack of Funds*, PHILLY VOICE (Jan 6, 2022), <https://www.phillyvoice.com/philadelphia-covid-19-emergency-rental-assistance-program-closure>.

172. RENTAL CRISIS WORKING GRP., *TRACKING EMERGENCY RENTAL ASSISTANCE DISTRIBUTION AND EVICTION PROTECTIONS*, URB. INST. (Apr. 26, 2022), <https://www.urban.org/renters-and-rental-market-crisis-working-group/tracking-emergency-rental-assistance-distribution-and-eviction-protections>.

173. See, e.g., Vincent Reina, *Rental Assistance Is a Lifeline for Thousands of Philadelphia Families—Don't Let It Disappear*, PHILA. INQUIRER (Jan. 31, 2022), <https://www.inquirer.com/opinion/commentary/rental-assistance-philadelphia-emergency-covid-20220131.html>.

174. Treskon et al., *supra* note 146, at 11.

a world where non-payment evictions are non-essential is a matter of resourcing and political will.

ii. Houston, Texas

Houston's pandemic tenant stabilization system offers a model for communities with few tenant protections. Houston's system operates in a context of landlord-friendly state laws,¹⁷⁵ like the three-day notice period between when a landlord formally demands rent and then files for eviction.¹⁷⁶ The Urban Institute¹⁷⁷ cited the statewide program as a best practice, with another evaluator citing Houston as having the best county program in Texas.¹⁷⁸

While the state determines landlord-tenant law and Texas's political branches did not institute a lasting eviction moratorium during the pandemic,¹⁷⁹ the state's supreme court led on eviction prevention and ERA distribution.¹⁸⁰ It instituted a voluntary mediation program that delayed and dismissed cases where both parties want to mediate and buy time for rental assistance to be distributed.¹⁸¹ While an ERA application was pending, no eviction could occur.

Houston was particularly attentive to rental assistance system efficiency and design. The state distributed most of its federally provided rental assistance ahead of other large states.¹⁸² Houston, in particular, prioritized interventions to ensure equity by offering self-attestation to reduce the burden of means testing and prioritizing eviction cases.¹⁸³ Local data suggest that Houston had the best racial-equity outcomes of any program in the state.¹⁸⁴ While the ability to overnight rental aid checks in Houston is unknown, mediation lengthened timelines to facilitate the satisfaction of rental debts.

Finally, Houston partnered with three large non-profits to distribute rental assistance, ensuring greater trust in a community with preexisting

175. Megan Hatch, *Statutory Protection for Renters: Classification of State Landlord-Tenant Policy Approaches*, 27 HOUS. POL'Y DEBATE 99, 105, 111 (Apr. 20, 2016), <https://www.tandfonline.com/doi/abs/10.1080/10511482.2016.1155073?journalCode=rhpd20>.

176. TEX. PROP. CODE ANN. § 24.005.

177. See Treskon et al. *supra* note 146, at 10.

178. Erin Hahn, *Evaluating the Effectiveness of the Emergency Rental Assistance Program in Texas*, TEX. HOUSERS (Sept. 7, 2021), <https://texashousers.org/wp-content/uploads/2021/09/ERAP-Report-v.2.1.pdf>.

179. See *Covid-19 Housing Policy Scorecard*, EVICTION LAB (June 30, 2021), <https://evictionlab.org/covid-policy-scorecard> (describing limited protections on eviction until the end of May 2020).

180. See Treskon et al. *supra* note 146, at 10.

181. *Id.*

182. RENTAL CRISIS WORKING GRP., *supra* note 72.

183. Hahn, *supra* note 178, at 10.

184. *Id.* at 18.

connections to those agencies after recent natural disasters.¹⁸⁵ Only three percent of tenants facing eviction received legal aid in Harris County, and only thirteen percent successfully invoked the national eviction moratorium,¹⁸⁶ making the voluntary mediation program that integrated rental and legal aid essential for housing stabilization. For tenants whose landlords accepted rental assistance, the Texas courts further offered stabilization, dismissing cases and suppressing the eviction filings.¹⁸⁷ Based on publicly available coverage, the connection between the eviction diversion system and rehousing options is unknown.

Houston's system demonstrates the importance of judicial involvement and large, trusted community institutions, especially in an environment with unfavorable laws. With only three percent accessing counsel and thirteen percent accessing the federal eviction moratorium, voluntary mediation alongside rental assistance offered a literal lifeline.

iii. Colorado

Colorado's emergency rental assistance system offers a model for eviction diversion in communities with limited political or judicial participation. The governor and state legislature enacted middle-of-the-pack tenant protections during the pandemic,¹⁸⁸ though its judicial system was uninvolved in contrast to Texas. Colorado's system stands out as a best practice for its partnership with non-profit legal aid programs and for its ability to match the rental assistance to a legal timeline.¹⁸⁹ This program, in conjunction with the COVID-19 Eviction Defense Project, (which this author helped to start in the interest of full disclosure), has been cited as a best practice by The Urban Institute¹⁹⁰ and the Department of Housing and Urban Development.¹⁹¹

185. Cailin Crowe, *In the Race to Distribute Rent Relief, Houston-Harris County Has Made Major Strides*, SMART CITIES DIVE (Sept. 15, 2021), <https://www.smartcitiesdive.com/news/in-the-race-to-distribute-rent-relief-houston-harris-county-has-made-major/606345>.

186. *Id.*

187. Treskon et al., *supra* note 146, at 10.

188. See *Covid-19 Housing Policy Scorecard*, *supra* note 179 (describing limited protections on eviction until the end of May 2020).

189. See, e.g., Dan Sherfinski, *U.S. Cities Try to Head Off Eviction Wave As Federal Ban Expires*, REUTERS (July 30, 2021), <https://www.reuters.com/article/usa-housing-evictions-idUKL8N2P45KZ> (describing the fast lane for rental assistance); Joe Rubino, *Evictions in Denver Climb To Pre-Pandemic Levels Despite Millions in Aid Available*, DENVER POST (Apr. 28, 2022), <https://www.denverpost.com/2022/04/28/denver-rent-evictions-increase-covid-aid>.

190. See Treskon et al., *supra* note 146, at 11; see also John Walsh, *Distributing Emergency Rental and Mortgage Assistance to Vulnerable Households During the COVID-19 Pandemic*, URB. INST. (Feb 27, 2023), <https://www.urban.org/research/publication/distributing-emergency-rental-and-mortgage-assistance-vulnerable-households>.

191. Goplerud & Pollack, *supra* note 160.

Nevertheless, the state has reasonably strong tenants' rights protections driven by pandemic mobilizations.¹⁹² Three years ago, the state had a three-day demand period.¹⁹³ By October 2021, advocates and policymakers had upgraded the tenant protections.¹⁹⁴ Colorado lengthened the cure period from three days to until the date of judgment, sealed eviction filing records,¹⁹⁵ and passed a law to limit late fees and allow renters the most time of anywhere in the country to cure non-payment before an eviction hearing.¹⁹⁶ The cure period extension was essential because the state did not require or offer mediations; it also did not delay eviction proceedings while ERA applications were pending.

With a libertarian legal context, the state Division of Housing built a hybrid rental aid delivery system. It contracted with a for-profit company to provide the bulk of ERA¹⁹⁷ and partnered with non-profits to integrate rental aid with legal aid organizations to facilitate on-time ERA payments that might match an unchanged eviction timeline.¹⁹⁸ Colorado's pace of emergency rental assistance distribution was average among states.¹⁹⁹ The state limited means testing through self-attestation of income.²⁰⁰ While the scale of these non-profits does not match that of the non-profits in Houston or Massachusetts, they brought specialized capacity. The state has relied on these non-profits to reach community organizations and low-income and BIPOC individuals who are not as connected to services.²⁰¹ Specifically, the COVID-19 Eviction Defense Project (now known as the Community Economic Defense Project), which serves 1000 households per month,²⁰² helped the state design a system that includes a rental assistance fast-lane

192. See Nadler et al., *supra* note 73, at 29.

193. See Part IV *supra* (describing the transition in Colorado's housing stability infrastructure).

194. See Nadler et al., *supra* note 73.

195. See Moe Clark, *New Colorado Law Allows Courts To Suppress Records of Pending Eviction Cases*, COLO. NEWSLINE (Dec. 10, 2020), <https://coloradonewsline.com/2020/12/10/new-colorado-law-eviction-records-suppression>.

196. *Id.*

197. See Tamara Chuang, *Thousands of Coloradans Struggling to Pay Rent Asked the State for Help. \$6.5 Million Later, Phones Are Still Ringing*, COLO. SUN (June 10, 2021), <https://coloradosun.com/2021/06/10/colorado-horne-contractor-housing-rent-assistance>; Tamara Chuang, *Colorado's Pandemic Housing-Assistance Program Now Open to Non-Pandemic Applicants*, COLO. SUN (Feb. 28, 2022), <https://coloradosun.com/2022/02/28/pandemic-housing-rent-assistance-data>.

198. *Id.*

199. See Chuang, *Colorado's Pandemic Housing-Assistance Program*, *supra* note 197; see also RENTAL CRISIS WORKING GRP., *supra* note 172.

200. U.S. Treasury, *Promising Practices for ERA Programs* (Jan. 20, 2023), <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices>.

201. See Chuang, *supra* note 199.

202. See Rubino, *supra* note 189.

for cases in the eviction system.²⁰³ The Project can overnight checks to stabilize tenants who have court dates or scheduled evictions within days or hours.²⁰⁴ Where community organizations are involved, the program also integrates with rehousing efforts and continuum of care.²⁰⁵

Colorado's tenant protections, integrations between service providers, and operational efficiency offer a roadmap for implementation of an eviction diversion system without judicial involvement. The overnight payment of rental assistance increases trust for both tenants and landlords and offers hope for jurisdictions without political buy-in. In a world without mediation, Colorado's tenant protections, with sealed eviction records and the ability to pay rent until the judge orders an eviction also offers a model that buys time for the system to work.

iv. Massachusetts

For states with strong tenant protections and political support for tenants, Massachusetts's mediation program offers a playbook. Given its long-running rental assistance program²⁰⁶ and comparatively strong tenant protections,²⁰⁷ the state resourced its existing systems and formalized access to justice protections that advocates had been fighting for, including a two-tier mediation system and access to justice protections.²⁰⁸

Massachusetts has strong local tenant protections relative to other states. The Commonwealth had one of the strongest moratoria in the country,²⁰⁹ and even its Republican governor invested significant resources into rental aid.²¹⁰ The Housing Court issued standing orders to close the eviction courts and instituted a mediation system.²¹¹ Under the Housing Court's standing order, a tenant could cure until their answer date—three days before the first-tier mediation, which is statutorily at least three weeks after the notice

203. *Id.*; see Sherfinski, *supra* note 189.

204. Sherfinski, *supra* note 189.

205. Rubino, *supra* note 189.

206. See Part II *supra*.

207. Hatch, *supra* note 175.

208. See Mass. Justice for All Project, Strategic Action Plan 34–56 (Dec. 22, 2017), <https://massa2j.org/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf>; see, e.g., 2020 Mass. Acts 257 (implementing many of the access to justice recommendations).

209. See *Covid-19 Housing Policy Scorecard*, *supra* note 179.

210. Tim Logan, *Will Baker's Rental Relief Plan be Enough to Fend Off a Feared Wave of Evictions?*, Bos. GLOBE (Oct. 12, 2020), <https://www.bostonglobe.com/2020/10/12/business/with-eviction-moratorium-expiring-baker-announces-171-million-package-aid-renters-landlords>; Sam Turken, *Massachusetts Housing Advocates Concerned About End of Rental Assistance Programs*, WGBH (Apr. 13, 2022), <https://www.wgbh.org/news/local-news/2022/04/13/massachusetts-housing-advocates-concerned-about-end-of-rental-assistance-programs>.

211. 2020 Mass. Acts 257.

to quit.²¹² The mediation system elongated an already comparatively long eviction timeline, facilitating the acceptance of rental assistance.²¹³ Further, during the pandemic the state invested in access to legal aid.²¹⁴

The Commonwealth's rental assistance program moved quickly but with limited prioritization. It distributed ERA at a fast pace relative to other states.²¹⁵ The Commonwealth's rental aid application also allowed for self-attestation and was administered by expanding quasi-public infrastructure through the Massachusetts Department of Housing and Community Development's Regional Administering Agencies.²¹⁶ Because no eviction could enter with rental assistance applications pending, individual rental aid applications were prioritized primarily on a first-come, first-serve basis. Through the expanded access to counsel and the mediation program, rental and legal aid were somewhat integrated. The degree of integration between the state's diversion program and rehousing efforts is unknown to public coverage.

With a permanent rental assistance infrastructure, housing courts specializing in landlord-tenant law, and laws designed to give tenants time to catch up, the Commonwealth's protections offer a blueprint for landlord-tenant law reformers who want to see a legal regime with elongated timelines and multiple offramps.

v. Model Policy

These case studies allow us to imagine a humane and operationally feasible replacement to the violence of the eviction system.²¹⁷ A best-practice eviction-diversion model requires a large, efficient, and equitable rental assistance program. It would include mandatory mediation like Philadelphia and elongated eviction timelines with multiple offramps like Massachusetts. The model would require the efficiency and scale of Houston's

212. *Id.* sec. 2(b) (as amended in 2021).

213. See Part IV *infra* (describing Massachusetts eviction timeline).

214. See Mass. Office of Hous. & Econ. Dev., *Eviction Diversion Initiative: Legal Services and Mediation*, MASS.GOV (2023), <https://www.mass.gov/info-details/eviction-diversion-initiative-legal-services-and-mediation>.

215. RENTAL CRISIS WORKING GROUP, TRACKING EMERGENCY RENTAL ASSISTANCE DISTRIBUTION AND EVICTION PROTECTIONS, URB. INST. (Apr. 26, 2022), <https://www.urban.org/renters-and-rental-market-crisis-working-group/tracking-emergency-rental-assistance-distribution-and-eviction-protections>.

216. Press Release, Office of Hous. & Cmty. Dev., Baker-Polito Administration Announces Upcoming Closure of Federal Rental Assistance Programs to New Applications, State Programs Remain Available (Mar. 15, 2022), <https://www.mass.gov/news/baker-polito-administration-announces-upcoming-closure-of-federal-rental-assistance-programs-to-new-applications-state-programs-remain-available>.

217. See Part IV *infra* (describing the eviction system); see, e.g., Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53 SETON HALL L. REV. 1, (2022) (describing the racist and classist history of evictions, the speed of summary process, and the violence of eviction).

non-profit driven program, facilitated more than 70,000 payments in a year.²¹⁸ It would limit difficult documentation burdens, and it would ensure outreach and access to assistance among low-income and BIPOC communities. It would follow Colorado's lead by offering integration between social services like rental assistance, legal aid, rehousing assistance, and other forms of cash, food, and counseling assistance. It would also have a fast lane for rental assistance to prioritize aid to those with the most acute timelines.

Collectively, these interventions offer a safety net for tenants, ensure that landlords remain whole, and save society money. More philosophically, these interventions take the world as it is while providing a path towards a right and entitlement to housing.

E. Eviction Diversion as COVID-19 Moves from Pandemic to Endemic

Unfortunately, society appears to be pointing back to its pre-pandemic normal, replacing the brief humanity of a safety net for renters with increasing rates of eviction. In 2022, eviction and rents accelerated nationwide while assistance waned.²¹⁹ By late March, most cities tracked by Eviction Lab neared or surpassed pre-pandemic eviction filings.²²⁰ By the end of 2022, eviction rates exceeded pre-pandemic normal across the board.²²¹ Meanwhile, rental prices inflated nationwide, increasing by an average of seventeen percent in the largest metropolitan areas²²² and specifically in neighborhoods that have been historically occupied by Black renters in 2022.²²³

As the United States moves from pandemic to endemic, from an economic shutdown to an inflating economy, the country faces choices at the local, state, and national levels. These choices could not be more important. On the one hand, we can return to a pre-pandemic status quo that accepted eviction and displacement. In this world, displacement and the resulting harm were collateral consequences. On the other hand, we can learn from the pandemic's historic investments in eviction prevention efforts, invest in the interventions that provided the greatest social returns, and move towards ending eviction.

218. HAHN, *supra* note 178.

219. Jennifer Ludden, *Evictions Are Up Sharply as Pandemic Aid Starts to Run Out*, NPR (May 4, 2022), <https://www.npr.org/2022/05/04/1095559147/eviction-filings-are-up-sharply-as-pandemic-rental-aid-starts-to-run-out>.

220. See EVICTION LAB, *EVICTION TRACKING* (2018), <https://evictionlab.org/eviction-tracking> (tracking eviction trends).

221. *Id.*

222. Monique Beals, *Record-Setting Rent Prices Spiking Nationwide*, THE HILL (Apr. 13, 2022), <https://thehill.com/policy/finance/housing/3265790-record-setting-rent-prices-spiking-nationwide>.

223. Kevin Schaul & Jonathan O'Connell, *Investors bought a record share of homes in 2021. See where.*, WASH. POST (Feb. 16, 2022), <https://www.washingtonpost.com/business/interactive/2022/housing-market-investors/>.

From here, this piece dives deeper into the legal mechanism of eviction (Part IV) and the economic drivers of eviction and displacement (Part V). These sections further deepen the case studies. A step-by-step description of the legal process of eviction highlights its injustice as well as opportunities for intervention. The economic analysis helps understand the benefits and limitations of eviction diversion efforts; they can prevent evictions driven by financial shocks but have significant limitations in the effort to address evictions driven by chronic unaffordability.

IV. Unpacking the Legal Mechanism: The Eviction Process as Experienced by Tenants and Landlords in Massachusetts and Colorado

This Part helps us understand the violence of the eviction system: the lightning-fast process and the harm it imposes.²²⁴ Understanding the legal displacement process is essential to capturing how and why formal and informal evictions occur and how to prevent them.²²⁵ It also allows us to contextualize the eviction-prevention best practices outlined in Part III.

Eviction is an expedited or “summary” legal process that offers property owners access to state police power to recover their property (homes) from non-paying (or underpaying) renters. The law sees a non-payment as a private dispute between two parties to a contract. Failure to pay rent is a breach of contract, punishable by law. The legal process starts with paper threats and an opportunity to recover. However, unlike a typical breach of contract in a corporate, consumer, or mortgage context that can take months if not years to resolve, evictions move fast.²²⁶ Within weeks of a tenant missing rent, the process ends with armed sheriffs forcibly removing tenants from their homes under court order.²²⁷ While each state has a different summary process regime with variation in the levels of tenant protections,²²⁸ the process includes some core features and is defined by speed and complexity, especially for non-lawyer litigants (tenants).²²⁹ This

224. See, e.g., Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53.1 SETON HALL L. REV. 1, (2022) (describing the racist and classist history of evictions, the speed of summary process, and the violence of eviction).

225. Desmond & Schollenberger, *supra* note 8 (defining the problem of forced moves including informal evictions).

226. CATHERINE F. DOWNING & JAMES M. MCCREIGHT, *RESIDENTIAL LANDLORD-TENANT PRACTICE: CREATING AND TERMINATING RESIDENTIAL TENANCIES*, MASSACHUSETTS CONTINUING LEGAL EDUCATION 4-35 (6th ed. 2017) (describing eviction cases as “summary process” due to the speed of a few days between each step).

227. See *id.* at 4 (describing the legal process of terminating a tenancy in Massachusetts); Karin Troendle, Alex Witteveld & Manuel Ramos, *Rights and Obligations: Colorado Landlord-Tenant Law* (Colo. Bar Ass’n, 8th ed. 2019).

228. Hatch, *supra* note 175.

229. *Adjartey v. Central Div. of the Hous. Ct. Dep’t*, 481 Mass. 830, 831 (2019) (noting that “the complexity and speed of summary process cases can present formidable challenges to individuals facing eviction, particularly where those individuals are not represented by an attorney”).

article draws upon Colorado and Massachusetts laws to explain the eviction system and how to design off ramps from it.²³⁰

The process for non-payment eviction begins when a tenant misses rent. The landlord must formally demand payment prior to initiating a court proceeding and may begin charging late fees if allowed by state law. Every state has a different process.²³¹ Owners of federally subsidized housing must also follow specific federal regulations.²³² In Colorado, the landlord begins the process for a non-payment eviction by serving a “Demand for Payment or Possession” on the tenant’s door.²³³ In Massachusetts, the landlord posts a similar document called a Notice to Quit, entitling tenants to fourteen days to cure the nonpayment.²³⁴ The Demand and Notice documents establish the timeline before a landlord can formally terminate the tenancy and summon a tenant to court. In Colorado, tenants have ten days to respond before a landlord can file with the court, and potentially more than twenty days if they can make full payment to the landlord or the court before a court order.²³⁵ As recently as 2016, tenants only had three days to legally cure the non-payment.²³⁶

In non-payment cases, the Demand for Payment or Possession (Colorado) and Notice to Quit (Massachusetts) typically lay out the tenant’s legal right to “cure” by paying the landlord and resolving their arrears. During a “cure period,” a landlord must accept payment from the tenant, and payment restores the tenancy.²³⁷ Colorado’s recent Keep Coloradans Housed Act established a right to cure until the date that a judge officially orders an eviction, which is the longest cure right in the nation.²³⁸

230. The states were chosen due to the author’s familiarity with state law and social services, the correspondence with case studies cited as best practices, and the distinctions between the two states’ legal regimes.

231. Hatch, *supra* note 175.

232. See 24 C.F.R. §§ 982.551 et seq. (describing the rules for PHA denial or termination of assistance for family).

233. COLO. REV. STAT. § 13-40-104(1)(d) (describing the statutory violation for not paying rent); Hix v. Roy, 139 Colo. 457, 459 (81959) (affirming the need for a non-defective demand).

234. MASS. GEN. LAWS ch. 186 § 11.

235. COLO. REV. STAT. § 13-40-115(4) (“A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant’s full payment of all amounts due according to the notice, as well as any rent that remains due under the rental agreement, at any time until a judge issues a judgment for possession pursuant to subsection (1) or (2) of this section. A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall: (a) Vacate any judgments that have been issued; and (b) Dismiss the action with prejudice.”).

236. COLO. REV. STAT. § 13-40-104 (2016).

237. E.g., MASS. GEN. LAWS ch. 186, § 11; Kazer v. Grazette, No. 02-SP-05808 (Bos. Hous. Ct. Jan. 16, 2003).

238. COLO. REV. STAT. § 13-40-115; see also Nadler et al., *supra* note 73 (defining the provisions of the Keep Coloradans Act passed as SB-173).

Massachusetts offers a fourteen-day cure period.²³⁹ In many states, tenants have three business days or fewer to cure.²⁴⁰ If they do not cure, a landlord can file an eviction, and the tenants lose their legal rights to tenancy. During this Notice or Demand period, the landlord can charge late fees, which can reach hundreds or even thousands of dollars. Even if tenants can cure by making rent, those living at the margins of affordability often cannot pay unexpected and usuriously high late fees. In 2021, Colorado capped late fees at five percent of the monthly rent or fifty dollars.²⁴¹ Massachusetts forbids late fees until thirty days after rent is due.²⁴² About half of states do not regulate late fees.²⁴³

The eviction system is also available to landlords even when tenants have done nothing wrong. In this case, called a no-fault eviction, landlords must serve a different document known as a Notice to Quit.²⁴⁴ The rest of the process is largely the same.

The Notice and Demand process often leads to displacements without formal legal process, scaring some tenants into leaving their homes. The legalese on Notices and Demands is notoriously difficult to discern. For example, the documents often do not say plainly that tenants do not need to legally leave their homes until a court orders them to do so.²⁴⁵ During this period, some landlords will threaten or coerce their tenants to leave. Moreover, economically “rational” tenants may choose to leave, rather than risk an eviction filing. In most states, a filing becomes a “Scarlet E” and a formal part of a tenant’s rental history for seven years—even if the tenant

239. COLO. REV. STAT. § 13-40-104 (2016). *E.g.*, MASS. GEN. LAWS ch. 186, §11; *see also* Lauren Song, *What If The Rent Is Late*, MASSLEGALHELP, https://www.masslegalhelp.org/housing/lt1-chapter-5-paying-rent-article#_edn21 (last accessed Feb. 24, 2023) (detailing the cure period and the differences in cure rights for tenants with leases and those who are at will).

