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Stop the Violence: A Taxonomy of Measures to Abolish Evictions

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STOP THE VIOLENCE: A TAXONOMY OF MEASURES TO ABOLISH EVICTIONS

Andrew Scherer*

Evictions are among the harshest, most violent, disruptive, and damaging acts authorized by our civil courts. An armed official with a gun orders a tenant and their family out of their home and removes their possessions, often simply placing a family's belongings — photos, knick-knacks, furniture, the accumulations of a life — on the sidewalk to be lost or damaged. Evictions ravage lives — they damage physical and mental health, disrupt education, cause job loss and homelessness, and dislodge people from community and stability. The violence of eviction is always implicit and often explicit. Sometimes, evictions result in armed conflict and death. And evictions are racialized and feminized: they are visited on Black women and other women of color in vastly disproportionate numbers. It is time to develop strategies to abolish evictions.

Evictions do not take place in a vacuum. Much needs to be in place (or fail to be in place) for evictions to happen. Eviction is the end-product of a system that enlists judicial authority to maintain the existing power dynamic between landlords and tenants by employing this harshest of “civil” remedies. The eviction system exalts profit over human need. The eviction system denies tenants the legal and financial safeguards and supports that are needed to avert the types of conflicts that lead to eviction. The eviction system uses unfair, biased, one-sided, rapid-fire court processes and fails to

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provide tenants with legal counsel and a meaningful opportunity to be heard. The eviction system relies on modern-day bounty-hunters who make more money the more people they evict. The eviction system denies tenants' dignity, respect, and humanity, and disregards the devastating impact of eviction on lives and livelihoods.

It does not have to be this way. We know what to do to disrupt the eviction system and abolish evictions. There are tools and approaches already in use around the world, and increasingly in the United States, that can avert evictions, minimize their likelihood, and mitigate their devastating impact. This article calls for developing a strategy to abolish the use of evictions and presents a taxonomy of tools and approaches that are now being used or that could be used to that end.

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“I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent.”¹

– Mahatma Gandhi

“You never need an argument against the use of violence, you need an argument for it.”²

– Noam Chomsky

“[A]bolition is a positive process. It means creating new infrastructure, new ways of thinking about reducing harm I can’t say that any one of us has the perfect answer of what we do, but we might be able to figure something out if we consider it together.”³

– Nana Kwame Adjel-Brenyah

INTRODUCTION

Very few orders of our civil courts are as harsh, violent, disruptive, and damaging as orders to evict. An eviction is executed by an armed official with a gun who orders a tenant and their family out of their home and removes their possessions, often simply placing a family’s belongings — photos, knick-knacks, furniture, the accumulations of a life — on the sidewalk to be lost or damaged.⁴ And even when tenants vacate prior to the physical act of eviction, their lives are disrupted and destabilized. The short and long-term consequences of evictions and displacement are devastating: they damage physical and mental health, disrupt education, cause job loss and homelessness and dislodge people from community and stability. The violence of eviction is always implicit and often explicit.⁵ Evictions sometimes result in armed conflict and death. At least 30 deaths related to

1. 5 M. K. GHANDI, *The Voice of Truth*, in *THE SELECTED WORKS OF MAHATMA GHANDI* 1, 134 (Shriman Narayan ed., 1968).

2. Noam Chomsky, *Viewpoint: War Would Be Insane*, BBC NEWS (Feb. 12, 2003), http://news.bbc.co.uk/2/hi/middle_east/2677131.stm [https://perma.cc/GMR3-XQCX].

3. Nana Kwame Adjel-Brenyah, *CHAIN GANG ALL-STARS* 285 (2024).

4. See, e.g., Ann O’Connell, *Handling a Tenant’s Abandoned Property: An Overview*, NOLO (Apr. 10, 2024), <https://www.nolo.com/legal-encyclopedia/handling-tenants-abandoned-property-an-overview.html> [https://perma.cc/8J2V-QAAL].

5. Eviction can be seen as a form of economic, as well as physical, violence. See Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 297–98.

evictions took place in the United States in 2023 alone.⁶ And, because of a centuries-long pattern of racist and sexist government policy and private action, evictions are racialized and feminized: they are visited on Black women and other women of color in vastly disproportionate numbers.⁷

Evictions do not take place in a vacuum. Much needs to be in place (or fail to be in place) for evictions to happen. Evictions are the end-product of a complex system involving courts, laws, policies, and public and private agencies and institutions, as well as individual actors. Evictions involve the use of judicial authority to maintain existing power dynamics between landlords and tenants and to discipline and punish. The eviction system exalts profit over human need. It denies tenants the legal and financial safeguards and supports that are needed to avert the types of conflicts that lead to eviction. It depends upon unfair, biased, one-sided court processes that fail to provide tenants with legal counsel and a meaningful opportunity to be heard. It relies on modern-day bounty-hunters to execute.⁸ The eviction system denies tenants dignity and respect, negates their humanity, and disregards the devastating impact of eviction on lives and livelihoods.

It does not have to be this way. We know what to do to disrupt the eviction system and abolish evictions. There are tools and approaches already in use around the world, and increasingly in the United States, that can avert evictions, minimize their likelihood, and mitigate their harm. A right to counsel for tenants who face eviction is a key step toward preventing evictions, and the movement for the right to counsel in eviction cases in the United States is having enormous success,⁹ demonstrating the strength and effectiveness of the tenants' rights movement.¹⁰ But having counsel, while a key component of any strategy to abolish evictions, is necessary, but not sufficient. This Article calls for developing an overall strategy to disrupt the eviction system and abolish the use of evictions. It presents a taxonomy of

6. Juan Pablo Garnham & Deanna Pantín Parrish, *Evictions Can Kill: How US Communities are Trying to Break the Cycle of Violence*, GUARDIAN (Dec. 10, 2023, 11:00 AM), <https://www.theguardian.com/society/2023/dec/10/housing-evictions-physical-violence-alternative-programs> [https://perma.cc/6NKL-22BY]. See also *infra* additional data discussed in Part I.

7. See *infra* Section I.D.

8. See *infra* Section IV.C.

9. See *Current Tally of Tenant Right to Counsel Jurisdictions*, NAT'L COAL. FOR A CIV. RT. TO COUNS. [hereinafter *Current Tally*], http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel [https://perma.cc/K52E-WVSC] (last visited Aug. 24, 2024).

10. See, e.g., THE RT. TO COUNS. N.Y.C. COAL. & TAKEROOT JUST., ORGANIZING IS DIFFERENT NOW: HOW THE RIGHT TO COUNSEL STRENGTHENS THE TENANT MOVEMENT IN NEW YORK CITY (2022) [hereinafter ORGANIZING IS DIFFERENT NOW], <https://takerootjustice.org/wp-content/uploads/2022/03/Organizing-is-Different-Now-0322.pdf> [https://perma.cc/H2GB-X62V].

tools and approaches to that end that are now being used in the United States and other countries, as well as those that could be used. These tools, and others yet to be devised, can be components of a strategy to abolish evictions.

It is important to be clear about what this Article does and does not call for. The term “abolition” is used in this article with the full recognition that eliminating eviction entirely will not be an easy task.¹¹ Evictions are so entrenched in the economic, political, and social psyche of our culture with respect to landlord-tenant relations that it is hard to imagine a world without them. But it is the very vision of a future in which there is no violent, forcible removal of people from their homes that creates a framework for a radical re-thinking and shift in perspective, for devising the specific steps and overall strategy to get there. Thus, abolition is used in this article in much the same sense that it is currently used in discussions around prisons, the police, and the “child-protective” family regulation systems.¹²

By calling for the abolition of evictions, this article is not a call for anomie and chaos. Legitimate claims for rent arrears must be addressed. Disruptive behavior that affects the health, comfort, and safety of tenant communities must be dealt with. Violations of reasonable requirements of leases and law must have consequences. But the manner in which these issues are addressed must have a different framing, one that: takes into account the considerable harms of eviction and displacement both in threat and execution; seeks to create norms that avoid conflicts in the first place by addressing their underlying causes; requires that all parties are treated with fairness, dignity and respect when conflicts arise; and when conflict becomes simply

11. See *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <https://criticalresistance.org/mission-vision/not-so-common-language/> [https://perma.cc/3X22-VRCS] (last visited Aug. 24, 2024) (“An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead us all to believe that things really could be different. It means *living this vision in our daily lives*. Abolition is both a *practical organizing tool* and a *long-term goal*.”); “Abolition is a dream toward futurity vested in insurgent, counter civilizational histories - genealogies of collective genius’ that perform liberation under conditions of duress?” See Dylan Rodriguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1575 (2019); see also Sophie House & Krystle Okafor, *Under One Roof: Building an Abolitionist Approach to Housing Justice*, N.Y.U. J. LEGIS. & PUB. POL’Y QUORUM (2020); Norrinda Brown Hayat, *Housing the Decarcerated: Covid-19, Abolition & the Right to Housing*, 110 CALIF. L. REV. 639 (2022).

12. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2020); see also DOROTHY E. ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2023); Larisa Bowman, *Eviction Abolition*, 55 LOY. U. CHI. L.J. 541, 541 (2024) (“Theorizing eviction itself as a carceral-continuum institution of racial and gender capitalism and punitive social control opens the door to abolitionist critique. Abolition orients us toward the transformation of society and the role of the state within it rather than reform measures that fail to confront power.”).

impossible to resolve, prioritizes the centrality of home over profit, and finds alternatives to the damage and trauma wrought by the act of eviction.

Ironically, it took the pandemic to help open up a vision for — and to some extent a methodology for achieving — a world without eviction. States declared moratoriums on evictions, closed their courts, and took other measures that prevented or slowed evictions.¹³ The federal government enacted an emergency rental assistance program and appropriated billions of dollars to pay rents for tenants who fell behind due to the pandemic.¹⁴ Even if these measures were undertaken primarily to prevent the spread of COVID-19 and protect profits for property owners — and not out of genuine concern for tenants — they showed that, with political will and novel policy measures, we could halt evictions and the world would not fall apart. The publication of Matthew Desmond’s 2016 sociological study, *Evicted: Poverty and Profit in the American City*, helped place popular focus on the harmful role of eviction.¹⁵ Pandemic-related eviction-prevention measures sharpened that focus. In the wake of the pandemic, many jurisdictions have been adopting methods such as the right to counsel for tenants facing eviction¹⁶ and “eviction diversion” programs¹⁷ that keep cases from landing in court in the first place and help level the playing field in court when they

13. See *In America, a Million Evictions Take Place in a Normal Year*, ECONOMIST (May 13, 2021), https://www.economist.com/united-states/2021/05/13/in-america-a-million-evictions-take-place-in-a-normal-year?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=Cj0KCQjwtsy1BhD7ARIsAHOi4xaEeOP6sJIN7_iqdPuifM3OiTksvxq0gde4lzCduYrIL8GzDzJd9tIaAvJCEALw_wcB&gclsrc=aw.ds [https://perma.cc/JTB4-LYTT]; *COVID-19 Eviction Moratoriums in the United States*, WIKIPEDIA, https://en.wikipedia.org/wiki/COVID-19_eviction_moratoriums_in_the_United_States [https://perma.cc/2G6S-3PHB] (last visited May 31, 2024); Emily Benfer et al., *COVID-19 Housing Policy: State and Federal Eviction Moratoria and Supportive Measures in the United States During the Pandemic*, 33 HOUS. POL’Y DEBATE 1390, 1390–1414 (2023).

14. See *Emergency Rental Assistance Program*, U.S. DEP’T OF THE TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> [https://perma.cc/FD4P-MKQN] (last visited May 31, 2024) (“Treasury’s Emergency Rental Assistance (ERA) programs have collectively provided communities over \$46 billion to support housing stability for eligible renters throughout the COVID-19 pandemic.”).

15. See generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

16. *Current Tally*, *supra* note 9 (describing that as of August, 2024, 17 cities, 5 states and 2 counties had adopted a right to counsel for tenants in eviction cases).

17. See generally Stanford University Legal Design Lab, *Eviction Diversion Programs*, EVICTIONINNOVATION, <https://evictioninnovation.org/innovations/eviction-diversion-programs/> [https://perma.cc/7DJC-ASU4] (last visited Apr. 25, 2024).

do. But most pandemic-related measures have already been rescinded,¹⁸ and much more could — and should — be done to abolish evictions.

Other countries, particularly the wealthier industrialized countries of the global north, handle evictions better than the United States. They prohibit evictions until the tenants have alternative living arrangements (“evictions to nowhere”), bar wintertime evictions, and provide grants and social services where needed.¹⁹ Americans hold on dearly to the notion of American exceptionalism and often resist ideas from abroad, but it is important to look to other countries as well as innovations in the United States, and to replicate good practices wherever they come from.²⁰ These approaches in other countries often center the importance of home and a right to housing. They reflect a very different balance between the powers and rights of owners and tenants than seen in the United States, reflecting a difference in values as well as in policies.

This Article presents a taxonomy of specific tools and approaches that are already being used or that could be used to abolish evictions and diminish their harm. It calls for framing eviction-related policy and law around the fundamental need for — and ultimately the right to — a home rather than the quest for profit. The ideas in this article are intended to stimulate thought and discussion and are not intended to be either comprehensive or prescriptive. To the extent that community leaders, advocates, and policymakers set out to develop strategies to abolish eviction, they will, no doubt, come up with new and better ideas.²¹ The strong and growing movement for a right to counsel in eviction cases demonstrates that the tenants’ rights movement is capable of winning big, transformative reforms.²² Developing a vision and strategy for abolishing evictions is doable.

18. See *National Eviction Moratorium*, NAT’L LOW-INCOME HOUS. COAL., <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium> [<https://perma.cc/5QDM-5KVH>] (last visited Mar. 22, 2024).

19. Note that the United States has adopted many progressive housing policy ideas from abroad — cooperatives, rent regulation, public housing (often known as social housing). See *infra* Part III.

20. See Stephen M. Walt, *The Myth of American Exceptionalism*, *ECONOMIST* (Oct. 11, 2011, 12:40 AM), <https://foreignpolicy.com/2011/10/11/the-myth-of-american-exceptionalism/> [<https://perma.cc/B2XE-BFZW>].

21. In a prescient article she wrote almost 25 years ago, Florence Roisman called upon advocates to think broadly about change and to not be daunted by what appear to be huge, intractable and overwhelming problems. Abolishing eviction may seem like an overwhelming task, but it is no more daunting than many economic, social and political problems that have been successfully overcome. See Florence Wagman Roisman, *The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time*, 19 ST. LOUIS. U. PUB. L. REV. 237, 238–39 (2000).

22. See ORGANIZING IS DIFFERENT NOW, *supra* note 10, at 3.

Part I of this Article defines the eviction system and its components, discusses the explicit and implicit violence of the physical act of eviction and the harshness of the eviction system's consequences. This Part also explains the racialized and feminized nature of the eviction system and its disparate impacts on women and people of color.

Part II examines the values reflected in the current eviction system and discusses the need for a shift in narrative, a re-framing of the function, purpose, and role of eviction. Historically, the eviction system has been centered on the quest for profits of property owners. Many changes, large and small, would flow if we were to center a dispute-resolution system between landlords and tenants on the fundamental human need for a home. This Part also calls for a rights-based approach to dismantling the eviction system and discusses law and policy measures that could reorder the power relationship between tenants and landlords and move toward the recognition of housing as a human right. A rights-based approach would start with funding and supporting community and tenant organizing to help tenants gain the power to affect the laws and policies that shape the ability to secure and retain a decent affordable home in a safe community and that inform the eviction system.

Part III addresses the legal processes by which evictions are sought, including measures that can reduce evictions by addressing and resolving potential conflicts before they reach the courts. This Part describes the legal structures under which evictions are obtained and discusses alternatives to current law that can assist in ending evictions, such as the right-to-counsel and elimination of the summary nature of eviction proceedings.

Part IV addresses measures that can be taken at the late stage when courts have already ruled in favor of eviction to mitigate the harsh consequences of eviction, such as assuring that tenants can be rehoused, barring evictions of vulnerable people, and barring evictions in winter or at night. This Part also calls for replacing the archaic bounty hunter nature of the approach currently in use for post-judgment execution of evictions and for measures that assure that people who are evicted do not lose their possessions.

I. EVICTIONS ARE VIOLENT AND HARMFUL

This Part describes how evictions are part of a system and not a single act. It explains how eviction and the threat of eviction is both implicitly and explicitly violent, sometimes resulting in death. It further discusses how the eviction system is racialized and feminized, and how evictions and the eviction system have devastating short-and-long-term consequences.

A. Evictions Are Part of a System

Evictions do not take place in a vacuum. Evictions are the end-product of a system that enlists judicial authority to maintain the existing power dynamic between landlords and tenants by employing the specter of a violent, life-altering act and one of the harshest of remedies employed in the civil justice system. The eviction system uses eviction as a threat and punishment for tenant behavior alleged to be transgressive. The eviction system exalts profit over human needs and denies tenants the legal and financial safeguards and supports necessary to avert the types of conflicts that lead to eviction. It uses unfair, biased, one-sided court processes that fail to provide tenants with legal counsel and a meaningful opportunity to be heard. It denies tenants dignity, respect, and humanity, and disregards the devastating impact of eviction on lives and livelihoods. And while evictions are twice as prevalent in cities as they are in rural areas, the general design and purpose of the eviction system is similar throughout the United States.²³

Much needs to be in place, or fail to be in place, for evictions to happen. The physical act of eviction is at the center of a multi-faceted system of laws, institutions, and individuals.²⁴ Evictions, like most legal remedies, are governed by a constantly evolving set of rules. They are subject to a complex web of constitutional principles, statutes and regulations, government policies, court decisions, and contractual agreements.²⁵ These rules govern the relationship between landlords and tenants, define the parties' rights and responsibilities, and set forth the grounds for and processes that permit severance of those relationships. Evictions engage government bureaucracies that administer housing laws, enforce or fail to enforce housing codes, and provide or deny income supports, housing subsidies, and social services. Evictions are the *raison d'être* of specialized courts and other legal institutions that are designated to adjudicate housing disputes.²⁶ The eviction system provides jobs and income to judges and other court personnel, to lawyers and legal workers, and to eviction executioners like sheriffs, marshals, and constables.²⁷ The eviction system involves action and inaction. And the failure to act — the absence of housing subsidies to keep

23. See Carl Gershenson & Matthew Desmond, *Eviction and the Rental Housing Crisis in Rural America*, 89 RURAL SOCIO. 86, 92 (2024), <https://doi.org/10.1111/ruso.12528> [<https://perma.cc/RL5V-ZGVK>] (“[R]ural renters experience lower rates of formal eviction than urban areas, with a rural eviction filing rate averaging around 4.3 percent as compared to an urban filing rate of around 9.7 percent.”).

