

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC HOUSING

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December 15, 2015

Start: 1:07 p.m.

Recess: 3:20 p.m.

HELD AT: 250 Broadway - Committee Rm.
16th Fl

B E F O R E: RITCHIE J. TORRES
Chairperson

COUNCIL MEMBERS: Rosie Mendez
James G. Van Bramer
Donovan J. Richards
Laurie A. Cumbo

A P P E A R A N C E S (CONTINUED)

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[sound check, pause]

CHAIRPERSON TORRES: Good afternoon everyone. I'm City Council Member Ritchie Torres and I call this hearing to order. In the interest of time, I'm going to dispense with the opening statement, but this hearing is obviously a continuation of the last, and it comes against the backdrop of several reports that have been issued relating to public safety in public housing. The Public Housing Committee's Report on permanent exclusions and the Mayor's Action Plan, we have the IQ's Report on information sharing between the NYPD and NYCHA, as well as permanent exclusions, and then the latest report from Senator Jeff on sex offenders in public housing. So that will constitute the scope of today's hearing. With that said, I invite the General Counsel to say a few--to deliver his testimony.

DAVID FARBER: Yes, can you hear me?

CHAIRPERSON TORRES: [off mic] Yes.

DAVID FARBER: Okay. Chair Ritchie Torres, members of the Public Housing Committee and other distinguished members of the City Council, good afternoon. I'm David Farber, Executive Vice

President for Legal Affairs and General Council for the New York City Housing Authority. Joining me today is Brian Clarke, Senior Vice President for Property Management Operations. Thank you for the opportunity to discuss NYCHA's admissions policies and to also update you on changes to our permanent exclusion process to better protect our communities. As a top priority for NYCHA, the NYPD and our many partners, public housing safety from admissions to exclusions and evictions require a comprehensive approach. There is no single solution to keep the most serious offenders out of our communities, but through focused efforts centered on collaboration and communications in addition to infrastructure upgrades we can enhance safety in a meaningful way. Next Generation NYCHA, the Authority's 10-year strategic plan is focused on changing how we do business at every level including public safety. Mayor de Blasio is committed to improving the quality of life and security of NYCHA residents through comprehensive safety enhancements such lighting, cameras, security doors, and the recent announcement to improve permanent exclusion and evictions as a tool to remove individuals who pose a risk to public safety and

those who harbor them in violation of their lease.

Before we discuss changes to permanent exclusion, I'd like to walk you through NYCHA's application and eligibility process. With high demand, low vacancy and turnover, there are currently 270,000 families on NYCHA's waiting list. As a landlord focused on resident safety and the wellbeing of the NYCHA community, we take our responsibility to thoroughly screen applications very seriously. As part of NYCHA's admissions process, a candidate for public housing submits an application with information on the family's total household income, family composition, and current living situation. Applicants are placed on a preliminary waiting list and are notified if and when they have been scheduled for eligibility screening. Typically, an initial screen occurs within six to nine months before an application is offered a unit, and finally when the family reaches the top of the waiting list.

Public housing is inclusive by design.

As a public program supported with government funding, all applicants that meet our income requirements are eligible for NYCHA housing. Ineligibility results in specific criteria

screenings, identify relevant information about health and safety risks. NYCHA gathers relevant information by contacting past landlords, reviewing housing records and conducting a criminal background check on every member of the family age 16 and over. Under HUD regulations, convicted sex offenders and those convicted of manufacturing methamphetamines--methamphetamines on the premises of housing supported with federal funding are automatically permanently ineligible for admissions into NYCHA. Additionally, NYCHA sought input from justice groups on the types of criminal convictions and periods of time or look back period for specific offenses that would bar an individual from eligibility. NYCHA verifies application data using a variety of databases and tools. NYCHA accesses HUD's Enterprise Income Verification Database to verify income, Social Security data, employment and unemployment data and other relevant information. NYCHA also reviews housing core records, public conviction records of the New York State Office of Court Administration, the National Sex Offender website, and other public record databases.

Last year, NYCHA interviewed more than 14,500 individuals, and rejected about 560 as ineligible. Of those 560, 18% of about 100 applicants were rejected for criminality and about five--and five applicants were rejected as registered sex offenders. Meth manufacturing convictions, which typically impact more roll jurisdictions, do not play a major role in NYCHA ineligibility. No applicants were found to have meth manufacturing convictions last year or this year to date. Most applicants are deemed ineligible for being over income, not criminality. We should note all rejected applicants are entitled to appeal the decision in a hearing with an impartial hearing officer. Over the 290 appeals made last year, on 13 rejected applicants were reversed. This year we've seen a similar appeal rate, nearly 260 appeals and nine reversals to date.

While our admission process helps screen out safety risks on the front end ahead of tenancy, permanent exclusion and eviction is our tool to eliminate risks once tenancy has been established. Permanent exclusion is a way to save tenancy. It removes the dangerous criminal without evicting the entire family. Typically, residents agree to bar the

serious offender from their apartment in a signed stipulation with NYCHA in return for continued tenancy and allowing follow-up inspections by a NYCHA investigator. For context, NYCHA's team of investigators performs 10,000 site visits a year. If an investigator finds a danger--a dangerous criminal back in the apartment in violation of a permanent exclusion order or stipulation, the family can be subject to the termination of tenancy, and eventual eviction following an impartial hearing officer's review and an eviction proceeding in Housing Court. Aligned with HUD guidance, HUD--NYCHA does not use an arrest in and of itself as a basis to terminate tenancy. A serious arrest prompts NYCHA to further investigate and identify evidence and other facts that could build a case for tenancy termination or permanent exclusion. We scrutinize all factors of this arrest, an offender's history, to determine if we have cause to move it forward and prove the case. Exclusions are permanent and last indefinitely unless the tenant applies to have the permanent exclusion lift. Last year, 425 individuals were permanently-- permanently excluded. Broadly, we know at least 55% of permanent exclusions involve a serious drug crime

charge, 20% of all firearms, 10% of all sex crimes, and approximately 9% of exclusions and small violent crimes. Often, a case includes multiple criminal charges. As I mentioned earlier, the de Blasio Administration recently announced improvements to the process for removing dangerous criminal offenders, which is centered on enhancing information sharing between the NYPD and NYCHA. These communication and process reforms address many of the issue highlighted in a recent DOI report on collaboration between NYPD and NYCHA. Using the best public safety tools available, the City and NYCHA will be able to more accurately identify high-risk cases and move quickly to protect public safety. It is important to note that NYCHA is not expanding on the criteria for eviction or exclusion. Rather, the Authority is working with the NYPD to sharpen its policy so that it moves more quickly to exclude or evict from NYCHA high-risk individuals who commit very serious offenses.

NYCHA is committed to serving our residents by implementing appropriate security measures that address all illegal activity that poses a danger to residents and the community. The

Authority implemented in this permanent exclusion policy in part to save the tenancy of families by instead excluding only the bad actor. We plan to work with NYPD, MOCJ, our partners and residents to improve our diagnoses of crime drivers and intervention strategies at our developments. This follows a larger push towards comprehensive safety enhancements such as increased CCVT and lighting enhancements throughout our developments. Along with the NYPD and our agency partners, we will continue to work to ensure the safety of our residents. We believe that smart policy making in this area is critical to meet the goals of Next Generation NYCHA and create safe, clean, and connected communities. We are happy to answer any questions you may have.

CHAIRPERSON TORRES: Thank you, General Counsel, and we've been joined by my colleague from the Far Rockaways, Council Member Donovan Richards, and I do need to swear you in so if you would please raise your right hands? Do you affirm or affirm to tell the truth, the whole truth, and nothing but the truth today.

DAVID FARBER: I do.

CAPTAIN HOWARD GOTTESMAN: I do.

CHAIRPERSON TORRES: I want to start with the IG's Report. The IG's Report has two findings. One is a Failure of Information Sharing between the NYPD and NYCHA, which was well established in our previous hearing. And second was I guess what the IG characterized as an ineffective permanent exclusions policy. And the IG concluded that both of these failures contributed to the persistently high rate-- higher rate of crime in public house. Do--do you agree with that assessment. That seems like a harsh assessment.

DAVID FARBER: Um, I agree that that is a--it's a harsh assessment. I don't think that--I think that we have been working together well with the NYPD over many years. We can certainly do better. We are doing better already, but I think that we are--we have and will continue to focus on public safety and the protection of our residents as something that is of primary importance to what we do at NYCHA.

CHAIRPERSON TORRES: I mean it seems to me the Mayor seems to favor a more targeted use of permanent exclusions using them more as a scalpel than a machete, if you'll excuse the metaphor. Is

that a--would that be a correct characterization of the Mayor's position here?