240. *See, e.g.*, ARK. CODE ANN. §§ 18-16-101, 18-17-701, 18-60-304; IDAHO CODE § 6-303(2); IOWA CODE § 562A.27(2); MISS. CODE ANN. §§ 89-7-27, 89-7-45; MONT. CODE ANN. § 70-24-422(2); N.D. CENT. CODE § 47-32-01, N.M. STAT. ANN. § 47-8-33(D); S.D. CODIFIED LAWS §§ 21-16-1(4), 21-16-2; TEX. PROP. CODE ANN. § 24.005; WYO. STAT. ANN. §§ 1-21-1002 to 1-21-1003; CAL. CIV. PROC. CODE § 1161(2); FLA. STAT. ANN. § 83.56(3); KAN. STAT. ANN. § 58-2564(b); UTAH CODE ANN. § 78B-6-802; LA. CIV. PROC. CODE ANN. art. 4701; MO. REV. STAT. § 535.0101 N.J. STAT. ANN. §§ 2A:18-53, 2A:18-61.1, 2A:18-61.2, 2A:42-9; OHIO REV. CODE ANN. § 1923.02(A)(9); Ann O’Connell, *State Laws on Termination for Nonpayment of Rent*, NOLO.COM (last visited Feb. 4, 2022), <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html> (offering a fifty-state comparison).

241. COLO. REV. STAT. § 38-12-105.

242. MASS. GEN. LAWS ch. 186, §15B(1)(c); MASS. GEN. LAWS ch. 93A, §2.

243. *See, e.g.*, Ryan Sullivan, *Survey of State Laws Governing Fees Associated with Late Payment of Rent*, UNIV. NEBRASKA-LINCOLN (Jan. 30, 2022), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1225&context=lawfacpub> (providing details on each state’s late fees).

244. COLO. REV. STAT. § 13-40-107(1).

245. *Id.* § 13-40-104(1)(d) (offering cure period language).

wins or settles an eviction trial.²⁴⁶ These scarlet letters make it exceedingly difficult to find a new home, especially in a tight rental market.²⁴⁷ In Colorado and a few other states, record-sealing laws prevent eviction filings until and unless a court orders a family's eviction.²⁴⁸ The record sealing enables tenants to take additional time to move and or to contest evictions without consequence.

For tenants who do not cure or leave within the demand period, landlords can formally terminate the tenancy and begin the legal process. The landlord, almost always represented by counsel,²⁴⁹ may file a formal lawsuit with the court that is called a forcible entry and detainer suit.²⁵⁰ The county clerk or landlord's attorney must serve the tenant with a complaint, a formal lawsuit, and a summons to court.²⁵¹

Depending on the jurisdiction, tenants have between seven and fourteen days to formally "answer" the eviction lawsuit.²⁵² In some states, tenants must pay an answer fee or file a waiver for indigency.²⁵³ Despite the costs, tenants who do not file an answer will lose by default. A judge issues a "default judgment" that orders the eviction.

Tenants who file an answer can assert limited counterclaims and defenses. In some jurisdictions, like Massachusetts, they can demand a jury trial.²⁵⁴ Counterclaims and defenses might include allegations that the landlord breached the tenant's right to live in a safe and habitable home,²⁵⁵ entitling the tenant to damages equal and above the cost of rent. Other

246. See, e.g., *The Scarlet E*, WNYC STUDIOS (June 6, 2019), <https://www.wnycstudios.org/podcasts/otm/scarlet-e-unmasking-americas-eviction-crisis>.

247. See, e.g., *id.*

248. See, e.g., Moe Clark, *New Colorado Law Allows Courts to Suppress Records of Pending Eviction Cases*, COLO. NEWSLINE (Dec. 10, 2020), <https://coloradonewsline.com/2020/12/10/new-colorado-law-eviction-records-suppression> (citing COLO. REV. STAT. § 13-40-110.5).

249. See, e.g., Jack Regenbogen & Aubrey Hasvold, *Facing Eviction Alone: A Study of Evictions Denver County 2014-2016*, COLO. CENTER ON L. & POL'Y (2017), https://cclp.org/wp-content/uploads/2018/04/Facing-Eviction-Alone-2017-Report_Final-1.pdf (finding landlord representation in every case reviewed as opposed to tenant representation in one to three percent of cases); see also *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, NAT'L COAL. FOR A CIVIL RIGHT TO COUNSEL (last updated Nov. 2, 2021), http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC_.pdf (finding large variation in landlord representation by jurisdiction and a non-weighted average of eighty-one percent).

250. COLO. REV. STAT. § 13-40-111.

251. *Id.*

252. COLO. REV. STAT. § 13-40-113(1).

253. Colo. State Cts., *How to Guide for Eviction Cases 7* (May 20, 2022), <https://www.courts.state.co.us/Forms/PDF/JDF100.pdf> (detailing the costs of eviction and the ability to apply for a fee waiver).

254. DOWNING & MCCREIGHT, *supra* note 226, at 4-46 (describing the jury demand process under Massachusetts Civil Procedure rules).

255. *Id.* at 4-60.

counterclaims and defenses include breach of security deposit laws, retaliation, discrimination, illegal lockouts.²⁵⁶ Should tenants win in court, they can retain possession of their home and may be entitled to damages paid by the landlord.²⁵⁷ In some jurisdictions, tenants must pay a “bond” to assert defenses and counterclaims.²⁵⁸ Tenants, who have the funds, must place a bet with the court: they can pay the bond with incredibly scarce funds and hope the court sides with them or use scarce funds on security deposits and a new place.

In Colorado, the court schedules a trial within five days of a tenant filing an answer.²⁵⁹ During this period, landlords, who are typically represented by counsel, and tenants, who are rarely represented, often negotiate a stipulated agreement, which typically settles the debt and restores a tenancy or results in a move-out agreement. When filed with the court, these stipulations become enforceable court orders. If a landlord alleges that a tenant defaults—by not moving out or by violating any relevant term in the agreement—the landlord may seek execution of the eviction without going back to court. The result for many renters is “civil probation.”²⁶⁰ They are entitled to stay in their homes, but only with surveillance, onerous conditions, and the threat of a judgment and removal hanging over their heads.²⁶¹

On a trial day, judges hear dozens of cases, working through what has been called a “rocket docket.”²⁶² This term, rocket docket, describes the roll call of cases. In many of the cases, the tenant does not show, and judges authorize the evictions on the spot via default judgment.²⁶³ Where parties are present, the judge turns to the trials. If judges find in favor of the tenants, they can get possession and damages. If judges find in favor of the landlord, they get possession and damages.²⁶⁴ Using data from before the

256. *Id.*; see also Troendle, Witteveld & Ramos, *supra* note 226, at 73, 83.

257. See MASS. GEN. LAWS ch. 93A (making landlord-tenant violations by corporate landlords a violation of Massachusetts Consumer Protection Act and entitling tenants to treble damages).

258. See COLO. REV. STAT. § 38-12-503 (2).

259. *Id.* § 13-40-114.

260. Nicole Summers, *Civil Probation*, 75 STAN. L. REV. (forthcoming 2023).

261. *Id.*

262. See, e.g., Emily Benfer, @emilyabenfer (July 2, 2020), <https://twitter.com/emilyabenfer/status/1278659930489323520> (labeling Oklahoma’s eviction court a “rocket docket” for the speed through which it displaced tenants and elevating a court watcher’s thread).

263. See, e.g., SARAH KIM EISENHARD ET AL., TEMPLE U. LAW SCHOOL, REDUCING DEFAULT JUDGMENTS IN PHILADELPHIA’S LANDLORD-TENANT COURT (June 2020), <https://scholarshare.temple.edu/bitstream/handle/20.500.12613/492/EisenhardElmerKulesza-Report-2020.pdf?sequence=1&isAllowed=y> (finding fifty-four percent of evictions in Philadelphia to be default judgments and presenting data on reducing default judgments).

264. COLO. REV. STAT. § 13-40-115.

passage of new renters' rights legislation in Colorado, seventy-nine percent of tenants who are filed against in Denver County lost possession of their homes.²⁶⁵

When a landlord wins, they get the legal right to leverage the police power of the state to forcibly remove tenants from their homes. In Colorado, this process is called a "writ of restitution,"²⁶⁶ which can be executed ten days after judgment and authorizes the sheriff to physically remove the tenant and their belongings from the property. All told, a sheriff-enforced forced removal can take place within thirty or forty days of the tenant's nonpayment.²⁶⁷ After sheriffs displace evicted renters, many have nowhere to go, and they end up experiencing homelessness.

Tenants like Mr. Tsegay often seek legal aid from non-profit and federally funded lawyers before or on the same day as an eviction hearing. However, his story is often aberrational. While tenants are entitled to due process, few manage to access social services or utilize their legal rights given the complexity of the process and lack of representation. While help is available, it is scarce: As a rule, demand for pro-bono eviction defense services outstrips supply. In Denver, for example, one to three percent of tenants have access to counsel.²⁶⁸ Nationally, no more than ten percent of tenants get legal aid.²⁶⁹ Applying those numbers to the number of filings, no more than (and probably far less than) 360,000 of the 3.6 million eviction filing cases nationwide benefited from a defense lawyer. Even when tenants have access to counsel, the law alone does not provide sufficient defenses for tenants to stabilize. For example, a statistical analysis by Nicole Summers, a law professor and eviction defense lawyer, found that tenants "overwhelmingly do not benefit" from warranty of habitability claims, "even when they are likely to have meritorious claims, and even when they have legal representation."²⁷⁰

Tenants may also seek rental assistance, typically from separate agencies, including faith-based institutions, local charities or government agencies. Prior to the pandemic, rental assistance funds were severely limited.²⁷¹

265. *Facing Eviction Alone: A Study of Evictions Denver County 2014–2016*, COLO. CTR. ON L. & POL'Y 6 (2017), https://cclponline.org/wp-content/uploads/2018/04/Facing-Eviction-Alone-2017-Report_Final-1.pdf.

266. COLO. REV. STAT. § 13-40-114.

267. *Id.* § 13-40-122(1); Troendle, Witteveld & Ramos, *supra* note 226, at 35 (2019).

268. *See, e.g.*, Regenbogen & Hasvold, *supra* note 249 (finding landlord representation in every case reviewed as opposed to tenant representation in one to three percent of cases).

269. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22 *FAST FOCUS* 1, 1–6 (2015), <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>; *see also* Regenbogen & Hasvold, *supra* note 249 (finding landlord representation in every case reviewed as opposed to tenant representation in one to three percent of cases).

270. Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 29 *J. AFFORDABLE HOUS.* 29, 54 (2020).

271. *See* Part III *infra* (detailing the limited availability of assistance).

Only a few states like Massachusetts²⁷² and some localities like Denver and New York had publicly funded but limited rental assistance programs.²⁷³ The amount of funding paled in comparison to the need.²⁷⁴ During 2021–2022, funds were abundant, improving the odds of tenant stabilization.²⁷⁵ When available, rental aid applications are often time consuming and difficult.²⁷⁶ Agencies with long wait-lists often struggle to help tenants apply, keep pace with need, and fund rental assistance along the eviction timeline. In practice, only a few models—those specifically designed to work with the legal system—can guarantee that funds arrive before an eviction judgment enters.²⁷⁷ The Colorado approach, for example, creates a fast-lane for providing assistance on the eviction timeline. The Massachusetts and Philadelphia models slow the eviction timeline, buying time for aid to arrive.

In contrast to their underresourced tenants, landlords are typically represented by law firms with business models built on an expectation of eviction by default. In urban areas, a few law firms typically have a monopoly in landlord representation that generally offer a fixed price per case.²⁷⁸ While lawyers are notorious for hourly pricing, the decision to charge flat rate fees indicates high profitability from high volume. Landlords' counsel can move through a handful of "trials," and the few cases that require any significant amount of legal work are cross-subsidized by those that quickly result in default judgments.²⁷⁹ The landlord economics demonstrate a

272. See, e.g., METRO HOUS. BOST., RAFT IN REVIEW: FISCAL YEAR 2019 (Nov. 2019), https://www.metrohousingboston.org/wp-content/uploads/2019/12/2019-RAFT-report_FNL_online.pdf.

273. See, e.g., *id.*; CITY & COUNTY OF DENVER, 2020 HOUSING REPORT (last accessed May 4, 2022), https://denver.prelive.opencities.com/files/assets/public/housing-stability/documents/2020housingreport_booklet_sixth_draft.pdf.

274. See, e.g., *id.*, (demonstrating \$20M in funding for renters facing eviction with more than 37,000 eviction filings, leaving less than \$1,000 per filing in assistance available, assuming eighty percent of evictions are for non-payment).

275. See Part VI *infra* (describing the win-win-win of rental assistance).

276. See American Rescue Plan Act, (describing ERAP program regulations); U.S. Department of the Treasury Emergency Rental Assistance Frequently Asked Questions (Aug. 25, 2022), <https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf> (detailing the documentation requirements, including fill out a ten-page application, provide identification and income documentation for all adults over eighteen in the household, leases, ledgers, and get their landlords to approve participation in the program).

277. See Part III *supra* (describing best practice case studies that guarantee emergency rental assistance arrives on time as opposed to models with long waitlists that do not prioritize those facing eviction).

278. See, e.g., TSCHETTER SULZER, EVICTIONS (2023), <https://www.thslawfirm.com/evictions> (describing flat rate fee for Denver's #1 eviction law firm).

279. See, e.g., Eliza Weill-Greenberg, *Most Tenants Facing Eviction Don't Have a Right to an Attorney. Lawmakers Want To Change That*, THE APPEAL (Feb. 18, 2021), <https://theappeal.org/most-tenants-facing-eviction-dont-have-a-right-to-an-attorney-lawmakers-want-to-change-that> (citing Stout Risius Ross studies from multiple cities including New

profitable industry underlying the eviction machine and an industry with delicate economics based on limited access to justice.

After an eviction, tenants are judged to owe their landlords the back rent. Many tenants do not have the funds and are judgment proof²⁸⁰—meaning that they have too little income for the court to garnish their wages or otherwise authorize coercive collections; landlords typically sell tenant debt to debt collectors at under ten cents on the dollar.²⁸¹ They may also write off lost rent on their taxes. Nevertheless, landlord economics benefit from being able to re-rent the unit.

As this section reveals, tenants have few defenses to or offramps from the eviction machine's speed and complexity. Tenants who cannot stabilize within days or weeks of an eviction filing face catastrophic consequences. Without calibrating eviction-prevention models to balance representation, mandate diversion or mediation, slow down the eviction timeline, or speed up the rental assistance check, most tenants do not stand a chance in eviction court.

V. Unpacking the Economic Causes of Eviction: Increasing Rental Prices and Income Shocks

America's non-payment eviction crisis has at least two distinct economic drivers: unaffordable rents and financial shocks. While these phenomena are interrelated, it is important to discuss them separately.

An eviction-prevention system can buy time for individual renters and society as a whole to respond to unaffordable rents, but it does not address the root problem. The phenomena of constrained supply, inflation, and increasing prices due to commodification of rental housing contribute to rising rents and increasing eviction rates. Based on the underlying economics, housing is chronically unaffordable or just barely affordable for some, meaning their incomes will not pay the market clearing price for housing. For others, rising rents strain family budgets, putting them one financial shock away from falling behind and potentially facing eviction. Many, like Ms. Gordon, are one rent increase or financial shock away from eviction.

In contrast, eviction prevention programs that include emergency rental assistance and legal aid effectively respond to acute financial shocks. They address the root cause (lack of money) and prevent the spiral of harm caused by an eviction. Income shocks—like a job loss—or expense shocks—like an unexpected medical bill or a predatory tow—can trigger eviction,

York, Cleveland, Los Angeles, and Baltimore); EISENHARD ET AL., *supra* note 263 (finding 54% of evictions in Philadelphia to be default judgments and presenting data on reducing default judgments).

280. Ezra Rosser, *Exploiting the Poor: Housing, Markets, and Vulnerability A Book Review of Matthew Desmond, Evicted: Poverty and Profit in the American City*, 126 YALE L.J. FORUM 458, 472 (2017) (describing judgment proof tenants and long-term implications).

281. See, e.g., RENT RECOVERY SERVICE, FLAT FEE COLLECTION SERVICE (2022), <https://www.rentrecoveryservice.com/flat-fee-based-collections>.

even for otherwise stable households. Recall Mr. Tsegay whose infection with COVID-19 triggered an eviction filing and almost caused him to lose his home. Sometimes a rent increase or a fee for late rent *is* the shock. These shocks will always exist, even with a perfect safety net that subsidizes rent for those who cannot pay the market clearing price for rent.²⁸² Thus, eviction prevention systems may always need to exist. It must be emphasized that racial bias plays a role in who gets evicted for economic reasons. Black and brown renters who have fallen behind on rent are evicted at disproportionate rates compared to white renters in similar situations controlling for economic factors.²⁸³ Eviction diversion systems are especially important to curb the disparate impact of eviction.

A. An Increasing Housing Affordability Crisis Drives Evictions

America faces an enormous housing affordability crisis, especially for low-income renters. While the rent eats first, eventually rents become simply too high for families to afford. When this occurs, unpaid rent becomes the basis for an eviction. This part highlights both the trends and structural drivers of expensive and increasing rents that drive eviction.

The National Low Income Housing Coalition's *Out of Reach* report, sums it up: "[M]odest rental housing is out of reach for every worker in the bottom half of the wage distribution."²⁸⁴ According to Harvard's 2022 *Rental Housing* report, nearly half of renters were cost burdened, spending more than thirty percent of their incomes on rent.²⁸⁵ Nearly twenty-five percent of renters spent more than one half of their incomes on rent.²⁸⁶ The impacts of housing unaffordability disproportionately fall on Black households, with nearly fifty percent of Black renters earning less than \$30,000 per year compared to thirty-three percent of white renters,²⁸⁷ meaning Black renters are less likely than white households to earn enough to make rents.

For some renters, the family budget math simply does not work.²⁸⁸ It costs no less than \$500 per month to operate multi-family affordable housing. A household must earn approximately \$20,000 per year to afford even basic housing at that level.²⁸⁹ And these figures are ever increasing with inflation outpacing wages and fixed incomes.²⁹⁰ Recall Ms. Gordon.

282. SCHUETZ, *supra* note 3, at 71.

283. See Part II.A *supra* (documenting disproportionate rates of eviction for Black households).

284. ANDREW AURAND ET AL., *OUT OF REACH: THE HIGH COST OF HOUSING 5* (2020), https://reports.nlihc.org/sites/default/files/oor/OOR_2020.pdf.

285. AMERICA'S RENTAL HOUSING 2022, *supra* note 93.

286. *Id.*

287. *Id.* at 5.

288. See, e.g., SCHUETZ, *supra* note 3, at 61 (describing the need to give poor people money and fund the entitlement to affordable housing for very low-income people).

289. *Id.* at 63.

290. *Id.* at 41 (documenting rent increases nearly twenty percent above wage increases).

While her home used to be affordable to her, she could no longer afford it on her fixed income. Her rent increase was both part of a macro trend and a result of an investor seeing an opportunity to extract higher rents either from Ms. Gordon or whomever would replace her. She needs more income or a deeper subsidy as she seeks to age in place—in her own home. Among people who make less than \$30,000 per year, eighty percent must dedicate more than half of their incomes to rent.²⁹¹ Many, like Ms. Gordon, must dedicate considerably more than half. After rent, cost-burdened renters, who make less than \$30,000 per year, have \$360 in leftover monthly income,²⁹² an insufficient sum to meet everyday needs.

Households with chronically low-incomes who do not receive housing subsidies often struggle with chronic displacement and homelessness. Among those who qualify, more than seventy-five percent do not receive public support to make up the difference between what they can afford and what the market will bear.²⁹³ Affordable rents sometimes do not—without subsidy—cover the costs of maintenance, debt service, taxes, and sufficient profit to justify ownership.²⁹⁴ This disparity often leads to upscaling or gradual divestment to the point of uninhabitability.²⁹⁵ Further, the stock of subsidized housing in the United States has decreased since 1994, in part because of demolition of deteriorated public housing, and in part because owners opted out of subsidized housing programs.²⁹⁶ Additionally, zoning and other limitations on density reduce growth in affordable housing in particular, limiting the growth to defined and often segregated areas.²⁹⁷

The affordability problem is getting worse, at a far faster rate than inflation, meaning households that could have previously afforded housing are on the precipice of eviction. Between 2000 and 2018, adjusting for inflation, median renter incomes increased by 0.5% and rental costs increased by 17%.²⁹⁸ Another analysis found that median monthly rent increased from \$483 in 2000 to \$1216 in 2021.²⁹⁹ Data from professionally managed properties showed an overall increase in rents by eleven percent year over year in mid-2022,³⁰⁰ reaching record highs in the pandemic. The harm falls

291. See, e.g., *id.* at 71–79.

292. *Id.*

293. *Id.* at 40.

294. *Id.* at 41.

295. *Id.* at 40.

296. See, e.g., Anne Ray et al. *Opting in, Opting Out a Decade Later*, HUD (May 8, 2021), https://www.huduser.gov/portal/sites/default/files/pdf/508_MDRT_Opting%20In_Opting%20Out.pdf.

297. See AMERICA'S RENTAL HOUSING 2022, *supra* note 93, at 19, 22; see also Jared Bernstein, Jeffery Zhang, Ryan Cummings & Matthew Maury, *Alleviating Supply Constraints in the Housing Market*, COUNCIL OF ECON. ADVISORS (Sept. 1, 2021).

298. ALEX F. SCHWARTZ, HOUSING POLICY IN THE UNITED STATES 38 (4th ed. 2021).

299. DESMOND, *supra* note 20, at 65.

300. AMERICA'S RENTAL HOUSING 2022, *supra* note 93, at 23.

disproportionately on low-income renters who can least afford a double-digit rent increase, and the profits are disproportionately extracted from them.

When households cannot make rent, they face formal or informal evictions, whether or not they are subsidized. And some renters, who have nowhere to rent at lower price points, experience homelessness. Indeed, according to the 2023 Metro-Denver point in time count of individuals experiencing homelessness, the top two self-reported reasons for experiencing homelessness were rising rents and eviction.³⁰¹ As previously cited, most evictions are for non-payment.³⁰²

While causal analysis is beyond the scope of this article, our economic analysis can further peel back the onion of the interaction between the rental housing market and eviction by identifying two important trends. First, the demand for rental housing continues to outstrip supply, increasing prices, and therefore increasing the likelihood of non-payment eviction. Second, increasing rates of corporate ownership and profiteering in low-income communities may drive both price increases and evictions.

i. Demand outpaces supply

The Economics 101 conclusion has merit: we have too few affordable units to house those who need them, which increases prices, which leads to more non-payment evictions. Supply and demand just do not match up. There is a more than seven million-unit gap between the supply and demand of units that are affordable for extremely low-income families.³⁰³ For every one hundred extremely low-income households, only forty units are affordable and available; for every one hundred very low-income families, only fifty-nine units are affordable and available.³⁰⁴ A match between affordability and availability only begins to occur above the low-income threshold of eighty percent of area median income.³⁰⁵

Further, renter demand increased dramatically during the pandemic, with prices increasing along with demand. First quarter 2022 market-rate apartment demand was seventy-six percent higher than the pre-COVID peak.³⁰⁶ And prices followed suit. Younger, millennial renters are

301. STATE OF HOMELESSNESS, METRO DENVER HOMELESS INITIATIVE (2022–2023), https://static1.squarespace.com/static/5fea50c73853910bc4679c13/t/63d52624683a6c1fcfa15cdc/1674913319640/State+of+Homelessness_Final_2022-2023+%282%29.pdf.

302. See, e.g., Salviati, *supra* note 87; COLLINSON & REED *supra* note 34.

303. SCHWARTZ, *supra* note 298 at 38 (citing AMERICA'S RENTAL HOUSING 2019, JOINT CTR. FOR HOUSING STUD. HARV. U. 4 (JAN. 2022)).

304. *Id.* at 39.