24. See Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 367–71 (2022).

25. See generally ANDREW SCHERER, RESIDENTIAL LANDLORD-TENANT LAW IN NEW YORK (2023).

26. See generally Sabbeth, *supra* note 24.

27. See *infra* Section IV.B.

rents affordable, the failure to provide counsel for tenants who cannot afford lawyers in complex legal proceedings, a lack of housing code enforcement — is just as integral to the eviction system as the actions that are taken. To abolish evictions, the eviction system and its component parts must be understood, analyzed, and dismantled or reconfigured to prevent, rather than promote, evictions.

B. All Evictions are Implicitly Violent; Some are Explicitly Violent

The ultimate act of the eviction system, the eviction itself, is always violent because it involves the forcible removal of people from their homes by an armed official, but the threat of the violence of eviction is also an assault and trauma for households that are facing eviction and are one short step away from homelessness. And even when tenants flee their homes prior to the execution of an eviction, their lives are upended: children's education is interrupted, jobs are jeopardized, community ties are lost, and physical and mental health is impacted.²⁸ While there is no comprehensive data on the total number of eviction proceedings filed or of evictions executed annually in the United States each year, there are undoubtedly many millions. The Eviction Lab at Princeton University, which tracks evictions in ten states and 34 cities, found that there were 1,078,856 eviction filings in the 12 months ending in August 2024 in those localities alone.²⁹ That's almost nine eviction proceedings filed every minute of the work week in just those select jurisdictions.

All evictions are implicitly violent because the execution of an eviction always carries the threat of physical harm. No wonder the word “eviction” derives from the Latin, *vincere*, meaning to conquer or vanquish.³⁰ When an armed official with a gun orders a tenant and their family out of their home and removes their possessions — the accumulations of a life — often to be lost, stolen or damaged, tenants are left devastated and traumatized.

Of course, the threat of eviction displaces far more households than the actual execution of evictions. The threat of eviction is a strong motivator for tenants to leave their homes before armed officials arrive to put them out.³¹

28. See Sabbeth, *supra* note 24, at 365.

29. *Eviction Tracking System*, EVICTION LAB, <https://evictionlab.org/eviction-tracking/> [<https://perma.cc/RMR2-7ABT>] (last visited Aug. 23, 2024). The failure of most jurisdictions to maintain accurate and accessible data on evictions is itself a reflection of the generally cavalier attitude about eviction.

30. *Evict*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/evict> [<https://perma.cc/Z4JY-9WBL>] (last visited Mar. 22, 2024).

31. Unfortunately, there is no data on the numbers of people displaced in advance of the execution of an eviction. It is quite likely that the numbers of households that leave before an eviction is executed far exceeds the number actually evicted. This is an important area for further research.

When a tenant believes or knows that eviction is inevitable, they will leave if they are able in order to avoid the devastation wrought by an eviction, even if they cannot avoid the destructive impact of forced displacement. They may leave when a proceeding is merely threatened, when they are served with preliminary predicate notices, when a proceeding is commenced, or after a judgment. However, even when tenants leave before evictions are executed and avoid the violence of the act of eviction, they are still subject to the fear and disruption brought upon by the threat of eviction. And they are displaced from their homes and communities and their lives are upended.

Tragically, the violence of eviction, which is always implicit, all-too-often becomes explicit. Data on evictions that end in violent encounters is very sparse and there is no comprehensive data collection on violent evictions, but it is clear from a survey of recent press accounts that violence and even death as a result of eviction is not uncommon. According to one report, there were at least 80 deaths related to evictions between 2021 and 2023 and at least 30 deaths related to evictions in 2023 alone.³² There is no data or press accounts available on evictions that turn violent but do not result in death or injury, but it is reasonable to assume that there are far more violent encounters that do not result in death and physical harm than there are encounters that turn fatal. The violence of an eviction provokes violence in response; reported deaths and injuries were as often of those executing the eviction as they were of tenants being evicted.

In Sarasota, Florida in 2022, three sheriff's deputies showed up to evict a 65-year-old man named Jeremiah Evans from a condominium.³³ Mr. Evans had been served with a summons and complaint a month earlier.³⁴ When the deputies arrived and entered the apartment, Mr. Evans was seated at the kitchen table.³⁵ He held a knife and said he had a "third amendment" right to stay.³⁶ Instead of de-escalating the conflict, a sheriff's deputy insisted he drop the knife.³⁷ When Mr. Evans stood up, the deputy shot and killed him.³⁸

32. Garnham & Pantín Parrish, *supra* note 6.

33. Melissa Pérez-Carrillo, *Veteran Sarasota Deputy Cleared in Shooting of 65-Year-Old Man During Eviction*, SARASOTA HERALD-TRIB. (June 28, 2022, 4:15 PM), <https://www.heraldtribune.com/story/news/local/2022/06/28/state-attorney-rules-sarasota-deputys-shooting-eviction-case-justified-marsys-law/7470304001/> [<https://perma.cc/4TMA-6S9Y>]; *see also Sarasota Eviction Notice Leads to Fatal Deputy-Involved Shooting*, ABC7 (Apr. 4, 2022, 11:00 AM) [hereinafter ABC7], <https://www.mysuncoast.com/2022/04/01/scso-confirms-deputy-involved-shooting-sarasota/> [<https://perma.cc/J49E-LHMN>].

34. *See* Pérez-Carrillo, *supra* note 33.

35. *See* Pérez-Carrillo, *supra* note 33.

36. *See* Pérez-Carrillo, *supra* note 33.

37. *See* Pérez-Carrillo, *supra* note 33; *see* ABC7, *supra* note 33.

38. *See* Pérez-Carrillo, *supra* note 33; *see* ABC7, *supra* note 33.

There are many such incidents. Dr. Yan Li, who was suffering from a mental health crisis, was shot to death by San Diego law enforcement officials while they were attempting to execute an eviction against her in 2022.³⁹ Gavin Lee Stansell, a tenant, opened fire and killed four people, including himself, when he was served with an eviction notice in Tucson, Arizona in 2022.⁴⁰ William Hardison was fatally shot in Pittsburgh in August of 2023 when seven deputies went to his house to execute an eviction.⁴¹ Kristofer Graves was killed, and the sheriff's deputy who was attempting to serve eviction papers was wounded, in a suburb outside Portland, Oregon in 2023.⁴² Theresa Cain shot and killed her husband and two of her children, then killed herself minutes before deputies arrived to evict them from their Ohio Township home in 2023.⁴³ Martin Wirth was killed, and two deputies were wounded in the course of an eviction in Bailey, Colorado in 2016.⁴⁴ In Brooklyn, Connecticut, in 2023, police shot and tased Bryon Harvey while trying to evict him from his home.⁴⁵

Poor training of eviction executors may lead to increased violence in evictions. In 2023, several people were shot or shot at during evictions in

39. Garnham & Pantín Parrish, *supra* note 6.

40. Sarah Lapidus et al., “*Horrifying and Inexcusable*”: Tucson Constable Shooting Leaves 4 Dead, ARIZ. REPUBLIC (Aug. 26, 2022, 3:50 PM), <https://www.azcentral.com/story/news/local/arizona-breaking/2022/08/26/pima-county-constable-shooting-tucson-deborah-martinez-garibay/7904922001/> [https://perma.cc/9P3S-KBDR].

41. Danny Freeman et al., *Suspect in Hourslong Pittsburgh Standoff After Deputies Tried to Evict Him is Dead, Police Say*, CNN (Aug. 23, 2023, 10:08 PM), <https://www.cnn.com/2023/08/23/us/pittsburgh-police-shooting-garfield/index.html> [https://perma.cc/HGH2-JHN4].

42. Associated Press, *Deputy in Critical Condition after Eviction-Related Shooting in Oregon Suburb, Suspect Dead*, U.S. NEWS & WORLD REP., (July 26, 2023, 3:44 PM), <https://www.usnews.com/news/best-states/oregon/articles/2023-07-26/sheriff-deputy-in-critical-condition-after-shooting-in-oregon-suburb> [https://perma.cc/QXW6-U2LV]; *Man Suspected of Shooting Oregon Deputy during Eviction Identified, Deputy Still Critical*, ASSOCIATED PRESS (July 27, 2023, 2:28 PM), <https://apnews.com/article/deputy-shot-oregon-eviction-089f5fa23e73cbd14811199d36151a31> [https://perma.cc/N29L-KU33].

43. Jennifer Edwards Baker, *Sheriff: Mom Shot Family Minutes before Deputies Arrived to Evict Them from Foreclosed Ohio Township Home*, CINCINNATI ENQUIRER (Mar. 3, 2023, 7:55 AM), <https://www.cincinnati.com/story/news/2023/03/03/murder-suicide-ohio-township-cain-family-new-richmond-eviction/69966270007/> [https://perma.cc/G67D-WCCR].

44. Kelly Werthmann, *Sheriff's Office Didn't Think Eviction Would Come to Violence*, CBS NEWS (Feb. 25, 2016, 9:53 PM), <https://www.cbsnews.com/colorado/news/sheriffs-office-didnt-think-eviction-would-come-to-violence/> [https://perma.cc/H8GB-V5X7].

45. Abigail Brone, *Housing Evictions in CT Are Rarely Violent, But There Are No Rules to Track Them*, CONN. PUB. (June 12, 2023, 4:37 PM), <https://www.ctpublic.org/news/2023-06-12/whether-violent-or-compliant-the-number-of-ct-housing-evictions-often-go-unreported> [https://perma.cc/27GC-DKBT] (“There is no real method or system in place to keep track of the number of evictions that require police involvement [in Connecticut].”).

Philadelphia that were executed by individuals holding the position of Landlord-Tenant Officer.⁴⁶ On March 29th, 2023, Angel Davis was shot in the head by a Philadelphia Landlord-Tenant Officer during an eviction.⁴⁷ On June 28th, 2023, a Philadelphia Landlord-Tenant Officer shot at, and missed, a dog while executing an eviction.⁴⁸ In July 2023, Latese Bethea was shot in the knee while being evicted by a Philadelphia Landlord-Tenant Officer.⁴⁹ A news report explained, “the sheriff’s office does some evictions, but landlords often hire the [Landlord-Tenant Office] because it’s faster and cheaper.”⁵⁰ These shootings, all within a period of four months, led the Philadelphia City Council to suspend evictions temporarily and examine the new position of Landlord-Tenant Officer.⁵¹ The position, which had been recently authorized by state law, empowered private, for-profit sector armed agents who are neither trained nor certified to execute evictions to do so.⁵² One Philadelphia City Councilmember stated at a press conference that this cluster of eviction-related violence reflected “a system that terrorized and traumatized many women and families”⁵³ As of August of 2024, the Landlord-Tenant Office was expected to be shut down because it was unable to obtain insurance.⁵⁴

46. Marco Cerino, *Legislators, Litigators Target Landlord-Tenant Office for Violent Evictions*, PHILA. TRIB. (July 25, 2023), https://www.phillytrib.com/news/local_news/legislators-litigators-target-landlord-tenant-office-for-violent-evictions/article_e5f268ce-b4c7-562c-ac1b-db005a5cfdd1.html [<https://perma.cc/U8BH-D7ZU>].

47. *See id.*

48. Max Marin, *Philly Landlord-Tenant Officer Discharges Firearm During Eviction for the Second Time in Months*, PHILA. INQUIRER (June 28, 2023, 6:19 PM), <https://www.inquirer.com/news/philadelphia/philadelphia-eviction-landlord-tenant-officer-shooting-dog-20230628.html> [<https://perma.cc/RRK8-WXYU>].

49. *See* Jesse Bunch & Ryan W. Briggs, *Second Tenant Shot During Philly Eviction Sues, as Landlord-Tenant Officer Moves to Resume Lockouts*, PHILA. INQUIRER (Aug. 16, 2023, 2:17 PM), <https://www.inquirer.com/news/philadelphia/landlord-tenant-office-philadelphia-shooting-lawsuit-20230816.html> [<https://perma.cc/Q7KW-XL4U>]; Cerino, *supra* note 46.

50. Chad Pradelli, *Philadelphia Landlord and Tenant Office Resumes Evictions, Implements Change*, 6ABC (Aug. 21, 2023), <https://6abc.com/philadelphia-evictions-landlord-and-tenant-office-municipal-court-philly-eviction-violence/13680844/> [<https://perma.cc/56R9-GQ5Q>].

51. *See* Cerino, *supra* note 46; *see also* Brian Sheehan, *Officials Suspend Evictions in Philly After 3 Reported Shootings in 4 Months*, NBC10 PHILA. (July 20, 2023, 4:50 PM), <https://www.nbcphiladelphia.com/news/local/officials-suspend-evictions-in-philadelphia-after-3-reported-shootings-in-4-months/3607955/> [<https://perma.cc/WVU4-EWP9>].

52. *See* Cerino, *supra* note 46; *see also* Sheehan, *supra* note 51.

53. *See* Cerino, *supra* note 46.

54. Aaron Moselle, *Philly’s Controversial For-Profit Eviction System Could Shut Down in the Coming Weeks*, WHYY PBS (July 30, 2024), <https://whyy.org/articles/philadelphia-landlord-tenant-office-shutdown-eviction-insurance/> [<https://perma.cc/WR7C-QFBB>].

One horribly violent eviction four decades ago led New York City to examine and revise its procedures for executing evictions.⁵⁵ In 1984, police shot and killed an elderly Black woman named Eleanor Bumpurs in the course of an eviction.⁵⁶ Ms. Bumpurs, who was alleged to be mentally ill, was renting a New York City public housing apartment for \$98.65 per month and had a default judgment granted against her when she failed to appear in court.⁵⁷ She refused to open the door when a city marshal came to evict her,⁵⁸ so the marshal called the police for assistance.⁵⁹ When the police arrived, they punched out the lock to the door to Ms. Bumpurs's home and fatally shot her with a 12-gauge shotgun twice.⁶⁰ The protocols initiated after the killing of Eleanor Bumpurs called for the use of tasers in lieu of shotguns in police encounters with emotionally disturbed persons, but they have been criticized because they did not call for involvement of mental health professionals, and police violence in encounters with emotionally disturbed people in New York City remains a serious problem.⁶¹

55. Selwyn Raab, *Autopsy Finds Bumpurs Was Hit by Two Blasts*, N.Y. TIMES (Nov. 27, 1984), <https://www.nytimes.com/1984/11/27/nyregion/autopsy-finds-bumpurs-was-hit-by-two-blasts.html> [<https://perma.cc/FM8C-CNJH>]; Karen McVeigh, *Police Face Lawsuits in Shootings of Three Emotionally Disturbed People*, GUARDIAN (Oct. 23, 2013, 10:36 AM), <https://www.theguardian.com/world/2013/oct/23/police-lawsuits-shootings-mentally-ill> [<https://perma.cc/R6AX-AFR6>].

56. See Selwyn Raab, *Officer Indicted in Bumpurs Case*, N.Y. TIMES (Feb. 1, 1985), <https://www.nytimes.com/1985/02/01/nyregion/officer-indicted-in-bumpurs-case.html> [<https://perma.cc/RQ52-EB6N>]; *People v. Sullivan*, 503 N.E.2d 74, 75–76 (N.Y. 1986).

57. Raab, *supra* note 56; see Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIA. L. REV. 127, 130 (1987).

58. See *id.*

59. Selwyn Raab, *Civilian Describes the 'Struggle' Before Shooting of Bumpurs*, N.Y. TIMES (Jan. 14, 1987), <https://www.nytimes.com/1987/01/14/nyregion/civilian-describes-struggle-before-shooting-of-bumpurs.html?searchResultPosition=14> [<https://perma.cc/CUE9-5VHD>].

60. Greg B. Smith, *Eleanor Bumpurs' Namesake Kin Inherits Legacy of NYCHA Neglect and Disrepair*, THE CITY, (Jan. 25, 2021, 8:02 AM), <https://www.thecity.nyc/2021/1/24/22247526/eleanor-bumpurs-nycha-disrepair-bronx-nypd> [<https://perma.cc/W3GH-RFEU>]; Raab, *supra* note 56. While New York City subsequently revised its protocols for situations like the Bumpurs case, it remains true that evictions are violent acts that carry the risk of injury and death. An indictment against Officer Steven Sullivan, the police officer who pulled the trigger, was dismissed in 1986. *Sullivan*, 503 N.E.2d at 76 (dismissing indictment); Leonard Buder, *Police Kill Woman Being Evicted; Officers Say She Wielded a Knife*, N.Y. TIMES (Oct. 30, 1984), <https://www.nytimes.com/1984/10/30/nyregion/police-kill-woman-being-evicted-officers-say-she-wielded-a-knife.html> [<https://perma.cc/F9EY-PYT6>].

61. See Kareem Fahim & Christine Hauser, *Taser Use in Man's Death Broke Rules, Police Says*, N.Y. TIMES (Sept. 25, 2008), <https://www.nytimes.com/2008/09/26/nyregion/26taser.html> [<https://perma.cc/4NEP-8376>]; McVeigh, *supra* note 55; see also Randolph M. McLaughlin & Debra S. Cohen, *The NYPD and the Mentally Ill*, 2017 N.Y.L.J.1053.

Whether the acts of violence associated with evictions are acts of desperation by tenants who face the imminent loss of their home or acts of frustration by those responsible for and determined to execute the eviction, it is time we look for strategies for resolving landlord-tenant disputes that are not centered on the use of violence. And until evictions as an available legal remedy are eliminated, those executing them must be trained to de-escalate and not exacerbate the violence.