DAVID FARBER: I don't think that we are using--talking about using permanent exclusion less. I think that we are talking about using permanent exclusion in a more focused and prioritized way. So, what we are going to do through better communication, better information sharing, and more refined prioritization is we are going to identify the most serious cases, and ensure that those are acted upon by NYCHA on an expeditious basis. We're trying to get to an outcome as quickly as--as we can, and getting those people excluded from NYCHA quickly. So it's not so much about numbers, it's about priorities and focus.

CHAIRPERSON TORRES: I guess what kind of cases or what or who are you prioritizing? Are you prioritizing say a first-time offender who might have committed a violent crime or you're prioritizing a violent actor who might have committed a minor crime? Are you looking at the crime or the criminal? Which are you prioritizing?

DAVID FARBER: So, um, we--so internally at NYCHA we've always--we have tried to prioritize

even prior to the Mayor's recent announcement. But we're not working with NYPD and MOCJ to--to refine that, to identify the criteria that are really most important in terms of identifying vendors who pose the most serious and imminent risk to their neighbors. So the kind--the kind of factors that we'll be looking at. We're looking at patterns of offenses. Are there multiple offenses? We're looking at violence. We're looking at serious gun crimes, not necess--so where guns are recovered or there's again multiple, you know, patterns of use of guns. So, beyond that I just--we are continuing to work with NYPD and MOCJ in--in further developing the criteria that we're going to use to prioritize the cases.

CHAIRPERSON TORRES: I'm not clear if I understand, though because if you have to decide which cases to prioritize, are we looking at the most violent actions? Are we looking at the most violent actors? Because it seems to me that there's a critical distinction between the two.

DAVID FARBER: We're--we're looking at both. So we are looking at both the offenders. So looking at both what the, you know, what the offense

may be on this--on the one particular--the most recent occasion. But we're also looking at what that offender has done in the past. So if that--if a collection of information reveals that this is a very dangerous offender, we're ready to act as a priority on that as well. If the nature of the offense is of--is a particularly dangerous or violent offense, we're also going to act to treat that as a priority. So both offenses and offenders will be part of the consideration.

CHAIRPERSON TORRES: And do you--first, do you see yourself limiting permanent exclusions to the most violent offense? Is that--?

DAVID FARBER: Again, we are not limiting permanent exclusion to the most violent offenders. So--

CHAIRPERSON TORRES: Because here's my concern. There's no clear discussion of what permanent exclusions is. I could not find a definition on NYCHA's website. Nor is there a clear delineation of your discretion when to bring permanent exclusions. I mean those are unanswered questions. So can you give us some clarity of that, and some--?

DAVID FARBER: So I think what's important here is--is that to frame--frame this as permanent exclusion happens not as a separate case, but it happens in the context of eviction action, and the tenant--our tenant lease says that we can bring an eviction action where we determine that--so there's a non-desirability concern. So that is--and one of the criteria there is where a member of the household poses a risk of danger or harm to other members of the NYCHA community. So, that--that is the test that we use to determine whether we're going to

CHAIRPERSON TORRES: And that strikes me as more of a standard. I mean one could argue that if I'm smoking pot in my apartment I'm posing a danger to someone's health. I mean how do you measure it specifically? Why not list the crimes that automatically trigger from the exclusion? Why not have a list?

DAVID FARBER: We have--we have lists of crimes in our--in our Admissions Manual that we consider as the basis for excluding people from admissions. We have lists of crimes that we describe as overlooked offenses, which really means offenses

that we will not use as the basis of either admissions bar or--or termination. But, beyond that, I think it's important to give NYCHA the--the room based on both NYCHA's experience, and input that we get from NYPD and MOCJ, again, through the improved--improved communication that we'll have to identify situations not just of most serious offenders or offenses, but serious offenders and offenses that also should be the subject of an eviction or exclusion procedures.

CHAIRPERSON TORRES: And I'll just--I--I might be belaboring this point, but if your intent is to focus on the most serious offenses, why the need for an open-ended discretion? Why not define the narrow set of circumstances that are so severe as to trigger a permanent exclusion proceeding or a termination proceeding?

DAVID FARBER: Again, I think we really want to emphasize that we are not only excluding for the most serious, right? So we are prioritizing those cases. And when I say prioritizing, I mean those are the cases that we--when we receive them we are going to put them at the top of NYCHA's list. We are going to act on them on a highly expedited basis.

We are going to bring then through our process as quickly as possible. But again, those are for the cases that have been determined to be the most serious offenders or offenses. Those are the people who we have to try to get out of NYCHA immediately. We do not want them to, you know, be there because they proposed imminent to serious risks. But there are other cases where we should also pursue eviction or exclusion because while the threatening may not be as imminent or as serious, these are also people who we--who should not be living in NYCHA. So--so, yes, there is a range of criteria. We do not evict people for misdemeanors. We are not evicting people for minor offenses. We use our discretion, but we--we use it reasonably and sensibly.

CHAIRPERSON TORRES: You know, NYCHA announced a few weeks ago with--with some degree of fanfare that you were bringing back the not wanted list, which you publish online, and you publish in your monthly journal. How does a--how does publishing a list in a monthly journal enhance public safety in public housing?

DAVID FARBER: Well, first with respect to the name, we--that--that is not necessarily the name of the list. (sic)

CHAIRPERSON TORRES: So what's the name of it?

DAVID FARBER: We haven't determined what-

CHAIRPERSON TORRES: [interposing] Okay.

DAVID FARBER: --it will be called.

CHAIRPERSON TORRES: Okay, so that's-- that's the template, you're following right? You're continuing the practice that you had--that had been in place about two years ago?

DAVID FARBER: It has been put in place for--for, you know, a long time in NYCHA, but I think what's important is that previously under this administration we had already dis--we had discontinued that list because that list in that form with that name in the way it was being disseminated and--and the number of people list--listed on that list, we decided that that was not an effective and efficient use of such a list. So, what we're doing now, we're again working with our--our partners, NYPD and MOCJ is--we are talking about what kind of list

would be of value? So most likely that list will be focused on the most serious offenders that I've been describing. So rather than have a list of thousands of names, it would have a list of more--a more targeted list. So, the more targeted list would make it more usable, more effective, more relevant. Exactly how that list will be disseminated hasn't been determined. So--so the--the specifics of the list are still a work in progress.

CHAIRPERSON TORRES: So I four questions about the latest report on sex offenders. In 2010, Senator Klein issued a reporting revealing that there were 74 Level 2 and Level 3 sex offenders residing in public housing. In the five years since the release of the report, that number has grown substantially to about 110 sex offenders with the Bronx seeing the largest increase. All of these offenders committed a sex crime serious enough to warrant lifetime registration. About 66 of them are Level 2 sex offenders, 44 of them Level 3 sex offenders, 41 of them have been designated as violent sex offenders, 8 of them as predicate sex offenders, which is the classification for re-offense, and four of them have committed sexual crimes against victims as young as

five years old or younger. Was NYCHA aware of this information before the release of the report?

DAVID FARBER: So, first of all, I'd like to emphasize that NYCHA certainly absolutely agrees that registered sex offenders, dangerous registered sex offenders should not be living at NYCHA. Under federal law they are barred from admission, and when we discover that either a sex offense has been committed or someone becomes a registered sex offender and learn of that, we take action to terminate their tenancy. So we--we absolutely agree with the goal of getting this information and using it. This--the report that was just issued so--so, you know, we've--in looking at it--

CHAIRPERSON TORRES: [interposing]
Although, as you mentioned the--the information contained--

DAVID FARBER: [interposing] Yes, right.

CHAIRPERSON TORRES: --in the report is part of this--

DAVID FARBER: [interposing] Yes, so--

CHAIRPERSON TORRES: --is part of--it comes from a publicly available registry. So--

DAVID FARBER: Correct.

CHAIRPERSON TORRES: --so were you aware of the information before the report or--?

DAVID FARBER: So--so let me speak to some--some of the specifics. So in--in the 2010 report, the report indicated that there were 74 registered sex offenders living at NYCHA. I think, um, what's important to note is that the information just like in that--in this--in the current report and in the prior report hadn't necessarily been verified against--at people who are actually living at NYCHA. It was based on--it-it the data match where we have access to that data match, but when we did--when we verified and reviewed that list, we were only able to verify that 32 of those 74 people live in NYCHA. So, of course, no number of registered sex offenders is--is, you know, is acceptable, but I think that it's reflective that the 74 didn't reflect the reality of the number, and we think the same is probably true of that 110. You know, we haven't been able to do the same kind of data checking. So that's my first comment.