305. *Id.*

306. Jay Parsons, *Apartment Demand, Occupancy and Rents Jump to New Highs Again in 1st Quarter*, REAL PAGE ANALYTICS (Apr. 4, 2022), <https://www.realpage.com/analytics/apartment-demand-occupancy-and-rents-jump-to-new-highs-again-in-1st-quarter>; see also AMERICA'S RENTAL HOUSING 2022, *supra* note 93 (finding that rental prices reached all time peaks during the pandemic).

entering the market, older Americans are returning to renting, and many higher-income renters have delayed the transition to homeownership due to income pressure, limited supply,³⁰⁷ and now rising interest rates. While demand for new apartments moderated at the end of 2022 and aggregate prices for new leases fell slightly,³⁰⁸ the pandemic set a new price floor at historic highs.³⁰⁹

Moreover, while the supply-and-demand argument has merit, increasing supply does not guarantee lower rents. For example, nearly twenty percent of rental units in Birmingham, Alabama, and twelve percent in Syracuse, New York were vacant in 2021, but prices still increased by fourteen percent and eight percent respectively in those cities.³¹⁰ With the right mix of profitable units and vacancies that can be written off as tax losses, landlords can seemingly maintain higher than “natural” prices in an undistorted market. According to another study, rents in neighborhoods with poverty rates of forty percent or higher are less than twenty percent lower than the median rent.³¹¹

ii. Corporate ownership driving price increases and eviction

In addition, the increasing corporate ownership of housing is accelerating rent increases and evictions. Ownership profiles have changed with investors building and purchasing rental housing at an increasing rate. Between 2000 and 2018, the share of investor-owned rental units (defined as units owned by limited liability partnerships, real estate corporations, and real estate trusts), increased by eight percentage points to twenty-six percent.³¹² The investor share of single-family home purchases went up by nearly seventy percent in 2021, capitalizing on historically low interest rates during the pandemic.³¹³ According to the Joint Center on Housing at Harvard, the increase “ha[s] raised concerns that the new owners will raise rents aggressively and displace current tenants,” particularly those living in single-family homes that function as naturally occurring affordable housing.³¹⁴

The profit opportunity is greatest in the lowest-income neighborhoods, where renters can least afford to pay more. According to recent analysis by Matthew Desmond, landlords in poor communities typically earn double

307. AMERICA’S RENTAL HOUSING 2022, *supra* note 93, at 10–11.

308. Jay Parsons, *Apartment Demand Turns Negative for the First Time Since 2009*, REAL PAGE ANALYTICS (Jan. 5, 2023), <https://www.realtor.com/realpage.com/analytics/apartment-demand-turns-negative-for-the-first-time-since-2009>.

309. Anna Bahney, *US Rents Hit a Record High for the 17th Month in a Row*, CNN Bus. (Aug. 24, 2022), <https://edition.cnn.com/2022/08/24/homes/us-rents-record-july/index.html>.

310. DESMOND, *supra* note 20, at 65.

311. *Id.* at 67.

312. AMERICA’S RENTAL HOUSING 2022, *supra* note 93, at 4, 29.

313. *Id.*

314. *Id.*

the profits of landlords in affluent neighborhoods.³¹⁵ This increase occurs in part because the market charges what renters will pay.³¹⁶

While limited causal data exists on new purchases and rents in the pandemic, increased pandemic investment in rental housing is likely to drive higher rents and eviction rates, controlling for other factors. Studies highlight that corporate owners increase rents more dramatically than non-corporate owners.³¹⁷ A recent ProPublica analysis identified the use of pricing software by many corporate owners; the software provided pricing suggestions to a variety of corporate purchasers, allegedly helping more than 30,000 corporate owners collude to keep rental prices high by providing the same pricing suggestions.³¹⁸ Other studies highlight the association between corporate ownership and eviction controlling for other factors.³¹⁹ A Federal Reserve Bank of Atlanta study in 2016 found that large private equity firms filed evictions on a third of their properties in the year, and they had an eighteen percent higher housing instability rate, controlling for property and neighborhood characteristic.³²⁰ The study also found non-private equity corporate owners also disproportionately evicted tenants compared to non-corporate owners.³²¹ Black households were evicted at the highest rates, demonstrating the layering of financial and racial causes of evictions.³²² In less technical terms, corporate ownership was associated

315. DESMOND, *supra* note 20, at 67.

316. *Id.*

317. See, e.g., ‘The Rent Eats First’: How Renters and Communities are Impacted by Today’s Housing Market Before U.S. Sen. Comm. on Banking, Hous. & Urb. Affs., 117th Cong. (Aug. 2, 2022) (statement of Matthew Desmond, Principal Investigator, EvictionLab), <https://www.banking.senate.gov/imo/media/doc/Desmond%20Testimony%208-2-22%20.pdf> (citing John Gilderbloom et al., *Intercity Rent Differentials in the U.S. Housing Market 2000: Understanding Rent Variations as a Sociological Phenomenon*, 31 J. URB. AFFS. 409 (2009)); William Hardin III, Matthew Hill & James Hopper, *Ownership Structure, Property Performance, Multifamily Properties, and REITs*, 31 J. REAL EST. RSCH. 285 (2009)); see also Chris Arnold, *Why Are Investors Buying Up Mobile Home Parks And Evicting Residents?*, NPR (Sept. 3, 2021), <https://www.npr.org/2021/09/03/1033910731/why-are-investors-buying-up-mobile-home-parks-and-evicting-residents>.

318. Heather Vogell, *Rent Going Up? One Company’s Algorithm Could Be Why*, PRO-PUBLICA (Oct. 15, 2022), <https://www.propublica.org/article/yieldstar-rent-increase-realtor-rent> (describing the ways in which RealPage’s YieldStar algorithm set daily prices for primarily corporate users of the technology).

319. See generally ELORA RAYMOND ET AL., *supra* note 95.; see also Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 SOC. FORCES 316 (2021) (finding that neighborhoods with higher concentrations of corporate landlords had higher rates of serial eviction filings which as a tactic itself raises property costs by twenty percent); Henry Gomory, *The Social and Institutional Contexts Underlying Landlords’ Eviction Practices*, 100 SOC. FORCES 1774 (2022).

320. RAYMOND ET AL., *supra* note 95.

321. *Id.*

322. *Id.*

with a higher housing instability rate that disproportionately impacted Black and brown communities.

To illustrate this point, there is a through line from foreclosures during the Great Recession of 2007–2009, to evictions in the very same neighborhoods during the pandemic.³²³ In the early 2010s, many single-family homes were purchased by private equity firms in foreclosure sales and turned into rental properties.³²⁴ Before the Great Recession, mortgage lenders targeted BIPOC renters for subprime mortgages in a process known as reverse redlining.³²⁵ When the housing bubble burst, many homeowners lost their homes in foreclosure sales.³²⁶ Private equity firms pounced on the undervalued assets, purchasing these properties at bargain basement prices, and transformed them into rentals.³²⁷ These private-equity firms were some of the most egregious violators of eviction moratoria during the pandemic.³²⁸ In other words, there are direct ties between displacement of subprime borrowers—largely people of color—during the Great Recession and eviction of potentially the same renters by the firms that purchased foreclosed properties.³²⁹

323. See, e.g., Elora Raymond et al., *From Foreclosure to Eviction: Housing Insecurity in Corporate Owned Single-Family Rentals*, 20 CITYSCAPE 158 (2018) (finding post foreclosure homes to be fifty-eight percent more likely to have eviction filings than those without foreclosure histories with disproportionate evicting coming from large corporate owners).

324. Francesca Mari, *A \$60 Billion Housing Grab by Wall Street*, N.Y. TIMES (Mar. 4, 2020), <https://www.nytimes.com/2020/03/04/magazine/wall-street-landlords.html>.

325. See, e.g., Charles L. Nier, III & Maureen R. St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMP. L. REV. 941 (2011).

326. See, e.g., HUD, REPORT TO CONGRESS ON THE ROOT CAUSES OF THE FORECLOSURE CRISIS (Jan. 2010), https://www.huduser.gov/portal//Publications/PDF/Foreclosure_09.pdf.

327. See, e.g., Peter Whoriskey, Spencer Woodman & Margot Gibbs, *This Block Used to Be for First-Time Homebuyers. Then Global Investors Bought In*, WASH. POST (Dec. 15, 2021), <https://www.washingtonpost.com/business/interactive/2021/investors-rental-foreclosure/>.

328. See, e.g., *Corporate Landlords Ramp up Eviction Actions Even as Renters Struggle to Access Tens of Billions of Dollars in Rental Assistance; Lawmakers Respond*, PRIV. EQUITY STAKEHOLDER PROJECT (July 7, 2021), <https://pestakeholder.org/corporate-landlords-ramp-up-eviction-actions-even-as-renters-struggle-to-access-tens-ofbillions-of-dollars-in-rental-assistance-still-available-lawmakers-respond>; *Private Equity & Corporate Landlord Evictions Tracker* PRIV. EQUITY STAKEHOLDER PROJECT (last accessed Jan. 1, 2022), <https://docs.google.com/spreadsheets/d/1lgntfTGWT4rbylrmtYDiEWJODbrHAofNMkRaqcHXG9E/edit#gid=770957791>. Irina Ivanova, *Feds Target Evictions by Some of America's Biggest Landlords*, CBS NEWS (May 14, 2021), <https://www.cbsnews.com/news/eviction-landlords-ftc-cfpb> (describing the increased scrutiny of private equity landlords by the federal government).

329. See generally ELORA RAYMOND ET AL., FED. RESERVE BANK OF ATLANTA, CORPORATE LANDLORDS, INSTITUTIONAL INVESTORS, AND DISPLACEMENT: EVICTION RATES IN SINGLE FAMILY RENTALS (2016), <https://www.frbatlanta.org/-/media/documents/com>

The housing affordability crisis—driven by supply shortages, inflation, rent-seeking behavior, and other causes—leads to eviction. Until society reaches a tipping point that can lower costs relative to incomes, high prices that have increased faster than inflation threaten to drive greater housing instability, evictions, and displacements. Of course, an emergency rental aid system cannot solve the root cause of price increases. Nevertheless, as described above, the financial and social cost of eviction argues for investing in the social safety net until the market or government tip the scales.

Ultimately, the forty-year-long mismatch between demand and supply will take years to reverse.³³⁰ Sufficient housing production should decrease the price of rental housing in general.³³¹ However, recent studies indicate that the effects of housing production may not trickle down to making low-cost housing more affordable.³³² In other words, we will likely continue to need intentional investment in affordable housing supply that lowers the lowest rental prices. Unfortunately, policy support for systemic investments in affordable housing or the voucher program³³³ is nowhere in sight after the failure of Build Back Better.³³⁴ Moreover, rent stabilization policies that would cap rent increases or control rents have also not taken hold in a meaningful way.³³⁵ Without these interventions, the affordability crisis

munity-development/publications/discussion-papers/2016/04-corporate-landlords-institutional-investors-and-displacement-2016-12-21.pdf; *PANDEMIC EVICTOR: Don Mullen's Pretium Partners Files to Evict Black Renters, Collects Billions from Investors*, PRIV. EQUITY STAKEHOLDER PROJECT (Apr. 14, 2021), <https://pestakeholder.org/pandemic-evictor-don-mullens-pretium-partners-files-to-evict-black-renters-collects-billions-from-investors>.

330. See, e.g., Jared Bernstein et al., *Alleviating Supply Constraints in the Housing Market*, WHITE HOUSE (Aug. 9, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/09/01/alleviating-supply-constraints-in-the-housing-market>.

331. Christina Stacy et al., *Land-Use Reforms and Housing Costs: Does Allowing for Increased Density Lead to Greater Affordability?*, URB. STUDIES (Mar. 21, 2023), <https://journals.sagepub.com/doi/10.1177/00420980231159500> (finding “statistically significant” evidence that land-use reforms drive production of housing, which drives down prices at the upper end of the rental market).

332. *Id.* (finding “no statistically significant evidence that additional lower-cost units became available or moderated in cost in the years following [land use] reforms”).

333. SCHUETZ, *supra* note 3, at 63.

334. Aris Foley, *Housing Investments at Risk As Build Back Better Withers*, THE HILL (May 2, 2022), <https://thehill.com/policy/finance/3472231-housing-investments-at-risk-as-build-back-better-withers>.

335. See NAT'L MULTIFAM. HOUS. COAL., *RENT CONTROL BY STATE LAW CHART* (July 2022), https://www.nmhc.org/globalassets/advocacy/rent-control/rent-control-by-state-law-chart_2022.pdf (demonstrating minimal uptake of rent control and stabilization laws nationwide and the degree of progress necessary). *But see* Janie Har, *As Rents Skyrocket, Rent Control Ballot Measures Gain Momentum*, CHRISTIAN SCI. MONITOR (Nov. 2, 2022), <https://www.csmonitor.com/USA/Politics/2022/1102/As-rents-skyrocket-rent-control-ballot-measures-gain-momentum>.

threatens to accelerate the eviction crisis and further strain the eviction system in the coming years.

B. *Income Shocks and Unexpected Expenses*

Supply, ownership, and price notwithstanding, the eviction crisis also has roots in the income shocks and unexpected expenses that are a feature of low-income life in America. Unfortunately, eviction is often the legal response to a short-term cash flow crisis. Due to the speed, violence, and impact of an eviction, a one-month cash flow crisis can send households into a spiral of homelessness and possibly generational poverty. Here, an eviction prevention system that combines rental and legal aid can systematically stabilize low-income renters, facing acute tradeoffs between rent and another expenses.

Even in a perfect system where all extremely low-income individuals had rents calibrated to their income, income or expense shocks will happen.³³⁶ For example, without assistance how could Ms. Gordon afford the \$500 fee for not signing her lease on her fixed income? How could Mr. Tsegay make rent when his hours were cut due to contracting COVID-19? These shocks like a predatory tow or other unexpected expense, illness, layoffs, or massive medical bill commonly threaten housing stability.

Income for American families, particularly low-income families, varies significantly, putting the ability to pay rent at risk.³³⁷ Income insecurities like layoffs, reduced work hours, and inconsistent scheduling disproportionately fall on low-income, low-wealth communities, people without a college degree, and communities of color.³³⁸ More than twenty-five percent of households experienced major economic hardship once over three years, including fifty percent of Black and Latine households with children.³³⁹

336. See, e.g., Mihir Zaveri, *As Thousands Fall Behind on Rent, Public Housing Faces 'Disaster,'* N.Y. TIMES (Jan. 23, 2023), <https://www.nytimes.com/2023/01/23/nyregion/rent-crisis-public-housing.html> (describing the need for assistance for subsidized housing resident and the impact on affordable housing entities like New York City Housing Authority (NYCHA) when they fail to collect rent at sustainable rates).

337. See, e.g., Karen Dynan, Douglas Elmendorf & Daniel Sichel, *The Evolution of Household Income Volatility*, BROOKINGS INST. (Dec. 2012), <https://www.brookings.edu/wp-content/uploads/2016/06/household-income-volatility-dynan.pdf> (finding a thirty-percent increase in income volatility concentrated at the tails of the income distribution).

338. Christian Weller, *Working-Class Families Are Getting Hit from All Sides*, CTR. FOR AM. PROGRESS (July 26, 2018), <https://www.americanprogress.org/article/working-class-families-getting-hit-sides>.

339. Arloc Sherman et al., *Widespread Economic Insecurity Pre-Pandemic Shows Need for Strong Recovery Package*, CTR. ON BUDGET & POL'Y PRIORITIES (July 14, 2021), <https://www.cbpp.org/research/poverty-and-inequality/widespread-economic-insecurity-pre-pandemic-shows-need-for-strong>.

Sometimes these shocks are driven by businesses or systems designed to take advantage of low-income people's lack of access to cash.³⁴⁰ Consider late fees: when families are late on rent, landlords charge fines and fees, often reaching hundreds of dollars per month.³⁴¹ A non-consensual tow can cost vehicle owners five hundred dollars after three days.³⁴² Without hundreds of dollars in savings or access to loans to recover a car, a family may not earn enough to catch up on rent. Other fines and fees that cause acute financial challenges for low-income households include traffic tickets, court fees, parole supervision fees, jail phone calls, and DNA lab testing fees.³⁴³ Debt itself—from payday loans and student loans to credit card bills—may also push families from being able to make rent to having an acute income crisis. Families then face impossible choices: pay the fees now or potentially lose the home later. While a variety of policy and legal solutions may be necessary to curb predatory and extractive behavior, cash is the solution for families in the throes of an acute shock.

And most low-income households do not have sufficient cash to simultaneously make rent and resolve an income or expense shock. Approximately forty percent of adults—and disproportionately higher numbers of low-income adults—could not pay a four hundred dollar expense without borrowing or selling something.³⁴⁴ The lack of financial cushion occurs in a context where sixty percent of households experience financial shock in a given year, with the median cost approaching \$2,000. In a Pew Survey, more than fifty percent who reported a shock, “struggled to ‘make ends

340. See, e.g., Abhijit Banerjee, Esther Duflo & Garima Sharma, *Long-term Effects of Targeting the Ultra Poor Program*, (Nat'l Bureau of Econ. Rsch. Working Paper, 2021), https://www.nber.org/system/files/working_papers/w28074/w28074.pdf (defining poverty traps and describing the effects of “Big Push” policies that help very poor households get out of poverty).

341. See, e.g., Jennifer Brown, *Two Paychecks from Eviction: Coronavirus Shined a Light on Colorado Housing Instability*, COLO. SUN (Feb. 24, 2021), <https://coloradosun.com/2021/02/24/two-paychecks-away-from-eviction-coronavirus-shined-a-light-on-colorado-housing-instability> (describing late fees and non-rent costs reaching into the thousands); see also Donna Bryson, *The Aurora Eviction Case That Turned into a Challenge of Late Fees Across Metro Denver*, DENVERITE (Aug. 1, 2019), <https://denverite.com/2019/08/01/the-aurora-eviction-case-that-turned-into-a-challenge-of-late-fees-across-metro-denver/>; see also Leung et al., *supra* note 319, at 13 (finding that neighborhoods with higher concentrations of corporate landlords had higher rates of serial eviction filings that raise costs through expensive fines and fees).

342. W. CTR. ON L. & POL'Y, *TOWED INTO DEBT: HOW TOWING PRACTICES IN CALIFORNIA PUNISH POOR PEOPLE* (Mar. 18 2019), <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>.

343. Kiese Hansen & Joanna Smith-Ramani, *Set Up to Fail: Fines, Fees, & Financial Insecurity*, ASPEN INST. FIN. SEC. PROGRAM (Jan. 28, 2021), <https://www.aspeninstitute.org/wp-content/uploads/2021/01/2020-AFN-FinesandFees.pdf>.

344. FEDERAL RESERVE, *REPORT ON THE ECONOMIC WELLBEING OF US HOUSEHOLDS IN 2018*, at 21 (May 2019), <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>.

meet'' after an expensive shock, including fifty percent of low-income people, sixty-eight percent of very low-income people and seventy-three percent of extremely low-income people.³⁴⁵ The cost of these shocks alone for extremely- and very low-income people often range between eighteen to thirty days of income.³⁴⁶ Where these shocks compound—like a tow that leads to missed work that leads to missed rent that leads to an eviction—recovery can take months. In contrast, timely rental assistance that covers rent and prevents an eviction, when a family spends its last dollar on recovering a towed vehicle, creates stability.

In the context of the economic drivers of eviction, this Part makes the promise and limitations of eviction prevention efforts clear. While anti-displacement efforts offer a critical housing lifeline to families who chronically cannot pay enough under conditions of ever-increasing rents, eviction prevention systems cannot meaningfully address the broader economic conditions accelerating housing unaffordability. In contrast, eviction prevention systems can permanently resolve acute financial crises that lead to evictions by ensuring that families can address those issues and make rent.

VI. Conclusion: A Light Towards Better Policy: How the Pandemic Policy Helps Us See the End of the Non-Payment Eviction System

During the pandemic, we decided housing was essential. We banned non-essential evictions and funded emergency rental assistance programs to keep landlords whole and cure tenant debts. As this article shows, the eviction machine is deeply unjust and economically irrational. The pandemic showed us that we once did and could again live in a world where we respond to financial shocks and the causes of eviction with assistance and social services instead of lightning-fast displacement, saving money in the process.

At the policy level, society's efforts to deem housing essential and eviction non-essential offer a roadmap to dramatically reducing non-payment evictions and the catastrophic consequences precipitated by the speed and violence of an eviction. Especially in cases driven by financial shocks or corporate policy, like that of Mr. Tsegay, we can end eviction. Rental assistance plus access to supportive services and legal aid offer the win-win-win, keeping tenants in their homes, making landlords whole, and saving society money. Even in cases where a tenant may be unable to maintain rental payments, such an eviction prevention infrastructure facilitates less violent and disruptive displacement and offers tenants time and social services to transition.

At the operational level, the pandemic showed how to implement household stabilization services in a way that is responsive to the race between the check and the sheriff. If we spend the money, we should make sure it

345. THE ROLE OF EMERGENCY SAVINGS IN FAMILY FINANCIAL SECURITY, PEW CHARITABLE TRUSTS 7 (Oct. 2015), https://www.pewtrusts.org/-/media/assets/2015/10/emergency-savings-report-1_artfinal.pdf.

346. *Id.*

stabilizes households. Best-practice emergency-rental-assistance programs use eviction diversion to facilitate settlement,³⁴⁷ offer a fast lane for and limit means testing to speed the delivery of rental assistance,³⁴⁸ emphasize racial equity in service delivery,³⁴⁹ and integrate legal aid and other services.³⁵⁰ These implementation best practices dramatically increase stability for renters and landlords while minimizing state violence—violence that disproportionately affects BIPOC and Latine communities.

More aspirationally, the pandemic showed us that a just-housing stabilization system would be built on a right to housing and achieved through an entitlement to affordable housing. It would enable us to eliminate eviction as a means of property recovery, as rental-aid and social services systems would be designed to swiftly and comprehensively respond to financial shocks that currently trigger evictions.

The pandemic showed us that the trauma of an eviction that disproportionately impacts Black mothers with children is not a fact of nature. It can be reduced. In a permanent continuation of the pandemic protections, Black communities and other communities of color—that have historically been redlined and reverse redlined, excluded and targeted—would have more protections against discrimination and displacement. Landlords would stay whole. Public budgets would see savings. We could buy time for our economy to build affordable housing, offer rent stabilization, and take on exploitation that drives housing instability.

While such a national system is achievable, it will take a political mobilization. In the interim, the federal government, states, and localities can take leaps towards ending eviction and building a more just housing system. This article shows that every eviction avoided is worthwhile. Each eviction prevented saves a family from human suffering and long-term economic harm.

Some of these leaps are within sight: with enough political support at the federal level, we can authorize permanent emergency rental assistance under a variety of formats. Senators Bennet and Portman have a bill,³⁵¹ the

347. Mark Treskon et al., *Eviction Prevention and Diversion Programs: Early Lessons from the Pandemic*, URB. INST. (Apr. 2021), https://www.urban.org/sites/default/files/publication/104148/eviction-prevention-and-diversion-programs-early-lessons-from-the-pandemic_0_0.pdf.

348. Sam Gilman, *Using Community Income Levels Help Tenants Get Emergency Rental Assistance*, HARV. JOINT CTR. ON HOUS. (Oct. 28, 2021), <https://www.jchs.harvard.edu/blog/using-community-income-levels-help-tenants-get-emergency-rental-assistance>.

349. Katherine Reynolds et al., *Building Racial Equity into Emergency Rental Assistance Programs*, URB. INST. (Aug. 18, 2021), https://www.urban.org/sites/default/files/2021/08/18/building_racial_equity_into_emergency_rental_assistance_programs.pdf; Emily Bramhall et al., *Equity Trade-Offs in the Design of COVID-19 Emergency Assistance*, URB. INST. (July 28, 2021), <https://www.urban.org/research/publication/equity-trade-offs-design-covid-19-emergency-assistance>; Ingrid Gould Ellen et al., *supra* note 157.

350. *See, e.g.*, Aiken et al., *supra* note 150.

351. *See* Eviction Crisis Act, S. 2182, 117th Cong. (2021).

Bipartisan Policy Center³⁵² and Furman Center³⁵³ also have put forward ideas. The federal government could fund and states could implement these programs, building on the pandemic-created infrastructure.

