



January 8, 2021

Ms. Erika Poethig
Team Lead
U.S. Department of Housing and Urban Development, Review Team

Re: Policy Recommendations to Stop Mass Evictions: Right to Counsel, Eviction Moratoria, & Rent Relief in Eviction Cases

Dear Ms. Poethig,

The National Coalition for a Civil Right to Counsel (NCCRC) and the American Civil Liberties Union (ACLU) write to offer our recommendations to the Biden-Harris Administration on three key steps to advance housing justice and prevent a mass eviction crisis. As outlined below, communities across this country face mass evictions in 2021. We urge the administration to take immediate action to protect vulnerable tenants across this country by urging Congress to fund state and local level efforts to provide a right to counsel for tenants facing eviction, issuing a strengthened and enforced federal moratorium on evictions, and providing additional rent relief for tenants.

By January 31, 2021, the CDC moratorium, as well as many of the remaining local and state moratoria on evictions, will expire absent further action from the CDC, Congress, or the states. The Eviction Lab's analysis of filings during the period of time between the expiration of the federal CARES Act moratorium and the issuance of the CDC order demonstrates that landlords will immediately file for eviction once tenant protections expire; in fact, eviction filings are already increasing in some jurisdictions despite the moratoria. And there is the added problem of the uncounted number of illegal "self-help" evictions carried out by landlords in the form of utility shutoffs, lockouts, physical threats, and other actions to force tenants from their homes.

Evictions devastate lives and communities, and to a greater degree during COVID-19. Evictions have always had disastrous effects on the lives of tenants. A growing body of research, as well as anecdotal reports, shows that evictions lead to displacement from home and community, loss of personal property, instability in employment and education, increased likelihood that children will be placed in foster or other out-of-home care, and greater reliance on social service supports. Eviction also commonly leads to homelessness, which brings with it an increased risk of arrest and incarceration as well as significant mental and physical health issues. Eviction records can affect a tenant's ability to rent for years, which is especially problematic given the well-documented dearth of accessible rental assistance programs and safe, affordable housing. During COVID-19, evictions may result in an increase in community spread of the disease as households are forced to double up with other families or contribute to further crowding at homeless shelters.

Housing courts in America are plagued with due process problems. The dynamics and law skew in favor of landlords: 90% of landlords have representation, whereas fewer than 10% of tenants have counsel. Many tenants without counsel are bewildered and intimidated by the process, while others lack the ability to attend hearings due to employment, childcare, or transportation reasons. Consequently,

tenants default at high rates. Some landlords count on this imbalance and file meritless eviction cases with impunity. Beyond the imbalance of representation, evictions proceed quickly compared to other civil litigation, and any defenses that are available to a tenant are virtually impossible to prove without a lawyer. And these problems are now far worse because of COVID-19. The local, state, and federal eviction moratoria issued throughout the pandemic add their own layer of legal complexity, and the CDC moratorium has a complicated declaration that tenants must complete under penalty of perjury in order to receive any protection at all. Some courts continue to hold in-person hearings despite the CDC moratorium, while others hastily adopted virtual hearings that came with a slew of new access-to-court issues for low-income litigants. Tenants have little recourse in legal aid and legal services programs: legal aid has always been underfunded, but during the pandemic, several major sources of revenue for the programs have significantly diminished. Furthermore, these programs, even outside of a pandemic, have never had the resources and support to provide anything more than triage services, and only for a small segment of eligible tenants.

The coming eviction cliff, as with the eviction crisis steadily growing prior to the pandemic, will not be experienced equally by all. Mass evictions are a racial and gender justice issue. Black and Latinx households are more likely than white households to rent their homes, and they are consistently over-represented in households facing eviction. Black households only recently began to recover from the financial crisis of 2008; recovery after the pandemic is expected to be considerably slower. During the pandemic, Black and Latinx households have been hit significantly harder by COVID-19, and in turn, they have been twice as likely as white tenants to report that they have little to no ability to make rent each month. Without deliberate federal, state, and local action and funding, households of color, and particularly Black, female-led households, will be the ones to weather this storm on their own.