CHAIRPERSON TORRES: Do you--does NYCHA periodically track the number of sex offenders in public housing? Do you periodically review the sex

offender registry and cross-reference it with NYCHA addresses or--?

DAVID FARBER: So the 2010 law, sponsored by Senator Klein, required New York State Criminal Justice Division to provide regular reporting to public housing authorities of the registered sex offender lists, registry. We--we supported that law, and we appreciate Senator Klein's efforts to help make that information more accessible to NYCHA. But in fact, this--that state agency has not been providing the--that information to NYCHA. When the law was adopted, we sought out that information. NYCHA pursued it several times but, in fact, was unable to get the State to provide us that information. So, instead--

CHAIRPERSON TORRES: [interposing] So there's been no compliance with the law for five years?

DAVID FARBER: So, again, based on the research that we've been able to do since the report came out to verify that, yes, that is our--our understanding, and that the--

CHAIRPERSON TORRES: [interposing] And since 2000--I'm sorry. I just want to be clear.

Since 2010, the Division of Criminal Justice Services has been failing to provide you with information regard sex offenders in public housing?

DAVID FARBER: Yes.

CHAIRPERSON TORRES: Okay. But why--why not proactively review the registry yourself and cross-reference it with NYCHA addresses? That's something you can do without the State--

DAVID FARBER: [interposing] Well, that's not to say that we don't get information so the NYPD is our source of information. They provide us information about the--

CHAIRPERSON TORRES: [interposing] But I'm asking if your agency--does your agency proactively and periodically review the registry to identify sex offenders in public housing?

DAVID FARBER: So--so the only way to review the--

CHAIRPERSON TORRES: [interposing] It's a yes or no. It's not--

DAVID FARBER: The only way to review the registry there's no database. You have to search zip code by zip code, and then you have to search person

2 by person. So you have to compare every single
3 registered sex offender in all of New York State.

4 CHAIRPERSON TORRES: [interposing] So is
5 that the kind of analysis that you conduct at NYCHA
6 periodically?

7 DAVID FARBER: Um, I, um, I don't have
8 details about that. [background comments] We're
9 still looking to see what analysis internally that we
10 perform.

11 CHAIRPERSON TORRES: What happens when
12 you discover that a sex offender is living in public
13 housing?

14 DAVID FARBER: So, um, we--we act in the
15 way that I described earlier with eviction and
16 permanent exclusion cases. We--we pursue the case
17 such that the individual who's a registered sex
18 offender is either--is excluded from the household.
19 Usually we obtain that permanent exclusion. It
20 doesn't require eviction of a family, and we are
21 generally successful in accomplishing that.

22 CHAIRPERSON TORRES: Are those going to
23 be among the cases that you prioritize for permanent
24 exclusion or--

25 DAVID FARBER: Absolutely, yes.

CHAIRPERSON TORRES: Okay. A question about the IG report again. So one of the findings was a failure of information sharing on the part of the NYPD. The IG alleged that you were out of compliance with a 1996 memorandum in which the NYPD is required to provide all of the arrest reports, all the complaint reports to NYCHA, but it would seem to me that providing every single complaint report and every single arrest report of our criminal--criminal activity in public housing-- Is there a concern about information overload here, and does that seem to undercut the goal of prioritizing cases or?

DAVID FARBER: So, yes, I'll--I'll start. Absolutely. So I think there's two concerns. One is if you're receiving information, and it turns out that a great deal of it is not something you can use or local actionable, then you're spending--instead of spending the time and energy that you can on pursuing cases in an effective manner to exclude people, you're spending your time trying to filter through, you know, a lot of information. That's the first point. The second point is that as HUD we certainly reiterated in--in the formal notice arrest information in and of itself is not sufficient to

exclude or evict people from public housing. That has always been NYCHA's policy. So we are continuing to do that, but to the extent that the DOI report focuses on arrest information, that information is both overload and of concern that it would suggest that we're acting on arrest information to evict people.

CAPTAIN HOWARD GOTTESMAN: As far as the NYPD on that you are correct. I think that in approximately 2011 so they stopped sending every report over there. So there was concerns about privacy and the arrests where the cases were sealed, and then by court orders you're supposed to get that stuff back. So, there's an issue between legal about what you can send out on that, and we're working with NYCHA to come up with the more efficient way of getting whatever information they way. The second part of that though is the CFLA. That--that hasn't affected the CFLA--the CFLA--

CHAIRPERSON TORRES: [interposing] Can you tell me what that is?

CAPTAIN HOWARD GOTTESMAN: The Cases for Legal Action.

CHAIRPERSON TORRES: Yeah.

CAPTAIN HOWARD GOTTESMAN: While we're not giving all the arrests, all the incidents that occur in housing, the complaint reports, the minor ones because it is a data dump--a massive data dump. Where actually we streamlined the C-F--the cases for legal action. Those are the prioritized cases where this is somebody who should be evicted from housing. Those cases we have a sub-unit within the Housing Bureau that tracks the arrests citywide, and pulls these cases out and get all the paperwork within the housing bureau, which--we--the--the report indicates there some shortcomings on our tracking, but our review of some of those cases I think were--were not quite as bad as the report would indicate, but we can always get better. And our issues in terms of the legal--

CHAIRPERSON TORRES: [interposing] What did the report identify? (sic)

CAPTAIN HOWARD GOTTESMAN: There--looking through the cases, they identified I think 18 out of 27 went in, and this--and I'm not saying this numbers might not be higher than a different random drawing. But of the 27 cases they picked out, they highlighted six of them. And our review of six of those cases it

1 didn't seem to fit our current guidelines for the
2 cases for the cases for the--to be submitted. Made
3 were a development case or a weapons case that was a
4 Taser. It was not actually a firearm. It wasn't
5 charged as such. So it wouldn't fit the criteria to
6 be a case for legal action. We did--like I said,
7 there's so many outside within youths (sic) the
8 department, maybe a Detective Bureau case or
9 something that will slip through the cracks. We're
10 setting up some systems in order to track those.
11 We'll make sure, you know, we're better than the
12 report says, but we can definitely still get better.

14 CHAIRPERSON TORRES: So you wouldn't
15 bombard NYCHA with every report as required by the
16 1996 Memorandum of Understanding. You're going to
17 limit the floor information to the most serious
18 cases. Does that mean that NYCHA is going to enter
19 an MOU with that--with the NYPD or--?

20 CAPTAIN HOWARD GOTTESMAN: I don't--I
21 don't know if that--if that would be required, but we
22 have--

23 CHAIRPERSON TORRES: [interposing]
24 Because right now the new process is outlined in the
25 press release, right and I'm wondering is there going

2 to be something more detailed than a press release?

3 Is there going to be a formal public safety agreement
4 between NYCHA and NYPD--

5 DAVID FARBER: [interposing] I think

6 CHAIRPERSON TORRES: -- so that we know
7 the rules of the game going forward?

8 DAVID FARBER: The focus right now is to
9 work on the policy--work--work on the process
10 improvements, work on the information flow with Jerry
11 to get that right.

12 CHAIRPERSON TORRES: But is that going to
13 be delineated in writing in the MOU or otherwise?

14 DAVID FARBER: I would say further down
15 the line it makes sense to--for us to consider that.

16 CHAIRPERSON TORRES: I see I've been
17 joined by my colleague Council Member Mendez, and
18 I'll give you the opportunity to ask a few questions
19 as well.

20 COUNCIL MEMBER MENDEZ: Thank you very
21 much, Mr. Chair. I have a couple of questions
22 directly coming from your testimony. On--where is
23 it? On page 2, the last paragraph you talk about the
24 ineligibility that results when specific criteria
25 screenings identifies relevant information about

health and safety risk. What health risk might be, the safety issue. Can you elaborate that please?

DAVID FARBER: I'll turn this over to my colleague Brian Clarke.