While evictions may have rebounded to their pre-pandemic norm, as the nation faces the headwinds of inflation and affordable housing shortages, a return to the inhumanity of the eviction system is not necessary or guaranteed. As Philadelphia showed us, evictions do not have to return to pre-pandemic levels after the expiration of federal funds. It's a policy choice. The Philadelphia model includes mandatory mediation, just cause eviction protections, access to counsel, emergency rental assistance, and extreme limitation on evictions for infrequent non-payment. The Houston model includes emphasis on racial equity. The Colorado model offers effective and rapid client service. The Massachusetts model offers stronger tenant defenses. The case studies show us that with sufficient funding, local commitment, mandatory diversion, and integrated rental assistance we can stop seventy percent or more of the evictions as Philadelphia did.

In short: we have the tools to replace the racialized violence of the eviction system with the humanity of a safety net.

352. BIPARTISAN POL'Y CTR., HOUSING AMERICA'S FUTURE: NEW DIRECTIONS FOR NATIONAL POLICY (Feb. 2013), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/03/BPC_Housing-Report_web_0.pdf.

353. See Ellen, Ganz & O'Reagan, *supra* note 131.

Lessons Learned by a Landlord from a Housing Stability Program

*Trevor Samios**

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I. Introduction

Each year across the United States, thousands of individuals and families face eviction and displacement from their homes, primarily due to their inability to consistently afford rent. Housing instability, coupled with other forms of hardship like joblessness, income loss, and rising expenses, most severely affect residents with extremely low to moderate incomes. These families also have the least ability to recover from a financial hardship or disruption. This instability is compounded by the rising cost of living in our cities and towns and the failure of federal assistance programs to serve most eligible households.

Evictions have been widely shown to be a negative social determinant of health. Threat of eviction increases anxiety and depression in tenants. Further, a tenant who has been evicted is at greater risk of a future eviction. Repeat evictions can lead to chronic homelessness, which in turn is directly linked to a high risk of morbidity and premature death. For families, eviction and the fall into homelessness have been linked to several negative youth health and educational outcomes.

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Eviction leaves a lasting legal mark on affected individuals and families, with each Housing Court filing a permanent, publicly accessible record for all household members named in the filing. This record alone directly undermines an individual or family's ability to find new housing for years following the filing. Regardless of the eviction filing's outcome, this lasting mark remains, adversely affecting individual credit ratings and the accessibility of financial tools and products. Further, under current policies in many states, eviction from subsidized housing can ban individuals and families from receiving housing benefits for a period of months and even years, leaving those already struggling with housing instability few options for future assistance.

In addition, evictions not only adversely affect individuals but also directly contribute to the financial and social challenges borne by cities and towns, by adding to the growing homelessness pandemic, exasperating public healthcare systems, and increasing the myriad costs associated with each.

Evictions are also expensive to property owners and operators. Within WinnCompanies' managed communities across the United States, evictions create a considerable financial burden to ongoing operations. Eviction cases often cost considerably more than the amount owed by a tenant for non-payment of rent, especially for subsidized housing renters. Total eviction costs (incorporating lost rent, bad debt, legal fees, repairs, marketing, leasing, and other costs) can range from \$2,500 and \$8,000 per evicted household. These costs do not include significant time dedicated by salaried staff.

Ultimately, the eviction process is one that plays out over weeks and months, from initial notice of late payment to the filing of eviction proceedings and, in many states, a Housing Court ruling. For all housing owners and operators, large and small, this timeline and process allow for multiple Housing Stability interventions to be implemented upstream, both helping to prevent and halt the eviction process.

Since the period leading up to the pandemic, WinnCompanies has participated in the City of Boston's Eviction Prevention Task Force. The Task Force, commissioned by then-Boston Mayor Marty Walsh in 2018, sought to better understand the role of eviction within the context of the City's affordable housing crisis and then set out a series of recommendations for city government, housing owners and operators, legal service providers, housing courts, advocates, and philanthropy and community-based organizations aimed at systematically averting displacement and lowering evictions for those most vulnerable. A key responsibility for the Task Force was to review past years' eviction data within the City, gathered from housing courts, to understand exactly where and how evictions were occurring. An immediate finding of this review was that affordable housing owners and operators were significant contributors to evictions within Boston.

In December 2019, the Task Force released its recommendations, an Action Plan to Reduce Evictions in Boston,¹ along with new proposed

1. CITY OF BOSTON, ACTION PLAN TO REDUCE EVICTIONS IN BOSTON (2019), https://www.boston.gov/sites/default/files/file/2020/01/An_Action_Plan_to_Reduce_Evictions_in_Boston_%28report%29%20200109_1.pdf.

regulations, requiring property owners using City of Boston funding for income-restricted housing development to implement best practices outlined by the Task Force as well as to share eviction and displacement risk data with the City for ongoing tracking efforts, a key deficit outlined by the Task Force in combatting evictions.

In parallel to the City's Task Force, WinnCompanies set out to review our own operations and implement changes that would lower the likelihood of evictions within the housing portfolio that we manage. We understood through our participation in the Task Force that there were many ways we and our peers had both contributed to unnecessary evictions in the past and the necessity of organizations like ours to be at the forefront of eviction prevention moving forward. WinnCompanies, assisted by former Greater Boston Legal Services attorney Jay Rose, began work on a plan to lower evictions within our portfolio by fifty percent within five years.

Senior leadership at WinnCompanies convened a housing stability working group in December 2019 with the objective of creating organization-wide eviction-prevention goals and an implementation plan. The working group included representation from property management, development, legal, compliance, resident services, communications, and asset management teams within our organization. The working group was charged with shaping and implementing ongoing housing stability protocols, establishing and supporting best practices, reinforcing and training toward regional guidance and protocol, monitoring quality assurance, and reinforcing accountability. This working group created WinnCompanies' Housing Stability Program, in early 2020,² a comprehensive set of innovations in process, communication, and accountability focused on housing stability. The program included an implementation plan for each state in our national portfolio with state-tailored trainings for over 2,000 of WinnCompanies' property management staff participating.

Focusing on strengthening our commitment to eviction prevention across our national rental housing portfolio, WinnCompanies designed the Housing Stability Program to employ a variety of strategies within our property management operations to relieve barriers to housing stability among lower-income renters, seek to assist tenants who have fallen behind on their rent, and serve as a blueprint for operators of multi-family affordable and mixed income housing to do the same.

Implementing the Housing Stability Program's standard operating procedures was a massive endeavor exacerbated by the rise of the COVID-19 pandemic shortly after our the program's launch. With tens of thousands of tenants immediately affected by job or income loss, WinnCompanies announced an eviction moratorium for our owned portfolio, communicating to residents they would not be evicted due to financial hardships through no fault of their own. State and federal eviction moratoria followed shortly thereafter. As the U.S. Treasury began to initiate Emergency Rental Assistance Program (ERAP) funding distribution to states, we began

2. The plan is summarized, *infra*, in Section II.

to map these assistance programs state by state and then build updates to our Housing Stability Program trainings to incorporate these programs' mechanics in our trainings to team members.

We created an infrastructure of operating protocol, tracking, accounting, and streamlined rental assistance offerings for our staff and residents, taking ownership of the preparation of ERAP applications to relieve residents and their families of this substantial burden amidst their financial hardship. Our goal in creating the program was to design and implement a new operational and cultural approach to housing stability through our work as a property manager. We wanted to make eviction the last resort, not our first reaction, while preserving the rental income stream so fundamental to both functional communities and our organization. Under this program, property management teams must exhaust every effort to work with households behind on their rent before issuing a Notice to Quit that would in turn trigger the eviction process. We help support tenants applying for benefit and unemployment applications; recertify incomes to account for changing finances to the date of actual occurrence; create achievable rent payment plans; mediate disputes; focus our attorneys on preserving tenancies; and leverage state and local rental assistance. These changes to our standard operating procedures also afforded us the ability to balance the real business needs of our clients and their need for rental collections and cash flow stability that was necessary to the ongoing operations of affordable housing communities and the ecosystem of housing.

Since March 2020, over 55,000 households have successfully participated in WinnCompanies' Housing Stability Program. As a result, over 121,000 residents have averted eviction for non-payment because of the program, accessing over \$55 million in Emergency Rental Assistance. WinnCompanies has not evicted a single household who has worked in good faith with our team members as part of the Housing Stability Program. With the necessary support of Emergency Rental Assistance funding, the program has largely been successful to date in maintaining the balance of affordable housing for both renters and owners. In addition to the thousands of residents who have benefited, the program has mitigated tens of millions in losses when accounting for reductions in the operating costs of eviction.

WinnCompanies' Housing Stability Program does not waive household lease obligations, including the obligation to pay rent, or does it ignore lease violations for criminal behavior, violence, or other activities that endanger the health and well-being of the community. It simply provides a viable path forward for residents who demonstrate a good-faith effort to meet their obligations. The next section describes the Program in greater detail.

II. Winncompanies' Housing Stability Program

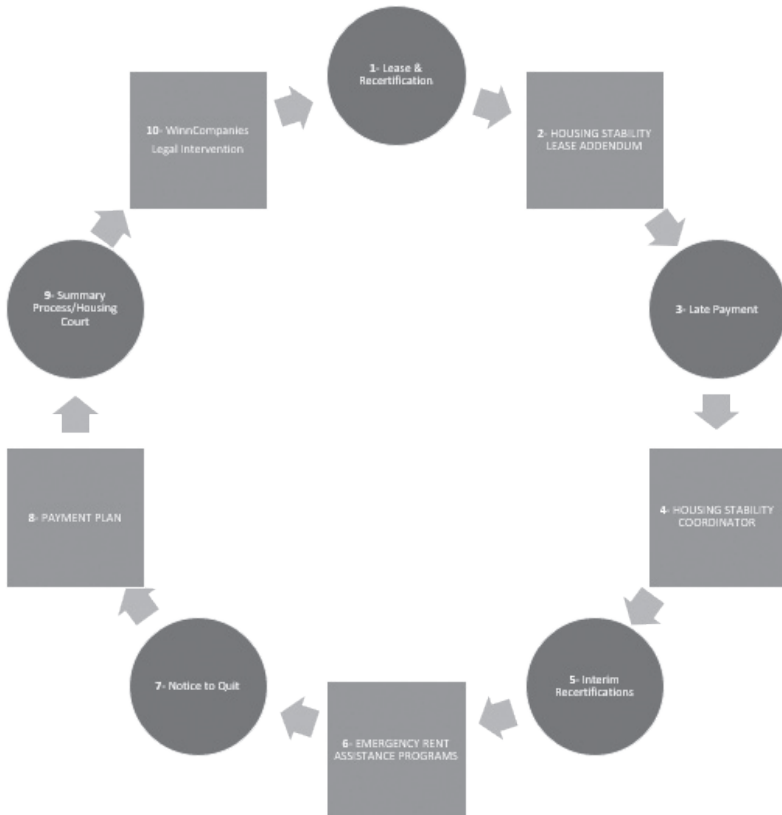
The Housing Stability Program aims to reduce WinnCompanies' evictions by **fifty percent from 2020 to 2025**. While household rent payment is critically important to both the survival and maintenance of the housing stock of our communities, much can be done to stabilize households in financial peril. The Program employs a variety of innovative strategies to relieve barriers to housing stability among lower-income renters and mitigate

traditional routes to eviction filing in affordable and mixed-income housing. This effort will proactively and sustainably preserve housing stability for individuals and families and help to serve as a blueprint for operators of multifamily affordable and mixed-income housing to do the same.

Adapted to conform to each state that WinnCompanies operates within, the Housing Stability Program formally offers four strategic features for our property operations team. Key innovations in each of these component areas are featured in detail throughout the Housing Stability Program plan. For example, in pursuit of resident education and engagement, the Program emphasizes communication with tenants by employing “Housing Stability Coordinators,” who conduct outreach, perform retroactive income certifications in the event a tenant loses income, provide financial coaching, and help tenants apply for rental assistance. The Program also anticipates payment plans and mediation with tenants. In addition, WinnCompanies directs its legal counsel to prioritize preserving the tenancy.

As illustrated below, the Program begins when a tenant first applies for a unit and continues throughout the tenancy.

Figure 1



A. Program Overview

1. Lease and Education

In welcoming a new individual or family into a WinnCompanies' managed community, we take pride in our "New Resident and Renewal Orientation." As with all aspects of housing operations, resident engagement and education are vital to ensuring that each new or renewing household understands the community they live in, from its amenities and staff to the guidelines, policies, rules, and regulations that govern both their lease and operations of the community. It is also imperative that new and recertifying residents understand these aspects in their preferred language and, if needed, have access to multi-lingual assistance and support. Our lease education process for each household outlines rent payment terms (security deposits, rent and charges, rent payment method options, etc.), timelines, and communication necessary from each resident, as well as what each household can expect from our property management team to support this effort. Each property management team is responsible to make sure that each household understands the terms of their lease and renewal or recertification with respect to rent and the expectations *from* and resources available *to* each household relative to monthly rent collections. Tenants are encouraged to contact us for assistance if they experience financial hardship. New and renewing households have access to orientations each year.

2. Housing Stability Notice

To further support the move-in and renewal/recertification process, a "Housing Stability Notice" is reviewed and signed by both residents and the property manager each year. The move-in process is a review of complicated legal and compliance documentation, and the Housing Stability Notice is designed to ensure that each household clearly understands both its lease obligation to pay on time and in full as well as the support, tools, rights, and resources available to them when facing a financial hardship. The property management team provides a tailored, individual household overview of the following for discussion with each household:

- Household rent obligation
- Rent due date and rent schedule
- Rent payment method options (in-person location, mail, online, etc.)
- Rent payment frequency options (weekly-monthly)
- Fee schedule (late fees, etc.) if applicable
- Recertification process (if applicable)
- Property management team contact information
- Overview of collections/legal process and timeline (late notice, Notice to Quit, etc.)
- Overview of on-site Connected Communities (resident services) team and resource/supports availability

- Introduction and demonstration of CONNECT,³ WinnCompanies' resident resource finding technology
- Definition and overview of reasonable accommodations and process for submission/approval
- Overview of Enterprise Income Verification process⁴ (if applicable)
- Financial hardship review/verification and process
- Eligible rental assistance (city, state, and philanthropic emergency rent, utility, and basic needs resources) based on household eligibility and application support
- Local mediation services available
- Legal counsel recommendation (legal services referral)

Feedback from move-in surveys and the affordable housing industry (2019–2023) shows that many residents did not have the time to fully understand the components of their lease, key resident responsibilities and resources available should they face housing instability. The Housing Stability Notice and training each property management team receives ensures that each household will have the opportunity to review this document in-person (and with a third party if needed) with their property manager, ask questions, and gain a fuller understanding of the rent obligation, collections process, and the supports available to them. The Housing Stability Notice includes plain language and is discussed in conversation with the household (also available for Limited English Proficiency needs).

3. Rent Payment Options

The total tenant portion of rent in each community is due by the first of the month and is considered late by the fifth of each month. Each month, the Housing Stability Program is triggered when households fail to meet this rent obligation on time. Delinquency reporting is reviewed by each property management team on the fifth day of the month. Any resident failing to meet its rent obligation on time receives a “Rent Reminder (Balance Due Notification),” sent as a proactive measure on the fifth of the month, outlining the following:

- Overview of lease payment terms;
- Household rent obligation;
- Rent payment method options (in person location, mail, online, etc.);
- Rent payment frequency options (weekly, bi-weekly, monthly, etc.);

3. WINNCOMPANIES, CONNECT (2023), <https://connect.winncompanies.com> [hereinafter Connect Platform].

4. U.S. Dep't of Hous. & Urb. Dev., Enterprise Income Verification (EIV) System, (https://www.hud.gov/program_offices/public_indian_housing/programs/ph/eiv (last visited May 4, 2023)).

- Fee schedule (late fees, etc.) if applicable;
- Property management team contact information;
- Emergency Rent Assistance options available to the household;
- Brief overview of interim recertification process (if eligible) to alert household of retroactive rent adjustment options available due to a change in income.

Rent Reminder letters are an effective measure of the Housing Stability Program that typically result in initial household contact with the property management team to discuss payment plan options, available rent assistance or the interim recertification process. Because many residents are paid in different ways and with varying frequency, rent payment options ensure each household has the opportunity to pay rent in ways that are most effective for them. All rent reminder letters are kept in the household file.

4. Housing Stability Coordinator

A core innovation of the Housing Stability Program is the creation of a “Housing Stability Coordinator” for each affordable and mixed-income housing community. The Housing Stability coordinator is an existing property management team member, specifically the Senior Property Manager or Regional Manager, within their regional portfolio. The primary responsibility of the Housing Stability Coordinator is to support property management team members who meet with families, offering a variety of unique and supportive services to residents facing a life change or financial hardship that affects their ability to pay rent on time or in full. These include the following:

- **Proactive Outreach:** Residents are largely unaware of the programs, services, and resources available to them when facing a financial hardship. Working closely with the property management team, the Housing Stability Coordinator ensures that rent-reminder letter distribution is followed with proactive phone calls and email to relevant households. The date, time, and description of conversations or messages left are recorded and maintained in the household’s file. Between the fifth and tenth of each month, Housing Stability Coordinators, using the current delinquency reporting available to each property, proactively reach out to households failing to meet their lease rent obligation by the fifth of the month. Initial outreach is offered from the fifth and tenth of each month to gather information on household financial hardship or situation, offer a range of resources and available services, and provide direct updates to the property management team charged with collections operations.

- **Brief Counseling:** Residents can meet with the on-site Housing Stability Coordinator by in-person or virtual appointment, or over the phone/email for a brief session to gain one-time emergency rent assistance information and coordination for a past due balance, a direct assistance referral, or to begin outlining a payment plan so rent payment can be paid in full prior to the end of the current month if possible.
- **Stability Consultation:** If a resident or household requires additional assistance or support, Housing Stability Coordinators are available to conduct a more in-depth assessment to determine barriers to assistance or other types of support that may be needed. Working closely with the properties' community coordinator or property manager, stability consultation helps to assist residents directly in applying for rent assistance, obtaining needed benefits to maximize income supports, etc. Consultations will also help to mediate disputes with property management, or to locate needed resources like childcare, adult education, legal assistance, or employment that may be adversely affecting the resident or household's income or expenses.
- **Mediation:** Housing Stability Coordinators are trained each year in mediation techniques that help to address and resolve a range of challenges from lease violations to non-payment to neighbor-to-neighbor disputes. Should internal staff not be accepted as "neutral parties" in mediation, the property management team will offer and coordinate for third-party mediation services to be provided to the household at no cost to them.
- **Assessments & Resource Referrals:** Non-payment is often a byproduct of other factors affecting a family like a crisis, inadequate benefits, or sudden loss of income. In addition, many residents required to complete annual recertifications struggle to assemble the wide range of needed information and documentation required for this process. Working with our strong network of community partners, a key part of Housing Stability Coordination and resident services is a basic housing stability assessment to better understand the household's situation and then leveraging the experience of local organizations that provide a range of resources, support and coaching for individuals and families. Resource referrals are documented and followed up with to ensure households access needed supports.
- **CONNECT:** Using WinnCompanies' CONNECT platform,⁵ residents have access to over three million national services and resources for direct navigation and self-referral to needed assistance like local childcare, healthcare, job training, placement opportunities, and more. If

5. Connect Platform, *supra* note 3.

additional navigation support is needed, all property management staff and the Housing Stability Coordinators are trained to assist residents directly.

- **Financial Coaching Workshops:** In-person and virtual workshops are held to offer resident education in a group setting and are facilitated by experienced, third-party organizations. Topics may include CONNECT navigation, financial education and budgeting, maximizing credit scores, and many more.

Ultimately the Housing Stability Coordinator offers a range of proactive support, service coordination, and accountability focused on assisting residents to meet their lease obligations, find needed supports and resources, and resume stability for the months ahead sustainably.

5. Recertification

WinnCompanies' recertification process offers innovations that elevate the industry standard for responsible affordable and LIHTC outreach and rent adjustments based on changes to income and expenses. This critical tool is leveraged to proactively communicate with and assist households facing financial hardship and rent payment challenges with the goal to provide new options, resources, assistance and adjustments where necessary, altering the tenant paid portion of rent to the real date of income/expense change, prior to filing the Summary Process (described below) and beginning eviction proceedings. Interim recertifications may be offered to eligible households at any point, but proactive outreach occurs for delinquent and eligible households on the tenth of each month to offer this resource.

Residents often do not report decreases in income or increased expenses immediately and, as a result, may struggle to meet their monthly rent obligation. Even when reported, this communication may be done long after the change occurred, resulting in an industry standard of rent adjustment made only when the property management team is alerted of the change. WinnCompanies' property managers and appropriate staff are trained to proactively reach out to delinquent households to uncover reduced income and increased expenses when rent is late and, if necessary, obtain proper income and hardship verifications to identify whether the household qualifies for a lower rent. WinnCompanies' policy allows for interim recertifications to be made retroactive (up to eleven months or one month following the last recertification) to the first month following the actual job or income loss, greatly assisting households who feel overwhelmed at their current rent obligation in these situations. If the resident holds a Housing Choice Voucher, management will both encourage and directly assist the resident to request an interim recertification from the applicable administrator or local housing authority. Property management will work with public housing agencies or voucher administrators in this case to expedite interim recertification information collection and processing. For delinquent households, senior/regional property managers overseeing Project-Based Section 8

properties should regularly review any interim recertifications completed. Interim recertification should be compared against the documentation in the file to ensure that the rent decrease was implemented the first of the month immediately following the household's income loss/reduction, even if the resident failed to report the change in a timely manner. This is an opportunity to support households who experienced an adverse change to their family's finances and who may not have been able to immediately report the change.

6. Emergency Rental Assistance

Emergency Rental Assistance (ERA) programs have been shown to dramatically reduce evictions when implemented effectively. WinnCompanies team members are trained each year to understand their state, county, city, and philanthropic ERA programs available in detail so as to offer the best possible assistance and support for households facing financial hardship.

For those households who have failed to make contact with property management by the fifteenth of the month, staff begin to assemble Emergency Rent Assistance applications on behalf of the affected households to be reviewed with each household once communication is engaged. Management directly assists residents in applying Emergency Rental Assistance funds if the household meets the qualifications. WinnCompanies works closely with ERA providers to ensure applications, required documentation, and constant communication are available, streamlining the ERA process to support the resident. As property management teams have access to information, documents, and technology needed to complete and submit assistance applications, WinnCompanies has made this service a core part of its protocol for property management teams. Working closely with emergency rent support providers, state agencies and philanthropies in each state, WinnCompanies has helped to streamline this traditionally arduous process for both property managers and residents facing hardship. All ERA program required information is assembled for each affected household to be reviewed individually and provides a thoughtful and thorough overview of hardship income or job loss, increased expenses and/or other life situations that may inhibit the household's ability to meet their rent obligation sustainably. Property management will follow applicable rental assistance guidelines as warranted and provided by the rental assistance administrator. This information and its compilation also assist in Payment Plan development (see Section 8), maximizing efficiency and limiting resident stress.

7. Notice to Quit

In tandem with the assembly of ERA application information, the "Notice to Quit" or "14/30-Day Notice" is often a needed accountability step and tool employed to encourage household communication about delinquency for those who have not met with the property management team. A Notice to Quit is also a precondition to filing in court in many jurisdictions, but it is

not a court filing and does not affect a tenant's ability to find housing if a future landlord conducts a records check. Because a Notice to Quit is a formal document that might be misinterpreted by tenants as a court order, we couple that document with direct outreach in plain language.

A delinquency report is run on the 5th and 10th day of the month. Any resident who continues to owe rent is issued a Notice to Quit. The notice shall be served by either a constable or a staff member. If a staff member serves the Notice to Quit, a "Certificate of Service" must be completed by that staff member. A copy of the Notice to Quit and Certificate of Service is then to be placed in the resident's file. Any applicable housing authorities on all Section 8 tenancies should be copied and applicable language per the public housing agency incorporated. In addition, the Notice to Quit will be provided to the community's Housing Stability Coordinator for additional follow-up by phone and posted notice.