C. Evictions Have Devastating Consequences

What happens in the aftermath of eviction vastly compounds the violence of the act of eviction. There is extensive and rapidly accumulating data on the long-and-short-term devastation wrought by eviction. This author and many others have written in depth about how evictions ravage lives: they damage physical and mental health, disrupt education, cause job loss and homelessness and dislodge people from community and stability.⁶² Negative health effects associated with eviction include: feelings of anxiety, depression, and hopelessness;⁶³ increased emergency room visits;⁶⁴ mortality from substance abuse;⁶⁵ increased incidence of high blood

62. See generally Emily A. Benfer, *Housing Is Health: Prioritizing Health Justice and Equity in the U.S. Eviction System*, 22 YALE J. HEALTH POL'Y, L., & ETHICS, 49–133 (2024) [hereinafter Benfer, *Housing is Health*]; Emily A. 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, 4–5 (2021); Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and Oppression*, 53 SETON HALL L. REV. 1 (2022); Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POL'Y 59, 61 (2016).

63. RILWAN BABAJIDE ET AL., THE MIDDLESEX CNTY. COAL. ON HOUS. & HOMELESSNESS, EFFECTS OF EVICTION ON INDIVIDUALS AND COMMUNITIES IN MIDDLESEX COUNTY 27 (2016); see also TARA COOKSON ET AL., THE SEATTLE WOMEN'S COMM'N & THE HOUS. JUST. PROJECT OF THE KING CNTY. BAR ASS'N, LOSING HOME: THE HUMAN COST OF EVICTION IN SEATTLE 3 (2018) (documenting that in Seattle, approximately 37% of survey respondents who had experienced eviction reported feeling stressed, roughly 8% experienced increased or new depression, anxiety, or insomnia, and 5% developed a heart condition they believed to be connected to their housing instability).

64. ROBERT COLLINSON & DAVIN REED, THE EFFECTS OF EVICTIONS ON LOW-INCOME HOUSEHOLDS 25, 26 (2018), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf [<https://perma.cc/QB5Y-84MH>] (finding an increase in the probability of emergency room visits in one to two years after an eviction filing of about 3.5 percentage points, or 0.38 visits in one to two years after filing, a 70% increase over the mean of non-evicted households).

65. ASHLEY C. BRADFORD & W. DAVID BRADFORD, HEALTH SERVS. RSCH., THE EFFECT OF EVICTIONS ON ACCIDENTAL DRUG & ALCOHOL MORTALITY 55 9, 15 (2020); CTR. ON URB. POVERTY AND CMTY. DEV. CASE W. UNIV., THE CLEVELAND EVICTION STUDY: OBSERVATIONS IN EVICTION COURT AND THE STORIES OF PEOPLE FACING EVICTION 17, 30 (2019) [hereinafter CASE W. UNIV.] (noting that a Case Western University survey of tenants facing eviction in Cleveland found that 45% of interviewed tenants reported they had been mentally or emotionally impacted by the eviction process and that their children were also mentally or

pressure, heart disease, respiratory illnesses, sexually transmitted infections; and exacerbation of HIV/AIDS.⁶⁶ Other studies have arrived at similar conclusions.⁶⁷

For obvious reasons, evictions are also a leading cause of homelessness, with all of its attendant consequences.⁶⁸ When a household is evicted and left unhoused in a housing market with a paucity of affordable housing, the household becomes homeless. A 2017 report by The Institute for Children, Poverty, and Homelessness, found that 25% of families eligible for shelter in New York City cited eviction as the reason for their homelessness.⁶⁹ When a household has an eviction on its record, it faces further obstacles to rehousing beyond the paucity of affordable housing. It is also difficult for

emotionally impacted; and approximately 21% reported that they were experiencing poor physical health); see Grace Himmelstein & Matthew Desmond, *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic*, HEALTH AFFS. (Apr. 1, 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/> [<https://perma.cc/3Q76-QP52>].

66. See Himmelstein & Desmond, *supra* note 65.

67. Benfer, *Housing Is Health*, *supra* note 62; CASE W. UNIV., *supra* note 65 (noting that a Case Western University survey of tenants facing eviction in Cleveland found that 45% of interviewed tenants reported they had been mentally or emotionally impacted by the eviction process and that their children were also mentally or emotionally impacted; and approximately 21% reported that they were experiencing poor physical health).

68. See, e.g., MASS. INTERAGENCY COUNCIL ON HOUS. & HOMELESSNESS, REGIONAL NETWORKS END HOMELESSNESS PILOT FINAL EVALUATION REPORT 76 (2011), <https://westernmasshousingfirst.org/wp-content/uploads/2011/03/wmn-icch-final-report-complete.pdf> [<https://perma.cc/762U-4HUC>] (45% of people experiencing homelessness or at risk of experiencing homelessness cited eviction as the reason for their housing instability); N.Y.C. INDEP. BUDGET OFF., N.Y.C. DEP'T OF HOMELESS SERVS., THE RISING NUMBER OF HOMELESS FAMILIES IN NYC, 2002–2012: A LOOK AT WHY FAMILIES WERE GRANTED SHELTER, THE HOUSING THEY HAD LIVED IN & WHERE THEY CAME FROM 7 (2014) (eviction was the most common reason for families entering city homeless shelters between 2002 and 2012); WHITNEY FLEMING, COAL. FOR THE HOMELESS HOUS./HARRIS CNTY., CAPACITY AND GAPS IN THE HOMELESS RESIDENTIAL AND SERVICE SYSTEM, HARRIS AND FORT BEND COUNTIES 5 (2011), <https://irp-cdn.multiscreensite.com/2d521d2c/files/uploaded/Capacity-and-Gaps-in-the-Homeless-Residential-and-Service-System-Harris-and-Fort-Bend-Counties.pdf> [<https://perma.cc/4H3R-6Y9Q>] (in Harris and Fort Bend Counties, Texas, approximately 30 percent of people experiencing homelessness identified eviction by a family member or a landlord as a cause of their homelessness); JOHN & TERRY LEVIN CTR. FOR PUB. SERV. & PUB. INT., SAN FRANCISCO RIGHT TO CIVIL COUNSEL PILOT PROGRAM DOCUMENTATION REPORT 3, 17 (2014), <https://law.stanford.edu/index.php?webauth-document=child-page/341183/doc/slspublic/SF%20RTCC%20Documentation%20Report.pdf> [<https://perma.cc/T6HJ-MHCN>] (noting in San Francisco, 11% of families in homeless shelters identified evictions — legal and illegal — as a cause of their homelessness).

69. INST. FOR CHILDREN, POVERTY & HOMELESSNESS, ON THE MAP: THE DYNAMICS OF FAMILY HOMELESSNESS IN NEW YORK CITY (2017), <https://www.icphusa.org/reports/map-dynamics-family-homelessness-new-york-city-2017/> [<https://perma.cc/2DGH-LY4S>]. A 2014 study by the New York City Department of Homeless Services similarly found that eviction was the most common reason for families entering city homeless shelters between 2002 and 2012. See N.Y.C. INDEP. BUDGET OFF., *supra* note 68.

an evicted family to secure alternative housing because of the prevalent use of tenant-screening reports of prior evictions by landlords to deny housing applications by prospective tenants.⁷⁰ The toll of eviction on those who become unhoused includes physical, emotional, and social harm. Unhoused people face decreased lifespans;⁷¹ increased rates of diabetes, hypertension, heart attacks, and depression;⁷² are more susceptible to disease, injury, hunger, and death;⁷³ are victims of theft, violence, sexual assault, rape, and murder.⁷⁴ Their human connections to families, friendships, and community,

70. See, e.g., *LEGAlease: The Use of Tenant Screening Reports and Tenant Blacklisting*, N.Y. STATE BAR ASS'N, <https://nysba.org/legalease-the-use-of-tenant-screening-reports-and-tenant-blacklisting/> [<https://perma.cc/426J-4XE8>] (last visited Sept. 11, 2024); Ronda Kaysen, *How to Escape the Dreaded "Tenant Blacklist,"* N.Y. TIMES (Apr. 13, 2019), <https://www.nytimes.com/2019/04/13/realestate/how-to-escape-the-dreaded-tenant-blacklist.html> [<https://perma.cc/M4BC-V33F>].

71. Anna Gorman & Harriet Blair Rowan, *The Homeless are Dying in Record Numbers on the Streets of L.A.*, KAISER HEALTH NEWS (Apr. 24, 2019), <https://khn.org/news/the-homeless-are-dying-in-record-numbers-on-the-streets-of-l-a> [<https://perma.cc/JRK4-5T7L>] (“In Los Angeles County, the average age of death for homeless people was 48 for women and 51 for men. The life expectancy for women in California in 2016 was 83 and 79 for men.”); Erin McCormick, *Homelessness is Lethal: U.S. Deaths Among Those Without Housing are Surging*, GUARDIAN (Feb. 7, 2022), <https://www.theguardian.com/us-news/2022/feb/07/homelessness-is-lethal-deaths-have-risen-dramatically> [<https://perma.cc/356B-X5H9>] (“An examination of 20 U.S. urban areas found the number of deaths among people living without housing shot up by 77% in the five years ending in 2020.”); N.Y.C. DEP’T OF HEALTH & MENTAL HYGIENE, SIXTEENTH ANNUAL REPORT ON DEATHS AMONG PERSONS EXPERIENCING HOMELESSNESS 8 (2021), https://a860-gpp.nyc.gov/concern/parent/zg64tp214/file_sets/j9602313t [<https://perma.cc/SUB4-MFUB>] (“Overall, DHS and OCME reported 640 deaths among persons experiencing homelessness in NYC, representing an increase of 4% in the overall number of deaths compared to FY20 (613).”).

72. NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL, HOMELESSNESS & HEALTH: WHAT’S THE CONNECTION? FACT SHEET (2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf> [<https://perma.cc/UZ4S-ESJ9>].

73. McCormick, *supra* note 71 (“An examination of 20 U.S. urban areas found the number of deaths among people living without housing shot up by 77% in the five years ending in 2020.”); N.Y.C. DEP’T OF HEALTH & MENTAL HYGIENE, *supra* note 71; Matt Katz, *Number of Homeless People Killed in NYC is Increasing*, GOTHAMIST (Mar. 15, 2022), <https://beta.gothamist.com/news/number-of-homeless-people-killed-in-nyc-is-increasing?betaRedirect=true> [<https://perma.cc/7WR5-97MU>]; NAT’L COAL. FOR THE HOMELESS, VULNERABLE TO HATE: A SURVEY OF BIAS-MOTIVATED VIOLENCE AGAINST PEOPLE EXPERIENCING HOMELESSNESS IN 2016–2017 4 (2018), https://nationalhomeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final_for-web2.pdf [<https://perma.cc/S95D-MVTJ>].

74. See Katz, *supra* note 73 (“Data compiled by city agencies shows that the killings are part of a larger pattern. Since 2018, the number of homeless people killed in New York City has increased 300 percent. Seven people were killed that year, 10 in 2019, then 11 in 2020, and finally 22 in the last fiscal year. It’s a trend that homeless advocates told *The Washington Post* holds true nationally, though there is no definitive national data.”); NAT’L COAL. FOR THE HOMELESS, *supra* note 73.

are ruptured; they face major obstacles to employment and education;⁷⁵ and their daily struggle for survival subjects them to criminalization.⁷⁶ And the cost of homelessness to society is also enormous. A Massachusetts study, for example, found almost ten years ago that each family that enters the state-run emergency shelter system cost the state an estimated \$26,620.⁷⁷

D. Evictions Disproportionately Affect People of Color, Especially Women

The data is incontrovertible: evictions affect people of color, especially women, in vastly disproportionate numbers compared to their white male counterparts. A 2020 study by the Eviction Lab at Princeton University found that eviction filing rates and eviction rates were, on average, significantly higher for Black renters than for white renters and that women — especially Black and Latinx women — faced higher eviction rates than men.⁷⁸ Black individuals comprised 19.9% of all adult renters in the counties included in the study, but 32.7% of all defendants in eviction proceedings.⁷⁹ In contrast, whites constituted over half the population of adult renters

75. NAT'L COAL. FOR THE HOMELESS, EDUCATION OF HOMELESS CHILDREN AND YOUTH (2007), <https://nationalhomeless.org/wp-content/uploads/2014/06/Education-Fact-Sheet.pdf> [<https://perma.cc/TD5G-2QEL>]; NAT'L CTR. FOR HOMELESS EDUC., IN SCHOOL EVERY DAY: ADDRESSING CHRONIC ABSENTEEISM AMONG STUDENTS EXPERIENCING HOMELESSNESS (2017), <https://nche.ed.gov/wp-content/uploads/2018/10/chron-absent.pdf> [<https://perma.cc/H2HC-8THK>]; INST. FOR CHILDREN, POVERTY, & HOMELESSNESS, EMPTY SEATS: THE EPIDEMIC OF ABSENTEEISM AMONG HOMELESS ELEMENTARY STUDENTS (2015), https://www.icphusa.org/wp-content/uploads/2016/09/ICPH-Policy-Report_Empty-Seats_Chronic-Absenteeism.pdf [<https://perma.cc/GAQ6-UYCD>].

76. *See, e.g.*, *City of Grants Pass v. Johnson*, 144 S. Ct. 2202, 2218 (2024). *Grants Pass* involved an ordinance in Grants Pass, Oregon that makes it a criminal offense to sleep on public property. The U.S. Court of Appeals for the Ninth Circuit had held the ordinance unconstitutional under the Eighth Amendment because it constituted cruel and unusual punishment of people due to their homelessness status. *Johnson v. City of Grants Pass*, 72 F.4th 868, 896 (9th Cir. 2023). The U.S. Supreme Court reversed and reinstated the Grants Pass ordinance, holding the following:

The Cruel and Unusual Punishments Clause focuses on the question what ‘method or kind of punishment’ a government may impose after a criminal conviction, not on the question whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction for that offense.

Grants Pass, 144 S. Ct. at 2216.

77. Linda Wood-Boyle, *Facing Eviction: Homelessness Prevention for Low-Income Tenant Households*, CMTIES. & BANKING 20, 21 (2015), <https://www.bostonfed.org/publications/communities-and-banking/2015/winter/facing-eviction-homelessness-prevention-for-low-income-tenant-households.aspx> [<https://perma.cc/CFT7-W6MM>].

78. *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/> [<https://perma.cc/ANH3-CXG8>].

79. *Id.*

(51.5%) but represented only 42.7% of eviction filings.⁸⁰ Across the 1,195 counties in the Eviction Lab’s sample, they found that 341,756 women were evicted annually, approximately 16% more than the 294,908 men.⁸¹

In another study, of racial and gender disparities in national eviction rates between 2012 and 2016,⁸² the Eviction Lab found, based on demographic patterns of communities, that eviction and eviction filing rates for Black renters were almost double that of white renters⁸³ and that nearly 25% of all Black renters live in a county in which the Black eviction rate was at least double the white eviction rate.⁸⁴ In a different study, the New York University Furman Center for Real Estate and Urban Policy concluded that this disproportionality is not correlated with income — wealthy Black households are more likely to be evicted than white households.⁸⁵ Regional and local studies expand on the Eviction Lab’s findings.⁸⁶ For example, a statewide analysis of Michigan found that higher eviction filing rates were correlated with Black neighborhoods, “single-mother households, and the presence of children.”⁸⁷

Black women, in particular, are the most likely to be evicted.⁸⁸ A 2020 American Civil Liberties Union (ACLU) study found that in at least 17 states, the rate of eviction filings against Black female tenants was at least

80. *Id.*

81. *Id.*

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

83. *See id.* at 653 (finding that Black renters had a filing rate of 6.2% and eviction judgments at a 3.4% rate, while white renters had a filing rate of 3.4% and eviction judgments at a 2% rate).

84. *Id.*

85. N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON C.R., RACIAL DISCRIMINATION AND EVICTION POLICIES AND ENFORCEMENT IN NEW YORK 84 (2022), <https://www.usccr.gov/files/2022-03/New-York-Advisory-Committee-Evictions-Report-March2022.pdf> [<https://perma.cc/CB2Q-VVCL>].

86. *See* STOUT, COST-BENEFIT ANALYSIS FOR PHILADELPHIA RIGHT TO COUNSEL FOR LOW INCOME TENANTS FACING EVICTION (2022), <https://www.stout.com/en/experience/cost-benefit-analysis-for-philadelphia-right-to-counsel> [<https://perma.cc/K9UX-SK7F>] (concluding “the benefits associated with providing attorneys to low-income tenants far exceed the cost of providing attorneys.”).

87. ROBERT GOODSPEED ET AL., UNIV. OF MICH. POVERTY SOLS., MICHIGAN EVICTIONS: TRENDS, DATA SOURCES, AND NEIGHBORHOOD DETERMINANTS 20 (2020), <https://poverty.umich.edu/files/2020/06/Michigan-Eviction-Project-working-paper.pdf> [<https://perma.cc/Z4U6-GG47>].

88. Molly Solomon & Erin Baldassari, *Why Black Women Are More Likely to Face Eviction*, KQED (Feb. 21, 2022), <https://www.kqed.org/news/11905386/why-black-women-are-more-likely-to-face-eviction> [<https://perma.cc/DL5F-2LW8>]; *see also* NADA HUSSEN & SARAH GALLAGHER, NAT’L LOW INCOME HOUS. COAL., THE STATE OF STATEWIDE TENANT PROTECTIONS 1–2 (2023), <https://nlhc.org/sites/default/files/The-State-of-Statewide-Tenant-Protections.pdf> [<https://perma.cc/NSM9-VLKB>].

twice as high as the rate for white renters.⁸⁹ Another Eviction Lab study of evictions in Milwaukee found that women from Black neighborhoods constituted 9.6% of the city's population, but 30% of the evicted households.⁹⁰ These studies more than amply document the consequences of public policies and private action that have racialized and feminized the status of tenants, resulting in tenancy, eviction filings and actual evictions all disproportionately affecting women and Black and other people of color.