BRIAN CLARKE: So, good afternoon. My name is Brian Clarke. I'm the Senior Vice President of Operations for property management, and so what I would like to do is take you through our actual process for finding folks eligible and ineligible, and I think that will help to answer the overall--the overall question. So, first off, when we get an application, you know, typically it's filed online and folks need to meet the minimum income requirements as well as age requirements. Once you pass that criteria then you get to our preliminary, our preliminary wait list. The--and then once we, you know, based on your priority and borough of choice and family size, if we believe we're going to be able to reach you within nine months, then we'll schedule an eligibility interview with the--with the applicant. And as we go through when we meet with the applicant, we're--we're looking at a number of different items. One is we will go back and review landlord contact just to see how the tenancy was, and

review issues such as, you know, for example when we talk about health, hoarding. If there are any hoarding issues associated with, you know, the tenancy. We're also going to see whether or not there's been any rent--rent collection or outstanding rent issues or any issues, you know, outstanding in the New York City Landlord Court regarding the--the applicant. So it could be for non-desirable behavior. Also, we're going to check for, um, um, we're going to verify income eligibility as well and at the--and then we're also going to check the National Registration for Sex Offenders for all occupants over the age of, you know, 16 or all applicants over the age of 16 at that point in time. Once we--once the--we also are going to review HUD's EIV System, which is the Enterprise Income Verification System. It provides, you know, information, you know, for example if the applicant has ever lived in federal subsidized housing, and if there was ever any adverse tenancy, you know, listed, you know, for the family. It's also going to provide, you know, information also verifying, you know, income as--as well. And then we're going to do a review of the criminal background. So we'll do a

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2 review of the State Unified Court System for any, you
3 know, convictions as well.

4 COUNCIL MEMBER MENDEZ: Okay, so that
5 just raised more questions for me. Is requirements
6 why? Is it just for your senior housing or--?

7 BRIAN CLARKE: No, the age should--the
8 minimum age is 18.

9 COUNCIL MEMBER MENDEZ: Okay.

10 BRIAN CLARKE: 18 to be head of
11 household.

12 COUNCIL MEMBER MENDEZ: Okay. Landlord
13 contacts?

14 BRIAN CLARKE: Yes.

15 COUNCIL MEMBER MENDEZ: How much--what
16 else do you do besides landlord contacts?

17 BRIAN CLARKE: So landlord contacts so
18 we're also going to review whether or not there is
19 any in New York City Courts and landlord and tenant
20 court if there are any active--

21 COUNCIL MEMBER MENDEZ: And how
22 dispositive is that going to be? Because--

23 BRIAN CLARKE: [interposing] Excuse me.

24 COUNCIL MEMBER MENDEZ: How dispositive
25 is that going to be? So for example many tenants

2 don't get repairs by their landlords, and I'm sure
3 you know about this in your own capacity at NYCHA.

4 BRIAN CLARKE: Yes.

5 COUNCIL MEMBER MENDEZ: So if a tenant
6 goes to Housing Court and starts an HP action for
7 repairs, is that held against the applicant?

8 BRIAN CLARKE: No, it will be--it's more
9 as if they were evicted for non-desirability or not
10 paying rent?

11 COUNCIL MEMBER MENDEZ: Non-desirability?

12 BRIAN CLARKE: Yes.

13 COUNCIL MEMBER MENDEZ: So explain that
14 one then?

15 BRIAN CLARKE: So a non-desirability
16 would be that if there was any criminal activity
17 within the, you know, within the household.

18 COUNCIL MEMBER MENDEZ: Uh-huh.

19 BRIAN CLARKE: You know, it could be
20 hoarding issues.

21 COUNCIL MEMBER MENDEZ: So there are
22 specific and when you're talking about health, you're
23 talking about hoarding.

24 BRIAN CLARKE: Yeah. Uh-huh.
25

COUNCIL MEMBER MENDEZ: I can get that.
Anything else?

BRIAN CLARKE: I--

COUNCIL MEMBER MENDEZ: [interposing] So--

BRIAN CLARKE: --and then, of course,
there's the criminal background.

COUNCIL MEMBER MENDEZ: Okay. So, you
know, HUD is proposing and some of my colleagues are
proposing a smoking ban in NYCHA. So if someone is a
smoker, is that going to be taken into consideration?

CAPTAIN HOWARD GOTTESMAN: Yeah, we
thought--I don't think--you know that at this point
in time, you know, we don't know.

COUNCIL MEMBER MENDEZ: Okay. If--I'm
just trying to think of scenarios here because there
are so many. So if a tenant has taken their landlord
to court--I'm raising issues that ring a bell with
NYCHA--for mold, and they decide to move out because
their NYCHA application seems--

BRIAN CLARKE: No.

COUNCIL MEMBER MENDEZ: --that's not going
to be held against them?

BRIAN CLARKE: No, no.

COUNCIL MEMBER MENDEZ: Okay. You--rent collections. So if they're on rent strike because they're not getting repairs, you look into that and you will determine that that is not a barrier to having--

BRIAN CLARKE: If they've been evicted or if they've left the tenancy with, you know, with outstanding, you know, rent arrears, you know, in landlord/tenant court then that would be a consideration.

COUNCIL MEMBER MENDEZ: So--okay. So if they were taken--if they were doing a non-payment--if they were doing a rent strike because they're not getting repairs, and all the issues weren't addressed in court, and they were evicted by a marshal, maybe are in the process of getting an order show to show cause, their tenancy would be rejected?

CAPTAIN HOWARD GOTTESMAN: It would--that would all be taken under consideration.

COUNCIL MEMBER MENDEZ: It would--that would all be taken under consideration. That's good to hear. National Registration for Sex Offenders.

DAVID FARBER: Yes.

COUNCIL MEMBER MENDEZ: There are different degrees of sex offenders that you don't need to register for sentencings. How does that get incorporated into this national registration.

BRIAN CLARKE: I think it's all one Level 2 and 3 really. So the National Registration is all Level 2 and Level 3 sex offenders.

COUNCIL MEMBER MENDEZ: So Level 1 sex offenders are not barred from apply to NYCHA?

BRIAN CLARKE: Um, they can--they can apply. Whether or not they would could would depend upon the actual--the offense, whether it was, you know, a felony or whether it was a misdemeanor, and depending upon the timeframes could be found ineligible. [pause]

COUNCIL MEMBER MENDEZ: Okay. I just want to know about the sharing of information between the NYPD and NYCHA. So, and Brian, I don't know if you remember this. I have the infamous cigarette selling case, a woman who was selling untaxed cigarettes, and it was not--otherwise was a model tenant, had adopted foster kids. And the case in criminal court was dismissed against her, but NYCHA was still moving forward with her eviction until I

intervened and--and looking at her past tenancy, she was put on probation. So how are you dealing with those kinds of cases, and certainly that was before 2011, and apparently there's a DOI report that says-- [coughs] excuse me--that says that the NYPD stopped sharing information with NYCHA in 2011. So can you address those issues, please?

DAVID FARBER: I don't [coughs] I can't speak to the facts of that case, but what we are about now in both the more serious cases and other cases we are considering, we are about cases that pose--tend to pose a risk of harm to other tenants. That is the focus. It's certainly true for our most--the most serious cases that we're going to expedite, but it is generally true of the cases that we're looking at so--

COUNCIL MEMBER MENDEZ: So, if I could stop you there for a second. A similar case like that now would not--a tenant would not be taken to court to be evicted? Is that what I'm understanding? Is that correct?

DAVID FARBER: I--I think it's fair to say that that's--that is our approach. [pause]

2 COUNCIL MEMBER MENDEZ: Okay, the--the
3 DOI Report--the information sharing between NYPD and
4 NYCHA that stopped in 2011.

5 DAVID FARBER: Um, so, um, so, yes.
6 Sorry. [pause] So--so let me add to the--the sort
7 of danger survey that is our most important
8 consideration, but if tenants are engaged in
9 significant illegal activities, particularly, for
10 instance if they are using their apartment for an
11 illegal business, we will terminate. We will seek to
12 terminate tenants who are engaging in--in illegal
13 activity that is inconsistent with their rights under
14 their lease.

15 COUNCIL MEMBER MENDEZ: So selling
16 untaxed cigarettes is illegal. So then I go back to
17 that scenario.

18 DAVID FARBER: Yes.

19 COUNCIL MEMBER MENDEZ: If they are
20 otherwise a model tenant and there's been no problem
21 you will take that into consideration?

22 DAVID FARBER: Yes. So what--what we are
23 absolutely doing now, though I can't speak to the two
24 prior years, is we considering all appropriate
25 factors when we decide on what the--what the

appropriate measures are to take, if any, with respect to tenants' behaviors and actions. Let's go back to--to--to the DOI Report.

COUNCIL MEMBER MENDEZ: Yes.

DAVID FARBER: So, as--so I was--so as I was discussing earlier, I think the DOI report really focuses on arrest information that is no longer being provided to NYCHA, and I think there were two--from NYCHA's point of view, there were two significant issues with all of that arrest information. One is that much of it, or a significant portion of it, is not necessarily information that we can do something with. So it was putting us in a position of having to filter through a lot of information that we couldn't use in order to find information that we could use, and we would--we think it's more effective to get information that is mostly usable or actionable so that we can spend our time working on getting tenants who don't belong in NYCHA out of NYCHA. Secondly, that arrest information in and of itself is not something you're supposed to act on. So to the extent that we're getting purse arrest information with no other accompanying information, we're not--we're not supposed to evict tenants or

exclude tenants simply on the basis of arrest information. So those are--those are the two reasons why we disagree with the, um, the concerns expressed in the DOI Report.