It is important to note that the Notice to Quit serves as a pre-filing accountability step for all households with rent balances who have failed to respond to the Late Notice, proactive housing coordinator outreach, and other reminder outreach made by property management staff. The Notice to Quit typically results in most tenants either paying the balance in full, being supported with rental assistance, or beginning a payment plan process with property management staff. As the Notice to Quit may also trigger a household reporting a downward adjustment in income, the interim recertification will be initiated and processed by property management, halting the eviction proceedings for the household.

8. Payment Plan

By the fifteenth of the month, property management teams reach out with already populated payment agreements based on the known income and expenses of the household. Property management then adjusts the payment agreement with such households that more fully delves into current income and expense changes to ensure the agreement is constructed with the relevant data. The payment plan agreement will focus on what is both achievable and sustainable for the affected household as well as reasonable for the landlord. As such, WinnCompanies will allow property managers and legal counsel to create payment agreements for such low-income households in areas at a length significantly higher than the industry average: for a term up to nine months in repayment (or lower pending individual household circumstances). Any exceptions shall be reviewed and approved by the property's regional vice president if the situation warrants additional time and is viable for all parties. This agreement does not waive the right to future legal action; however, if the payment plan is honored, it will eliminate the need for a summary process filing (as described below). If the payment plan is not honored and a resolution is not reached, however, property management and legal counsel will immediately proceed with the summary process filing.

9. Summary Process Filing

If rent collection efforts have been unsuccessful by the tenth day after the Notice to Quit was issued, Winn will send a "Pending Court Letter" directly to the resident. This letter outlines the imminent court action for failure to pay rent, while offering solutions and resources that will avoid the need for court altogether, initiating yet another upstream communication. The goal of the attorney letter is to successfully negotiate rent payment solutions with the resident and eliminate the need for a Summary Process.

Upon expiration of the Notice to Quit, each delinquent household's account is reviewed to determine if payment has been made. If the household communicates a downward change in income and is eligible, an interim recertification will be started, halting the current eviction proceedings. If the resident is still in arrears, does not have a payment plan, or has not responded to the multiple means of outreach and support, the site must complete a "Pre-Court Checklist" indicating that all outreach efforts to the resident have been made. The Pre-Court Checklist will be submitted to the senior/regional property manager for approval prior to contacting the legal counsel to commence legal action. Outreach by both the property management team and Housing Stability Coordinator will continue during this time.

Communication is a key challenge for residents facing financial hardships or in need of additional support. Experience teaches that many residents do not take the in-house payment agreements or the possibility of an eviction action as seriously as they should until they are served by a constable with a summary process eviction case and court date. This is problematic if Winn Companies wants to avoid the stigmatizing impact to residents of a "Housing Court Record" as described above.

Fortunately, a creative reading and use of Rules of Summary Procedure rules suggest a solution. In Massachusetts, most civil actions are initiated by the filing in court of a summons and complaint (the lawsuit) and payment of the filing fee. Only then may a constable serve the papers. Summary Process, however, is different. A landlord cannot file or "enter" an eviction action in court until it is first served by a constable on the resident. By completing the paperwork in advance, the property manager or legal counsel may pick an entry or filing date which can be between seven and thirty days after service. Most legal counsel pick the shortest timetable to have the case before the judge as soon as possible, which can be as soon as ten days from initial entry. Our Housing Stability Program prescribes that we instead pick the latest day possible for entry of the case in court and thereby create an extra two to three weeks between service and the deadline for filing in court.

During this time period, legal counsel will contact the resident directly and offer the resident an opportunity to once again enter into a payment agreement. Entering into a signed agreement before the Summary Process entry date will stop the attorney from filing the Summary Process. Compliance with the terms will negate the need for court action. If the resident

still fails to enter into an agreement, the attorney will file the Summary Process. In some cases, this might require having a constable serve a new summons and complaint with a new /later entry date. In this case, the earliest entry day will be chosen, but all innovative payment provisions will still be offered.

This series of resolution opportunities creates a needed safety net for each delinquent household, systematically lowering Summary Process filing across WinnCompanies' managed portfolio. In addition, all attorneys that perform legal services for communities owned and managed by WinnCompanies must adhere to the Housing Stability Program guidelines outlined below. Legal counsel conduct are guided by WinnCompanies "Guiding Principles," specifically that "Clients and residents are our focus. They are our priority as we nurture mutually beneficial relationships." Key features of this guidance include the following:

- Legal counsel shall treat residents with respect at all times;
- Legal counsel shall focus on tenancy preservation through sustained support and repayment, not eviction;
- Legal counsel should be mindful that self-represented residents are often at a disadvantage through language, mental health, and other barriers. Legal counsel shall make every effort to ensure interpreter services are available and residents are encouraged to seek support from the Housing Court attorney of the day and representatives from eviction diversion programs;
- Repayment agreements will be allowed for up to nine months or pending individual household circumstances and/or based on owner terms;
- Summons and complaint will only list adult heads of household, not minors or other lease holders;
- Repayment agreements will state that the payment terms will be modified if a resident experiences a documented loss of income subsequent to making the agreement;
- Legal counsel will offer the following in the agreement if household is eligible/interested: voluntary rep payee services and the opportunity/application assistance to apply for ERAP and/or other rental assistance;
- All residents in project-based Section 8 developments will be offered retroactive recertifications if applicable;
- Residents will be offered the ability to name a third party to also receive formal paperwork in order to minimize defaults;

- After the rent is paid in full, probationary periods will be limited to a maximum of six months. Residents will have one automatic “right to cure” late rent. Managers will have discretion to allow resident more than one chance;
- Motion to Issue Execution for a material violation of the repayment agreement will be limited to issues raised in the Notice to Quit;
- Priority will be given to preserving voucher if tenancy cannot be saved;
- Legal counsel will request WinnCompanies prior approval of all form agreements;
- Legal counsel will attend annual “Housing Stability” training provided by WinnCompanies;
- Legal counsel performance evaluations in accordance with the Housing Stability Program will be conducted at least once annually;
- Remote technology (Zoom, Docusign, etc.) will be offered to all residents both prior to and throughout Housing Court by legal counsel so the household has access to mediation services, eviction diversion programs and/or payment plan negotiation.

B. Program Summary

The COVID-19 pandemic’s myriad economic effects have required an unprecedented response to and collaboration between federal, state, and local governments, housing owners, advocates, and residents as communities nationwide face the looming fear of eviction and displacement. Simultaneously, the pandemic has shown a spotlight on the inequities already present in so many communities nationwide, further compounding disparities in healthcare access, education, employment and civic engagement. With the continued rise in cost of living nationwide and inadequate availability of federal assistance programs, non-payment eviction now stands as one of our nation’s most important issues as we look ahead toward recovery and sustainable resilience in the future. While payment of rent is critically important to both the survival of, and the maintaining of quality for, the housing stock of our communities, WinnCompanies believes that evictions can often be avoided – with partnerships and cooperation among all parties. We believe that many of the root causes of housing instability can be met upstream, countered, and result in dramatic reductions of non-payment eviction filing and execution. Through a combination of resident education, engagement and fostering of trust, pro-active resident cooperation, a fundamental cultural shift in property management operations relative to rent collection and access to financial assistance, and innovations in legal counsel eviction protocol, we believe the

Housing Stability Program can serve as a national model for eviction prevention by strengthening housing stabilization. This program is intended to be a living guide and resource for housing owners and operators, residents, advocates and communities alike, designed to learn from and adapt to challenges met along the way.

Since creating this program in 2019 and launching in 2020 across our portfolio, we have learned a great deal about what works in strengthening housing stability and eviction prevention. From our work convening resident and community focus groups to participating in national forums centered on housing stability, a number of proven practices have emerged to create a solid foundation for housing stability for housing owners, operators, and residents alike. Published in February 2023, the Urban Institute's "Preventing and Mitigating Evictions After the COVID-19 Crisis"⁶ is perhaps one of the best distillations of these practices. A working group convened by the Urban Institute, including WinnCompanies, coalesced around a series of practices that have proven to divert otherwise certain evictions:

1. Remove barriers for residents in their housing search and use transparent processes when establishing tenancy;
2. Use clear, accessible, and equitable communication through all stages of tenancy;
3. Proactively connect residents to resources and encourage communities of support, to help residents stay stable throughout their tenancy;
4. Allow flexibility in terms, processes, and payments for renters to reduce the likelihood of eviction; and
5. Commit to procedures that prioritize eviction diversion in the case of non-payment or late payment.

These principles, along with the tools shared by WinnCompanies and many of our peers, are quite literally changing the traditional practices of affordable housing property management. Property managers can embrace comprehensive, collaborative policies that reduce evictions and homelessness but also preserve the rental income owners need to maintain the quality housing that communities deserve are fundamental at this moment.

C. Challenges Loom

Across affordable housing communities nationwide, there is a concerning convergence of phenomena. Dramatically rising rental delinquency, local, state, and federal pandemic-era tenant protection policies, overwhelmed

6. KATHRYN REYNOLDS ET AL., URB. INST., PREVENTING AND MITIGATING EVICTIONS AFTER THE COVID-19 CRISIS (Feb. 2023), <https://www.urban.org/sites/default/files/2023-01/Preventing%20and%20Mitigating%20Evictions%20after%20the%20COVID-19%20Crisis.pdf>.

housing courts, and the tapering of vital emergency rental assistance funding are all clashing at once. From the “recipe for disaster”⁷ most poignantly outlined with the New York City Housing Authority’s current struggles to the looming capital needs deferred by many owners and operators throughout the pandemic, rental delinquency is an immediate cause for concern, especially as operating costs continue to escalate within affordable housing.

Within WinnCompanies’ own managed portfolio, for every three households who elected to participate in the Housing Stability Program, one household does not. The confluence of eviction moratoria, eligibility prioritization for rental assistance, misinformation, and a myriad of other barriers have now left many households at real risk of eviction as delinquency mounts and rental assistance wains. ERA funding, Eviction Lab’s founder Matt Desmond has said, represents “the deepest investment in low-income renters the federal government has made since” and perhaps “the most important eviction prevention policy in American history.” These ERA programs were fundamental to the success of WinnCompanies’ Housing Stability Program, but the post-pandemic “new normal” for operators brings a wealth of new financial stressors. High staff turnover, higher costs across the board, and spikes in rental delinquency have significantly limited options for owners and operators of affordable housing in the promotion of housing stability.

D. Call for Collaboration

WinnCompanies continues to implement our Housing Stability Program and its practices. In our home state of Massachusetts, we are fortunate to have one of the nation’s best-funded, best-designed emergency rental assistance programs. Those programs continue to make our Housing Stability Program successful in eviction diversion. This program was made possible because, at the pandemic’s onset, Massachusetts convened all parties to understand the big picture and brainstorm equitable strategies forward. Challenges remain, certainly, but efforts to improve the process continue to this day.

Our hope is that the same commitment to constructive collaboration occurs in 2023 among the federal government, states, multifamily owners, advocates, and communities themselves. We are all confronting the doubled-barreled challenge of record-high labor, maintenance, insurance and construction costs alongside continuing rental delinquencies that place people and housing within our towns and cities at risk.

Partnership across the rental housing ecosystem is more necessary at this moment than perhaps ever before.

7. Mihir Zaveri, *As Thousands Fall Behind on Rent, Public Housing Faces ‘Disaster,’* N.Y. TIMES (Jan. 23, 2023).

III. Conclusion

The COVID-19 public health pandemic's myriad economic effects have required an unprecedented response to and collaboration between federal, state, and local governments, housing owners, advocates, and residents as communities nationwide face the looming fear of eviction and displacement. Simultaneously, the pandemic has shown a spotlight on the inequities already present in so many communities nationwide, further compounding disparities in healthcare access, education, employment, and civic engagement. With the continued rise in cost of living nationwide and inadequate availability of federal assistance programs, non-payment eviction now stands as one of our nation's most important issues as we look ahead toward recovery and sustainable resilience in the future. While payment of rent is critically important to both the survival of, and the maintaining of quality for, the housing stock of our communities, WinnCompanies believes that evictions are a reality that can often be avoided—with partnerships and cooperation among all parties. We believe that many of the root causes of housing instability can be met upstream, countered, and result in dramatic reductions of non-payment eviction filing and execution. Through a combination of resident education, engagement and fostering of trust, pro-active resident cooperation, a fundamental cultural shift in property management operations relative to rent collection and access to financial assistance, and innovations in the legal counsel eviction protocol, we believe the Housing Stability Program can serve as a national model for eviction prevention by strengthening housing stabilization. This program is intended to be a living guide and resource for housing owners and operators, residents, advocates, and communities alike, designed to learn from and adapt to challenges met along the way.

Anticipating the Impact of the White House’s Blueprint for a Renter Bill of Rights

Nathan Cummings & Anika Singh Lemar***

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Introduction

On January 25, 2023, the Biden White House released a “Blueprint for a Renter Bill of Rights” (Blueprint).¹ The document sets the stage with a few key statistics on the state of the rental market in the United States: it notes that average rents across the country skyrocketed by 17.2% in just one year from February 2021 to 2022, threatening to exacerbate housing insecurity for the “roughly 35 percent of the U.S. population[] [that] live in rental housing.”² Yet, as the Blueprint also notes, there is no “comprehensive set of federal laws protecting renters”—only a “patchwork of state and local laws and legal processes that renters and rental housing providers must navigate.”³

To address this deficit, the Blueprint “lays out a set of principles to drive action by the federal government, state and local partners, and the private

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1. Domestic Pol’y Council & Nat’l Econ. Council, *The White House Blueprint for a Renter Bill of Rights*, WHITE HOUSE (Jan. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights-1.pdf> [herein after *Blueprint*].

2. *Id.* at 4.

3. *Id.*

sector to strengthen tenant protections and encourage rental affordability.⁴ It sets forth “five common-sense principles” for renters’ rights, namely “Safe, Quality, Accessible and Affordable Housing; Clear and Fair Leases; Education, Enforcement, and Enhancement of Renter Rights; the Right to Organize; and Eviction Prevention, Diversion, and Relief.”⁵ Under each of these umbrella categories, the Blueprint catalogues a number of specific action items that federal agencies will take or explore to increase protections for tenants. These action items draw in a broad cast of characters, including the Department of Defense (DoD), the Department of Agriculture (USDA), the Federal Housing Finance Agency (FHFA), the Federal Trade Commission (FTC), the Consumer Financial Protection Bureau (CFPB), and the Department of Housing and Urban Development (HUD).⁶

The Blueprint arrives at a transitional moment in U.S. policy on landlord-tenant relationships. The past few years have seen a groundswell of attention to tenants’ rights issues across the United States, driven by the pressures of the country’s ongoing affordable housing crisis and recently spurred to new heights by the COVID-19 pandemic, inflation, and a marked slowdown in housing construction during and after the Great Recession.⁷ Beginning in March 2020, the federal government enacted sweeping and unprecedented emergency protections for tenants—from federally funded ERA programs to the CDC’s eviction moratoria—that are now drawing to a close.⁸ The Blueprint represents a turning point in this “post-pandemic pivot”: both a product of the recent political energy around tenants’ rights⁹

4. Press Release, White House, FACT SHEET: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability (Jan. 25, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability>.

5. Blueprint, *supra* note 1, at 4.

6. *Id.* at 6–7, 9, 11–13, 15, 17–18.

7. See Kelly Hogue & Heather K. Way, *The Role of the Law in Protecting Tenant Organizing: Opportunities for Local and State Legal Reforms*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 391, 399–402 (2023); Alexander Hermann, *Past Recessions Might Offer Lessons on the Impact of COVID-19 on Housing Markets*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV. (Apr. 27, 2020), <https://www.jchs.harvard.edu/blog/past-recessions-might-offer-lessons-on-the-impact-of-covid-19-on-housing-markets> (“After the Great Recession, housing production stalled for years, due largely to the high levels of homebuilding preceding the crash, the corresponding financial crisis, and the severity and length of the recession.”).

8. See Noah M. Kazis, *Can Affordable Housing Be a Safety Net? Lessons from a Pandemic*, 132 YALE L.J. FORUM 412, 413–14 (2022).

9. See Meir Rinde, *Biden Has Power to Impose Rent Control, Say Housing Advocates*, SHELTERFORCE (Sept. 1, 2022), <https://shelterforce.org/2022/09/01/biden-has-power-to-impose-rent-control-say-housing-advocates> (quoting Homes Guarantee campaign director Tara Raghuvver: “Up until basically exactly right now, rent control and rent regulation were basically a third-rail political issue, completely untouchable by anyone really at any level of government, much less the federal government. Now, based on how dire the inflation crisis is, and how painfully it’s hitting American households’

and a sign that the winds may now be changing. Several commenters have noted that the Blueprint's focus on executive-branch action reflects the political realities of a newly divided Congress through 2024.¹⁰ As the possibility of meaningful legislative reform affecting tenants' rights grows more distant, the White House has issued a call to action for federal agencies, state and local governments, and private actors to step in.

But what does the Blueprint mean, in practical terms, for housing providers and tenants across the country? Is it a preview of more dramatic things to come, or a swan song for an era of action that is now coming to a close? And what long-term effects might its specific policy actions have? While the answers to these questions will only become fully clear in the coming months and years, this essay offers some initial reflections in response. At a minimum, the Blueprint is an important acknowledgment of the tenants' rights movement's recent resurgence and a restatement of many of its key principles. However, the document itself omits meaningful historical context as to where these principles came from and how they have been deployed in practice, which makes it more difficult to envision how future stakeholders might convert its recommendations into concrete policy changes. We attempt to provide some of that context in this Essay. More concretely, the Blueprint's focus on agency actions in lieu of legislation raises both concerns about enforcement, particularly during Republican presidential administrations, and the specter of future litigation battles testing the limits of the executive branch's ability to affect landlord-tenant relations. Will tenants see the benefits of new language in federal mortgage documents or even in regulations?

Part I of the Essay provides some context for how the Blueprint came to be, including the organizing efforts and negotiations that led up to its release, and examines how it fits into the broader history of tenants' rights issues at the federal level. Part II traces the Blueprint's key prescriptions back to their origins at the state and local level, looking at how notable recent campaigns and victories by tenant advocates are embodied in the document's text. Part III provides some very preliminary thoughts on the potential legal ramifications of the Blueprint's federal policy measures.

I. Overview of the Blueprint

A. *The Blueprint's Content: "More Talk Than Action?"*

Before examining what the Blueprint is, it is important to clarify what it is *not*. The Blueprint itself does this at the outset, disclaiming itself as a "white paper" and "statement of principles" that "is not binding and does not . . . supersede, modify, or direct an interpretation of any existing

pocketbooks, people's hunger for the federal government and specifically the president to act is shifting . . .").

10. Rachel Siegel, *White House Unveils New Tenant Protections amid Soaring Rental Costs*, WASH. POST (Jan. 26, 2023), <https://www.washingtonpost.com/business/2023/01/25/white-house-renter-protection>.

Federal state, or, local statute, regulation, or policy.”¹¹ It does not create any consequences for state, local, and private actors who fail to protect the “rights” that it sets forth under its five key principles.¹²

The Blueprint’s laundry list of specific policy interventions is similarly nondirective. It catalogues the promises that federal agencies have already made to explore potential ways in which tenant protections can be strengthened, but does not itself issue any new mandates for further agency action.¹³ The White House singled out the following set in its initial press briefing for particular attention:

- The FTC and CFPB will “collect information to identify . . . a broad range of practices” that negatively affect tenants’ ability to find housing, including background checks, the use of algorithms in tenant screenings, and the use of source-of-income information in making housing decisions.¹⁴
- The FHFA will “launch a new public process to examine proposed actions promoting renter protections and limits on egregious rent increases for future investments.”¹⁵
- The U.S. Department of Justice (DOJ) will host a workshop on “anti-competitive information sharing, including in rental markets.”¹⁶
- HUD will initiate a new rulemaking to require that public housing authorities (PHAs) and project-based rental assistance property owners provide thirty days’ notice before evicting tenants for nonpayment of rent.¹⁷

While it is still too early to gauge the long-term effects of these reforms—although we offer some tentative initial thoughts in Part III—it is clear that their impact out of the gate is likely to be minimal.¹⁸ Many of the Blueprint’s listed policy items do not have any immediate effect and only commit the agency in question to “explore,” “launch a process” towards,

11. Blueprint, *supra* note 1, at 2.

12. *Id.*

13. *Id.*

14. Press Release, White House, *supra* note 4; see Blueprint, *supra* note 1, at 6, 12.

15. Press Release, White House, *supra* note 4; see Blueprint, *supra* note 1, at 6. On May 31, 2023, the FHFA issued a Request for Input, see *infra* discussion p. 129.

16. Press Release, White House, *supra* note 4; see Blueprint, *supra* note 1, at 6.

17. Press Release, White House, *supra* note 4; see Blueprint, *supra* note 1, at 17.

18. See Cadwalader, Wickersham & Taft LLP, *Biden-Harris Administration Issues White Paper Addressing Tenants’ Rights*, NAT’L L. REV. (Feb. 14, 2023), <https://www.natlawreview.com/article/biden-harris-administration-issues-white-paper-addressing-tenants-rights> (noting that, while the Blueprint’s “action plans and proposals have the potential to seriously affect owners and operators of multifamily housing,” it is “more of a statement of ideas . . . than it is concrete policy” and “will require sufficient additional detail and fine-tuning before any potential implementation”).

or “seek public comment” on potential reforms.¹⁹ Those actions that will produce direct results generally affect only a small portion of the nation’s overall housing market, such as the USDA’s pilot of a new “uniform and independent inspection protocol” to ensure adequate housing conditions for the 400,000 multifamily rental housing units that it supports with loans, loan guarantees, and grants.²⁰

Although the Blueprint’s specific action items are purely federal, it also issues a call to action for state, local, and private actors to build on the foundation it has set. The White House paired the Blueprint’s release with a “Resident-Centered Housing Challenge” directed at state and local government actors and private firms, calling on them to “strengthen practices and make their own independent commitments that improve the quality of life for renters.”²¹ The Biden administration has touted a number of early sign-ons: for example, Wisconsin and Pennsylvania’s housing finance authorities committed to stabilizing rent at five percent year-over-year in their portfolio of funded properties, and the National Association of Realtors has agreed to create new resources for its members to further “resident-centered property management practices,” such as advertising acceptance of Housing Choice Vouchers (HCVs).²² Yet the Challenge, which was scheduled to take place over spring 2023, is purely voluntary, and it imposes no consequences for states, local entities, and private firms that elect not to participate.²³

For all of these reasons, some commenters have framed the Blueprint as “more talk than action.”²⁴ Prior to the Blueprint’s release, a group of

19. Blueprint, *supra* note 1, at 6.

20. *Id.* at 9.

21. Press Release, White House, *supra* note 4; see also Letter from Marcia L. Fudge, Sec’y, U.S. Dep’t of Hous. & Urb. Dev. (Mar. 7, 2023), https://www.hud.gov/sites/dfiles/PA/documents/Junk_Fees_Memo_SOHUD_signed.pdf (issuing a statement “amplifying the White House’s Challenge and urging all housing providers, as well as state and local governments, to take action to limit and better disclose fees charged to renters in advance of and during tenancy”).

22. Press Release, White House, *supra* note 4.

23. See Siegel, *supra* note 10 (“[A] core tension is whether the[] initiatives [proposed under the Blueprint pillars] will gain steam, especially if they are not mandated or tied to federal funding.”); Sean Keenan, *What Could White House Proposal for Tenants’ Bill of Rights Do for Atlanta Renters?*, ATLANTA CIVIC CIRCLE (Feb. 1, 2023), <https://atlanta.civiccircle.org/2023/02/01/white-house-housing-plan-could-help-atlanta> (quoting tenant organizers’ observations that the Blueprint lacks enforceable penalties for states who fail to follow its principles); NAHMA *Strategic Foresight: Resident Centered Property Management (RCPM) Challenge*, NAT’L AFFORDABLE HOUS. MGMT. ASS’N (Mar. 9, 2023), <https://www.nahma.org/meetings/resident-centered-property-management-session> (discussing potential industry responses to the Challenge).