The reasons for this are not complicated. A growing body of literature — including by the author of this Article — explains that the current eviction system results from and is the culmination of racism and discrimination in the laws, policies, and practices over the history of the United States that have determined who gets access to housing, both to own and rent, and the financial and physical conditions related to that housing.⁹¹ Since the founding of this nation, Black people and other people of color have been blocked from homeownership opportunities and denied the ability to accumulate wealth. Black people themselves were treated as property and prohibited from owning property when they were enslaved,⁹² and the few free Black people who were legally able to acquire property in the early years of the republic often faced vicious discrimination and violence.⁹³ Post-Civil War public policies, starting with the *de jure* residential segregation rules of the century-long Jim Crow era and followed by redlining, urban renewal,

89. Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, AM. C.L. UNION (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color> [https://perma.cc/4XKQ-T3AE].

90. Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. 1 (Mar. 2014), https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf [https://perma.cc/2HCU-BJ96].

91. See generally KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP (2019); Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: Advancing Racial Equity Through Highway Reconstruction, 73 VAND. L. REV. 1259, 1260 (2020) (recommending that policymakers provide a comprehensive analysis of how a proposed policy or practice will affect racial or ethnic groups); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICAN (2017); Scherer, *supra* note 62.

92. Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation*, 11 U. PA. J.L. & SOC. CHANGE 131, 135–36 (2007).

93. *Id.* at 142 (discussing Frederick Douglas’s 1848 speech following a series of anti-Black race riots: “No man is safe — his life — his property—and all that he holds dear, are in the hands of a mob . . .” (citing LEON LITWACK, NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES 1790–1860, at 102 (1961))).

exclusionary zoning and private discrimination, continue to deny Black people homeownership opportunities and relegate them to tenancies today.⁹⁴

Zoning laws have, since their inception in the early 20th century, been a tool of racial segregation and bars to homeownership. The earliest zoning laws explicitly mandated separate neighborhoods for Black and white residents.⁹⁵ In *Buchanan v. Warley* in 1917, the Supreme Court held a Louisville, Kentucky zoning ordinance unconstitutional under the Fourteenth Amendment,⁹⁶ but private racially restrictive covenants in deeds quickly replaced racially restrictive zoning. The government, at all levels, both promoted and supported these covenants,⁹⁷ until the Supreme Court declared racially restrictive covenants illegal in *Shelley v. Kramer* in 1948.⁹⁸ Gentrification and displacement, fostered by contemporary zoning and other public policies, continue to encourage segregation.⁹⁹ Predatory lending practices similarly continue to promote segregation, deprive Black people of homeownership opportunities, and relegate them to tenant status.¹⁰⁰

94. See generally Danyelle Solomon et al., *Systemic Inequality: Displacement, Exclusion, and Segregation: How America's Housing System Undermines Wealth Building in Communities of Color*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/> [<https://perma.cc/L2JJ-Q8GT>].

95. *Buchanan v. Warley*, 245 U.S. 60, 60–61 (1917).

96. *Id.* at 65 (resting its decision on the theory that the zoning restriction abridged the freedom of contract of a white seller who sought to sell to a Black purchaser).

97. ROTHSTEIN, *supra* note 91, at 94–95.

98. 334 U.S. 1, 10–12 (1948).

99. See, e.g., NAT'L CMTY. REINVESTMENT COAL., SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES, <https://ncrc.org/wp-content/uploads/2019/03/NCRC-Research-Gentrification-FINAL.pdf> [<https://perma.cc/K6AQ-SM52>]; Abigail Savitch-Lew, *City's Tenant Protection Effort Breaks Ground and Ruffles Feathers*, CITY LIMITS (July 21, 2015), <https://citylimits.org/2015/07/21/citys-tenant-protection-effort-breaks-ground-and-ruffles-feathers> [<https://perma.cc/G7A7-ZPZW>] (“While the city hopes its rezoning plan will help the de Blasio administration achieve its goal of building and preserving 200,000 units of affordable housing over the next ten years, the city has also acknowledged that investment in rezoning neighborhoods will incentivize landlords to use illegal measures to push out existing tenants.”); Emma Whitford, *City Nearly Doubles Budget for Lawyers Who Help NYers Fight Evictions*, GOTHAMIST (Sept. 28, 2015), <https://gothamist.com/news/city-nearly-doubles-budget-for-lawyers-who-help-nyers-fight-evictions?br=1> [<https://perma.cc/R4F7-LD6P>].

100. Press Release, N.Y. State Att’y Gen.’s Off., A.G. Schneiderman Secures Agreement with Evans Bank Ending Discriminatory Redlining in Buffalo (Sept. 10, 2015) [hereinafter Press Release, Redlining in Buffalo], <https://Ag.Ny.Gov/Press-Release/2015/Ag-Schneiderman-Secures-Agreement-Evans-Bank-Ending-Discriminatory-Mortgage> [<https://perma.cc/4KPS-3498>]. In another press release, the New York Attorney General’s office stated that it found a similar pattern of discrimination by Five Star Bank in Rochester, New York. Press Release, N.Y. State Att’y Gen.’s Off., A.G. Schneiderman Secures Agreement with Five Star Bank to End Racially Discriminatory Mortgage Lending Practices in Rochester (Jan. 15, 2015) [hereinafter Press Release, Mortgage Lending Practices in

Black people and other people of color and their communities have also been shunted from place to place when their presence has been in the path of land use development. A prime example of this is the federal government's Urban Renewal projects, which ran from the late 1940s to the early 1960s. As a result of urban renewal projects, low-income communities of color throughout the country were demolished with federal funds, and many people of color lost homes that they either rented or owned. Two-thirds of those displaced by Urban Renewal were people of color and three quarter of the people of color displaced were tenants rather than homeowners before their displacement.¹⁰¹ Unlike homeowners, tenants were provided no compensation for the loss of their homes or any assistance to defray the costs of relocation.¹⁰² In Los Angeles, Urban Renewal displaced 20,000 people, the majority of them people of color.¹⁰³ In Cincinnati, the Kenyon-Barr project displaced at least 4,953 families, 4,824 of which were Black.¹⁰⁴ In St. Louis, the Plaza Square Urban Renewal project razed Mill Creek Valley — a 454-acre densely populated Black community in the center of St. Louis — and displaced 20,000 people¹⁰⁵.

Public and private banking policies and practices have also significantly limited homeownership opportunities for Black and other people of color. When the Roosevelt administration stepped in during the Depression to shore up the banks and the real estate industry, it first created the Home Owners Loan Corporation (HOLC), which drew maps to guide banks in making loans that encouraged lending to homeowners in white communities and redlined Black communities to discourage lending.¹⁰⁶ Racial segregation became an official requirement of newly-established FHA mortgage insurance program: the federal government would only provide mortgage insurance for homeownership in segregated communities.¹⁰⁷ These policies effectively prevented Black families from becoming homeowners and meant that Black people who did own property were more likely to be denied loans, or were charged higher interest rates to borrow, maintain, and improve their

Rochester], <https://ag.ny.gov/press-release/2015/ag-schneiderman-secures-agreement-five-star-bank-end-racially-discriminatory> [<https://perma.cc/HJ2Q-29SD>].

101. Terry J. Tondro, *Urban Renewal Relocation: Problems in Enforcement of Conditions on Federal Grants to Local Agencies*, 117 U. PA. L. REV. 183, 184 (1968).

102. *Id.*

103. *Id.*; see also Brent Cebul, *Urban Renewal Meant Negro Removal*, LA PROGRESSIVE (July 29, 2020), <https://www.laprogressive.com/racism/urban-renewal> [<https://perma.cc/V9CA-R594>].

104. See Cebul, *supra* note 103.

105. Ryan DeLoach & Jenn DeRose, *Urban Renewal and Mill Creek Valley*, DECODING THE CITY, <http://www.decodingstl.org/urban-renewal-and-mill-creek-valley> [<https://perma.cc/PK2P-W5T8>] (last visited Sept. 4, 2024).

106. ROTHSTEIN, *supra* note 91, at 63–64.

107. ROTHSTEIN, *supra* note 91, at 65.

properties, all of which made their ability to remain in their homes more precarious.¹⁰⁸ In many localities, contemporary property values still directly correspond to the HOLC maps from 1937¹⁰⁹ and predatory lending practices leading to the 2008 recession and beyond continue to foster segregation, deprive Black people of homeownership opportunities, and relegate them to tenant status.¹¹⁰

This centuries-long history of enslavement, discrimination, segregation and denied opportunity, has led to enormous racial disparities in homeownership in the United States. In 2018, 42% of Black households were homeowners, compared to 73% of non-Hispanic white households,¹¹¹ While 27.9% of white households rent their homes, 58% of Black households, 52% of Latino households, and just under 40% of Asian households do.¹¹² Because of this racialization of tenancy, Black and other people of color are disproportionately subject to eviction proceedings.

High rent burdens and inadequate living conditions also fall disproportionately on Black people and further contribute to their higher eviction rate. Black and Latinx families are significantly more rent-burdened than white families. In 2021, 57% of Black families and 53% of Latinx families were rent-burdened in comparison to 45% of white and Asian families in the United States at all income levels.¹¹³ Rising housing costs have displaced Black renters disproportionately. For example, in San Francisco, between 2000 and 2015 as housing prices rose, the city lost 17%

108. ROTHSTEIN, *supra* note 91, at 65; *see also* La-Brina Almeida, *A History of Racist Federal Housing Policies*, MASS. BUDGET & POL'Y CTR. (Aug. 6, 2021), <https://massbudget.org/2021/08/06/a-history-of-racist-federal-housing-policies/> [<https://perma.cc/X2JT-WXAU>].

109. ROTHSTEIN, *supra* note 91, at 64.

110. For example, a 2014 mortgage lending discrimination case in Buffalo, New York revealed that a map created by Evans Bank to define its lending area automatically excluded predominantly black communities from its mortgage products regardless of an individual's credit-worthiness and excluded those communities from their marketing efforts. Press Release, Redlining in Buffalo, *supra* note 100. In another press release, the New York Attorney General's office stated that it found a similar pattern of discrimination by Five Star Bank in Rochester, New York. Press Release, Mortgage Lending Practices in Rochester, *supra* note 100.

111. Drew DeSilver, *As National Eviction Ban Expires, A Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR., (Aug. 2, 2021), <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s> [<https://perma.cc/H78X-N2QG>].

112. *Id.*

113. Rachel Bogardus Drew, *Low-Income Renters of Color Increasingly Struggled to Pay Rent During Pandemic*, ENTERPRISE (Sept. 11, 2023), <https://www.enterprisecommunity.org/blog/low-income-renters-color-increasingly-struggled-pay-rent-during-pandemic> [<https://perma.cc/WD2P-Y8CE>].

of its low-income Black population.¹¹⁴ Another reflection of the disproportionately high rent burdens of Black renters is the high rate of Black tenancy in publicly subsidized housing. Black tenancy in subsidized housing, at 39%, is approximately three times higher than the Black population in the United States.¹¹⁵

Black people are also more likely to live in deteriorated housing, which further increases the likelihood of conflicts that lead to eviction proceedings.¹¹⁶ A May 2020 report from the United States Government Accountability Office found that the proportion of Black households that lived in rental units “with substantial quality issues” was estimated at 24%.¹¹⁷ This disparity is particularly pronounced for LGBTQ+ people of color who, at 30.2%, were more than three times as likely to be in rental arrears in 2021 than white non-LGBTQ+ people.¹¹⁸

The court-sanctioned violent eviction system that, as a result of a lengthy history of government policies and practices has fallen disproportionately on people of color, has its parallels in mass incarceration, child regulation, and other legal systems that primarily and disproportionately affect the rights and lives of low-income people of color. Like those systems, the eviction system reflects the use of violence, discipline, and punishment against a mostly Black and brown population, in this case, mostly women.¹¹⁹ As Matthew Desmond said, “If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out.”¹²⁰

114. U.C. BERKELEY’S URB. DISPLACEMENT PROJECT & CAL. HOUS. P’SHP, RISING HOUS. COSTS AND RE-SEGREGATION IN SAN FRANCISCO 1, 3 (2021), https://www.urbandisplacement.org/wp-content/uploads/2021/08/sf_final.pdf [<https://perma.cc/E769-HLTG>].

115. N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON C.R., *supra*, note 85, at 63.

116. See Pouya Bavafa, *The Intentional Targeting Test: A Necessary Alternative to the Disparate Treatment and Disparate Impact Analysis in Property Rentals Discrimination*, 43 COLUM. J.L. & SOC. PROBS. 491, 495 (2010) (explaining how landlords rent substandard apartments to minority groups for profit).

117. U.S. GOV’T ACCOUNTABILITY OFF., GAO-20-427, AS MORE HOUSEHOLDS RENT, THE POOREST FACE AFFORDABILITY AND HOUSING QUALITY CHALLENGES 29 (2020).

118. See BIANCA D.M. WILSON ET AL., UCLA SCH. L., WILLIAMS INST., LGBT RENTERS AND EVICTION RISK 3 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Eviction-Risk-Aug-2021.pdf> [<https://perma.cc/DEX2-BYJR>].

119. See generally ALEXANDER, *supra* note 12; ROBERTS, *supra* note 12.

120. See DESMOND, *supra* note 15.

II. THE NARRATIVE MUST SHIFT: EMPOWER TENANTS AND ELIMINATE THE CAUSES OF EVICTION

This Part examines the values reflected in the current eviction system, and discusses the need for a shift in narrative, a re-framing of the function, purpose, and role of eviction. It further calls for a rights-based approach and discusses measures that could reorder the power relationship between tenants and landlords, starting with setting the right to housing as a goal of housing policy and funding and supporting community and tenant organizing to help tenants gain the power to affect the laws and policies that inform the eviction system. This Part essentially calls for a conceptual shift — a human-needs-based, rather than a profit-based framing for our understanding of the role of eviction.

An eviction is the result of a conflict between the needs and interests of two parties. On one side is the owner or landlord who has a business interest in the property, who is most often a private person or entity that seeks to maximize profit.¹²¹ On the other side is the tenant, who has an interest in remaining in their home. In other words, conflict plays out between parties where one has fundamental human needs at stake and the other has pecuniary interests at stake.¹²² In the common narrative, pecuniary interests win out.¹²³ Housing is primarily viewed and treated as a commodity that, like other commodities, provides a source of income.¹²⁴ In the popular literature and view, as well as in much of the academic and policy literature, the landlord and their pecuniary needs are centered in the narrative about eviction.

121. In the case of government owned, government subsidized, nonprofit enterprises or other forms of social housing, the interest of the landlord is in sustaining and protecting the social enterprise. Social housing generally has greater tenant protections, including rents that are geared to income and the constitutional right to due process. However, conflicts between nonprofit landlords and tenants are wedged into an eviction system that is designed by and for private owners and leads to most of the same imbalanced processes and harsh remedies.

122. Of course, there are instances when the pecuniary interests of a landlord/owner intersect with the landlord's need for a home. This occurs when the owner depends on rental income to pay a mortgage and other expenses that enable the landlord to avert foreclosure and remain in the home. This special circumstance further underscores the need to have the types of measures discussed in this article to avoid litigation, subsidize rents, and provide fair and equitable court proceedings.

123. For example, the eviction courts in the United States routinely “treat the inability to pay rent as a more serious violation of law than refusal to maintain a home in safe condition.” Tonya L. Brito et al., *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1274 (2022).

124. This phenomenon of financialization is global and has become even more pronounced in recent years. “The vast amount of wealth has left governments accountable to investors, rather than to their international human rights obligations.” Leilani Farha, *Financialization of Housing*, UNITED NATION, <https://www.ohchr.org/en/special-procedures/sr-housing/financialization-housing> [https://perma.cc/MR7S-5NQU] (last visited Aug. 23, 2024).

Eviction is seen as an incidental, unavoidable and logical tool to either coerce tenants into compliance — with rent-paying, with lease rules, with behavior — or to punish tenants for their transgressions.¹²⁵ But housing is not like other commodities. Housing fulfills an essential, universal human need and the laws, policies and practices that shape the eviction system should recognize this. Certain principles that currently guide policy, practice, and decision-making flow from prioritizing profit over human need. These include:

The Untrammelled Free Market Will Sort Things Out. Pursuant to this philosophical principle, government-imposed limitations on the use of private property will always be opposed. This can be seen in the legislative battles over tenant-protective legislation and the perennial challenges to rent regulation, “good cause eviction,” and the like.¹²⁶

Tenants Who Transgress Deserve Their Fates. There is a pervasive lack of empathy for tenants and a lack of understanding of the conditions that may lead to an eviction proceeding. This leads to a tendency to place blame on tenants who are sued for eviction. Undoubtedly, there are tenants who make missteps, but the conditions that lead to eviction are more often beyond the tenant’s control, such as rent increases or loss of income that make the rent unaffordable in the short or long term.

Eviction Is an Effective Tool to Shape Tenant Behavior. In many instances, landlords would maintain that they are not interested in eviction, that they bring eviction cases because the fear of eviction will cause tenants to pay and otherwise comply with their contractual and legal obligations. The execution of eviction is viewed as justified retribution for noncompliance and often as a last resort.

Speed Is Good and Delay Is Bad. Because the landlord’s pecuniary interests are prioritized, the entire eviction system is expected to be handled with speed and a sense of urgency. At the time of this writing, a lawsuit currently pending in the New York courts represents this viewpoint succinctly. In *In the Matter of the Application of Argentine Leasing Limited Partnership v. Office of Court Administration*, a group of landlords sued the New York Court System under the theory that eviction cases are taking too

125. Jeff Rohde, *Tenant Not Paying Rent? Here Are Your Options as Landlord*, STESSA, <https://www.stessa.com/blog/tenant-not-paying-rent/> [<https://perma.cc/2XXX-6N2Y>] (last visited Aug. 22, 2024) (“While the last thing a landlord may wish to do is evict a tenant, sometimes there is no other choice.”).