COUNCIL MEMBER MENDEZ: Okay, good. That could be of some value because, you know, there were cases like this cigarette lady case where she was just automatically taken to court even after the case was dismissed. The charge, you know, NYCHA did not move forward with dismissing the eviction case. So, on page 6 of your testimony in the second paragraph, you made--you mentioned our diagnosis of crime drivers. What--what does that mean?

DAVID FARBER: So--

COUNCIL MEMBER MENDEZ: [interposing]
Does that involve like an illegal--some real illegal activity or someone who has gotten too many points on their license? What does that really mean?

DAVID FARBER: Let me look at that page with you.

COUNCIL MEMBER MENDEZ: The second paragraph. We plan to work with NYPD, MOCJ, our partners and residents to improve our diagnosis of

crime drivers and intervention strategies at our developments.

DAVID FARBER: Okay, so the, um, so that goes to--to the fact that we are--been working with NYPD and MOCJ to better identify and prioritize the cases that pose with the offender with taking into account the offender and the offenses. That pose the greatest and most imminent risk of harm to public housing residents. So, we need to work more closely, which is what we're doing, more closely with NYPD and MOCJ to--to be able to identify the--how do you decide which cases to pursue? How do you decide which cases to put on the top of the list? So, that's what we're doing.

COUNCIL MEMBER MENDEZ: Okay, what is crime drivers mean?

DAVID FARBER: That is--that's just a--a way to--a way to explain sort of describe the factors that should be taken into account to understand, you know, what--what types of offenses and offenders are giving rise to the criminal activity at NYCHA that--that we would possess. (sic)

COUNCIL MEMBER MENDEZ: [interposing]
We're talking--we're talking about the frequency of

someone involved in crimes. We're not talking about driving per se, right? We're not talking about driving while intoxicated. We're not talking about--

DAVID FARBER: [interposing] Right.

COUNCIL MEMBER MENDEZ: --points on the license?

DAVID FARBER: Correct.

COUNCIL MEMBER MENDEZ: Okay, I'm just making sure because you never know--

DAVID FARBER: [interposing] Right.

COUNCIL MEMBER MENDEZ: --since it's not explained. I'm just trying to figure that out.

DAVID FARBER: Yes.

COUNCIL MEMBER MENDEZ: [pause] So, in addition to within work context what other information is NYCHA getting to verify any of the information that may be in a Housing Court re--you know, case or where there's little information on there. Are you doing anything else to verify that information?

BRIAN CLARKE: Yeah, so the, um, so we'll work with the applicant to get the, you know, additional information if there's something that needs to be clarified and if we see something in

Landlord/Tenant Court. We're also, as I said before, looking at, you know, HUD's, you know, nationwide EID, you know, system as well for information, and then once again if we found something that we would-- we would ask the applicant, you know, certainly for an explanation. Or, if there's documentation that can, you know, explain whatever the issues are.

COUNCIL MEMBER MENDEZ: And Mr. Chair, I don't know if this question has been asked, but I--so I'm going to ask it again, and you can tell me. The NYCHA Trespass Notice Program? Okay. Can you tell me a little bit about that, and then I'm going to tell you the problem I'm having at one of my developments and maybe how that might be addressed.
[pause]

HOWARD GOTTESMAN: Good afternoon. My name is Howard Gottesman, and I'm a Captain in the Housing Bureau. So we're not talking about CFLA. We're talking about NYCHA Trespass, which is a separate program. Is that--is that accurate?

COUNCIL MEMBER MENDEZ: CFLA would mean what? I can't answer the question.

HOWARD GOTTESMAN: Case for--Cases for Legal action--

2 COUNCIL MEMBER MENDEZ: [interposing] Uh-
3 huh.

4 HOWARD GOTTESMAN: --where we ask NYCHA
5 to take a look at a tenant for some sort of illegal
6 activity and to proceed to evict or exclude them.
7 Trespass is something different than that.

8 COUNCIL MEMBER MENDEZ: Correct?

9 HOWARD GOTTESMAN: Okay, so I just
10 wanted--

11 COUNCIL MEMBER MENDEZ: [interposing]
12 Unauthorized people coming into buildings and
13 trespassing on NYCHA grounds, property, buildings.

14 HOWARD GOTTESMAN: Okay, so the program
15 is predicated on a triggering arrest. That
16 triggering arrest is not a trespass arrest. It is a
17 felony sale of drugs or marijuana on NYCHA property.
18 If someone is arrested for that, the arresting
19 officer serves that person with a notice that they
20 are no longer allowed to come onto NYCHA property.
21 There is an exception to that, which I could get to,
22 but if they're not a resident, and they are on NYCHA
23 property selling felony drugs or marijuana, they are
24 served with a notice by that arresting officer that
25 they're no longer allowed. That service is put into

a database, and that person is subject to an arrest if they violate that notice. That's NYCHA trespass. There is an exception to that. If you'd like I could get into that.

COUNCIL MEMBER MENDEZ: Yes, I--I--well, what I want to know is when it's nota felony, when someone doesn't live in the building and they're trespassing because in the past we could get precincts where the PSA or whoever has jurisdiction over that development to go in and do a patrol, and issue summonses. Now, what I'm getting is if the--the unauthorized individual says oh I was visiting someone and they're not home, the officer doesn't check. They escort them out of the building. They walk out of the building and they come back in. This is particularly a problem for me in one of my developments near the Beldiman (sic) Shelter. Before we were getting summonses. So that was helpful and it--and it released that the, you know, trafficking of unauthorized individuals in that building, and now it's a free-for-all because these unauthorized individuals know that once the officer leaves they can just come back and go back into the building. And, you know, their--their--and if it's for selling-

-if it's for selling, and some of them who are selling are very sophisticated. They don't have anything on themselves. It may be in another apartment, in another building. Someone on the street and they get vetted, and then get sent somewhere else to actually do the transaction. So this has been problematic for the residents of this building, which recently had a sexual assault as well there. So what--what is the policy in terms of unauthorized individuals who are just trespassing, and the no other, you know, visible crime can be detected as being engaged in at the moment.

HOWARD GOTTESMAN: Okay, so the situation you described is not, in fact, a trespass notice eligible case because it's not felony drugs. However, individuals could be arrested for criminal trespass inside of a NYCHA building, or trespass, a violation outside of the building if an officer conducts an investigation and concludes that, in fact, the crime or the violation has been committed.

COUNCIL MEMBER MENDEZ: So this is only where there is a felony? So you could be trespassing 20 times a day, and as long as you're not engaged in

a fel--felony, all the officers are required to do is escort them out of the building?

HOWARD GOTTESMAN: No, the officer has the option at some point to effect an arrest. However, it's not NYCHA Trespass Notice Program. It's a little confusing

COUNCIL MEMBER MENDEZ: [interposing]
Got it.

HOWARD GOTTESMAN: It's his view. (sic)

COUNCIL MEMBER MENDEZ: Okay. Got it.
Okay. So, in--in that particular case, my precinct is telling me that all they can do is escort the person out and, you know, we can go offline and have that conversation in more detail. But, but it is problematic in that unauthorized individuals going into that development are more and more. And more recently we've had a sexual assault in that building. So I just wanted to bring that to your attention. Thank you. Thank you for your answers. Thank you, Mr. Chair.

CHAIRPERSON TORRES: Thank you, Council Member. A few more questions for the General Manager--the General Counsel. I'm sorry. You indicated earlier that the--the 2010 report

indicating that there were 74 sex offenders in public housing that you found that to be inaccurate, that you verified only 32 sex offenders. Is that correct?

DAVID FARBER: Correct.

CHAIRPERSON TORRES: What--what became of those 32? What--what actions did you take against those 32, if any?

DAVID FARBER: We pursued termination cases. I don't have the data of those outcomes, but I do know that I would say generally speaking we pursued termination cases, and achieved either evictions or exclusions, and we can--I can get back to you with additional data.

CHAIRPERSON TORRES: And I suspect you're going to conduct in light of the new report, a subsequent analysis of the registry plus references to NYCHA addresses, and then come back to the committee with a number?

DAVID FARBER: Yes, and also what we like to do is we like to work with Senator Klein so that we can get the additional information flowing to NYCHA so that we can, you know, get information that we need to identify all the offenders and--and pursue--

2 CHAIRPERSON TORRES: [interposing] So--so
3 you said that the State has been non-compliant with
4 the--with that section of the Correction Law for five
5 years. Did you ever reach out to the Governor's
6 Office or Senator Klein's Office to indicate the non-
7 compliance of the Division of Criminal Justice
8 Services?