24. Nick Pipitone, *The White House’s Renters Bill of Rights Is Likely More Talk Than Action*, PROPMODO (Feb. 3, 2023), <https://www.propmodo.com/the-white-houses-renters-bill-of-rights-is-likely-more-talk-than-action>; see also Jessi Turnure, *Tenant Advocates: White House ‘Renters Bill of Rights’ Falls Short*, WKRN.COM (Jan. 31, 2023), <https://www>

progressive legislators led by Rep. Jamal Bowman and Sen. Elizabeth Warren had sent a joint letter to the president proposing a more assertive approach than was ultimately taken in the final draft.²⁵ Recommendations proposed but not ultimately adopted in this letter included “directing the FTC to issue rent-gouging regulations similar to price-gouging regulations and using FEMA to move people experiencing homelessness into permanent affordable housing.”²⁶ The final product failed to take these bold steps, opting instead for a far more incremental approach.²⁷

Initial reactions to the Blueprint’s scope fell along predictable lines: industry representatives raised concerns about its potential overreach, while tenants’ rights groups criticized it for not going far enough. The National Apartment Association (NAA) has framed the Blueprint as a close call, opining that “NAA’s advocacy helped avert an executive order advanced by renters advocates and members of Congress, which would have imposed immediate policy changes.”²⁸ On the other side, the National Low Income

.wkrn.com/washington/washington-dc/tenant-advocates-white-house-renters-bill-of-rights-falls-short (quoting Tara Raghuvver’s description of the Blueprint as “a plan to make a plan”); Roshan Abraham, *Housing in Brief: Biden Unveils New Measures to Protect Tenants and Desegregate Housing*, NEXT CITY (Jan. 26, 2023), <https://nextcity.org/urbanist-news/housing-in-brief-biden-unveils-new-measures-to-protect-tenants-and-desegreg> (calling the Blueprint “baby steps toward larger policy goals, not the bold plan advocated hoped for”); Brian O’Connell, *How The White House “Renters Bill of Rights” May Affect You*, THE STREET (Jan. 30, 2023), <https://www.thestreet.com/personal-finance/white-house-renter-bill-of-rights> (describing the Blueprint as “[not] exactly a nothing burger,” but calling out its absence of “any direct action against the sky-high cost of rentals”).

25. Letter from Sen. Jamal Bowman et al. to President Joe Biden (2023), https://bowman.house.gov/_cache/files/9/7/97843cbc-7540-41e1-bcb5-3f56e93b4b1b/725554DDDCB60C25457119DDEBB0328F.letter-to-biden-admin-on-rent-inflation-warren-bowman-01092023.pdf; Blueprint, *supra* note 1, at 2.

26. Abraham, *supra* note 24.

27. While the most obvious explanation for this reluctance is simple politics, the Supreme Court’s recent hostility to perceived agency overreach may have also played a role. See *infra* notes 135–39 and accompanying text.

28. NAA Update on the Biden Administration’s “Renters Bill of Rights,” NAT’L APARTMENT ADMIN. (Jan. 25, 2023), <https://www.naahq.org/naa-update-biden-administrations-renters-bill-rights>; see also NMHC Statement on White House Housing Action to Promote Rental Affordability, NAT’L MULTIFAM. HOUS. COUNCIL (Jan. 25, 2023), <https://www.nmhc.org/news/press-release/2023/nmhc-statement-on-white-house-housing-action-to-promote-rental-affordability> (“While [the Biden administration has] rejected calls for failed policies such as national rent control, we are disappointed they are pursuing potentially duplicative and onerous regulations that are already appropriately addressed under state and local law. These efforts will do nothing to address the nation’s housing shortage and could discourage much-needed investments in housing.”); Gabriel Frank, *Should You Be Worried About the Renters Bill of Rights?*, MULTIFAM. REAL EST. NEWS (Jan. 29, 2023), <https://www.multihousingnews.com/should-you-be-worried-about-the-renters-bill-of-rights>; Richard Mize, *Biden Administration Unveils “Renters Bill of Rights,” but What Exactly Does It Include?*, OKLAHOMAN (Feb. 3, 2023),

Housing Coalition (NLIHC)'s president, Diane Yentel, has praised aspects of the Blueprint, but has still criticized it for failing to include asked-for measures like "tak[ing] action to hold corporate landlords accountable for documented, egregious and often unlawful behavior."²⁹ Both sides, however, appear to agree on one point: in releasing the Blueprint, the Biden administration stopped short of directly intervening in landlord-tenant relations.

Given the stakes of the debate, such critiques are perhaps inevitable. But it would be a mistake to underestimate the Blueprint's significance given the broader context in which it arose—as we argue in the following section.

B. *The Blueprint's Context: Tenants' Rights on the National Stage*

One of the Blueprint's most distinctive features is its very existence. It arrives at a unique moment of "energy and focus" and a crest in the generational political cycle around tenants' rights issues.³⁰ The history of tenant organizing in the United States was laid out in detail in the last issue of this *Journal*,³¹ but to briefly summarize: after a wave of tenant organizing in the early 1970s and early 1980s that produced victories like the implied warranty of habitability and the "right to purchase," tenant issues fell by the wayside in the mid-1980s as organizing efforts declined amidst a general lull in political urgency.³² In the past several years, however, tenants' rights issues have gained significant momentum across the country, starting with the late-2000s foreclosure crisis and more recently spurred to new heights by the pandemic.³³ This movement has expanded nationally across state and local borders, moving beyond its traditional focus in big cities as the United States' housing crisis has increased pressure on landlords and tenants across a broad spectrum of local contexts.³⁴

<https://www.oklahoman.com/story/business/real-estate/2023/02/03/white-house-blueprint-for-a-renters-bill-of-rights-hits-with-a-thud/69854405007>.

29. @dianeyentel, TWITTER (Jan. 25, 2023, 5:06 AM), <https://twitter.com/dianeyentel/status/1618188467997126658>.

30. See Miriam Axel-Lute, *Tenants Rights: It's Not a Moment, It's a Movement*, SHELTERFORCE (Nov. 14, 2022), <https://shelterforce.org/2022/11/14/tenants-rights-its-not-a-moment-its-a-movement>.

31. See Hogue & Way, *supra* note 7, at 394–99.

32. Karen Ceraso, *Whatever Happened to the Tenants Movement?*, SHELTERFORCE (May 1, 1999), <https://shelterforce.org/1999/05/01/whatever-happened-to-the-tenants-movement>. For other sources tracing the ebb and flow of the tenants' rights movement and legal tenant protections over time, see, for example, Edward Rabin, *Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517 (1984); and David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389 (2011).

33. Hogue & Way, *supra* note 7, at 399; Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 555 (2021).

34. Sophie Kasakove, *The Tenants' Rights Movement Is Expanding Beyond Big Cities*, NEW REPUBLIC (May 17, 2019), <https://newrepublic.com/article/153929/tenants-rights-movement-expanding-beyond-big-cities>.

The Blueprint represents both an acknowledgment of and a key turning point in this movement. It is the product of a broader, years-long advocacy campaign spearheaded by tenants' rights organizations including Homes Guarantee, People's Action, NLIHC, and the National Housing Law Project (NHLP).³⁵ Tenant groups have long pushed for a "national renters bill of rights"³⁶: Homes Guarantee, in particular, has made this document the centerpiece of its policy platform since 2019.³⁷ During engagement sessions leading up to the Blueprint's release, advocacy groups pushed the Biden administration to take immediate measures to safeguard tenants, including issuing an executive order imposing nationwide rent stabilization measures³⁸ and opening investigations into "predatory" institutional

35. Ramenda Cyrus, *The Tenants Who Went to Washington*, AM. PROSPECT (Feb. 9, 2023), <https://prospect.org/api/content/89741582-a7fb-11ed-802e-12b3f1b64877>.

36. See Nia Johnson, *Hear Us: A National Tenants' Bill of Rights Is Foundational for Race Equity*, NEXT CITY (Nov. 18, 2021), <https://nextcity.org/urbanist-news/hear-us-a-national-tenants-bill-of-rights-is-foundational-for-race-equity>. The idea of a "tenant's bill of rights" or "renter's bill of rights" has become increasingly widespread among organizers over the past ten years, both as an informal political organizing platform and—in some cases—as a formally codified legal document. See CREATE Initiative, *Renter's Bill of Rights*, UNIV. OF MINN. (Feb. 2020), <https://create.umn.edu/wp-content/uploads/2020/02/Renters-Bill-of-Rights.pdf> (defining a "renter's bill of rights" as "a suite of legal mechanisms that protect renters from landlord exploitation," which may be "framed . . . as a cohesive policy tool but are often enacted independently," and which "point[] to a broad narrative grounded in a universal right to safe and health housing"); *The California Tenant Bill of Rights*, TENANTS TOGETHER, <https://www.tenants-together.org/california-tenant-bill-rights> (outlining ten universal rights for California renters, including safe and affordable housing, court access, and the right to organize). Organizers in some jurisdictions have succeeded in passing tenants bills of rights into law: Washington, D.C., for example, enacted such a bill in 2015 and requires landlords to supply applicants with a copy of the legislation. See D.C. MUN. REGS. tit. 42, § 42-3531.07(8) (2023); D.C. OFF. OF THE TENANT ADVOCATE, OTA 2015.07.03, D.C. TENANT BILL OF RIGHTS, <https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/2015%2007%2003%20OTA%20DC%20Tenant%20Bill%20of%20Rights%20ODAI-OTA%20FINAL.pdf>. For other local examples, see, for instance, Committee Substitute for Resolution No. 190934, Kansas City, Mo. City Council (Dec. 12, 2019), <https://www.kcmo.gov/home/showpublisheddocument/5360/637262617325600000>; and Miami-Dade Cnty., Fla. Ordinance No. 22-47 (May 3, 2022), <https://www.miamidade.gov/govaction/legistar/files/MinMatters/Y2022/221055min.pdf>. As the Blueprint itself notes, tenant bills of rights have also been adopted by specific federal agencies, such as the Department of Defense, for their housing portfolios. See Blueprint, *supra* note 1, at 8; *Military Housing Privatization Tenant Bill of Rights*, U.S. DEP'T DEFENSE (Aug. 1, 2021), <https://media.defense.gov/2020/Feb/25/2002254968/-1/-1/0/Revised-MHPI-Tenant-Bill-of-Rights-Effective-08012021.PDF>.

37. People's Action, *A National Homes Guarantee*, HOMES GUARANTEE (Sept. 5, 2019), https://homesguarantee.com/wp-content/uploads/Homes-Guarantee_-Briefing-Book.pdf.

38. *Executive Order on Protecting Tenants and Stabilizing the American Economy*, PEOPLE'S ACTION (Nov. 14, 2022), <https://peoplesaction.org/wp-content/uploads/2023/01>

investors in the rental market.³⁹ The Blueprint falls short of meeting these demands. It is exactly as its title advertises: a “blueprint” towards concrete and enforceable rights for tenants, nothing more. Its equivocal nature is a reflection of the political compromises necessary to get it published.

But while the Blueprint’s immediate practical implications are less than what advocates hoped for (and what industry representatives feared), it is notable—if for no other reason—as one of the first instances in recent memory that tenants’ rights issues have been given a national platform.⁴⁰ It is a key step towards defining a common identity for the tenants’ rights movement, a goal sometimes referred to as “tenants as a class.”⁴¹ It acknowledges the movement’s nationwide expansion by giving the White House’s imprimatur to policy tenets that, only a generation ago, would have been unthinkable outside large urban centers.⁴² It signals the current administration’s sympathy towards tenants’ rights issues and leaves open the possibility of further executive action in Biden’s remaining two years

/Updated-Final-1.23-Rent-Regulations-Executive-Order-w-Sign-ons.pdf.

39. Letter from Diane Yentel, President and CEO, Nat’l Low Income Hous. Coal. & Shamus Roller, Exec. Dir., Nat’l Hous. L. Project, to Janet Yellen, Sec’y, U.S. Dep’t of the Treas. (Aug. 16, 2022), [https://nlihc.org/sites/default/files/Urgently-Needed-Admin-Actions-to-Protect-Renters-and-People-Experiencing-Homelessness_FINAL.pdf?utm_source=NLIHC+All+Subscribers&utm_campaign=e98c5bbf54-NLIHC_081622&utm_medium=email&utm_term=0_e090383b5e-e98c5bbf54-293365474&ct=t\(NLIHC_081622\)](https://nlihc.org/sites/default/files/Urgently-Needed-Admin-Actions-to-Protect-Renters-and-People-Experiencing-Homelessness_FINAL.pdf?utm_source=NLIHC+All+Subscribers&utm_campaign=e98c5bbf54-NLIHC_081622&utm_medium=email&utm_term=0_e090383b5e-e98c5bbf54-293365474&ct=t(NLIHC_081622)).

40. Ayesha Rascoe, *The Biden Administration Plans to Expand Protections for Renters*, NPR (Jan. 29, 2023), <https://www.npr.org/2023/01/29/1152387241/the-biden-administration-plans-to-expand-protections-for-renters> (quoting Diane Yentel: “[T]his is really the first time in decades, I think probably the first time since the Great Depression, that the federal government is acknowledging that there could be an important federal role in preventing rent gouging.”); Genevieve Rand, *Biden’s Blueprint for a Renter’s Bill of Rights*, LIFE FOR FREE (2023), <https://lifeforfree.substack.com/p/bidens-blueprint-for-a-renters-bill> (“There are a few concrete, notable things buried in this announcement, but its real significance is the tenant organizing infrastructure it represents. It marks the first time in what must be many, many decades that a US president has explicitly recognized tenants as a political class and quantifiable voting constituency”); @taraghuveer, TWITTER (Jan. 25, 2023, 7:12 AM), <https://twitter.com/taraghuveer/status/1618220329167638530> (“Today’s announcement affirms a role for the federal government in correcting the imbalance of power between landlords and tenants.”).

41. Conor Dougherty, *The Rent Revolution Is Coming*, N.Y. TIMES (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html>; see also CREATE Initiative, *supra* note 36 (“In addition to the legal protections themselves, public campaigns around a renter’s bill of rights serve as an important reminder that renters have rights in the first place.”); Cyrus, *supra* note 35 (“[T]he Homes Guarantee Campaign managed to bring together average Americans who have one thing in common—rent—and organize them into a tenant-led force that was heard by the White House and Congress.”).

42. Kasakove, *supra* note 34. For a history of New York City’s tenant organizing movement, see generally ROBERTA GOLD, *WHEN TENANTS CLAIMED THE CITY: THE STRUGGLE FOR CITIZENSHIP IN NEW YORK CITY HOUSING* (2014).

in this term.⁴³ And, as we argue in the following part, it provides future campaigns with a high-profile roadmap for further action at the state and local level.

II. The Blueprint's Inspirations

The Blueprint's five principles can be read as a restatement of the modern tenant activist movement's central pillars, as well as a summation of some of its highest-profile recent victories.⁴⁴ Tara Raghuv eer, one of the principal leaders of the Homes Guarantee coalition that was heavily involved in the efforts that led to the Blueprint's release, has called these "organizing hooks," or abstract principles around which to focus further efforts.⁴⁵ Because the Blueprint does not take more definitive federal action, tenant advocates will have to continue to work at the state and local level to achieve sought-after reforms, such as rent control, source-of-income and good-cause eviction protections, and the right to counsel.⁴⁶

Yet the Blueprint does not "cite its sources" by directly naming the past state and local movements from which it draws inspiration. This level of abstraction makes it difficult to picture what it would look like in practice for future organizers to implement these items in their own communities. Accordingly, this part compares some of the Blueprint's major policy buckets to comparable advocacy efforts that have taken place across the country over the past few years. While we do not exhaustively trace back the history of every tenant protection listed in the Blueprint, we do attempt to provide a sampling of some of the more significant ones that it references—and a sense of the future ones that it might inspire.

43. One of the ongoing commitments the Blueprint makes is to host meetings between federal officials and tenant advocates "on a quarterly basis to hear their perspectives on dynamics in the rental markets and opportunities to strengthen tenant protections." Blueprint, *supra* note 1, at 6; see Rand, *supra* note 40 (arguing that the Blueprint suggests "the administration is looking towards developing a Renter's Bill of Rights in the coming years" and that "tenant groups . . . [have] the President's ear").

44. See Shelby R. King, *Tenant Protections 101*, SHELTERFORCE (Nov. 15, 2022), <https://shelterforce.org/2022/11/15/tenant-protections-101> (listing the "[s]ix tenant protections [that] appear on most organizers' wish lists" as "just cause eviction, right to habitability, right to counsel, rent regulation, right to organize/protection from harassment, and tenant opportunity to purchase"). All but the last appear in some form in the Blueprint.

45. @taraghuv eer, *supra* note 40.

46. While the tenants' rights movement has enjoyed significant momentum at the state level over the past few years, it is worth noting that endorsements like the Blueprint also risk sparking conservative backlash. Some state bills were introduced in 2023 that would curtail, rather than expand, renters' rights. See, e.g., H.B. 282, 68th Leg., Reg. Sess. (Mont. 2023) (allowing landlords to terminate leases and recover rent more easily); H.B. 283 68th Leg., Reg. Sess. (Mont. 2023) (expanding state preemption of local government landlord-tenant laws).

A. "Safe, Quality, Accessible, and Affordable Housing"

The Blueprint's first key principle incorporates a number of the tenants' rights movement's core commitments: minimum habitability standards, lower barriers in application and background screening processes, and protections against excessive rents and drastic rent increases.⁴⁷ While the specific policies in this bucket touch on a number of these areas, the one that has received by far the most attention is the FHFA's promise to "launch a process to . . . [explore] policies that limit egregious rent increases at properties with [federally]-backed mortgages going forward."⁴⁸ Although the significance of this relatively noncommittal reference might not be immediately apparent from the document on its face, this single bullet point has sucked up a good bit of the oxygen in the conversation around the Blueprint's release, simply for opening the door to the mere possibility (or specter) of "national rent control."⁴⁹

On May 31, 2023, the FHFA issued a Request for Input (RFI), seeking "public input on issues faced by tenants in multifamily properties."⁵⁰ The RFI is broad in scope as it makes reference to a broad range of tenant issues and concerns. It references relatively broad statutory authorization for Fannie Mae and Freddie Mac to advance affordability and provide leadership in the rental housing market. It also, however, repeatedly acknowledges that those entities' "role in the multifamily housing market limits their ability to influence tenants' housing experiences."⁵¹ At the time of publication, the FHFA is receiving responses to its RFI, and it remains to be seen how or whether it will act on that input, including whether it will advance any form of rent control.

The allusion to rent control in the federal Blueprint reflects rent control's rapid expansion over the past few years. While rent control has historically been limited to large coastal cities with deep rental markets,⁵² it is expanding more broadly today as the nationwide housing affordability crisis causes rental markets to heat up across both rural and urban areas.⁵³ Yet this wave of advocacy is running up against a bulwark of state laws

47. Blueprint, *supra* note 1, at 5.

48. *Id.* at 6.

49. NAT'L MULTIFAM. HOUS. COUNCIL, *supra* note 28; see also Editorial Board, Opinion, *Nationwide Rent Control?*, WALL ST. J. (Jan. 22, 2023), <https://www.wsj.com/articles/nationwide-rent-control-congress-democrats-progressives-housing-president-biden-11674233540>.

50. *Tenant Protections for Enterprise-Backed Multifamily Properties: Request for Input*, FED. HOUS. FIN. AGENCY (May 2023), <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Multifamily-Tenant-Protections-RFI.pdf>.

51. *Id.* at 3.

52. Prasanna Rajasekaran, Mark Treskon & Solomon Greene, *Rent Control: What Does the Research Tell Us About the Effectiveness of Local Action?*, URB. INST. 2 (Jan. 2019), https://www.urban.org/sites/default/files/publication/99646/rent_control._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf.

53. Kasakove, *supra* note 34.

that foreclose local rent control policies, which arose in the 1980s and 1990s as part of a concerted effort by conservative state legislators and interest groups.⁵⁴ The current landscape of rent control policy in the United States is fragmented, with thirty-nine states expressly or de facto preempting it, two (California and Oregon) imposing some form of it statewide, and nine permitting localities to enact it on their own.⁵⁵

Rent control has been an explosive political issue at the state level for the past several years, ever since California voters approved “Proposition 10,” a ballot initiative to repeal statewide rent-control limits, in 2018.⁵⁶ While this measure ultimately failed to pass into law, debates over rent control have only intensified as the pandemic has caused rents to skyrocket around the country.⁵⁷ More than a dozen states are set to consider bills that would establish or expand rent stabilization measures in 2023,⁵⁸ and cities including Portland, Maine, Pasadena, and Santa Monica have also passed such measures in recent months.⁵⁹ Nowhere is this conversation more live than Massachusetts, where Boston’s mayor Michelle Wu has called for a repeal of the state’s three-decade-old ban on local rent control laws.⁶⁰ Still, while political energy around rent control is at an all-time high, the barriers in state legislatures remain substantial. Progressives in Washington, D.C. had hoped to sidestep the grueling process of fighting for rent control state-by-state and city-by-city through an executive order establishing a nationwide policy capping rents.⁶¹ The Blueprint falls short of that ask,

54. Christina Plerhoples Stacy et al., *Rent Control: Key Policy Components and Their Equity Implications*, URB. INST 33 (July 2021), <https://www.urban.org/sites/default/files/publication/104630/rent-control-key-policy-components-and-their-equity-implications.pdf>.

55. *Rent Control Laws by State*, NAT’L MULTIFAM. HOUS. COUNCIL, [HTTPS://WWW.NMHC.ORG/RESEARCH-INSIGHT/ANALYSIS-AND-GUIDANCE/RENT-CONTROL-LAWS-BY-STATE](https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state). The District of Columbia also imposes district-wide rent control.

56. Rajasekaran, Treskon & Greene, *supra* note 52, at 4.

57. New York’s 2019 tenants’ rights legislation expanded rent regulation beyond New York City and its immediate suburbs and allowed localities to adopt it statewide. Vivian Wang, *New Rent Laws Pass in N.Y.: ‘The Pendulum Is Swinging’ Against Landlords*, N.Y. TIMES (Jun. 14, 2019), <https://www.nytimes.com/2019/06/14/nyregion/rent-laws-ny-deal.html>.

58. *2023 Rent Control Outlook*, NAT’L MULTIFAM. HOUS. COUNCIL 2 (Dec. 8, 2022), <https://www.nmhc.org/contentassets/c7692c4e8fd04fd4a36dc67a015a03ff/2023-rent-control-outlook.pdf>.

59. Molly Bolan, *Rent-Control Measures Are Poised for a Big 2023*, ROUTE FIFTY (Dec. 13, 2022), <https://www.route-fifty.com/management/2022/12/rent-control-measures-are-poised-big-2023/380804>.

60. Jared Brey, *What Should Rent Control Accomplish?*, GOVERNING (Jan. 30, 2023), <https://www.governing.com/community/what-should-rent-control-accomplish>.

61. See *supra* note 39 and accompanying text.

meaning that this fight will need to continue at the state and local level in the years to come.⁶²

While a full treatment of this topic is beyond the scope of this essay, it is worth noting that the debate over the Blueprint's reference to rent stabilization mirrors long-running tensions in the housing community between "supply-side" housing advocates and tenants' rights groups.⁶³ Earlier in 2022, the White House released a "Housing Supply Action Plan" that detailed various steps that local communities could take to reduce barriers to housing production.⁶⁴ Industry critics of the Blueprint have argued that its measures threaten to undermine housing production by increasing costs and discouraging new development, and have called on the Biden administration to prioritize the Housing Supply Action Plan over this new document.⁶⁵ On the other hand, many "supply-side" advocates have acknowledged that additional housing production will take years to have an impact on renters' quality of life. In the meantime, because the current housing market's historically low vacancy rates and high rents are substantially tilted towards landlords, other tenant protections may be appropriate.⁶⁶

Beyond rent control, the Blueprint's first principle also references another long-standing centerpiece of the tenants' rights movement: the right to habitable living conditions in rental housing.⁶⁷ The implied warranty of habitability was a major victory for tenants when it was almost universally

62. See Ginny Monk, *CT Housing Committee Won't Vote on Rent Cap This Session*, CONN. MIRROR (Mar. 7, 2023), <https://ctmirror.org/2023/03/07/ct-rent-cap-housing-committee> (describing unsuccessful attempt to pass a statewide rent cap bill in Connecticut's 2023 legislative session).