126. These challenges most often are brought under the Takings Clause, where owners challenge the ability to regulate the use of private property. *See, e.g.*, *74 Pinehurst LLC v. New York*, 601 U.S. ___ (2024) (where the U.S. Supreme Court recently denied a petition for a writ of certiorari from a landlord who sought review of a Second Circuit decision upholding aspects of New York’s rent stabilization clause).

long, infringing on their supposed legal right under the Fifth Amendment to have the cases move more rapidly.¹²⁷

The Eviction System Is a Business That Generates Rewards and Seeks to Preserve Itself. There is, in effect, an industry designed to implement and expedite the process of eviction. The eviction system is a source of livelihood for a range of players, including lawyers and law firm staff, judges and other court personnel, eviction executioners like sheriffs, marshals and constables, the tenant screening industry and more. As with all systems, there is a strong interest on the part of the beneficiaries of that system to preserve and expand the system.¹²⁸

But what if the need for, or right to, a home was at the center of the narrative about evictions? What if we had a system that prioritized homes over profit? What if the system that now leads to eviction was replaced by a system designed to resolve problems and prevent evictions? What principles would flow from that framing? Under a framing in which policy, practice and decision-making are part of a strategy to abolish evictions, here are some principles that would apply:

The Human Need for a Home Is Paramount. We would work toward a right to housing and devote resources to preventing evictions, not fostering them. As the United Nations' Special Rapporteur on Housing has said, "I believe there's a huge difference between housing as a commodity and gold as a commodity. Gold is not a human right, housing is."¹²⁹ And whether or not there is fault on the part of a tenant, we need to develop alternatives to the use of eviction as a remedy.

All People Must Be Treated with Dignity and Respect. In 2018, Jeh Johnson, the former Secretary of Homeland Security for the Obama Administration, undertook a study of racism in the New York Courts at the request of the then Chief Judge of the New York State Court of Appeals. The resulting report from Secretary Johnson's inquiry singled out the New York City Housing Court as one of the "poor people's" courts that "serve[s] a primarily minority population in a physically intolerable setting that shows callous disregard for the litigants."¹³⁰ Under a guiding principle that all

127. See generally Memorandum of Law in Support of Petition, In the Matter of the Application of Argentine Leasing Ltd. P'ship v. Off. of Ct. Admin., Index No. 703941/2024 (N.Y. Sup. Ct. Queens Cnty. 2024), <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=k7g2Jcv5qe8FV4cxsqH67w==> [https://perma.cc/Y5PY-FUAW].

128. See, e.g., Sarah Moylus Schurr, *Systems Theory: The Basics*, UNITARIAN UNIVERSALIST ASS'N (May 10, 2019), <https://www.uua.org/leaderlab/systems-theory> [https://perma.cc/NT5D-V2A5].

129. Farha, *supra* note 124.

130. N.Y. STATE UNIFIED CT. SYS., REPORT FROM THE SPECIAL ADVISER ON EQUAL JUSTICE IN N.Y. STATE COURTS 2-3 (2020),

people must be treated with dignity and respect, such conditions would not be allowed to exist.

Systems Should Foster and Support Agency and Power for All.

Agency and power should not be reserved exclusively for those with wealth and property. The eviction system has always reflected power and control by those with property to the exclusion of those without. The modern-day eviction system stems from the feudal origins of landlord-tenant relations in the U.S and the enactment of summary eviction proceedings by legislatures comprised of property-owning white men, the only people permitted to own property, vote or hold office.¹³¹ In the two centuries or so since the adoption of summary eviction proceedings, landlord-tenant relations have become racialized as a result of historical government housing policy, law, and practice as well as private action rife with racial exclusion that has deprived people of color of access to housing ownership.¹³² A system to address landlord-tenant conflict built on an equitable distribution of agency and power would be a system designed to preserve homes and prevent evictions and would look quite different than the eviction system we have now.

Eviction is Harmful and Must Be Avoided. The implicit and explicit violence of eviction – its harm and trauma, its disruption and displacement – must not continue to be ignored by the human beings who take part in the eviction system. The forced displacement from their homes of elderly or disabled tenants, of families with young children, or other vulnerable individuals, can evoke sympathy and even, on occasion at least, efforts to intervene. New York City, for example, has a municipal agency, the New York City Department of Social Services, charged with assisting vulnerable people who are caught up in eviction litigation or other cases.¹³³ However, the law does not factor vulnerability or the violence or consequences of eviction into the legal rights of the parties in an eviction case.¹³⁴ A framing for landlord-tenant conflict that centers the human need to be housed would balance needs and equities in a very different manner than is done now.

<https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf> [<https://perma.cc/GYT8-B5MQ>]; see also SPECIAL COMM'N TO THE FUTURE OF THE N.Y.C. HOUS. CT., REPORT TO THE CHIEF JUDGE 2, 18 (2018), http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/housingreport2018_0.pdf [<https://perma.cc/D2WT-SAT4>]; Scherer, *supra* note 62.

131. See Scherer, *supra* note 62.

132. See Scherer, *supra* note 62.

133. N.Y.C. HUM. RES. ADMIN., *Adult Protective Services*, <https://www.nyc.gov/site/hra/help/adult-protective-services.page> [<https://perma.cc/W4GY-P8UA>] (last visited Aug. 22, 2024). The New York City Department of Social Services is comprised of the New York City Human Resources Administration and the Department of Homeless Services.

134. See generally SCHERER, *supra* note 25.

A new narrative around eviction, a shift in perspective, a framing that centers the human need for a home, would lead to a rejection of violence and trauma, an effort to understand and address its underlying causes, and a rethinking of each of the elements of the eviction system.

A. Take a Rights-Based Approach

The best approach to advocacy is a rights-based approach. Rights shift power. Rights enable people to claim what is “rightfully” theirs.¹³⁵ A shift in rights will, in many instances, avoid the conflicts that lead to eviction filings. If tenants have a right to a home, a right to affordable rent, and a right to a safe place in good repair, most of the causes of eviction will be eliminated.

The laws, policies, and norms around landlord-tenant relations reflect the power relationship between owners and renters. In the earliest days of the republic, owners had almost absolute control.¹³⁶ The rights and responsibilities of the parties derived directly from the feudal landlord-tenant relationship. The lease was viewed as a conveyance: the landlord would lease property “as is” for a period of time and have no further responsibilities.¹³⁷ Over time, that relationship has evolved . . . somewhat. At various junctures, a confluence of factors, not solely an interest in reducing harm to the most vulnerable, have converged to bring about reforms that have tempered some of the imbalance.¹³⁸ An excellent example of this is the closing of courts and eviction moratoriums implemented during the COVID-19 pandemic.¹³⁹ It is likely that these measures were as much about keeping people housed to reduce contagion as they were about protecting the families and individuals who were faced with homelessness.

In any event, since the industrial revolution and the growth of modern cities, community and political organizations in alliance with enlightened

135. Andrew Scherer, *WHY A RIGHT: The Right to Counsel and the Ecology of Housing Justice*, 2 WILF IMPACT CTR. FOR PUB. INT. L. RACIAL JUST. PROJECT 11, 17 (2016), https://digitalcommons.nyls.edu/impact_center/17 [<https://perma.cc/F7FL-6HAW>].

136. See generally Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135 (2000).

137. *Id.*

138. See Derrick Bell, *Brown v. Board of Education: Reliving and Learning from Our Racial History*, 66 U. PITT. L. REV. 21, 22 (2004) (“First, the interest of blacks in achieving racial equality is accommodated only when that interest converges with the interests of whites in policy-making positions. This convergence of interests is far more important to gaining relief than is the degree of harm suffered by blacks or the character of proof offered to prove this harm.”).

139. See *COVID-19 Eviction Moratoriums in the United States*, WIKIPEDIA, https://en.wikipedia.org/wiki/COVID-19_eviction_moratoriums_in_the_United_States [<https://perma.cc/N5YR-UEFB>] (last visited May 31, 2024).

power holders and progressive politicians and policymakers, often in times of crisis, have been able to win housing reforms that shifted the terms of landlord-tenant relationships.¹⁴⁰ Examples of this convergence of interest include: the housing and building codes of the late nineteenth and early twentieth centuries; early rent regulation during World I; public housing and mortgage guarantees during the depression; and housing discrimination protections before, during, and after the years of the Civil Rights Movement.¹⁴¹ Courts began to view leases as contracts rather than conveyances in the 1960s, with mutual obligations for both parties to a lease, and an implied warranty of habitability by landlords.¹⁴² These shifts were brought about by community and political organizing, which continues to shift policy today. To eliminate the root causes of eviction, the power relationship needs to be upended. The best way to do this is by advocacy for a rights-based approach that fosters laws, policies and norms that avert, rather than promote, eviction.

1. *Center the Human Right to Housing*

Perhaps the single most important step in developing a strategy to abolish evictions is to be guided by a vision of an enforceable right to housing. The adoption of a legally cognizable right to housing would bring about an enormous shift in the norms, attitudes, and expectations about landlord-tenant conflict. The right to housing is not an idle fantasy — it is a concrete goalpost, well-established under international law and incorporated into domestic law and policy in many parts of the world.

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, calls for all nations to recognize a right to housing,¹⁴³ and states that the right to housing applies to the signatories of

140. Note, however, that these policies, that were designed to and in fact did vastly expand the availability and affordability of housing, were explicitly segregationist. *See* Scherer, *supra* note 62. The legacy of those racist policies has strongly informed patterns of racial segregation that we live with today.

141. *See* Scherer, *supra* note 62.

142. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1075–77 (D.C. Cir. 1970).

143. International Covenant on Economic, Social and Cultural Rights (1966), adopted by United Nations General Assembly resolution 2200A (XXI) on December 16, 1966, entered into force on January 3, 1976; 106 States Parties as of June 1992. State compliance with the Covenant is monitored by the Committee on Economic, Social and Cultural Rights. Article 11(1) states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right,

the covenant.¹⁴⁴ Article 11 recognizes that the guarantee of a right to housing is aspirational as well as enforceable and urges parties to “take appropriate steps to ensure the realization of this right,”¹⁴⁵ in effect, encouraging signatories to operationalize the right to housing under domestic law to fit their own contexts and circumstances. The right to housing is referenced in other international human rights instruments as well. The Universal Declaration of Human Rights (1948), Article 25, provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care”¹⁴⁶ The International Convention on the Elimination of All Forms of Racial Discrimination (1966), Article 5, prohibits “racial discrimination in all its forms” and guarantees “equality before the law, notably in the enjoyment of the . . . right to housing.”¹⁴⁷

Many countries have struggled for years to breathe life into the right to housing, and the norms and policies established under the right have varied country-by-country and within countries as political regimes change. Argentina, for example, acknowledges the right to adequate housing at both an international and a domestic level.¹⁴⁸ Article 14.146 of the Argentine Constitution provides that the State shall establish by law “*el acceso a una vivienda digna*” (“access to decent housing”) as it relates to “*la protección*

recognizing to this effect the essential importance of international co-operation based on free consent.

G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 11 (Dec. 16, 1966), <https://www.ohchr.org/sites/default/files/cescr.pdf> [<https://perma.cc/E9JU-HUR5>].

144. There is an argument that, under customary international law, when international human rights are adopted by a significant portion of the countries of the globe, they become universally enforceable, even against non-signatories. *See, e.g.*, Paul L. Hoffmann & Nadine Strossen, *Enforcing International Human Rights Law in the United States*, 26 *STUD. TRANSNAT'L LEGAL POL'Y* 477, 483 (1994) (citing *RESTATEMENT (THIRD) OF FOREIGN RELATIONS L. OF THE U.S.*, §102(2) (AM. L. INST. 1987)). Customary international human rights law, as the international analogue to unwritten common law in the domestic sphere, consists of those principles that are so widely accepted by the community of nations that they are binding even on states that have not ratified treaties embodying them.

145. *See* G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 11 (Dec. 16, 1966), <https://www.ohchr.org/sites/default/files/cescr.pdf> [<https://perma.cc/E9JU-HUR5>].

146. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948), <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> [<https://perma.cc/2D5A-G2DE>].

147. G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (Dec. 21, 1965), <https://www.ohchr.org/sites/default/files/cerd.pdf> [<https://perma.cc/RA6Y-9HAV>].

148. Lily Frances Fontenot, *COVID-19 Housing and Evictions: A Comparative Case Study of Housing Law and Policy in the United States and Argentina Through an International Human Rights Lens*, 53 *U. MIA. INTER-AM. L. REV.* 159 (2021).

integral de la familia” (“full protection of the family”).¹⁴⁹ Like the Fifth Amendment to the U.S. Constitution, Article 17 of the Argentine Constitution protects private property, providing that “*la propiedad es inviolable*” (“property is inviolable”) and that “no inhabitant of the Nation can be deprived thereof except by virtue of a judgment supported by law.”¹⁵⁰ Thus, both the right to property and the right to housing are recognized in Argentina’s Constitution.¹⁵¹

In Scotland, the Homelessness, etc. Act of 2003 provides all homeless persons the right to be immediately housed and the right to long-term, supportive housing as long as needed.¹⁵² The legislation includes an individual right to sue if one believes one’s rights are being violated.¹⁵³ The Indonesian legal system has recognized the right to housing in several regulations, imposing on the national government the main duty to house the poor by establishing national housing policies to be implemented at the local level.¹⁵⁴ For example, the national government provides funding for the development of public housing, but the distribution, management, and maintenance of that housing is in the hands of local governments.¹⁵⁵ In France, French citizens have an enforceable right to housing, and government is obligated to provide the necessary resources for anyone living legally in France who is unable to access and remain in decent housing.¹⁵⁶

On the other hand, the United States is one of only six United Nations member states that have never ratified the International Covenant on Economic, Social and Cultural Rights or adopted a domestic version.¹⁵⁷ The closest the United States has ever been to adopting a right to housing on a national scale can be found in the preamble to the Housing Act of 1949, which provides for the “realization as soon as feasible of the goal of a decent

149. *Id.*

150. *Id.*

151. *Id.*

152. Homelessness etc. (Scotland) Act 2003, c. 9, § 1(c) (Scot.), <https://www.legislation.gov.uk/asp/2003/10/contents> [<https://perma.cc/GE4Q-KWPU>].

153. *See id.*; *see also* Eric S. Tars & Caitlin Egleson, *Great Scot!: The Scottish plan to end homelessness and Lessons for the Housing Rights Movement in the U.S.*, 16 GEO. J. ON POVERTY L. & POL’Y 187, 190 (2009).

154. Michel Vols & Erna Dyah Kusumawati, *The International Right to Housing, Evictions and the Obligation to Provide Alternative Accommodation*, 21 ASIA-PACIFIC J. ON HUM. RTS. & L. 237, 237–69 (2020).

155. *See id.* at 252.

156. Marie Loison-Leruste & Deborah Quilgars, *Increasing Access to Housing: Implementing the Right to Housing in England and France*, 3 EUR. J. HOMELESSNESS 75, 85 (2009).

157. Ann M. Piccard, *The United States’ Failure to Ratify the International Covenant on Economic, Social and Cultural Rights: Must the Poor Be Always with Us?*, 13 ST. MARY’S L. REV. ON RACE & SOC. JUST. 231, 232 (2010).

home and a suitable living environment for every American family.”¹⁵⁸ Congress reiterated versions of this goal in subsequent Housing Acts as well,¹⁵⁹ but a goal, however, is not a right.

Regardless of whether a right to housing can be achieved anytime soon in the United States, the notion that there could and should be an enforceable right to housing can inform and guide policy advocacy and policy making in the United States, as it has in many other nations. Evictions are antithetical to the right to housing. As a guiding principle, the right to housing can and should inform any strategy to abolish evictions.

2. *Fund and Support Community and Tenant Organizing*

While this article sets out a range of specific measures that could be components of a strategy to avoid, and ultimately abolish, evictions, the most effective, most lasting solutions will be those that communities directly impacted by housing instability themselves embrace or devise. These types of changes can only be envisioned and ultimately brought about by organizing. In recent years, advocacy by community and tenant leaders has achieved a right to counsel for tenants facing eviction in a growing number of jurisdictions, as well as a range of other tenant protections. Change does not just happen — change rarely, if ever, comes about without advocacy and a movement. People need organizing to understand the causes of their situations, to see a vision of change, to see a path to getting there, to be motivated to take the steps needed to achieve their goals, and to help them work together and stay together. On a small scale, the work of organizing can happen spontaneously. People can come together, leadership can develop, change can be brought about without professional organizers. However, there is an art and a skill to organizing, and it cannot take place on a broad scale or be effective in the long run without funding and support for sustaining the work.

Perversely, Congress recognized the transformative potential of organizing, especially when coupled with legal strategies, when it placed restrictions on involvement in organizing by legal services organizations that are funded by the federal Legal Services Corporation (LSC).¹⁶⁰ This, and

158. 42 U.S.C. § 1441 (1949).

159. *See, e.g.*, Fair Housing Act, 42 U.S.C. § 3601 (1968); National Affordable Housing Act, 42 U.S.C. § 12701 (1990).

160. Since 1996, the Legal Services Corporation (LSC) Act, 42 U.S.C. § 2996, has prohibited LSC-funded organizations from engaging in organizing activities, including training for — or encouraging of — political or labor activities. *See* 42 U.S.C. §§ 2996–2996f(b)(6). *See also* 45 CFR § 1612.9, which prohibits LSC-funded organizations from using funds provided by LSC or private entities “to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.”

other restrictions on LSC-funded programs, that were placed in 1996 (and remain in place to date) were intended to diminish the effectiveness of advocacy by those programs on broad-based issues affecting the lives of the low-income communities served by the programs.¹⁶¹ There is extensive literature documenting the effectiveness in organizing in securing measures that ameliorate policies and practices that are harmful to tenants.¹⁶² Organizing is indispensable to effecting change, and unrestricted support for organizing is a key component of any strategy to abolish evictions.¹⁶³

3. *Dismantle Racist Structures*

The sordid history of racially oppressive housing policy discussed in Section ID above, much of which continues to this day, has left an indelible mark on Communities of Color and has led to structural racism in the eviction system.¹⁶⁴ Housing in the United States remains segregated by race and, in many respects, segregation is more pronounced than ever.¹⁶⁵

In light of their disproportionate status as tenants and their disproportionate experience of high rent burdens and habitability issues, it is not surprising that Black people and other people of color face eviction proceedings and are evicted in disproportionately high numbers. And while the ever-expanding list of categories of people protected by fair housing laws is a sign of progress,¹⁶⁶ anti-discrimination laws that provide remedies for

161. See generally Liza Q. Wirtz, *The Ethical Bar and the LSC: Wrestling with Restrictions on Federally Funded Legal Services*, 59 VAND. L. REV. 971 (2006).