9 DAVID FARBER: I don't have any
10 additional information. We--we--we've looked into
11 it, and that's just isn't working out, and I know
12 that we did--we did pursue the information, but I
13 can't give any more specific information as to
14 exactly what communications, we--we undertook.

15 CHAIRPERSON TORRES: Is NYCHA willing to
16 commit to periodically reviewing the Sex Offender
17 Registry to identify sex offenders on your premises,
18 or is that something you do want to do periodically--

19 DAVID FARBER: [interposing] I think what
20 we--

21 CHAIRPERSON TORRES: [interposing] --to
22 track the sex offenders.

23 DAVID FARBER: --want to do is we want to
24 work with NYPD and the State--
25

2 CHAIRPERSON TORRES: [interposing] And
3 absent cooperation--yeah, absent cooperation from the
4 State, what is NYCHA willing to commit to doing
5 within its own--

6 DAVID FARBER: I think we have to--we
7 have to explore. So again, we absolutely agree that
8 sex offenders should be out, but we have to explore
9 internally exactly what the method would be--

10 CHAIRPERSON TORRES: [interposing] You
11 have to explore whether you're willing to--

12 DAVID FARBER: --how--how--no, now. How
13 we would do that. How we would do that, and we--we
14 absolutely want to find a way to identify those sex
15 offenders, but exactly how we would do that I can't
16 say now without further internal discussions about we
17 work. (sic)

18 CHAIRPERSON TORRES: But Senator Klein's
19 Office could do then, and our agency of probably
20 11,000 could probably pull it off as well.

21 DAVID FARBER: Then we--we will certainly
22 explore this--you know, issue that's of paramount
23 importance to--to the safety of NYCHA.

24 CHAIRPERSON TORRES: I want to address
25 permanent exclusion. I want to really take a look at

it because I think one concern is are we over-reacting? Are we going too far in--in the opposite direction of reform in the name of public safety, and--and I want to just review some of the most common arguments I've heard against permanent exclusions, you know, permanent exclusion per se or as it's--or as it's currently practiced, and I'd be curious to hear your response. So one argument is that we should simply do away with permanent exclusions altogether. You know, it's--is a phenomenon, but it's unique to private housing. No private landlord has a tool known as permanent exclusions. Some see it as an attempt to short circuit due process, the eviction process. How would--how would you address that concern, that argument?

DAVID FARBER: So first--so the alternative if eviction is your only option and permanent exclusion is not an option, that would mean that in order to remove an offender from the department, whether he's a registered sex offender or another violent offender that the only solution would be to render an entire family homeless or to evict them from NYCHA. And certainly it does not seem like

a good idea as a matter of public policy. We think that it's a smart--it was a smart idea for NYCHA to have permanent exclusion as a more targeted or surgical way of addressing the problem, right. Which if there's one or more offenders, we should address them, we should get them out, not the whole family.

CHAIRPERSON TORRES: [interposing] Well, here's--here's an alternative argument. So rather than initiate a permanent exclusion based on sheer allegation, why not wait until a conviction?

DAVID FARBER: So, um--

CHAIRPERSON TORRES: [interposing] Why-- why not have someone convicted in a court of law and then we know that person will-- You know, we know beyond a reasonable doubt that--that a person committed a crime.

DAVID FARBER: No, in--in terms of due process and fairness--

CHAIRPERSON TORRES: [interposing] Yeah.

DAVID FARBER: --that again because a permanent exclusion outcome originates as an eviction proceeding, right, all of the protection both by practice and by law and by consent decree and by HUD notice, all of the protections and due process rights

that apply to an eviction proceeding also apply to something that results in permanent exclusion. So-- so that's one.

CHAIRPERSON TORRES: So I guess one point is, is it fair to--and I'm just throwing the point out--

DAVID FARBER: [interposing] Right.

CHAIRPERSON TORRES: --is it fair to exclude me for criminal activity for which I might have been exonerated in a court of law?

DAVID FARBER: So, we do not exclude people. we do not seek exclusion. We do not exclude people only on the basis of allegations. As we were discussing earlier, arrest information is sufficient--

CHAIRPERSON TORRES: [interposing] But the standard--the standard that you employ is much lower than the standard in the court of law. So why not rely on the higher standard in a court of law?

DAVID FARBER: Because I think that it is--I think that it's fair to say that there are many--many situations in which for a variety of reasons an offender, a serious offender, a dangerous offender is not convicted in court where it's clear

that there's enough information outside of the criminal justice setting to justify removing that person from NYCHA.

CHAIRPERSON TORRES: I just have one other question about the Mayor's announcement regarding the new information sharing of-- The Mayor's announcement indicates that there's going to be a 21st Century data sharing platform between NYPD and NYCHA. Can you explain what that platform is going to look like and where is the money going to come from?

DAVID FARBER: So that--that is something that we are developing right now.

CHAIRPERSON TORRES: Okay.

DAVID FARBER: So we're working with the NYPD and MOCJ. We are literally speaking to them daily about what that platform is going to look like, how it's going to be set up. We think it's very feasible, not necess--not, you know, cost prohibitive and it's--but I can't give you the details.

CHAIRPERSON TORRES: So here's--here's my frustration is that we've seen all these announcements from the Mayor's Office and all these announcements from NYCHA, but it looks like nothing

has fleshed out. Nothing has developed. There's an announcement about the data sharing platform, but that hasn't been fleshed out. The announcement of the Not One of Us, but that's maybe not what we're going to call it, and that hasn't been fleshed out. It's just I don't know why NYCHA is quick to make announcements without fully developing or fleshing out these new policies and processes?

DAVID FARBER: Even--even though they're not--even if they're not fully fleshed out, there is--there's a dramatic--pretty dramatic improvement already. So we are working to prioritizing cases. We're working with NYPD to decide which cases to assure that the cases that--that they believe will in collaboration with NYCHA are the cases that we should absolutely be focusing on. That is--that's something of paramount importance that we are doing already. We are--another thing we're doing already is we're expediting cases. So when there's a case that's been identified as a most serious case, NYCHA is acting on that case within one week if not sooner of getting information from NYPD. And we are undertaking to process that case in the shortest deadline possible, and we're already doing a lot more and, you know,

2 more systematic information sharing and
3 communication. So whether or not everything is
4 fleshed out, what we are doing I think is--

5 CHAIRPERSON TORRES: [interposing] I
6 guess--I guess the improvements that--that--

7 DAVID FARBER: --is very valuable.

8 CHAIRPERSON TORRES: --you claim are
9 unclear to me as the Committee Chair. And so I guess
10 how you want to update the committee going forward
11 on--on the progress that you're making.

12 DAVID FARBER: We will certainly keep--
13 keep--keep you and the Council regularly informed
14 about the improvements that we're making.

15 CHAIRPERSON TORRES: And regarding this
16 database, who's going--where's the funding coming
17 from? Is that going to be from NYCHA's budget, the
18 NYPD's budget, the shared database?

19 DAVID FARBER: We haven't determined the
20 specifics of that.

21 CHAIRPERSON TORRES: Does NYCHA have the
22 resources to pay for such a system or--?

23 DAVID FARBER: This is again as we--as we
24 determine what the specifics are and what the costs
25 will be then we'll be exploring that.

CHAIRPERSON TORRES: So I want to review one more thing in the DOI's report or the IG's Report. Based on a sample of 145 termination of tenancy actions commenced in the first quarter of 2014 due to CFLA referrals, the DOI Report found that 60 cases were withdrawn. That's 41%. Four resulted in a permanent exclusion, 20%; Seven, 5% resulted in probation; 34--24% resulted in permanent exclusion and probation; 24 had no disposition; 10 had an administrative disposal. I know nine actually went to a hearing. Why the 41% of termination of tenancy actions withdrawn?

DAVID FARBER: So cases are withdrawn for a number of reasons. So one would be potentially that we can't verify that it involves a NYCHA address. But I think since, you know, I can't speak to the particulars of each--each, you know, each case, I think what's more important is looking forward, one of the benefits of improved communication with and coordination with NYPD is that when we get information about a case, we're going to get immediately. You know, and then during the case, we're going to get better information, more comprehensive information, and information and a form

that we can use. If there's gaps in information, it will be an easier process for us to work with NYPD and solve the information gaps, et cetera. So, that kind of statistic is something that, you know, we want to do better about.

CHAIRPERSON TORRES: Okay. So if I understand you correctly, you seem to suggest that the number is high of 41% not because or pursuant to many actions that end up have little merit, but because you're not receiving enough information from the NYPD?