63. See, e.g., Kriston Capps, *Would AOC's National Rent Control Solve the Housing Crisis, or Make It Even Worse?*, BLOOMBERG: CITYLAB (Sept. 26, 2019), <https://www.bloomberg.com/news/articles/2019-09-26/what-aoc-s-national-rent-control-proposal-would-do> (outlining the debate over the potential negative effects on housing supply of a previous national rent control proposal by Representative Alexandria Ocasio-Cortez).

64. See Press Release, White House, President Biden Announces New Actions to Ease the Burden of Housing Costs (May 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs>.

65. E.g., NAT'L MULTIFAM. HOUSING COUNCIL, *supra* note 28.

66. See Janaki Chadha & Danielle Muoio Dunn, *Group Pushing More Housing Production Backs 'Good Cause' Eviction*, POLITICO (Jan. 3, 2023), <https://www.politico.com/weekly-new-york-real-estate-infrastructure/2023/01/03/group-pushing-eviction-00075884>.

67. Blueprint, *supra* note 1, at 5 ("Owners of rental housing and state and local governments should ensure that homes for rent meet habitability standards . . . are free of health and safety hazards, such as lead or mold [and] . . . provide services and amenities as advertised or included in the lease (such as utility costs and functional appliances) and ensure that the residential housing unit is well maintained (including common areas)").

adopted during the last major wave of organizing in the 1960s and 1970s,⁶⁸ but more recent commentary has highlighted pervasive issues with its lack of enforcement due to procedural and informational barriers and disparate access to resources between landlords and tenants.⁶⁹ Doubtless, as described below, enforcement will be a concern with respect to protections described in the Blueprint as well.⁷⁰ The Blueprint does not go into detail on some procedural and access-to-justice reforms that have been floated to address conditions enforcement,⁷¹ though its restatement of the basic principles underlying the warranty makes clear that this is still an ongoing fight. Future advocates and policymakers should take note of this enforcement gap issue when pushing for reforms that would expand the right to “safe, quality, accessible, and affordable” housing that the Blueprint describes.⁷²

B. “Clear and Fair Leases”

The Blueprint’s second principle focuses on the contractual landlord-tenant relationship, calling on housing providers to draft tenant-friendly leases with digestible language and fair, enforceable terms.⁷³ Evidence has shown that landlords’ use of complicated and unenforceable leases is rampant across U.S. rental markets⁷⁴ and that this practice significantly increases costs for tenants by leading them to pay rental expenses that

68. All states other than Arkansas now recognize some form of affirmative duty on landlords to make necessary repairs and keep the premises in safe and habitable condition. Alan M. Weinberger, *Up from Javins: A 50-Year Retrospective on the Implied Warranty of Habitability*, 64 ST. LOUIS U. L.J. 443, 444 n.4 (2020). Some have gone further by passing so-called “repair-and-deduct” laws, which explicitly authorize tenants to withhold the cost of self-obtained repairs from their regular rent payments. See Ann O’Connell, *State Laws on Rent Withholding and Repair and Deduct Remedies*, NOLO (Jan. 26, 2022), <https://www.nolo.com/legal-encyclopedia/state-laws-on-rent-withholding-and-repair-and-deduct-remedies.html>.

69. E.g., Super, *supra* note 32; Serge Martinez, *Revitalizing the Implied Warranty of Habitability*, 34 NOTRE DAME J.L. ETHICS & PUB. POL’Y 239–80 (2020); Paula A. Franzese, Abbott Gorin & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U. L. REV. 1, 22 (2016) (finding, in study of Essex County, New Jersey, eviction suits, that the implied warranty of habitability was only raised in 0.2% of cases as a defense).

70. See *infra* Section III.B.

71. See, e.g., Martinez, *supra* note 69, at 267–79; Franzese, Gorin & Guzik, *supra* note 69, at 30–42; Weinberger, *supra* note 68, at 458–63.

72. Blueprint, *supra* note 1, at 5.

73. *Id.* at 8.

74. See, e.g., David A. Hoffman & Anton Strezhnev, *Leases as Forms*, 19 J. EMPIRICAL LEGAL STUD. 90 (2022) (examining this phenomenon in the Philadelphia area’s rental market); Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. LEGAL ANALYSIS 1 (2017) (doing the same for Greater Boston).

should properly be borne by landlords.⁷⁵ While the Blueprint has relatively little to offer in terms of concrete federal actions supporting this principle relative to the other policy buckets,⁷⁶ its reference to “appropriately sized” security deposits evokes recent state and local laws that have imposed limits on security deposit terms in leases. New York’s 2019 Housing Stability and Tenant Protection Act (HSTPA) legislation is a particularly high-profile recent example, limiting security deposits to one month’s rent and making it easier for tenants to recover their deposits.⁷⁷ Twenty-seven states and Washington, D.C. currently limit deposits to anywhere from one to three months’ rent, while another twenty-three do not impose statutory limits.⁷⁸ In 2023, some state legislators sought to build on this list: states like California and Connecticut considered lowering their statutory limits,⁷⁹ and states like Vermont evaluated whether to enact them for the first time.⁸⁰

C. “Education, Enforcement, and Enhancement”

One of the central subprinciples contained under the Blueprint’s “fair housing” bucket is preventing discrimination on the basis of a tenant (or prospective tenant)’s source of income, particularly for holders of housing choice vouchers. That the federal government does not include source of income as a protected class under the Fair Housing Act, even as discriminatory practices by landlords undermine the proper functionality of the federal voucher program by frustrating voucher holders’ ability to secure safe and stable

75. Meirav Furth-Matzkin, *The Harmful Effects of Unenforceable Contract Terms: Experimental Evidence*, 70 ALA. L. REV. 1032 (2019).

76. The only listed item is a promise by USDA to promulgate a new tenant-friendly lease across its portfolio of multifamily properties, which will be modeled on a similar template used in HUD Section 8 properties, as well as a set of other tenant protection materials. Blueprint, *supra* note 1, at 9.

77. Among many other protective measures, the legislation also limits application fees, including fees for background checks, to twenty dollars. Luis Ferré-Sadurní, *How New Rent Laws in N.Y. Help All Tenants*, N.Y. TIMES (June 21, 2019), <https://www.nytimes.com/2019/06/21/nyregion/rent-laws-new-york.html>.

78. Ann O’Connell, *Chart: Security Deposit Limits, State-by-State*, NOLO (Apr. 4, 2022), <https://www.nolo.com/legal-encyclopedia/chart-security-deposit-limits-state-29020.html>. Washington State does not impose an absolute limit, but does require landlords to pay the deposit and fees in installments. WASH. REV. CODE ANN. §§ 59.18.260–285 (2023).

79. See A.B. 12, 2023–24 Leg., Reg. Sess. (Cal. 2023); H.B. 6666, 2023 Gen. Assemb., Jan. Sess (Conn. 2023).

80. See H. 135, 2023–24 Gen. Assemb., Reg. Sess. (Vt. 2023).

housing, is a long-recognized irony.⁸¹ In the absence of federal protection, states and local governments have been left to fill in the gaps.⁸²

State-level source-of-income protections have expanded rapidly over the past few years amidst the broader surge in tenant activism. According to a report by the Poverty & Race Research Action Council, the enactment of source-of-income laws in seven states from 2018 to 2022 means that over fifty-seven percent of voucher holders now enjoy some form of protection, up from thirty-four percent five years ago.⁸³ Nevertheless, these laws vary widely in their scope: not all explicitly address voucher status as a protected source, and some have been weakened by subsequent judicial interpretation.⁸⁴ Here, too, the Blueprint stops short of leveling the field with a uniform federal protection for all voucher holders (perhaps unsurprising, given the steep legal and practical obstacles to implementing a new federally protected class solely by executive action). It only “reiterates” the federal government’s biggest current intervention in the area—the Low Income Housing Tax Credit program’s prohibition on voucher discrimination in tax credit-funded properties.⁸⁵

Another key area of focus in the Blueprint’s third bucket is the prevalence of discriminatory practices in background checks for prospective tenants, including credit reports and algorithms that inaccurately penalize certain groups.⁸⁶ Legal scholars Sarah Schindler and Kellen Zale have recently observed how these practices not only disadvantage lower-income, younger, and racial minority individuals, but are also skewed more broadly against individuals with a residential history of renting rather than homeownership. Because only late rental payments are reported to credit

81. See Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act’s New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155, 170–71 (1996); Kim Johnson-Spratt, *Housing Discrimination and Source of Income: A Tenant’s Losing Battle*, 32 IND. L. REV. 457, 465 (1999); Laura Bacon, *Godinez v. Sullivan-Lackey: Creating a Meaningful Choice for Housing Choice Voucher Holders*, 55 DEPAUL L. REV. 1273, 1296–97 & n.208 (2006).

82. See Michael Mouton, APPENDIX B: *State, Local, and Federal Laws Barring Source-of-Income Discrimination*, POVERTY & RACE RSCH. ACTION COUNCIL (Jan. 2023), <http://www.prrac.org/pdf/AppendixB.pdf>.

83. Brian Knudsen, *Expanded Protections for Families with Housing Choice Vouchers*, POVERTY & RACE RSCH. ACTION COUNCIL, <https://prrac.org/pdf/soi-voucher-data-brief.pdf>. While the general trend is towards expansion, a few states—Texas, Iowa, and Indiana—have taken the opposite tack by preempting local source-of-income discrimination prevention laws. See *State Preemption of Local Equitable Housing Policies*, LOC. SOLS. SUPPORT CTR., <https://www.supportdemocracy.org/equitablehousing>.

84. Mouton, *supra* note 82; Beck, *supra* note 81, at 168–70; Johnson-Spratt, *supra* note 81, at 463–65.

85. Blueprint, *supra* note 1, at 12–13. The Blueprint does catalogue some additional federal steps to incentivize equal treatment of voucher holders: for example, it notes that Fannie Mae’s new Expanded Housing Choice pilot program offers a pricing incentive to property owners who agree not to discriminate on this basis. *Id.* at 13.

86. Blueprint, *supra* note 1, at 11–12.

reporting agencies—unlike home mortgage payments, which can improve scores if paid on time—renters are subject to a “one-way, negative ratchet” where their credit can only get worse, not better, over time.⁸⁷

The Blueprint hints at some promising future federal intervention in this area. It relates the CFPB's promise to “identify guidance or rules . . . to ensure that the background screening industry adheres to the law, and coordinate law enforcement efforts with the FTC to hold tenant background check companies accountable for . . . ensur[ing] accurate information in the credit reporting system.”⁸⁸ Last year, the CFPB released a pair of reports highlighting issues with faulty methodologies in the tenant background check industry, including a failure to account for rental payment history, an overuse of reductive digital algorithms, and a failure to provide adverse action notices as required by the Fair Credit Reporting Act.⁸⁹ Given that most credit reporting firms operate on a national level, this may be one of the relatively few policy areas where the Blueprint has the potential to break new ground in a field not yet meaningfully covered by state and local legislation.

D. The Right to Organize

The “right to organize” is not a new concept in the world of federal housing policy. HUD has for decades recognized public housing tenants' right to form “tenant organizations” in order to collectively negotiate with property owners over their living conditions and rental terms, as well as to take certain protected activities in support of organizing efforts like leaflet distribution and on-site meetings.⁹⁰ The Blueprint's policy items under this bucket do not expand much beyond this context, creating similar protections for the relatively small number of tenants in housing that is owned, controlled, or overseen by DoD, as well as expanding funding and opportunities for public housing tenants, including tenants in properties participating in the Rental Assistance Demonstration (RAD) program.⁹¹

Still, the Blueprint's reference to how tenant organizing can help “highlight[] structural issues in housing markets” is clearly a nod to recent, high-profile expansions of the right to organize in private as well as public housing. In particular, San Francisco passed an ordinance in 2022 that

87. Sarah Schindler & Kellen Zale, *The Anti-Tenancy Doctrine*, 171 U. PA. L. REV. 267 (2023), <https://papers.ssrn.com/abstract=4068843>.

88. Blueprint, *supra* note 1, at 12.

89. *Tenant Background Checks Market*, CONSUMER FIN. PROT. BUREAU (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf; *Consumer Snapshot: Tenant Background Checks*, CONSUMER FIN. PROT. BUREAU (Nov. 2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf.

90. 24 C.F.R. § 245.100–.135 (2022) (promulgated in 65 Fed. Reg. 36,281 (June 7, 2022), and 72 Fed. Reg. 73,495 (Dec. 27, 2007)).

91. Blueprint, *supra* note 1, at 15; see also U.S. DEPT. OF HOUS. & URB. DEV., RENTAL ASSISTANCE DEMONSTRATION (RAD) (2023), <https://www.hud.gov/RAD>.

extends sweeping protections for “tenants unions” to engage in collective activities.⁹² The legislation, modeled after the federal National Labor Relations Act (as well as HUD’s own federal tenant protections⁹³), guarantees tenants of buildings with at least five rental units the right to organize into unions upon showing a bare majority of support.⁹⁴ It protects the right to conduct organizing activities in building common areas and requires landlords to meet at least quarterly with tenant unions to confer in good faith.⁹⁵ A landlord’s failure to comply with the ordinance’s provisions allows tenants to petition for a reduction in rent.⁹⁶

It is not clear whether this model will be fully replicable elsewhere. Even prior to COVID, San Francisco had some of the nation’s most tenant-friendly laws and a long history of robust tenant organizing,⁹⁷ and, like many other recent tenant protections alluded to in the Blueprint, its most recent legislation was a product of the unique pressures created by the COVID-19 pandemic.⁹⁸ Nevertheless, the San Francisco experience shows how the right to organize—for decades, a concept largely limited to the federal public housing sphere—is gaining greater currency in the private housing market. Other cities like New Haven, Connecticut, are following San Francisco’s example by also recognizing tenants’ rights to unionize and collectively bargain.⁹⁹ What is more, these rights may have important synergistic effects with other protections championed by the Blueprint—for

92. S.F., CAL. ORDINANCE NO. 32-22 (Mar. 11, 2022), <https://sfgov.legistar.com/View.ashx?M=F&ID=10654228&GUID=CBEAFE47-AF2D-4CAC-B756-F11A8572C68A>.

93. Noah Arroyo, *Proposed Tenant-Organizing Protections Could Shift Balance of Power in SF*, S.F. PUB. PRESS (Nov. 23, 2021), <https://www.sfpublicpress.org/proposed-tenant-organizing-protections-could-shift-balance-of-power-in-sf>.

94. *New Legislation on Tenant Organizing and Tenant Associations*, SF.GOV (Apr. 7, 2022), <https://sf.gov/news/new-legislation-tenant-organizing-and-tenant-associations>.

95. *Id.*

96. David Popoola, *Tenants’ Right to Organize: The Regulation of Tenants’ Unions in San Francisco*, ONLABOR (May 13, 2022), <https://onlabor.org/tenants-right-to-organize-the-regulation-of-tenants-unions-in-san-francisco>.

97. For histories of the tenants’ rights movement in San Francisco, see, for example, Randy Peters, *Tenant Power in San Francisco*, in *RECLAIMING SAN FRANCISCO: HISTORY, POLITICS, CULTURE* 287 (James Brook, Chris Carlsson & Nancy J. Peters eds., 1998); AMY L. HOWARD, *MORE THAN SHELTER: ACTIVISM AND COMMUNITY IN SAN FRANCISCO PUBLIC HOUSING* (2014); and John Baranski, *Something to Help Themselves: Tenant Organizing in San Francisco’s Public Housing, 1965–1975*, 33 J. URB. HIST. 418 (2007).

98. The 2022 ordinance arose as a result of a widely publicized dispute between fifteen tenants’ unions and one of the city’s largest landlords, which refused to meet to discuss the unions’ demands for cancellation of back rents accrued during the pandemic. Popoola, *supra* note 96.

99. See NEW HAVEN, CONN. ORDINANCE no. OR-2022-0017 (Sept. 6, 2022), <https://newhaven-ct.legistar.com/LegislationDetail.aspx?ID=5677250&GUID=8F87DF8D-3539-4E58-965D-4EAC8B953DD5>.

example, by increasing the likelihood that tenant protection conditions in government-funded mortgages are effectively and consistently enforced.¹⁰⁰

E. Eviction Prevention, Diversion, and Relief

Limits on evictions were thrown into the spotlight during the pandemic, and, while the temporary COVID-era moratoria are now largely phased out,¹⁰¹ states are continuing to consider more lasting reforms.¹⁰² The Blueprint acknowledges this political momentum in its fifth principle. Citing well-established literature on the catastrophic and lasting effects that evictions can have on tenants' well-being, financial stability, and long-term success,¹⁰³ it lists a series of policy measures aimed at reducing renters' risk of being evicted and lessening the negative impacts of evictions that do occur.¹⁰⁴ It reiterates the public-health rationale that undergirded the federal government's limits on evictions during the pandemic, noting that empirical results showed a strong correlation between the expiration of eviction moratoria and increased rates of COVID-19 transmission.¹⁰⁵

One of the specific subprinciples that the Blueprint calls out under this category is the right to counsel for tenants in eviction proceedings. This trend kicked off in 2017 with the passage of New York City's "first . . . in the nation" right-to-counsel law guaranteeing low-income tenants legal representation in Housing Court.¹⁰⁶ Since then, it has rapidly spread to other jurisdictions¹⁰⁷: in particular, Detroit passed a Right to Counsel Ordinance in

100. See *infra* notes 158–60 and accompanying text.

101. For a comprehensive overview of eviction moratoria and other renter-supportive measures implemented during the pandemic, see Emily A. Benfer et al., *COVID-19 Housing Policy: State and Federal Eviction Moratoria and Supportive Measures in the United States During the Pandemic*, HOUS. POL'Y DEBATE 1 (2022).

102. During the pandemic, legislators in thirty-seven states plus the District of Columbia introduced 182 bills affecting how eviction lawsuits are adjudicated in the first half of 2021, an increase of more than fifty percent from the entire prior year. Erika Rickard & Natasha Khwaja, *State Policymakers Are Working to Change How Courts Handle Eviction Cases*, PEW CHARITABLE TRS. (Aug. 26, 2021), <https://pew.org/3kj5puX>.

103. See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016); *Why Eviction Matters*, EVICTION LAB (2018), <https://evictionlab.org/why-eviction-matters>; Off. of Pol'y Dev. & Mgmt., *Eviction Prevention Initiatives*, U.S. DEP'T HOUS. & URB. DEV. (Summer 2021), <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight3.html#title>.

104. Blueprint, *supra* note 1, at 16–17.

105. *Id.* at 17 n.xlix (citing Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190 AM. J. EPIDEMIOLOGY 2503 (2021)).

106. See Tonya Myers Phillips & Rebecca Robichaud, *Detroit's Eviction Crisis: How Power and ARPA Funds Could Radically Alter It*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 333, 343 (2023).

107. See, e.g., S.B. 5160, 67th Leg., 2021 Reg. Sess. (Wash. 2021) (codified at WASH. REV. CODE 59.18.650 (2022)); H.B. 6531, 2021 Gen. Assemb., Jan. Sess. (Conn. 2021) (codified at CONN. GEN. STAT. § 47A-75 (2022)); H.B. 18, 2021 Leg., 442nd Sess. (Md. 2021) (codified at MD. CODE ANN., REAL PROP. §§ 8-901 to -911 (2022)); S.F., CAL. NO EVICTION WITHOUT

May 2022 that “is one of the broadest such ordinances in the nation,” guaranteeing legal representation to any income-qualified city resident facing eviction.¹⁰⁸ Right-to-counsel reforms have particularly strong momentum as eviction filing rates have skyrocketed coming out of the pandemic¹⁰⁹ and could potentially sweep the field this year with bills introduced in at least twelve states as of February 2023.¹¹⁰ The federal government has already endorsed the right to counsel as a recommended eviction prevention strategy: in 2021, HUD, DOJ, and Treasury issued a joint letter to American Rescue Plan Act fund recipients encouraging them to use pandemic relief funds to provide legal representation for tenants facing eviction, as well as other measures like court navigators and diversion programs.¹¹¹

A second subprinciple the Blueprint endorses is “just- or good-cause eviction protections that require a justified cause to evict a tenant, and . . . adequate notice if [a] lease is not renewed.”¹¹² Good-cause eviction is a key pillar of tenant organizers’ policy platforms,¹¹³ but it has been slower to gain traction than the right to counsel. The landlord-tenant relationship has historically been at-will, allowing landlords to end lease relationships for any reason or no reason at all.¹¹⁴ Some states, however, have passed legislation restricting landlords’ ability to displace tenants in the private rental market.¹¹⁵ New Jersey’s good-cause eviction law, which has

REPRESENTATION ACT (June 5, 2018) (codified at S.F., CAL. ADMIN. CODE § 58.4 (2023)); CLEVELAND, OHIO ORDINANCE NO. 1001-2019 (codified at CLEVELAND, OHIO CODE OF ORDINANCES § 375.12 (2022)); see also *Status Map*, NAT’L COAL. FOR A CIVIL RT. TO COUNS. (2023), <http://civilrighttocounsel.org/map> (tracking jurisdictions with enacted or pending right-to-counsel laws).

108. Phillips & Robichaud, *supra* note 106, at 346; see DETROIT, MICH. ORDINANCE NO. 2022-14 (to be codified at DETROIT, MICH. CITY CODE §§ 22-10-1 to -9). Residents must be at or below 200% of the federal poverty level in order to meet the income qualifications.

109. See *The Eviction Tracking System*, EVICTION LAB (Apr. 8, 2023), <https://evictionlab.org/eviction-tracking> (reporting that, as of February 2023, over 1.9 million evictions had been filed since the start of the pandemic in March 2020).

110. See *2023/2024 Civil Right to Counsel Bills*, NAT’L COAL. FOR A CIVIL RT. TO COUNS., http://civilrighttocounsel.org/legislative_developments/20232024_civil_right_to_counsel_bills.

111. U.S. Dep’t of the Treas. & U.S. Dep’t of Just., Joint Letter to Governors, Mayors, County Executives, and Chief Justices/State Court Adm’rs (Aug. 27, 2021), <https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf>.

112. Blueprint, *supra* note 1, at 16.

113. King, *supra* note 44.

114. Jade Vasquez & Sarah Gallagher, *Promoting Housing Stability Through Just Cause Eviction Legislation*, NAT’L LOW INCOME HOUS. COAL. 1 (May 17, 2022).

115. The five states with just-cause legislation in place as of early 2023 are New Jersey, California, New Hampshire, Oregon, and Washington. *Id.* at 2. These follow the lead set by local municipalities, many of which have had just-cause protections of varying scope in place for decades. See *id.* at 6–7; N.Y.C. ADMIN. CODE § 26-408 (2023) (imposing good cause for rent-regulated units); SEATTLE MUN. CODE §§ 7.24.030, 22.05.010 (2023)

been in place since 1974, is one of the most notable of its type.¹¹⁶ It removes landlords' ability to evict for reasons other than those set out in the statute, which include failure to pay rent, disorderly conduct or property damage, or other substantial breaches of the rental agreement.¹¹⁷ Notably, data shows that several of New Jersey's largest cities have some of the lowest eviction rates in the country, and the state is also outpacing its neighbors in housing production.¹¹⁸

Several state bills were introduced in the past few years that would implement or extend good-cause eviction measures.¹¹⁹ New York, in particular, has been hotly debating a good-cause eviction bill for the past several years; while the most recent version failed to make it into the state's annual budget, a good-cause law in New York would be an extremely high-profile victory for the tenants' rights movement that could spur similar legislative action across the country.¹²⁰

A third subprinciple that the Blueprint discusses is the sealing of eviction case filings.¹²¹ This policy bucket recognizes the long-term downstream effects that an eviction can have on a renter's future housing opportunities and other life options.¹²² California and Illinois have both implemented

(imposing good cause for month-to-month tenancies and verbal agreements, as well as all expiring term leases beginning in 2021).

116. Henry Grabar, *New York Needs to Learn a Housing Lesson from . . . New Jersey?*, SLATE (Feb. 8, 2022, 12:01 PM), <https://slate.com/business/2022/02/new-york-good-cause-eviction-new-jersey-housing.html>.