162. See, e.g., Jamila Michener, *Racism, Power, and Health Equity: The Case of Tenant Organizing*, 42 HEALTH AFFS., 1318, 1323 (2023); see ORGANIZING IS DIFFERENT NOW, *supra* note 10, at 6.

163. Indeed, community organizations have long sought to abolish evictions. See generally, e.g., Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, 18 FORDHAM URB. L.J. 507 (1991).

164. In recent years, many scholars and journalists, including the author, have documented the long and sordid history of anti-Black government policies that shaped the racialized dimensions of the current real estate market. See, e.g., KEEANGA-YAMAHTTA TAYLOR, *supra* note 91; Katie Nodjimbadem, *The Racial Segregation of American Cities was Anything but Accidental*, SMITHSONIAN MAG. (May 30, 2017), <https://www.smithsonianmag.com/history/how-federal-government-intentionally-racially-segregated-american-cities-180963494> [<https://perma.cc/85PZ-EC7U>]; Terry Gross, *A "Forgotten History" of How the U.S. Government Segregated America*, NPR (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america> [<https://perma.cc/R6HB-TYBW>]; *Segregated by Design*, UNITED NATIONS INT'L SCH. HUM. RTS. PROJECTS (Jan. 9, 2020), <https://www.unishumanrightsproject.org/segregation>; see Scherer, *supra* note 62, at 2.

165. Stephen Menendian et al., *The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States*, OTHERING & BELONGING INST. (June 30, 2021), <https://belonging.berkeley.edu/roots-structural-racism> [<https://perma.cc/F5PY-SQAZ>].

166. See generally SCHERER, *supra* note 25.

specific categories of people who experience discrimination are not enough. Racialized systems and policies that have developed over decades need to be understood and dismantled as a key component of a strategy to abolish evictions. In particular, the structural racism that has racialized the eviction system and has led to the vastly disproportionate impact of eviction on people of color, especially women, needs to be carefully analyzed and disassembled. This requires developing new and better strategies to tackle the systems of banking, zoning, land use, housing development, housing code enforcement, and housing subsidization, all of which continue to contribute to racialization and disparity in the eviction system.

B. Assure Security of Tenure

Tenants' legal claims to their homes are, in most cases and jurisdictions, tenuous. Tenants generally have no right to remain in their homes beyond the expiration of their lease, unless the lease provides for a right to extend or renew the lease, which is rare, or regulation provides a right to continued residency. Rent regulation laws often provide a right to renew a lease,¹⁶⁷ and tenants in government-owned-and-operated housing generally have a due process right to continued tenancy, unless the building manager can demonstrate some good cause to evict.¹⁶⁸ In some jurisdictions, such as New Jersey¹⁶⁹ and California,¹⁷⁰ a more general "good cause" or "just cause" requirement applies to some or all private landlords as well. New York also adopted a "good cause" law in 2024 applicable in New York City, with other localities in the state given the right to opt in.¹⁷¹ The law has limited value, however, because it contains many exemptions for different categories of landlords, including landlords who own ten or fewer housing units.¹⁷² Without a right to continued occupation unless the landlord has good cause to evict, tenants are extremely vulnerable to eviction for arbitrary reasons or no reason at all.

To protect tenants, good cause legislation must include a provision that limits periodic rent increases. Without a cap on rent increases, a landlord would be able to evade the good cause requirement easily by simply raising

167. Under New York City's Rent Stabilization Law, for example, an owner of a Rent Stabilized apartment unit is required to offer a tenant a renewal lease "on the same terms and conditions as the expired lease." N.Y. COMP. CODES R. & REGS. tit. 9, § 2522.5(g) (2023); SCHERER, *supra* note 25, § 4:184.

168. *See, e.g.*, 512 E. 11th St. HDFC v. Grimmet, 181 A.D.2d 488, 489 (N.Y. App. Div. 1992).

169. N.J. STAT. ANN. § 2A:18–61.1 (West 2013).

170. CAL. CIV. CODE § 1946.2 (West 2024).

171. N.Y. REAL PROP. LAW § 213, 215 (McKinney 2024).

172. *Id.* § 214.

rent to an unaffordable level for a tenant who the landlord seeks to remove from the premises without having to allege a legitimate cause for the eviction. New York's law, for example, limits yearly rent increases to 5% plus the inflation index or 10%, whichever is lower.¹⁷³

“Good cause” is good policy. It shifts the presumptions: tenants are entitled to remain in their homes unless a landlord has a good reason to deny them the right to remain. It recognizes the importance of the home, provides a measure of security of tenure to tenants, and reduces eviction filings and evictions. This principle has been understood in other countries as well. New Zealand, for example, recognized this in 2021 when it adopted the reformed Residential Tenancies Act, under which property owners must provide valid reasons for ending a rental agreement. Under the Act, termination of a tenancy due to “anti-social behaviour,” for example, is permissible, but requires sufficient proof of three separate instances of anti-social behavior within a 90-day period.¹⁷⁴

C. Make Housing Affordable

The vast majority of housing disputes that lead to eviction involve claims of nonpayment of rent. In large part, nonpayment is rooted in the disconnect between what can be charged for housing and what people can afford to pay for it.¹⁷⁵ Nationally, over 77% of eviction cases filed were for nonpayment of rent in 2017.¹⁷⁶ In New York City, nonpayment proceedings made up 84.3% of all eviction proceedings in 2019.¹⁷⁷ Rent-burdened households or individuals — households that spend more than 30% of their income on rent — are at far greater risk of eviction due to their increased likelihood of falling behind on rent payments.¹⁷⁸ Low-income renters saw their share of

173. *Id.* § 216(a)(1).

174. U.N. Special Rapporteur, *Visit to New Zealand Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Nondiscrimination in This Context*, U.N. doc. A/HRC/47/43/Add.1 (Apr. 28, 2021); New Zealand Residential Tenancies Amendment Act 2020, s 55A.

175. *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> [<https://perma.cc/ZV48-2TD3>].

176. *Id.*

177. *Trends in New York City Housing Court Eviction Filings*, N.Y.U. FURMAN CTR., 4 (Nov. 2019), https://furmancenter.org/files/publications/NYUFurmanCenter_TrendsInHousingCourtFilings.pdf [<https://perma.cc/W6WA-7CJV>].

178. Rejane Frederick & Jaboia Lake, *Kicking Folks Out While They're Down*, CTR. FOR AM. PROGRESS, <https://www.americanprogress.org/article/kicking-folks-theyre/> [<https://perma.cc/4DPZ-RZBW>].

household income needed for rent rise between 2019 and 2021.¹⁷⁹ Implementing measures that make housing affordable would, of course, eliminate the cause of many eviction proceedings and greatly reduce the number of eviction filings.

We know how to make rent affordable. There are many different ways of bringing down the cost of housing for renters, and in the United States, we already have a large range of tools that make housing more affordable in place, including: government-owned-or-operated public housing with rents tied to income; federal, state, and local housing voucher programs that subsidize the difference between what tenants can afford to pay and what landlords are permitted to charge; subsidies to developers to lower the cost of constructing and operating new housing; various forms of rent regulation; low-income housing tax credits; inclusionary zoning requirements; and many more.¹⁸⁰ However, these measures, with their widely varying effect on affordability are rarely universal entitlements: some people get them, and others do not. They are not rights-based; in that sense, they are random benefits doled out to only a portion of the population that needs them. This is either done by lottery, on some version of a first-come, first-served basis, or through a filtering process that determines who is most “deserving.” As a result, they reach only a portion of the tenants who need them.

A few jurisdictions have attempted novel approaches to make housing affordable that function as entitlements available to all who are categorically eligible. Philadelphia is currently experimenting with a type of direct-to-tenant housing subsidy in the form of an unconditional and unrestricted debit card that covers the difference between what tenants can afford to pay and what landlords may legally charge.¹⁸¹ New York City has a long-standing Senior Citizen and Disabled Persons Rent Increase Exemption program that categorically exempts individuals 62 years or older or those who have a qualifying disability, household income below a statutory threshold, and legal rent that exceeds one-third of their household income from further legal

179. *Low-Income Renters Spent Larger Share of Income on Rent in 2021*, U.S. CENSUS BUREAU (Mar. 2, 2023), <https://www.census.gov/library/stories/2023/03/low-income-renters-spent-larger-share-of-income-on-rent.html> [<https://perma.cc/8WG5-RQBF>].

180. See generally SCHERER, *supra* note 25.

181. *Closing the Gap*, PHL HOUS., <https://phdcphila.org/residents-and-landlords/homebuyers-and-renters/phlhousing-plus/> [<https://perma.cc/Z4CH-N5T5>] (last visited Aug. 22, 2024); Deonna Anderson, *Here's How Philadelphia's First Guaranteed Income Program Is Going* (Jan. 25, 2023), <https://nextcity.org/urbanist-news/philadelphias-first-guaranteed-income-program> [<https://perma.cc/N4TL-C899>]; *PHDC and the City of Philadelphia, in Partnership with the University of Pennsylvania and PHA Announce Initial Successes of Guaranteed Income Pilot Program*, PHILA. HOUS. DEV. CORP. (Dec. 20, 2022), <https://phdcphila.org/success-stories/press-releases/> [<https://perma.cc/L3SB-YH3T>].

rent increases.¹⁸² Landlords are then able to deduct the exempted amount from their real property tax liability, the city forgoes revenue that corresponds to the exemption, and landlords don't incur the expense.¹⁸³ Any strategy to abolish evictions needs, as a component, an approach or set of approaches to making housing affordable as of right.

D. Make Housing Safe and Habitable

Another major precipitating factor for eviction proceedings is poor quality housing. Tenants whose homes lack basic repairs and services are often unable to pay rent because they are forced to spend their limited resources on temporary alternative lodging or emergency repairs when the conditions of their homes are intolerable, on takeout food when they do not have a working stove, or on space heaters and blankets when they are not provided heat.¹⁸⁴ To enforce their rights under warranty of habitability laws, tenants justifiably withhold rent. The problem of inadequate housing conditions is significant. In 2021, the U.S. Census Bureau found that approximately 10% of rental units occupied by households with income below the federal poverty line were “inadequate.”¹⁸⁵ To be classified as “moderately or severely inadequate,” a housing unit had to have experienced serious issues with plumbing, heating, electricity, or upkeep, such as holes in the wall, rat infestations, etc.¹⁸⁶

Every state has housing codes that require residential dwellings to meet certain standards of habitability, and every state except Arkansas has adopted some form of implied warranty of habitability.¹⁸⁷ But while the warranty of habitability provides a legal right to a habitable home, and housing codes

182. N.Y.C. ADMIN. CODE § 3-19 (2024).

183. *Id.*

184. See generally SCHERER, *supra* note 25, ch. 12; Maria Caspani, *NYC Building Space Heater Malfunction Sparks Fire That Kills 19, Including 9 Children*, REUTERS (Jan. 10, 2022), <https://www.reuters.com/world/us/new-york-city-apartment-building-fire-critically-injures-32-officials-2022-01-09/> [<https://perma.cc/9HHW-X2KA>] (“Nineteen people were killed, including nine children, and dozens were injured when a fire started by a malfunctioning space heater spread smoke through a low-income building in The Bronx borough of New York City . . .”).

185. *2021 National — Housing Quality — All Occupied Units*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00000&s_year=2021&s_tablename=TABLE5&s_bygroup1=10&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1 [<https://perma.cc/VW7G-8W42>] (last visited Aug. 23, 2024).

186. *Appendix A: Subject Definitions and Table Index*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/ahs/2015/2015%20AHS%20Definitions.pdf> [<https://perma.cc/UQZ7-LW4H>] (last visited July 26, 2024).

187. National Housing Law Project, *A 50-State Survey of the Warranty of Habitability*, <https://www.nhlp.org/wp-content/uploads/Research-Memo-re-50-State-Survey-of-the-Warranty-of-Habitability.pdf> [<https://perma.cc/Y998-2V8Q>].

provide standards of habitability, neither are self-enforcing, and housing conditions, particularly in low-income communities of color, often remain intolerable.¹⁸⁸ Black tenant households in particular, suffer disproportionately from substandard housing conditions,¹⁸⁹ with higher incidences of “asthma, respiratory distress, carbon monoxide poisoning, high blood pressure, heart disease, lead poisoning, mental health impairment, and cancer, among others.”¹⁹⁰ Any strategy to abolish evictions must include measures that ensure that housing is safe and livable and that guarantee that housing quality standards are enforced. For example, code enforcement by local housing agencies could be more rigorous and routine than it ordinarily is. Health Departments in many municipalities routinely inspect all restaurants and other food preparation sites and close locations that fail to adequately comply with code requirements. Housing code enforcement, on the other hand, tends to be complaint-driven and not rigorously or comprehensively pursued by government agencies.¹⁹¹

Licensing of landlords is another measure that could foster code enforcement and compliance with other residential landlord obligations. Licenses are held for more than 20% of all jobs in the United States.¹⁹² Yet, in spite of the centrality of the home to health, safety and general well-being, landlords are not required to be licensed in many jurisdictions. Fear of losing a license could foster code compliance and reduce the causes of rent withholding and eviction filings. Denver, for example, has a licensing requirement that requires an inspection by “a certified private home inspector” to obtain a license.¹⁹³ Minneapolis¹⁹⁴ and Philadelphia¹⁹⁵ also require landlords to be licensed.

Similarly, protecting tenants from retaliatory eviction when they exercise their right to complain about housing conditions and organize to pressure

188. Benfer, *Housing Is Health*, *supra* note 62.

189. Jamila Michener, *Racism, Power, and Health Equity: The Case of Tenant Organizing*, 42 HEALTH AFFS. 1318, 1319 (2023).

190. *COVID Strategy Guide: Emerging Crises*, RESOLUTE STRATEGIES GRP., <https://cheetah-coconut-cmhd.squarespace.com/insights/covid-emerging-crises> [<https://perma.cc/PTB7-H654>] (last visited Aug. 22, 2024).

191. Sophie House, *Cracking Code Enforcement: How Cities Approach Housing Standards*, NYU FURMAN CTR. (Aug. 2021), <https://furmancenter.org/research/publication/cracking-code-enforcement> [<https://perma.cc/BX9F-PJGD>].

192. Genevieve Carlton, *What Jobs Require Professional Licenses?*, SCHS. ONLINE (Sept. 20, 2023), <https://www.accreditedschoolsonline.org/resources/jobs-requiring-professional-license/> [<https://perma.cc/ZF5R-V9BV>].

193. DENVER, COLO., CODE OF ORDINANCES, ch. 27, art. VIII, § 27 (2024).

194. MINNEAPOLIS, MINN. CODE OF ORDINANCES, ch. 244, art. XVI (2008).

195. PHILA., PA., CODE OF ORDINANCES § 9-3902 (2022).

landlords to remedy housing conditions would foster both code compliance and reduce eviction filings. Most states, but not all, have such protections.¹⁹⁶ Instituting a “clean hands” requirement is another measure that would simultaneously foster code enforcement and reduce evictions. A clean hands requirement would bar landlords from filing eviction claims in court if they have serious housing code violations in the premises from which they seek to evict. Clean hands legislation has been proposed in Philadelphia¹⁹⁷ and in New York State.¹⁹⁸ The Cleveland Housing Court adopted its own clean hands rule.¹⁹⁹ Clean hands legislation would not only help enforce housing quality standards, it would also keep cases out of court and help resolve issues without the threat of eviction.

E. Keep Cases Out of Court That Do Not Need to be In Court

Often, issues that lead to eviction proceedings could be resolved by measures that address those issues prior to commencement of an eviction proceeding in court and without the looming threat of eviction. A “clean hands” approach, as discussed above, is one such approach. Timely and appropriate social services assistance is another. Many disputes over nonpayment of rent could be resolved if government agencies responsible for ongoing housing subsidies or for emergency grants for rent arrears provided eligible tenants with benefits before eviction cases were filed. When a resolution can be implemented “upstream” before an eviction proceeding is commenced, there is no reason to put tenants through the stress and anxiety caused by the threat of eviction, disadvantage tenants by creating a record that could be made available to prospective landlords and result in housing application denials,²⁰⁰ or waste court time. When appropriate, before an eviction filing, or at any time they could help prevent eviction, social services agencies should be brought into the proceeding.

196. Ann O’Connel, *State Laws Prohibiting Landlord Retaliation*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-prohibiting-landlord-retaliation.html> [https://perma.cc/5H58-7M2M] (last updated Apr. 3, 2024).

197. MAYOR’S TASKFORCE ON EVICTION PREVENTION & RESPONSE, REPORT AND RECOMMENDATIONS (2018) <https://www.phila.gov/media/20210805121804/Mayors-Taskforce-on-Eviction-Prevention-and-Response-final-report.pdf> [https://perma.cc/YEK2-AUBE].

198. S.A1853, Reg. Sess. 2023–24 (N.Y. 2023), <https://trackbill.com/bill/new-york-assembly-bill-1853-requires-a-landlord-to-have-clean-hands-to-bring-action-for-rent-or-eviction-in-certain-cases/2335534/> [https://perma.cc/Y2DZ-S597].

199. Benfer, *Housing Is Health*, *supra* note 62, at 117.

200. See New York State Bar Association, *LEGAlease: The Use of Tenant Screening Reports and Tenant Blacklisting*, <https://nysba.org/legalease-the-use-of-tenant-screening-reports-and-tenant-blacklisting/> [https://perma.cc/XD99-QPXF] (last visited Aug. 7, 2024).