DAVID FARBER: Well, in cases withdrawing they--that--that could indicate that the case didn't really proceed. So we get cases. Every case that we get from NYPD we do an initial investigation, and so when we withdraw a case, that often means that we--we don't even start it. So it's not so much that we decided that we should pursue information, and we abandon it. It's more that there wasn't enough information. Either the crime wasn't serious enough or there wasn't the right connected address that the case really did not proceed at all.

2 CHAIRPERSON TORRES: What about the 9% of
3 termination of tenancy actions that go to hearing?
4 Why only 9% go to hearing?

5 DAVID FARBER: Well, actually, in a way I
6 think that's a good statistic because it reflects
7 that in many of the cases our evidence is strong
8 enough that we're able to proceed to persuade the
9 head of household that they should enter into a
10 stability stipulation with us to agree to the
11 permanent exclusion in order to end the eviction
12 action that, you know, put the whole family at risk.
13 So, because our information was good, we get the
14 stipulation. We don't have to go to the hearing. It
15 takes us less time and it's more effective. We spend
16 time on, you know, a large number of cases.

17 CHAIRPERSON TORRES: Do you have data on
18 what percentage of--because obviously, if you're
19 bringing an action to--against a tenant, those
20 tenants are not going to Housing Court. They're
21 going to 250 Broadway before a hearing officer of
22 NYCHA's choosing. Is that--?

23 DAVID FARBER: We have independent
24 hearing officers.

25 CHAIRPERSON TORRES: Okay.

2 DAVID FARBER: They're independent--I
3 stress independent.

4 CHAIRPERSON TORRES: What percentage of
5 tenants have legal counsel during those termination
6 of tenants actions, do you know?

7 DAVID FARBER: I don't have any data
8 about that.

9 CHAIRPERSON TORRES: But do you find that
10 most of them are represented or represent themselves?

11 DAVID FARBER: I'd have to get back to
12 you.

13 CHAIRPERSON TORRES: A question about the
14 NYCHA Trespass Notice Program. Do you know how many
15 trespass notices were issued this year and last?

16 [pause]

17 BRIAN CLARKE: I have the data right
18 here. So, so far this year there was 130 new notices
19 issued, and there were 73 repeat offender arrests.
20 Last year, 135 new notices issued and 70 repeat
21 offender arrests. [pause]

22 CHAIRPERSON TORRES: I know the DOI
23 Report recommended that NYCHA consider whether to
24 require trespass notices not only for felony sales of
25 controlled substances, but for a much broader range

2 of serious crimes like murder, sex crime, robbery.

3 Is that a recommendation that you're agreeing to
4 implement or is that something you're still
5 exploring?

6 DAVID FARBER: Like other recommendations
7 in the DOI--DOI Report, it's something we are looking
8 at, but that--yeah, that's all I would say at this
9 point.

10 CHAIRPERSON TORRES: A question about the
11 Cases for Legal Action. What--what are the four
12 categories of arrest or NYCHA residents that are
13 referred through the CFLA referral process?

14 [background comments]

15 BRIAN CLARKE: Do you want me to answer?
16 So there are four categories in no particular order.
17 The first is a resident arrested where a search
18 warrant was executed, and contraband recovered. The
19 second category is where a resident is arrested for
20 felony drugs or marijuana, and that's sale or
21 possession, not just sale.

22 CHAIRPERSON TORRES: Even under--even if
23 it's under 25 grams or in any level of possession?

24

25

2 BRIAN CLARKE: Any--a felony or a
3 misdemeanor. I want to contrast that with the NYCHA
4 Trespass and Notice Program.

5 CHAIRPERSON TORRES: I just want to be
6 clear these are among the cases you're prioritizing
7 for court decision? (sic)

8 BRIAN CLARKE: No, no, no. This is just
9 the four categories that qualify for CFLA.

10 DAVID FARBER: So, so, so before we
11 continue to go to that, let me continue to jump in.
12 So I think this illustrates what we're trying to
13 change and do better. So these categories are not
14 necessarily reflective of what's important, right?
15 So, they don't reflect which cases involve the worst
16 offenders, the worst offenses or when you look at it
17 as a whole. So these categories are not the
18 categories that are the most helpful to us. So we
19 are creating--that's why we're working with NYPD and
20 MOCJ to look at better categories. You know, more
21 relevant information or criteria. So while those
22 continue to be officially the categories in the CFLA
23 program, I think that's not really what it's all
24 about. What it's about is the new--you know, the new
25 way of doing things that we're looking at.

CHAIRPERSON TORRES: Sorry, I interrupted you. You need to finish there.

BRIAN CLARKE: Yes, sir, the third category is essentially a list of crimes that a resident is charged with. If you like, I could go through that list. So it's murder first degree or second degree or attempt. Rape first degree or attempt; robbery first degree or second degree; assault first degree; burglary first degree; arson first, second or third degree; criminal sexual act first degree or attempt; course of sexual conduct against as child, first degree or attempt; aggravated sex abuse, first degree or attempt; all firearm offenses and Penal Code Section 265 with the emphasis on firearms. That is--that is the third category. There is a fourth category. It's any other case deemed appropriate for submission by the commanding officer of the respect PSA, but that has to still be approved by the Chief of the Housing Bureau in coordination with our CFLA Coordinator.

CHAIRPERSON TORRES: That's an open-ended category?

BRIAN CLARKE: Exactly.

2 CHAIRPERSON TORRES: Okay, and then how
3 does this referral process interact with NYCHA's new
4 permanent exclusion policy?

5 DAVID FARBER: So, um--

6 CHAIRPERSON TORRES: [interposing] How
7 does it inform your prioritization of cases?

8 DAVID FARBER: Right. So this--this will
9 not--these categories will not be the key to our
10 system. They are not the key to our system. Again,
11 we're developing. We're still developing, you know,
12 how to prioritize, but these four categories, you
13 know, don't--they don't tell us--they don't
14 necessarily tell us what we really need to know in
15 order to--

16 CHAIRPERSON TORRES: [interposing] Well,
17 not all of them--not all of them are problematic. So
18 which ones are you looking to reform or revise?

19 DAVID FARBER: We--it's not that we're
20 going to revise those categories, it's that we're
21 going to have a new--a new approach, a new way of
22 sharing information of identifying priorities. But
23 again, that's something we're still working out.

CHAIRPERSON TORRES: Okay, because you receive a case through the CFLA referral process. What then happens?

DAVID FARBER: So, right now we internally, right, based on the experience of our attorney who have been working on cases like this for a number of years and our investigators we are determining what we think is a priority. But we're not the public safety agency. So I think what's important is that we take the lead from NYPD working with MOCJ to say--to get better and more sophisticated information about how to prioritize cases.

CHAIRPERSON TORRES: But just because you receive a case from that referral process does not necessarily mean that you're prioritizing it for permanent exclusion of that?

DAVID FARBER: Right. So there--so there--those--that generally corresponds to most of the cases that we are getting from NYPD, those categories. To the question of then what happens next? Right, that's again goes back to how do we determine what's the most serious--what's the most serious cases.

2 CHAIRPERSON TORRES: [interposing] Yeah,
3 how many of those cases come through the referral
4 process?

5 DAVID FARBER: How many?

6 CHAIRPERSON TORRES: Yeah.

7 DAVID FARBER: Or how many cases come--

8 CHAIRPERSON TORRES: [interposing]
9 Through the referral process. [background comments]

10 CHAIRPERSON TORRES: This year and last
11 year if you can--

12 DAVID FARBER: Approximately, 1,500-1,300
13 to 1,500 per year.

14 CHAIRPERSON TORRES: 1,300 to 1,500 cases
15 a year, and so of those cases, which share are you
16 looking--what percentage, what number are you looking
17 to prioritize?

18 DAVID FARBER: We're--we're now looking
19 at it as a percentage or it's a big number. What's
20 important is to, you know--

21 CHAIRPERSON TORRES: [interposing] Well,
22 the--

23 DAVID FARBER: -- to get them into
24 reconsideration. (sic)

CHAIRPERSON TORRES: --the reason I asked is because you have limited resources. In fact, the DOI was quick to note your inadequate staffing capacity, right. So part of prioritization is whether you're focused on a defined number of cases, and you made a commitment in a previous hearing that one of the concerns we had was Tyrone Howard. That you had brought a permanent exclusion proceeding against him in January. And by the time he shot a New York City police officer, that proceeding had not been finalized. And so the commitment that you made to the committee and to the general public is that you would reduce the time table from four months to one year to two months. You can't do that in 1,300 cases. So what number--what number of cases are you targeting so that you can meet the promised deadline of two months.