We urge the administration to take immediate action to protect renters who are at risk of eviction. To do this, the administration must:

1. **Issue a fully effective moratorium on evictions.** A moratorium is critical to stop the onslaught of evictions. Without a moratorium, the other types of relief sought will not have enough time to be put in place before millions are families are displaced. We know this because of the experience many states and localities have had in implementing rental assistance programs funded through the CARES Act. We urge you to not simply extend the CDC moratorium as it is, because it has severe flaws and limits. Tenants are not protected unless they complete a complicated declaration under penalty of perjury. Because of its unclear wording around its scope, it is often subject to legal challenges or questions about applicability, sometimes by housing judges themselves, and tenants cannot hope to respond to these challenges while being pro se. A federal moratorium must be broad, apply to all stages of the eviction process (including filings), unqualified, and automatic in order to be successful.
2. **Provide additional, accessible rental assistance for tenants.** Rental assistance goes to the heart of the eviction crisis: tenants have lost income due to COVID-related job loss and sickness. However, the rental assistance provided by Congress in the relief bill is not enough to reach all families or to cover the many months of rent arrears that countless families now have incurred. The National Low Income Housing Coalition has estimated that \$100 billion is needed to stave off the pending eviction crisis. As evidence of the significant need, existing programs run by the states and cities have often run out of money within days, sometimes even hours, of when they become available.
3. **Provide funding support for cities and states that implement a right to counsel for tenants in eviction proceedings.** Right to counsel works. A right to counsel for tenants in eviction proceedings has been enacted in 7 cities to date: New York City, San Francisco, Newark,

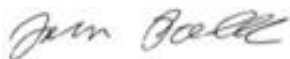
Cleveland, Philadelphia, Boulder, and Baltimore. The latest analysis of the impact of New York City's right to counsel legislation shows that 86% of represented tenants are remaining in their homes and the filing rate has decreased by 30%. In San Francisco, the filing rate decreased by 10% between 2018-2019, and of those receiving full representation, 67% stayed in their homes. Providing a right to counsel allows people to keep their homes, comply with necessary stay-at-home orders, and decrease the spread of COVID-19. Additionally, legal aid is necessary to make rental assistance impactful. Even for tenants who receive rent assistance, some states do not require landlords to accept the money from the tenant once the eviction has been initiated, while in other states landlords may illegally refuse to allow the tenants to "cure" the unpaid rent. Additionally, many tenants will need legal help for the rental assistance application process, which can be challenging, or for ensuring the court provides enough time for the rental assistance process to be completed. Finally, with respect to the moratoria, many tenants will not be aware of what rights they have or what they need to do, or be able to do it effectively, without legal help. At its core, the right to counsel effectuates the moratoria and rent relief. The reality is that the best laws have little effect without strong enforcement.

There is a distinct funding opportunity for these programs in the recently enacted COVID-19 relief package. Congress has appropriated \$25 billion toward emergency rental assistance. At least 90% of funds received by a grantee are to be used for direct financial assistance, and not more than 10% can be used for housing stability services as defined by the Secretary of the U.S. Treasury Department. We urge the U.S. Department of Housing and Urban Development to work with the U.S. Treasury Department to set a broad definition of "housing stability services," such that it encompasses legal representation of tenants facing eviction.

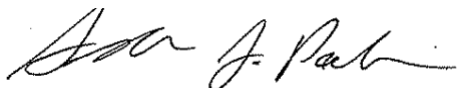
A moratorium, rental assistance, and right to counsel are the three legs of the tenant protection stool, and all three legs are essential.

We would be happy to provide any additional information or resources you deem necessary. Please let us know if you have any questions.

Sincerely,



John Pollock, Coordinator
National Coalition for a Civil Right to Counsel



Sandra S. Park
Senior Staff Attorney
ACLU Women's Rights Project