Other countries have systems in place to engage social services when tenants are threatened with eviction. In Belgium, the Centers for General Welfare Work is responsible for assisting and supporting people who are threatened with eviction.²⁰¹ In Scotland, landlords must inform local authorities of planned evictions, and the local authorities must then try to prevent the eviction or rehouse the individual or household.²⁰²

Many jurisdictions in the United States recognized the possibility of resolving landlord-tenant issues without court involvement during the COVID-19 pandemic and instituted pre-litigation dispute resolution systems.²⁰³ Some jurisdictions have continued those programs post-pandemic and set up pre-litigation problem-solving processes that were not accompanied by the threat of imminent eviction. These programs, commonly known as “eviction diversion” programs, are generally designed to provide an opportunity to resolve issues before they reach an eviction court.²⁰⁴ Philadelphia, for example, set up an eviction diversion program during the pandemic that requires landlords to participate in the program and enter into a mediation with a tenant before an eviction case can be filed and that continues to date.²⁰⁵

While mechanisms that try to address issues without the filing of an eviction proceeding can be a viable part of strategies for abolishing evictions, there are some important caveats. Eviction diversion is not particularly helpful unless its aim and effect is eviction prevention, and tenants could end up disadvantaged by poorly designed programs. Some programs, like Maryland’s, only engage in so-called “eviction diversion” efforts once an eviction case has been filed,²⁰⁶ which may add some additional steps to eviction proceedings, but it is hard to see how it could reduce the numbers of evictions. Indeed, the data presented by the Maryland court system shows that the litigants who participated in the program felt heard, but it does not include any data on whether evictions were in fact prevented.²⁰⁷ Eviction

201. Susanne Gerull, *Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries*, 8 EUR. J. HOMELESSNESS 137, 145 (2014).

202. *Id.*

203. *Eviction Diversion and Prevention Programs*, THE NETWORK FOR PUB. HEALTH L., <https://www.networkforphl.org/wp-content/uploads/2021/05/Fact-Sheet-Eviction-Diversion.pdf> [<https://perma.cc/RE77-HVD5>] (last visited Aug. 7, 2024).

204. *Id.*

205. Aiden Gardiner, *How Philadelphia Kept Thousands of Tenants from Being Evicted*, N.Y. TIMES (July 17, 2023), <https://www.nytimes.com/2023/07/13/headway/philadelphia-tenants-eviction.html> [<https://perma.cc/29Y2-LWB9>] (last visited Aug. 7, 2024).

206. *Mediation in Rent Court*, DIST. CT. OF MD., <https://www.courts.state.md.us/district/adr/home/rentcourt> [<https://perma.cc/3RD6-UGXS>] (last visited Mar. 23, 2024).

207. *Id.*

diversion approaches should provide tenants with a right to counsel whenever conflicts are addressed, prior to commencement of a court proceeding or after a proceeding has been commenced; otherwise, tenants will remain disadvantaged in whatever process is designed.²⁰⁸ Philadelphia has a right to counsel in eviction cases, and tenants are provided legal assistance in the pre-litigation eviction diversion stage as well as in eviction proceedings.²⁰⁹ This provides tenants with an opportunity to understand their rights and potential defenses to landlord claims and prevents the pre-trial process from becoming an opportunity for a landlord with counsel to take advantage of an unrepresented tenant in an informal setting.

III. HAVE A FAIR PROCESS

This Part addresses the legal process by which evictions are sought and obtained and discusses alternatives that can assist in ending evictions, such as the right to counsel and elimination of the summary nature of eviction proceedings.

Eviction proceedings are unfair. They are unfair because they are expedited summary proceedings that allow little time to probe the *bona fides* of a landlord's claims or to ascertain, assert, and prove defenses. They are unfair because, for the most part and, but for the recent adoption of the right to counsel in some jurisdictions, most tenants appear *pro se* to defend their homes in complex legal proceedings where most landlords are represented by counsel. Studies in many jurisdictions have estimated that less than 5% of tenants who appear in eviction proceedings are represented by counsel.²¹⁰ They are unfair because eviction cases are heard in courts where unrepresented litigants, mostly Black and brown, are treated with disrespect in crowded and chaotic courtrooms marked by a lack of decorum and disrespect towards litigants.²¹¹ Because eviction proceedings are so one-sided, chaotic and unfair, people who should not get evicted do get evicted.

208. Benfer, *Housing Is Health*, *supra* note 62, at 112 (“The necessary components to a successful eviction diversion program include access to an attorney or advocate, an alternative to the court process, and assistance — such as supportive services, financial assistance, debt forgiveness, housing counseling, and case management. It is critical that all three prongs of diversion are offered in tandem.”).

209. Gardiner, *supra* note 205.

210. NAT'L COAL. FOR A CIV. RIGHT TO COUNS., EVICTION REPRESENTATION STATISTICS FOR LANDLORDS AND TENANTS ABSENT SPECIAL INTERVENTION (2024), http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf [https://perma.cc/53QC-YH8J] (compiling results of many of these studies). The studies are from jurisdictions without the right to counsel (RTC) or from a period before jurisdictions adopted a right to counsel. In Denver, Baltimore City and New York City, for example, tenants were represented in only 1% of the cases prior to adoption of RTC. *Id.*

211. *See, e.g.*, JEH JOHNSON, N.Y. STATE UNIFIED CT. SYS., REPORT FROM THE SPECIAL ADVISER ON EQUAL JUSTICE IN N.Y. STATE COURTS 2–3 (2020),

Process is important. The eviction process reflects the power dynamic between owners and renters. It is structured to expedite eviction, not to prevent it. The imbalance in power between owners and renters is embedded in every aspect of the eviction procedures and the norms around the eviction process reflect that power relationship. Property owners have, for the most part, controlled or heavily influenced the development of the laws and procedures that govern eviction. Eviction's origin story in the United States makes this point abundantly clear. When the country was founded, landlords were able to use self-help to put people out and were not required to go to court, and in some states, this remains true. In all states, the court-based eviction process was designed up to two centuries ago as an expedited summary proceeding that exempts landlords from many of the constraints of civil litigation.²¹² These laws continue to govern the eviction process,²¹³ and the process needs to change. A fair process will prevent evictions.

A. Guarantee a Right to Counsel

Providing a right to counsel for tenants facing eviction is an indispensable component of any strategy to abolish evictions. Tenants across the country have been winning the right to counsel in eviction proceedings in a growing number of jurisdictions.²¹⁴ This development has been the biggest step forward in access to justice in more than a generation.²¹⁵ It has been enormously successful in preventing evictions, keeping people in their homes, and reducing the numbers of eviction filings. In New York City, for example, 84% of represented tenants have remained in their homes, and the rate of filing for eviction proceedings and the default rate for tenants have both decreased by 30%.²¹⁶ In San Francisco, 59% of represented tenants

<http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf> [<https://perma.cc/S6X8-XK2B>] (last visited Aug. 7, 2024); *see also* SPECIAL COMM'N TO THE FUTURE OF THE N.Y.C. HOUS. CT., REPORT TO THE CHIEF JUDGE 2, 18 (2018), http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/housingreport2018_0.pdf [<https://perma.cc/V49U-ZVR5>] (last visited Aug. 7, 2024); N.Y. State Jud. Comm'n on Minorities, *Report of the New York State Judicial Commission on Minorities*, 19 FORDHAM URB. L.J. 181, 187 (1992).

212. Scherer, *supra* note 62.

213. *Id.*

214. *See generally* NAT'L COAL. FOR A CIV. RIGHT TO COUNS., THE RIGHT TO COUNSEL FOR TENANTS FACING EVICTION: ENACTED LEGISLATION (2024), http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf [<https://perma.cc/Q789-Z8JF>].

215. Jennifer Kim, *In New York, Free Legal Help Arrives for Low-Income Tenants in Housing Court*, KUER (Mar. 31, 2019), https://www.kuer.org/2019-03-31/in-new-york-free-legal-help-arrives-for-low-income-tenants-in-housing-court?_amp=true [<https://perma.cc/6R78-X4XW>] (last visited Aug. 7, 2024).

216. *Id.*

have remained in their homes, and of the 30% who did not remain in their homes, 70% received a favorable settlement.²¹⁷

The right to counsel for tenants in evictions is crucial, not only because represented tenants are able to retain their homes where they might have been evicted, but because representation in eviction cases is being seen as a right, not a matter of the limited largesse of the government and private institutions that provide funding for legal assistance. The *right* to counsel shifts power. It deters landlords from bringing frivolous cases. It gives tenants the assurance that if they stand up for their rights and end up in court, someone will have their back.²¹⁸ It helps tenants get a sharper understanding of the ways in which the laws and eviction courts disadvantage them and can lead to organizing for broader change. When tenants have lawyers in eviction courts to defend them, it opens up the possibility of new and more favorable interpretations of law for tenants, greater decorum in the courts, and treatment with more dignity and respect.

There is a longstanding debate in academic circles about how to assure access to justice for those who have been historically deprived of meaningful ability to the justice system.²¹⁹ The movement for a right to counsel in eviction proceedings is a movement for expansion of fundamental rights and a shift in power. It opens up greater possibilities for change. The alternative view, often reflected in academic discussions, is that those who have power and control over the justice system can make determinations as to just how much access and how much justice each individual requires, and the system can dole out the appropriate dosage of access and, consequently, justice.²²⁰ This could be counsel, but it could be limited scope representation, simple advice, or no help at all. In this approach, access to justice is a management project for elites. But access to justice is about fundamental rights — it should not be approached as a management project for elites.

The right to counsel in eviction cases is a necessary step toward abolishing evictions. Without a right to counsel when they face eviction, tenants do not

217. *All About the Right to Counsel for Tenants in San Francisco*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS. (Apr. 28, 2024), http://civilrighttocounsel.org/major_developments/1179 [<https://perma.cc/6BX3-XEX2>].

218. For an in-depth discussion of why a right to counsel is so important, see Scherer, *supra* note 62, at 17.

219. See, e.g., Rebecca Sandefur, *Everyone Needs Legal Help. That Doesn't Mean Everyone Needs a Lawyer*, N.Y. TIMES: OPINION (Feb. 13, 2019), <https://www.nytimes.com/2019/02/13/opinion/legal-issues.html> [<https://perma.cc/C5V7-6JFJ>].

220. Compare Rebecca Sandefur's view in the Opinion cited *id.*, and Rebecca Sandefur, *Access to What?* DAEDALUS, 148:1, 49–55, with John Pollock, *Right to Counsel for Tenants Facing Eviction: Justifications, History, and Future*, 51 FORDHAM URB. L.J. 1439 (2024). See also Scherer, *supra* note 62.

have a fighting chance to defend their homes and families. But while the right to counsel is necessary, it is not sufficient. As discussed throughout this article, many more reforms need to be put in place to mitigate the harm of evictions and move toward their abolition. And the right to counsel itself runs the risk of simply becoming a palliative that can assure the smooth-running of the eviction system rather than disrupting it, unless it is undertaken as part of a movement toward abolition of evictions and toward a right to housing. Unless right-to-counsel providers see their roles as expansive and transformative, as focused on ending evictions through both individual representation and broad policy and statutory change, as disrupting status quo by challenging oppressive culture in the eviction courts, as a tool for strategically appealing issues that will shape the law to provide more eviction protection, and, most importantly, as serving as the legal support arm of a tenant-led movement for the expansion of tenants' rights that focuses on a right to housing as a long-term goal, right to counsel will fail to fulfill its true potential.

B. Repeal Summary Eviction Proceedings Statutes

Most evictions are litigated in the United States through summary eviction proceedings, which are truncated, expedited processes that are exceptions to normal civil procedure.²²¹ They move through the courts at an extremely rapid pace and generally do not allow for discovery, motion practice or, in many jurisdictions, adjournments.²²² An early 2000s report on Chicago's eviction court found that the average period of time spent by the court on each case was one minute and forty-four seconds, about half the average of less than three minutes spent on each case reported in an earlier study in 1996.²²³ A 1986 report on the New York City Housing Court found that judges spent an average of five minutes on eviction cases that appeared before them.²²⁴ And in Memphis, Tennessee, observers found in 2021 that

221. These proceedings are also known in many jurisdictions as “forcible entry and detainer” proceedings,” and in others as “unlawful detainer proceedings,” “special process proceedings,” “summary proceedings,” or “special proceedings. In Massachusetts, for example, they are known as “summary process” proceedings, MASS. GEN. LAWS ch. 239 § 1 (2021), while in New York, they are known as “summary proceedings for recovery of real property.” N.Y. REAL PROP. ACTS. LAW § 81 (McKinney 2022). Other states call these statutes “unlawful detainer” actions, or “summary ejection.” ROBERT S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT 409 (1980).

222. Scherer, *supra* note 62, at 48.

223. KAREN DORAN ET AL., CHI.-KENT COLL. OF L. CLASS OF 2004 HONORS SCHOLARS, NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT 11 (2003), <https://www.lcbh.org/sites/default/files/resources/2003-lcbh-chicago-eviction-court-study.pdf> [<https://perma.cc/MDE2-TGMS>].

224. MONITORING SUBCOMM., CITY WIDE TASK FORCE ON HOUS. CT., 5 MINUTE JUSTICE OR “AIN'T NOTHING GOING ON BUT THE RENT!” 50 (1986).

85.5% of eviction hearings took less than two minutes and more than 70% took less than one minute.²²⁵

This procedural shortcut that exempts evictions from standard civil practice has been in place since summary proceedings were first adopted in the early 19th century by legislatures composed exclusively of white men who owned property – the only people who were permitted to vote or hold office in that era.²²⁶ These legislators, elected by a white male property-owning electorate, designed summary eviction proceedings in their own self-interest – to give themselves a shortcut to eviction judgments.²²⁷ Summary eviction proceedings were conceived in a time when the United States was primarily rural and tenants primarily white, when Black people were enslaved and other people of color had yet to arrive in large numbers.²²⁸ Over time, the Civil War, the industrial revolution, the growth of immigration, the rise of cities and the long history of racial bias in law, public policy, and private action led to the racialization of tenancy. Over that same period, a far more complex body of law that governs landlord-tenant relations and the eviction process developed. Reforms have included housing codes and the warranty of habitability, various forms of rent regulation and federal, state and local housing subsidies, and government ownership through regulated public housing authorities. Yet, we have retained summary eviction proceedings. With the racialization of tenancy, summary eviction proceedings, originally designed as a procedural vehicle to favor landlords and expedite evictions, have become structurally racist as well as unfair.

Other countries have more protracted eviction processes. A comparative analysis of eviction proceedings for nonpayment of rent in 14 European countries found that for most countries, eviction proceeding took between 120 and 330 days from start to finish and at the extremes, an eviction took 52 days in the Netherlands and 1,080 days in Poland.²²⁹ The duration of the

225. Kathryn Ramsey Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 391, 416 (2022), <https://digitalcommons.law.ou.edu/olr/vol74/iss3/5> [https://perma.cc/X2S5-7Z7U] (last visited Aug. 7, 2024).

226. Scherer, *supra* note 62.

227. For discussion of the origins and history of summary eviction proceedings, also known as forcible entry and detainer statutes, see Luis Jorge DeGraffe, *The Historical Evolution of American Forcible Entry and Detainer Statutes*, 13 SETON HALL LEGIS. J. 129, 129–30 (1990); Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 137 (2000); Richard H. Chused, *Landlord-Tenant Court in New York City at the Turn of the Nineteenth Century*, 2000 ARTICLES & CHAPTERS 411, 413–420.

228. Scherer, *supra* note 62.

229. ALICE SALOMON HOCHSCHULE & SUSANNE GERULL, *EVICIONS DUE TO RENT ARREARS: A COMPARATIVE ANALYSIS OF EVICIONS IN FOURTEEN COUNTRIES* (2014),

proceedings in different countries is a reflection of the procedures in place. In Germany, the Netherlands, Portugal and Sweden, eviction laws guarantee “protection periods” of lengths that differ from country-to-country, during which tenants an opportunity to pay arrears before court proceedings can be commenced.²³⁰ In Portugal, that period is thirty days.²³¹ In many countries, rules regulate the length of the nonpayment period that must pass before legal proceedings may commence also make the eviction process less “summary.” For example, Romania requires one year or arrears of at least 1500 euros; Austria, Czech Republic, Estonia, France (in some cases), Latvia, Slovakia, Hungary, Netherlands, and Poland all require three months.²³² Australia, the Czech Republic, Germany, Denmark, Finland, the Netherlands, Poland, Sweden, and other European countries require other avenues to resolve conflicts to be exhausted before resorting to judicial measures in matters where children are involved.²³³

Repealing summary eviction proceedings statutes and replacing the summary process with a process that allows for the time and procedural vehicles to fully explore all defenses and alternatives to eviction would be an important component of a strategy to abolish evictions.²³⁴

C. Bifurcate Rent and Possessory Claims

Ultimately, an eviction is an act of punishment and retribution that creates more problems than it solves. Evictions are sought when landlords claim that tenants failed to pay rent, violated the lease or the terms of their tenancy, or held over after the expiration of their lease.²³⁵ When a tenant fails to pay rent, why should a judgment to evict be issued, rather than simply a judgment for the money owed to be enforced like other money judgments through garnishments and the like? Claims for rent and eviction should be bifurcated. New York State did this temporarily during the pandemic through the NY Tenant Safe Harbor Act, which allowed landlords to obtain money judgments for unpaid rent that accrued during the dates of the pandemic but barred them from obtaining possessory judgments based on that

<https://www.feantsa.org/download/policy-review-3-25888950126820351293.pdf>
[<https://perma.cc/L6J5-GBYT>].

230. *Id.*

231. *Id.*

232. THE FOUNDATION ABBÉ PIERRE – FEANTSA, SECOND OVERVIEW OF HOUSING EXCLUSION IN EUROPE 91 (2017).

233. *Id.* at 112.

234. For an in-depth discussion of the problems with, and need to replace, summary eviction proceedings, see generally Scherer, *supra* note 62.

235. See generally SCHERER, *supra* note 25.

nonpayment.²³⁶ De-linking claims for rent and claims for possession would significantly diminish the numbers of evictions. Landlords who obtain money judgments would still have all the remedies other than eviction that are available to other creditors who hold money judgments, and if a tenant repeatedly fails to pay rent, that “chronic rent delinquency,” and not a single instance of falling behind in rent, could be the basis for an eviction proceeding.