117. N.J. STAT. ANN. 2A:18-61.1 (2023).

118. Grabar, *supra* note 116.

119. *See, e.g.*, S. 3082, 2023-24 Reg. Sess. (N.Y. 2023); HB23-1171, 74th Gen. Assemb., 1st Reg. Sess. (Colo. 2023); H.B. 1338, 32nd Legis. (Haw. 2023). Some states have more limited just-cause laws that they are considering expanding: in Connecticut, for example, a bill introduced in the 2023 legislative session would extend the state's existing just-cause protections for elderly and disabled renters to the general market. *See* CONN. GEN. STAT. § 47a-23c (2021); S.B. 138, 2023 Gen. Assemb., Jan. Sess. (Conn. 2023).

120. Eduardo Cuevas, *Good Cause Eviction Bill Cut from NY Budget. What's Next for Tenants, Landlords?*, LOHUD (May 4, 2023), <https://www.lohud.com/story/news/2023/05/04/ny-budget-good-cause-eviction-policies-cut-whats-next-tenants-landlords/70174065007>. The New York Good Cause bill would also have implemented rent caps of the greater of three percent of the previous rent or 1.5 times the local rate of inflation. Unlike traditional rent stabilization, it would have allowed landlords to petition housing judges to let them raise rents beyond these limits based on a showing of substantial expenses.

121. Blueprint, *supra* note 1, at 16.

122. *Id.* at 17 ("Tenants know that the impact of an eviction extends well beyond the eviction itself. For example, eviction records are often included in background checks even when a case is dismissed on the merits or dismissed because the tenant pays overdue rent. An eviction filing often continues to appear on a tenant's screening report and impedes a renter's future ability to find housing.")

automatic sealing of certain housing court records,¹²³ and New York's 2019 tenant-protection legislation banned the practice of "blacklisting" based on eviction court history.¹²⁴ Finally, the Blueprint promotes alternative resolution mechanisms for eviction disputes.¹²⁵ This policy is taking off in cities such as Philadelphia, which recently enacted a unique new "eviction diversion" law that provides short-term rental assistance to landlords and renters while they work out their differences through city-sponsored mediation.¹²⁶

III. The Blueprint's Implications

The Blueprint is ambitious, but, because it is limited to policies that can be implemented by the executive branch without any congressional action, each proposed policy is quite narrow. The White House's options are limited to regulatory changes, revisions to forms for future contracts to which federal or quasi-governmental agencies are parties, budgetary allocations, and moral suasion. In this fourth bucket are the White House's ability to influence local and state actors, which might then change policies at the local and state level. In the first three buckets, there are likely to be implementation struggles as well as legal battles about interpretation and enforcement. This part anticipates some of those battles.

A. Regulations

As recounted above, the Blueprint anticipates new regulations addressing, for example, notice requirements when tenants in subsidized housing are at risk of eviction¹²⁷ and unfair competition and unfair and deceptive acts in the rental housing sector.¹²⁸ Because there is no serious push for new legislation, these regulations will have to be promulgated pursuant to existing statutes. Whether existing statutes authorize these new regulations is an area likely to be tested in the courts.

With respect to some of the policies anticipated by the Blueprint, the promulgating agency will not be HUD. Instead, the Blueprint seeks to

123. See A.B. 2819, 2023–24 Leg., Reg. Sess. (Cal. 2017) (codified at CAL. CIV. PROC. CODE. §§ 1161.2, 1167.1 (2023)); H.B. 2877, § 10-5, 102d Gen. Assemb. (Ill. 2021) (codified at 735 ILL. COMP. STAT. 5/9-121 (2021)). Illinois's automatic sealing law was a temporary measure enacted during the pandemic that expired in 2022.

124. Ferré-Sadurní, *supra* note 77.

125. Blueprint, *supra* note 1, at 16.

126. Aaron Moselle, *Philly Rolls out New Rental Assistance Program to Resolve Landlord-Tenant Disputes*, WHY (Feb. 2, 2023, 3:51 PM), [@HelenGymPHL, TWITTER \(Feb. 1, 2023, 6:56 AM\), https://twitter.com/HelenGymPHL/status/1620753032521859073](https://why.org/articles/philadelphia-targeted-financial-assistance-program-resolve-landlord-tenant-disputes); cf. *One Shot Deal*, ACCESS NYC (Jan. 30, 2023), <https://access.nyc.gov/programs/one-shot-deal> (providing one-time cash infusions to New York City residents facing emergencies, including evictions).

127. See *supra* note 17 and accompanying text.

128. See *supra* note 14 and accompanying text.

address housing affordability, in part, by reconsidering the rules affecting housing financed by the DoD and USDA. These agencies have long played a role in building and financing housing. As a result, they have levers available to them to affect affordability and conditions in those units. The FTC and CFPB have a role to play because tenants, as consumers of goods and services, are protected by various federal consumer protection statutes. Whether these agencies will prioritize regulations intended to protect tenants—both in terms of adoption and then, later, enforcement—remains to be seen.

Interestingly, the Blueprint barely mentions the Low Income Housing Tax Credit (LIHTC) program or its administering agency, the Treasury Department.¹²⁹ Tenants and their advocates might worry that Treasury's resistance to promulgating regulations pursuant to Section 42 of the Internal Revenue Code, which establishes and governs LIHTC, bodes ill for the likelihood that DoD, USDA, FTC, and CFPB will wade into this space. While HUD regulations protect tenants in HUD-financed affordable housing along many dimensions—due process prior to eviction, affirmative marketing, and the right to organize—LIHTC tenants receive fewer protections.¹³⁰ This distinction is all the more notable given that LIHTC is the nation's largest source of funding for new affordable rental housing construction.¹³¹ Tenants' rights groups might wonder whether other agencies will similarly hesitate to prioritize adoption of regulations anticipated by the Blueprint.

Even if these agencies choose to prioritize renters' rights, they may receive criticism, pushback, and litigation claiming that they do not have the authority to do so. Any regulations will have to be promulgated pursuant to an existing statute. Commentators aligned with the rental housing industry have already questioned whether, for example, the CFPB has the necessary authority to act as the Blueprint advises because a rental unit is not a "consumer product or financial service," as defined by statute.¹³²

129. See *Analysis of the White House Blueprint for a Renters Bill of Rights*, DAVIS VANGUARD (Feb. 3, 2023), <https://www.davisvanguard.org/2023/02/analysis-of-the-white-house-blueprint-for-a-renters-bill-of-rights> (noting that "[d]espite ongoing problems with enforcing good cause or limiting rent increases in the Low Income Housing Tax Credit program, there is no Treasury action to address either of these issues" and that "Treasury's main commitment is to meet with tenants, advocates, housing providers and researchers about tenant protections within LIHTC.").

130. See NATIONAL HOUSING LAW PROJECT, HUD HOUSING PROGRAMS: TENANTS' RIGHTS § 1.11 (5th ed.) ("Tenant and applicant rights and landlord duties are not as well-developed in LIHTC developments compared to most of the federal affordable housing programs.").

131. U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-285R, LOW-INCOME HOUSING TAX CREDIT: THE ROLE OF SYNDICATORS (2017), <https://www.gao.gov/assets/gao-17-285r.pdf>.

132. Alan Kaplinsky, Mark Levin & Roger Winston, Ballard Spahr LLP, *White House Issues Blueprint for Renters Bill of Rights: Will the CFPB and FTC Stay in Their Lanes?*, JD SUPRA (Jan. 31, 2023), <https://www.jdsupra.com/legalnews/white-house-issues-blueprint-for-1580098>.

While CFPB's authority to regulate unfair, deceptive, and abusive acts and practices pursuant to the Dodd-Frank Act is not coterminous with states' consumer protection statutes,¹³³ some courts have in fact interpreted these state laws to exclude tenant protections on various grounds, including that a rental unit is not a consumer product or service.¹³⁴

More broadly, the legal atmosphere around agencies stepping outside their perceived "sphere of expertise"¹³⁵ is increasingly hostile as the Supreme Court rolls out its "new major questions doctrine."¹³⁶ Among other recent cases, the Court's overturning of the CDC's eviction moratorium in 2021 on major questions grounds,¹³⁷ in particular, may have influenced the Biden administration's reluctance to commit to the bolder tenant protection steps that advocates and progressive lawmakers had pushed for.¹³⁸ The Court based its holding in that case on the CDC's lack of clear statutory authority to interfere with "an area that is the particular domain of state law: the landlord-tenant relationship."¹³⁹ This issue remains a looming concern even for the smaller-scale actions that the Blueprint does propose.

Still, while questions may arise as to whether courts will permit the CFPB to regulate leases generally, there is no question that tenant records searches are governed by the Fair Credit Reporting Act.¹⁴⁰ Similarly, certain kinds of records searches implicate fair housing concerns, as governed by

133. See *Unfair, Deceptive, or Abusive Acts or Practices*, CONSUMER FIN. PROT. BUREAU 1 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf (outlining the scope of the CFPB's authority under Dodd-Frank); Carolyn Carter, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*, NAT'L CONSUMER L. CTR. 10-11 (Mar. 2018), https://www.nclc.org/wp-content/uploads/2022/09/UDAP_rpt.pdf (outlining differences in coverage between state and federal consumer protection laws).

134. Eric Sirota, *The Rental Crisis Will Not Be Televised: The Case for Protecting Tenants Under Consumer Protection Regimes*, 54 U. MICH. J.L. REFORM 667, 691 (2021).

135. Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., 142 S. Ct. 661, 665 (2022) (per curiam).

136. Daniel Deacon & Leah Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. (forthcoming 2023), https://repository.law.umich.edu/law_econ_current/239; see Ala. Ass'n of Realtors v. Dep't of Health & Human Servs., 141 S. Ct. 2485 (2021); Nat'l Fed'n of Indep. Bus., 142 S. Ct. 661; Biden v. Missouri, 142 S. Ct. 647 (2022) (per curiam); West Virginia v. EPA, 142 S. Ct. 2587 (2022).

137. Ala. Ass'n of Realtors, 141 S. Ct. 2485.

138. See *supra* notes 25–26, 35–39 and accompanying text.

139. Ala. Ass'n of Realtors, 141 S. Ct. at 2489.

140. See 15 U.S.C. § 1681a(f) (2018) (defining "consumer reporting agency" for purposes of the Act); *What Tenant Background Screening Companies Need to Know About the Fair Credit Reporting Act*, FED. TRADE COMM'N (May 18, 2016), <https://www.ftc.gov/business-guidance/resources/what-tenant-background-screening-companies-need-know-about-fair-credit-reporting-act> (stating that tenant background screening companies fall within this definition).

the Fair Housing Act.¹⁴¹ It is not yet clear whether today's federal courts will be friendly to regulations and enforcement efforts intended to limit landlords' use of screening mechanisms, such as criminal background checks that have a disparate impact on protected classes.

B. Contracts

In addition to their regulatory authority, federal agencies have the power to include tenant protections in contracts to which they are party. Because federal agencies increasingly do not own, but instead subsidize, rental housing, financing documents are the most prominent example. Various federal agencies, not just HUD, finance the construction of housing. For example, as a result of the Military Housing Privatization Initiative, "[p]rivate-sector companies own and operate about 99% of homes on military installations in the United States."¹⁴² For its part, the USDA finances construction of rural and farmworker rental housing. It also subsidizes rent for low-income tenants residing in those subsidized units.¹⁴³ The relative size of these various programs varies enormously. While USDA and DoD housing programs comprise a very small portion of the market, a much larger number of units are in buildings secured by loans purchased by Fannie Mae and Freddie Mac.

The Blueprint points to USDA standardized leases as a form of tenant protection, but the requirement that a private landlord use a standardized lease will have to be included in USDA governmental financing documents in order to be effective. Other governmental institutions, like Fannie Mae and Freddie Mac, purchase or securitize loans used to finance housing construction. These contracts can include protections for tenants, from minimum requirements for maintenance and conditions to limitations on landlord's powers to raise rents or evict tenants. These Fannie- and Freddie-backed loans have the potential to affect a huge swath of the United States' rental market.¹⁴⁴ During the pandemic, they were used to delay the CARES Act's initial limits on evictions in March 2020 before the

141. See, e.g., *The Fortune Soc'y, Inc. v. Sandcastle Towers Hous. Dev. Fund, Inc.*, 388 F. Supp. 3d 145, 166 (E.D.N.Y. 2019).

142. U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-105866, *PRIVATIZED MILITARY HOUSING: UPDATE ON DOD'S EFFORTS TO ADDRESS OVERSIGHT CHALLENGES* (2022), <https://www.gao.gov/products/gao-22-105866>.

143. *Multifamily Housing Rental Assistance*, U.S. DEP'T AGRIC., <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-rental-assistance>.

144. Sarah Stein & Nisha Sutaria, *Housing Policy Impact: Federal Eviction Protection Coverage and the Need for Better Data*, FED. RSRV. BANK OF ATLANTA (20202), <https://www.atlantafed.org/community-development/publications/partners-update/2020/covid-19-publications/200616-housing-policy-impact-federal-eviction-protection-coverage-and-the-need-for-better-data>.

CDC's more sweeping moratorium took effect.¹⁴⁵ Advocates have sought to build on this precedent going forward by deploying conditions on federally financed mortgages as a powerful new federal policy lever for landlord regulation.¹⁴⁶

Once a protection is included in a contract, however, it must still be enforced, by either tenants themselves or regulators. Whether tenants will be able to enforce those provisions will turn on a number of considerations. Will tenants know that they have the rights included in the contract? Will courts allow tenants, as third-party beneficiaries, to enforce those protections? The pandemic experience throws these issues into sharp relief: many tenants did not know whether their landlord had a federally financed mortgage, making it difficult to effectively enforce limits on evictions and other protective measures.¹⁴⁷ Tenant advocates' experiences seeking to enforce maintenance requirements in private mortgage documents also imply hurdles to employing this strategy. Because tenants are not in contractual privity with lenders and lenders are not directly liable for code violations (unless they come into ownership of a dilapidated property following a foreclosure action), tenants must convince banking regulators to pressure banks to enforce these maintenance requirements.¹⁴⁸

Similar issues have arisen in the context of housing that is directly subsidized and regulated by the federal government. Courts have come out differently on the status of tenants as third-party beneficiaries: where tenants seek to independently enforce regulations that HUD opts not to enforce on its own, some courts have found that "[t]enants are not . . . third

145. Coronavirus Aid, Relief, & Economic Security Act, Pub. L. No. 116-136, § 4024(a)(2), (b), 134 Stat. 281, 492–94 ((2020) (codified as amended in scattered sections of the United States Code) (preventing evictions in "covered properties," defined to include federally subsidized and federally financed housing); Laurie Goodman, Karan Kaul & Michael Neal, *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units*, URB. INST. (Apr. 2, 2020), <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>.

146. Letter from Diane Yentel & Shamus Roller to Janet Yellen, *supra* note 39, at 2–3 (arguing that the FHFA "should expand renter protections, such as source-of-income protections, just-cause eviction standards, anti-price gouging protections, and habitability standards, to those living in properties with federally backed mortgages" in light of "recent precedent").

147. Goodman, Kaul & Neal, *supra* note 145; see Kriston Capps, *The White House Is Considering Broad Actions to Expand Tenant Protections*, BLOOMBERG: CITYLAB (Jan. 18, 2023), <https://www.bloomberg.com/news/articles/2023-01-18/what-the-biden-administration-could-do-to-help-tenants> (noting that while "on paper the number of covered tenants was enormous," in practice "the CARES Act order proved unwieldy for tenants actually seeking relief . . .").

148. Jack Newfield, *New Push for Banks to Monitor Building Conditions*, CITY LIMITS (Feb. 19, 2014), <https://citylimits.org/2014/02/19/new-push-for-banks-to-monitor-building-conditions>.

party beneficiaries to regulatory agreements between HUD and property owners [and where] property owners claim[] to be third party beneficiaries to an agreement between HUD and a tenant, the reasoning of those cases applies with equal force."¹⁴⁹ Yet other courts have endorsed tenants' ability to enforce affordability requirements included in LIHTC financing documents, even when those requirements have been abandoned by regulatory agencies. In at least one of those cases, landlords expressly agreed to permit tenant enforcement of contractual affordability requirements.¹⁵⁰ A key difference between these two lines of cases is whether the landlord expressly agreed to permit tenant enforcement when it accepted governmental subsidy. Agencies might learn from that case law and impose similar landlord acknowledgments and agreements when carrying out policies described in the Blueprint. These requirements must be included not only in regulations and guidance documents, but also in contractual documents to be signed by property owners.

In the past, HUD has taken the opposite tack. Notably, in response to "[court] decisions finding tenants had a third-party beneficiary right, HUD amended its documents to preclude any tenant right of enforcement," and these limitations have "generally [been] upheld by the courts."¹⁵¹ Agencies could give the Blueprint's protections more teeth by moving away from this philosophy and embracing a more expansive enforcement role for tenants and ensuring that landlords acknowledge and accept that role when they accept financing and subsidies. It is possible that they may choose an intermediate approach: in the context of homeowners' rights, courts have disallowed homeowners from seeking damages from servicers that ignore federal regulations, but have permitted them to defend against a mortgage on the grounds that the servicer ignored federal regulations.¹⁵² One might imagine analogous facts in the rental context, wherein a tenant cannot sue affirmatively to enforce affordability restrictions but can defend against a landlord's attempt to evict based on nonpayment on the grounds that the landlord is overcharging for rent. This would be weak tea, indeed,

149. *Grand Manor Health Related Facility, Inc. v. Hamilton Equities Inc.*, 941 F. Supp. 2d 406, 418 (S.D.N.Y. 2013) (collecting cases).

150. *Tuttle v. Front St. Affordable Hous. Partners*, 478 F. Supp. 3d 1030, 1037 (D. Haw. 2020).

151. Anne Marie Smetak, *Private Funding, Public Housing: The Devil in the Details*, 21 *VA. J. Soc. POL'Y & L.* 1, 59–60 (2014) (citations omitted).

152. *Pfeifer v. Countrywide Home Loans, Inc.*, 150 Cal. Rptr. 3d 673, 677 (Ct. App. 2012) ("Although we agree with those courts that refuse to permit any private right of action for failure to comply with the HUD regulations and the Pfeifers cannot seek damages based on their wrongful foreclosure action, we concur with those courts distinguishing an offensive action from a defensive action. Thus, we conclude that the servicing requirements are conditions precedent to the acceleration of the debt or to foreclosure. Consequently, the Pfeifers may seek to enjoin the lenders from proceeding with a nonjudicial foreclosure based on the lenders' failure to perform a HUD servicing requirement.").

however, for a tenant whose ability to secure housing is forever tarnished because they now have an eviction filing on their record.

Even where courts accept tenants' ability to assert rights as third-party beneficiaries, this does not mean that tenants can securely or predictably enforce these rights. Each individual tenant's standing is subject to changed circumstances—changes in eligibility due to changes in income and family size, for example. In one case, an appellate court found that a plaintiff had lost standing after a lawsuit had been brought but before a case had wound its way through the trial and appeals process. The court ruled that

[the] plaintiff lacked standing and her claims were moot by the time defendant moved to dismiss. After the change in plaintiff's circumstances that was reflected in the stipulation, plaintiff's right against wrongful eviction from the complex would not have been vindicated by the declarations and injunctions that she sought because, although the declarations and injunctions would have established that she had been wrongfully evicted, those remedies would not have had any practical effect on her rights, given that she was no longer eligible for the LIHTC program and did not want to move back into the complex.¹⁵³

Similar considerations render class actions difficult to maintain.¹⁵⁴ In addition, tenants might simply be unable to bear the costs—both time and money—of investigation, without the benefit of the sorts of reporting requirements that property owners might owe to funders and regulators. Commentators have noted that meaningful tenant enforcement of affordability restrictions will require equally meaningful notice requirements:

As third-party beneficiaries to the [affordability restriction], residents should also receive notice of [state housing finance agency] and owner actions that might be adverse to or impact their right to enforce the extended-use commitment. Notice should be provided for the following LIHTC events: foreclosure, an owner opt-out/qualified contract in year fourteen, a decision of an HFA to discontinue monitoring . . . , HFA reports to the IRS of owner noncompliance, or an owner's plan to convert the project to resident ownership at the expiration of the initial compliance period.¹⁵⁵

Even where property owners are subject to notice requirements, ensuring that they follow those notice requirements creates its own enforcement problem. Rental registries (which require landlords to submit information about their properties that is then made publicly available in a citywide

153. *Nordbye v. BRCP/GM Ellington*, 349 P.3d 639, 647 (Or. Ct. App. 2015).

154. Class-action doctrine does recognize some limited exceptions to the standard mootness rules that may be applicable in the landlord-tenant context. *See, e.g., Comer v. Cisneros*, 37 F.3d 775, 779 (2d Cir. 1994) (allowing class action of both current and former public housing residents to proceed over mootness objection in light of "the transitory nature of the public housing market"). Still, the slow pace and logistical complexities of class actions make them an unwieldy tool for consistent enforcement.

155. Desiree C. Hensley, *Out in the Cold: The Failure of Tenant Enforcement of the Low-Income Housing Tax Credit*, 82 U. CIN. L. REV. 1079, 1108 (2014).

database) are one possible mechanism for information-sharing and disclosure, but they do not exist in most parts of the country.¹⁵⁶

In short, systemic enforcement by tenants is difficult at best and impossible at worst. Ideally, both federal, state, and local regulators *and* tenants would have the concurrent ability to enforce tenant protections. These rights would coexist, and, in the case of governmental actors, enforcement would be funded and staffed. HUD and other agencies might consider funding enforcement by private actors, just as it does in the case of fair housing testing and enforcement through the Fair Housing Initiatives Program.¹⁵⁷

Mechanisms to protect and encourage tenant organizing might increase the likelihood of enforcement. As the previous part related, the last time tenant rights were on the radar of national policymakers in the 1960s, tenants won the right to organize in properties owned and managed by HUD and federal public housing authorities.¹⁵⁸ That right to organize requires that management meet with tenants periodically to discuss management issues. A few years later, Washington, D.C. gave tenants or tenant organizations, whether or not living in subsidized properties, a right of first refusal to purchase the properties in which they reside.¹⁵⁹ Today, the Blueprint endorses the idea of expanding these rights throughout the private rental market, building on the work of local and state jurisdictions like San Francisco and New Haven.¹⁶⁰ These organizing protections could reduce the informational barriers to robust tenant enforcement, helping to facilitate notice requirements by allowing landlords and regulators to communicate more efficiently with tenant representatives and groups about their rights as third-party beneficiaries. Still, it is unclear whether tenant organizing protections inspired by the Blueprint will, in practice, help tenants better understand and pursue their contract negotiation or property rights. And whether those rights have a sizable impact on affordability and conditions will likely depend on the dynamics of local housing markets.

IV. Conclusion

For the first time in generations, a substantial number of federal policymakers are paying attention to tenants' rights. There is, however, very little opportunity, with a divided Congress, to enact statutes that might better protect tenants. It is unlikely that partial measures, intended to take advantage of the federal executive branch's authority, can address a substantial

156. Shane Phillips, *We Need Rental Registries Now More Than Ever*, SHELTERFORCE (Dec. 18, 2020), <https://shelterforce.org/2020/12/18/we-need-a-rental-registry-now-more-than-ever>.

157. *Fair Housing Initiatives Program (FHIP)*, U.S. DEP'T HOUS. & URB. DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHIP.

158. See *supra* note 90 and accompanying text.

159. See Rental Housing Conversion and Sale Act of 1980, § 408, 27 D.C. Reg. 2975 (Sept. 10, 1980) (codified at D.C. CODE § 42-3404.08 (2023)).

160. See *supra* notes 92–99 and accompanying text.

power differential between landlords and tenants, one that results from landlord-friendly laws and a massive housing supply deficit. Ultimately, this conversation will likely continue at the state and local level, where openness to advancing tenant protections is often inversely correlated with willingness to permit additional supply, creating significant obstacles to meaningful additional protections for tenants in the near future.

Still, tenants' rights organizers are certain to keep trying, and the Blueprint will undoubtedly factor into their future efforts. Whether it will do so primarily as a thesis statement, a practical guidebook, or a point of leverage for further federal action remains to be seen, but it at minimum represents an important milestone in the generational cycle of tenant advocacy. It is the clearest proof possible that the tenants' rights movement has reached, and is continuing to reach, places it has never been.