IV. PREVENT EVICTION AFTER AN EVICTION JUDGMENT HAS BEEN GRANTED.

Thus far, this article has presented a range of methods that could avert the conflicts that lead to evictions and diminish eviction filings and set forth measures that could make the eviction process — or, better put, the conflict resolution process between landlords and tenants — fairer and more equitable. In addition, there should be fail-safe measures put in place that could avert evictions or minimize their harm, even after a court has authorized an eviction. This Part calls for replacing the archaic bounty hunter nature of the tools and procedures currently in use for post-judgment execution of evictions and suggests additional measures that can be taken to avert evictions at this late stage when courts have already ruled in favor of eviction.

A. Permit Redemption: Allow Tenants to Pay and Redeem Their Homes at Any Time Before Execution of an Eviction.

When a proceeding is brought based on nonpayment of rent, what purpose is served by putting a family out of their home if they are ultimately able to pay, even if that payment comes at the last possible moment? The right to redeem a home and avoid the travesty of eviction should be available until the last possible moment, yet most states fail to permit redemption.²³⁷ In 2019, New York State enacted the Housing Stability and Tenant Protection Act.²³⁸ Among its provisions, the Act allows tenants to satisfy a money

236. See *Covid-19 Eviction Protections for Tenants*, HOMES & CMTY. RENEWAL, <https://hcr.ny.gov/covid-19-eviction-protections-tenants> [https://perma.cc/EW6G-YU8J] (last visited Aug. 17, 2024) (“The Tenant Safe Harbor Act, Chapter 127 of 2020, protects tenants from eviction for failing to pay their rent that came due during the covered period from March 7, 2020 through January 15, 2022, if they suffered a financial hardship due to COVID-19.”).

237. JAMES ORLANDO, COMPARISON OF STATE LAWS ON MORTGAGE DEFICIENCIES AND REDEMPTION PERIODS tbl.1 (2010), <https://www.cga.ct.gov/2010/rpt/2010-r-0327.htm> [https://perma.cc/HH7U-Y6P6].

238. Housing Stability and Tenant Protection Act of 2019, S. 6458, Reg. Sess. 2019–2020 (N.Y. 2019), <https://legislation.nysenate.gov/pdf/bills/2019/S6458> [https://perma.cc/E3N3-2KAH].

judgment for rent and avoid eviction any time up to the execution of the warrant of eviction.²³⁹ Given the difficulties encountered by people living in poverty who may be living from paycheck to paycheck or relying on some form of public assistance, the “right to redeem” can avert eviction and its devastating consequences when tenants are able to pay the rent, even if that payment is late.²⁴⁰

B. No More Bounty-Hunters

Any strategy to abolish evictions requires a hard look at the systems in place for executing evictions. In all states throughout the United States, the current approach incentivizes execution of evictions. Evictions are executed by armed public officials — sheriffs, marshals, constables — or private sector individuals who are governmentally authorized to execute evictions.²⁴¹ In either case, these individuals are paid for each eviction they execute.²⁴² These eviction executioners are not fulfilling their assigned official duties in a disinterested manner. They are paid by the eviction and thus, like the bounty hunters of yore, their income depends on the volume of public duties they perform.²⁴³ Income goes up if evictions are up and down if evictions go down. This is inappropriate: the act of eviction, if it takes place at all, should be executed by disinterested individuals who are simply doing their job, not by people with a pecuniary interest in making evictions happen. The chart below presents a sampling of the types and amounts of fees charged by eviction executioners.

239. N.Y. REAL PROP. ACTS. LAW § 749 (McKinney 2019).

240. *See, e.g.*, D.C. Super. Ct. L&T R. 14-II(a) (“In any case in which the Court, following a trial on the merits, has entered a judgment for possession in favor of the plaintiff based upon the defendant’s nonpayment of rent, the Court shall determine and, in the presence of the parties, shall state on the record the amount of money that the defendant must pay to the plaintiff, as of that time, to redeem the tenancy and avoid eviction. The Court shall advise the parties that the amount of money that the defendant must pay to avoid eviction will increase as additional rents become due and, if applicable, as the plaintiff incurs additional court costs.”).

241. For example, in New York City, most evictions are executed by New York City Marshals. *See NYC Marshals Handbook of Regulations*, N.Y.C. DEP’T OF INVESTIGATION, <https://www.nyc.gov/site/doi/offices/marshals-handook.page> [https://perma.cc/C8M7-SADR]. Most evictions in Philadelphia are executed by a for-profit Landlord and Tenant Office. *See* Aaron Moselle, *supra* note 54. Evictions are executed by constables in Arizona. *See* Joseph Darius Jaafari, *As Evictions Increase, Questions About Constables Keep Rising. Here Are Some Answers*, AZCENTRAL (Nov. 1, 2022, 11:01 AM), <https://www.azcentral.com/story/news/local/arizona-investigations/2022/11/01/questions-constables-keep-rising-here-some-answers/10625653002/> [https://perma.cc/9CPZ-BTB8].

242. *See infra* Table 1.

243. It is beyond the scope of this article to delve deeply into the practices of these public officials, their earnings, etc.

Table 1. Fees Charged by Eviction Executioners in Select States

State	Executing Official	Fee
Idaho	Sheriff	Varies by county. For example, “a sheriff in Ada County may charge \$315; however, if a tenant vacates on their own, \$200 will be returned to the landlord.” ²⁴⁴
Illinois	Sheriff	Varies by county. “For example, in Lake County the enforcement fee ranges from \$143–\$226 for the first hour, plus an additional \$124 per hour.” ²⁴⁵
Massachusetts	Sheriff	Varies by county. “For example, in Essex County, the average cost of executing the writ is \$300.” ²⁴⁶
Pennsylvania	Writ server Sheriff Constable	Varies by county. “[F]or example, in Chester County the fee for serving and enforcing a writ is \$250.” ²⁴⁷

244. Elizabeth Souza, *Cost of an Eviction in Idaho*, IPROPERTYMANAGEMENT (Apr. 4, 2023), <https://iproperlymanagement.com/research/idaho-eviction-cost?u=%2Fresearch%2Fidaho-eviction-cost#writ-service> [https://perma.cc/U2F9-A36H].

245. Elizabeth Souza, *Cost of an Eviction in Illinois*, IPROPERTYMANAGEMENT (Apr. 4, 2023), <https://iproperlymanagement.com/research/illinois-eviction-cost?u=%2Fresearch%2Fillinois-eviction-cost#writ-execution> [https://perma.cc/T5CC-GEDX].

246. Elizabeth Souza, *Cost of an Eviction in Massachusetts*, IPROPERTYMANAGEMENT (Apr. 5, 2023), <https://iproperlymanagement.com/research/massachusetts-eviction-cost?u=%2Fresearch%2Fmassachusetts-eviction-cost#writ-service> [https://perma.cc/HDP7-73ED].

247. Elizabeth Souza, *Cost of an Eviction in Pennsylvania*, IPROPERTYMANAGEMENT (Apr. 12, 2023), <https://iproperlymanagement.com/research/pennsylvania-eviction-cost?u=%2Fresearch%2Fpennsylvania-eviction-cost#writ-service> [https://perma.cc/2UZF-E7PG].

Texas	Sheriff Constable	Varies by county. “For example, in Travis County, a sheriff can charge \$160. In Tarrant County, a sheriff can charge \$150 plus \$50 per deputy after 2 hours.” ²⁴⁸
Washington, D.C.	U.S. Marshal	“The filing fee for a writ is \$213. This fee includes the court issuance fee, the U.S. Marshals execution fee, and an administration fee.” ²⁴⁹

C. No Evictions to Nowhere, or of Vulnerable People, or in Winter, or at Night

Many countries’ laws and policies prohibit “evictions to nowhere” — when tenants have no place to go and would be rendered homeless.²⁵⁰ When the legal process has been exhausted and an eviction is ordered, execution of the eviction is postponed while social services agencies step in and help tenants relocate to alternative accommodations by providing or assisting the tenants with securing, alternative housing. The European Court of Human Rights has declared that where an eviction is justified, authorities must have measures in place to rehouse or provide financial assistance to the people who will be affected.²⁵¹ France’s, Right to Housing Act grants tenants under

248. Elizabeth Souza, *Cost of an Eviction in Texas*, IPROPERTYMANAGEMENT (Apr. 13, 2023), <https://ipropertymanagement.com/research/texas-eviction-cost?u=%2Fresearch%2Ftexas-eviction-cost#writ-service> [https://perma.cc/WQT6-LR7F] (last visited Feb. 22, 2024).

249. Elizabeth Souza, *Cost of an Eviction in Washington D.C.*, IPROPERTYMANAGEMENT (Apr. 17, 2023), <https://ipropertymanagement.com/research/washington-dc-eviction-cost?u=%2Fresearch%2Fwashington-dc-eviction-cost#writ-issuance> [https://perma.cc/4NN3-35E8].

250. See Gideon Bolt & Ilse van Liempt, *Eviction & Displacement*, in PRECARIOUS HOUSING IN EUROPE: A CRITICAL GUIDE 129 (Sybille Münch & Anna Siede eds., 2022) (recounting Poland’s enforcement of a ban on “evictions to nowhere”); Michel Vols, *The Optional Protocol to the ICESCR, Homelessness and Moral Hazard: The Alternative Adequate Housing Requirement in the CESCR’s Jurisprudence — an Incentive Not to Pay for Housing?*, 12 INT’L HUM. RTS. L. REV. 1, 18 (2023) (describing South Africa’s eviction protections). *But see Why “Evictions to Nowhere” Must Stop*, THE TYEE (Jan. 19, 2024), <https://theyee.ca/Opinion/2024/01/19/Evictions-To-Nowhere-Must-Stop/> [https://perma.cc/3BCB-X5R6] (explaining that bans on “evictions to nowhere” are needed in British Columbia, Canada).

251. P. KENNA ET AL., HUM. EUR. CONSULTANCY SCH. OF L., NAT’L UNIV. OF IR. GALWAY FEANTSA PILOT PROJECT — PROMOTING PROTECTION OF THE RIGHT TO HOUSING —

threat of eviction and who have no possibility of rehousing the right to appeal to a federal agency that is obligated to find both temporary and permanent replacement housing.²⁵² Similarly, Poland prohibits evictions due to rent arrears unless substitute accommodations are provided in a community social housing apartment, known as a “gmina.”²⁵³

Vulnerable people in particular have enhanced eviction protections in some countries. This is only logical. What sense does it make to evict people who, for whatever reason, would suffer even more severely than others and would be severely disadvantaged in finding replacement housing? Some countries prohibit eviction of vulnerable people who do not have alternative housing possibilities. Portugal’s Basic Housing Law, adopted in 2019, prohibits eviction of vulnerable people unless the government is able to provide suitable alternative accommodations.²⁵⁴ Vulnerable groups of people include “families with children, youth, persons with disabilities, and the elderly.”²⁵⁵ The prohibition against evicting vulnerable people flows from Portugal’s adoption of the principle that housing is a fundamental human right.²⁵⁶

A number of countries also diminish the harshness and cruelty of eviction by barring evictions in winter and at night. The European Committee of Social Rights of the Council of Europe, for example, requires member states to prohibit evictions at night or during winter.²⁵⁷ France has a five-month ‘treve hivernal’ (winter moratorium) that starts November 1st and prohibits evictions throughout winter.²⁵⁸ The ban applies to both traditional homes and “inhabited places,” such as makeshift shelters.²⁵⁹ Poland also bars wintertime evictions except in cases involving domestic violence and does

HOMELESSNESS PREVENTION IN THE CONTEXT OF EVICTIONS 4 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3286214 [<https://perma.cc/R5YT-97C>].

252. Marie Loison-Leruste & Deborah Quilgars, *Increasing Access to Housing: Implementing the Right to Housing in England and France*, 3 EUR. J. HOMELESSNESS 75, 87 (2009).

253. Gerull, *supra* note 201, at 144.

254. Press Release, Off. of the United Nations High Comm’r for Hum. Rts., Portugal: UN Expert Welcomes New Law Protecting the Right to Housing (Oct. 1, 2019), <https://www.ohchr.org/en/press-releases/2019/09/portugal-un-expert-welcomes-new-law-protecting-right-housing> [<https://perma.cc/U9RE-GDCV>].

255. *Id.* (quoting Leilani Farha, United Nation’s Rapporteur on the right to adequate housing).

256. *Id.* (“Portugal’s new housing law emphasises [sic] that the State has to guarantee housing as a human right and that public housing policies must follow the principles of universality and citizen participation.”).

257. KENNA ET AL., *supra* note 251, at 35.

258. Sarah Holder, *Should U.S. Cities Ban Winter Evictions*, BLOOMBERG (Nov. 2, 2017), <https://www.bloomberg.com/news/articles/2017-11-02/the-case-for-banning-winter-evictions> [<https://perma.cc/6D95-TNFQ>].

259. *Id.*

not permit eviction to a homeless or night shelter.²⁶⁰ Ireland has an eviction ban in winter for “no fault” eviction proceedings.²⁶¹

There are no winter eviction bans in the United States.²⁶² However, the Washington, D.C. sheriff’s office prohibits evictions when there is a “fifty percent or greater chance of precipitation” and when temperatures below 32 degrees are expected.²⁶³ In Chicago, the sheriff will not evict on days that the temperature is 15 degrees or lower.²⁶⁴ “The Winter Moratorium on Evictions Act of 2023” was introduced in the New York State Legislature in 2023, but has yet to pass.²⁶⁵ Our European counterparts have much more humane approaches to eviction.

D. Protect People’s Belongings

Shockingly, in a number of jurisdictions in the United States, a landlord is not required to protect or preserve a tenant’s belongings when the tenant is evicted.²⁶⁶ Indeed, the drafters of the Revised Uniform Landlord-Tenant Act, a product of the Uniform Law Commission,²⁶⁷ considered language that would have required protection for evicted tenants’ property by treating it as a bailment, but instead the “model law” exempted landlords from any obligations to protect the property of evicted tenants.²⁶⁸ When landlords evict, tenants’ property is subject to damage and destruction from the move,

260. Gerull, *supra* note 201, at 144.

261. *Understanding the Winter Eviction Ban*, IRISH PROP. OWNERS’ ASS’N, <https://ipoa.ie/understanding-the-winter-eviction-ban/> [<https://perma.cc/VDY8-5HBC>] (last visited Aug 18, 2024).

262. Holder, *supra* note 258.

263. Holder, *supra* note 258.

264. Holder, *supra* note 258.

265. S.1403-A, Reg. Sess. 2023–2024 (N.Y. 2023), <https://www.nysenate.gov/legislation/bills/2023/S1403/amendment/A> [<https://perma.cc/6V6R-MQX>].

266. *See generally What to Do with Tenant Belongings After Eviction (ALL STATES)*, EFORMS, <https://learn.eforms.com/real-estate/what-to-do-with-tenant-belongings-after-eviction-all-states/> [<https://perma.cc/B4N5-ZM4P>] (last updated Oct. 18, 2023).

267. *See generally Residential Landlord and Tenant Act, Revised*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=e9cd20a1-b939-4265-9f1e-3a47a538d495> [<https://perma.cc/C79U-PC9W>] (last visited Mar. 23, 2024).

268. Sheldon F. Kurtz & Alice Noble-Allgire, *The Revised Uniform Residential Landlord and Tenant Act: A Perspective from the Reporters*, 52 REAL PROP., TRUST & EST. L.J. 417, 492, https://www.americanbar.org/content/dam/aba/publications/real_property_trust_and_estate_law_journal/v52/03/rpte-journal-2018-v52-3-winter-article-kurtz-noble-allgire-revised-uniform-residential-landlord-and-tenant-act.pdf [<https://perma.cc/NF8N-PE2G>]; *see also id.* at 472 (“Twenty-five states have adopted URLTA-based statutes regarding a landlord’s right to enter the leased premises.”).

from the elements, and from the possibility — or likelihood — of theft.²⁶⁹ This callous disregard for tenants’ material possessions adds yet another layer of violence, trauma, and loss to the eviction system. Some places in the United States handle evicted tenants’ property with greater respect. New York City law, for example, requires City Marshals, who are the designated eviction executioners in most cases, to place tenants’ property in a warehouse that is licensed by the City’s Department of Consumer Affairs when they perform an eviction.²⁷⁰ The marshals are further required to prepare a “complete and accurate” inventory of the “quantity and condition” of the tenant’s property.²⁷¹ What purpose is served by treating life’s possessions with callous disregard? And would this happen if the tenants who are evicted were not overwhelmingly Black, brown, and low-income? We can do better.

CONCLUSION

It is long past time to devise comprehensive strategies to eliminate the use of eviction as a vehicle to address landlord-tenant conflict. This is not, as some are likely to claim, a call for anomie or chaos. Tenants still need to pay the rent they are legally obligated to pay and to comply with the laws and legitimate rules of cohabitation and community intended to protect the comfort, health, and safety of their neighbors. A call for strategies to abolish evictions is a call for a world that is eviction-free, not rent free, and it is not a call for the abrogation of responsibilities to other members of the community. Nor is it a call for defiance of the rules and commitments that

269. The Arkansas Code provides that “[u]pon the voluntary or involuntary termination of any lease agreement, all property left in and about the premises by the lessee shall be considered abandoned and may be disposed of by the lessor as the lessor shall see fit without recourse by the lessee.” ARK. CODE ANN. § 18-16-108 (West 1987). The Georgia Code provides:

Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord’s property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property. After execution of the writ, such property shall be regarded as abandoned.

GA. CODE ANN. § 44-7-55(c) (West 2024).

270. CITY OF N.Y., DEP’T OF INVESTIGATION, NEW YORK CITY MARSHALS HANDBOOK § 6-4 (2013), https://www.nyc.gov/assets/doi/Marshals/MarshalsHandbook4_24_13_Dir_Guidelines.pdf [<https://perma.cc/C9GW-U5K>].

271. *Id.* § 6-5.

regulate the landlord-tenant relationship; although it is certainly a call to change many of them.

Ultimately, however, the call to abolish evictions is a call for the recognition that eviction is simply too harsh a legal remedy, with consequences that are too dire. It is also a call for the recognition that eviction is rooted in a history of power imbalance and racial bias that needs to be disrupted. We do not have to evict. We can develop strategies that address eviction's underlying causes, transform policies and processes, and prevent, rather than foster evictions. We can abolish evictions.