DAVID FARBER: So I--I think you are right--

CHAIRPERSON TORRES: [interposing] Given your circumstances.

DAVID FARBER: --you are right that in order to prioritize, we have to get to a point where we say here's--here's the number of cases that we are

processing, and the most serious cases has to be some--some smaller portion of that to make--

CHAIRPERSON TORRES: [interposing] But you don't know that number?

DAVID FARBER: So we are--what we're doing is we're going to work with--with our partners, and try to identify the most serious cases. See how--see what kind of numbers we get from that process, and then based on those numbers we're going to determine whether we're able to prioritize in the way we want to expedite in the way we want. And then, after--after we see how that plays out and after--

CHAIRPERSON TORRES: [interposing] How--how could you promise a two-month timeframe from a year without know the number of cases you're prioritizing? Like what is that two--two-month time table based on if you don't even know what percentage or number of cases you're prioritizing?

DAVID FARBER: I think it's a--it's a balance between priorities and resources. We're going to look to see what are the most serious cases. We're going to look to see what are our resources is. Are our resources adequate to prioritize in the way that we've committed to do.

2 CHAIRPERSON TORRES: [interposing] So
3 you, but--so you just--so you made it--you committed
4 to a time table without knowing whether you could
5 actually meet that time table?

6 DAVID FARBER: We--sorry. [pause] So we
7 are committed to finding--finding a way to both
8 combine resources, potential resources and a
9 sophisticated way of--of determining what are the
10 most--the highest priority cases in order to be able
11 to achieve the highest priority cases in that short
12 time frame. Exactly how that will work is something
13 that we'll have to see as we move forward.

14 CHAIRPERSON TORRES: You said the average
15 right now is about four to--four months to a year,
16 right? Is that--is that--would you be willing to
17 come back to the City Council with the report in six
18 months letting us know what the median time table is
19 for--for a permanent exclusion proceeding?

20 DAVID FARBER: I think we--we will--we
21 will definitely provide additional information to you
22 in--in six months about how we are--how we are doing
23 in implementing our initiatives of prioritizing
24 cases, expediting cases and improve communication,
25

tracking follow-up case building information sharing with NYPD.

CHAIRPERSON TORRES: You can actually provide us with a copy of the General Management Directive as well? It's GM3711, the serious and--the serious drug and felony cases?

DAVID FARBER: Yes.

CHAIRPERSON TORRES: Which provides timelines for the respective NYCHA Departments to respond to NYPD referrals. Could you provide us with that information?

DAVID FARBER: Yes.

CHAIRPERSON TORRES: Okay. That is--that is the extent of my questioning. Thank you, and-- Well, actually Rosie. Council Member Mendez.

COUNCIL MEMBER MENDEZ: [coughs] Thank you. You mentioned before that this has led to more information sharing? And so I want to know what happens and what you've been doing when there's an information sharing breakdown?

DAVID FARBER: Um, well, I think we're-- we're doing better. So we are--we are in regular and systematic--we have regular and systematic communications with NYPD so that if there's

information missing, if there's information breakdown, I wouldn't call it a breakdown. I would say there's information, you know, we say we haven't got that we need. And we have easily, you know, easily accessible ways to, you know, talk to NYPD to get that information.

COUNCIL MEMBER MENDEZ: And when there's a breakdown within NYCHA so that NYPD hasn't been looped in because your information up or along or whatever pecking order you had has broken down. What are you doing to address that?

DAVID FARBER: Oh, well, I've talked mostly about the improved tracking and--and mechanisms and communications between agencies. The same thing is going on internally at NYCHA. We are improving the information flow between divisions both within the Law Department and with other divisions on these issues because certainly if we're not doing what we need to do internally, then we can't accomplish what we're committing to externally.

COUNCIL MEMBER MENDEZ: Okay. I'd--I'd like to get a meeting on that specific to a case. We recently had a meeting to follow up on when a domestic violence victim was told to take her abuser

to Housing Court, and she did that, which led to more abuse. When my office got involved we were able to get some response by NYCHA. But there clearly was a breakdown between NYCHA and calling in NYPD, and not anticipating that, you know, getting someone who's not on the lease and taking them to court. So one who doesn't have the wherewithal might also when there's a documented case of physical abuse leads to more abuse. So, while we're now rectifying this going forward, I want to know how we would prevent that issue. So I'm looking forward to that meeting. Thank you.

CHAIRPERSON TORRES: I have a few more questions before I--you--you mentioned information sharing around sex offenders between the NYPD--with the NYPD. What's the NYPD's role in--in the information sharing realm?

DAVID FARBER: Um--[pause]

BRIAN CLARKE: So we report sex offenders who are registered with New York State who list a NYCHA residence, a residential address as their residence. We report that several times a year to the Housing Authority's Law Department, and we follow

2 up with other methods of trying to help NYCHA get the
3 ball rolling on evicting them as well.

4 CHAIRPERSON TORRES: So I guess my
5 question is what information are you expecting from
6 the Division of Criminal Justice Services that you
7 aren't receiving from the NYPD I guess to NYCHA?
8 Because it sounds like NYCHA is providing you with
9 information about sex offenders in public housing so-
10 -

11 DAVID FARBER: We're--we're certainly
12 getting information from NYPD as part of our general
13 great working relationship. The specific question of
14 how is--how is what they're giving us is--would be
15 different--

16 CHAIRPERSON TORRES: [interposing] What
17 information--

18 DAVID FARBER: --or better (sic) you
19 know, we'll--that's something we have to explore.

20 CHAIRPERSON TORRES: So you don't even
21 know what information you need from the division of
22 Criminal Justice Services or--?

23 DAVID FARBER: We--we want--we want to be
24 able to compare their information to what NYPD is
25 giving us. If--if as in the last report--if there

was, you know, there was a report of 74, and we only verified 32, we want to get more robust information on that.

CHAIRPERSON TORRES: [interposing] It's sound like you're getting that information from the NYPD. So I know what information you could get from the State that you aren't already getting from the NYPD based on the description I just heard.

DAVID FARBER: And I--I--we need to do some internal analysis to see what information we're getting, and what additional information might be available.

CHAIRPERSON TORRES: If you could get back to us on those information gaps if any exist. Okay. Thank you so much for your testimony.

DAVID FARBER: Thank you

[pause]

CHAIRPERSON TORRES: Yes, if we could have representatives from the agencies some of them stay to hear the remainder of the testimony. Yes, thank you. [pause]

[gavel]

SERGEANT-AT-ARMS: [off mic] Quiet, please.

CHAIRPERSON TORRES: Okay, ma'am. I'm going to call the next panel. Allison Lokey from the Criminal Reentry Institute of John Jay College; Kate Rubin of Youth Represent. It was Bronx Defenders but now it's Youth Represent. Okay. Mr. Sergio from the Brooklyn Defender Services and Runa from the Bronx Defenders. [background comments, pause]. Just be mindful we're going to have a three-minute time table a and then--for each witness and then-- Thank you. Okay. Yes. [pause]

ALLISON LOKEY: Thank you. My name is Allison Lokey. I'm the Policy Director at Prisoner Reentry Institute at John Jay College. I've submitted my comments. I'm going to keep my--my comments here very brief, but just to say one focus of PRI's work really recognizes the link between homelessness and incarceration, and the impact that all of these things have family presentation and health and wellbeing. One thing that I wanted to point out, and I know General Counsel Farber touched on the HUD Guidelines, but one of the outstanding things on the HUD Guidelines is that it really recognized the trouble relationship between housing boroughs for individuals with criminal records and

homelessness. And further, it talked about the difficulties in reintegrating into the community, and how they increased the risk of homelessness for released prisoners, and also how homelessness in turn increases the risk of subsequent re-incarceration. And so, the--the other piece of research that was really important in the high--in the HUD Guidelines was the recognition that people stopped recidivating over time. People stopped re-offending. Just because you've been arrested once or convicted once doesn't mean that you're a life long offender. And one of the questions Council Member Torres that you asked of Council Member Farber was talking about advocates saying and permanent exclusion and he responded that permanent exclusion is an alternative to evicting to the entire family. That's very true, but our recommendation is that exclusion doesn't need to be permanent. Because people stop offending over time, because over time they no longer pose a risk to public safety, permanent exclusion doesn't have to be permanent. It could be limited to a period of years in very specific instances where someone poses a great danger to--to the NYCHA community. I also just want to touch on the Department Investigation Report,

and in particular there were three areas that the report missed that are really to understand--to have a holistic understanding of permanent exclusion. First is that the report really assumed without asking and without any evidence that permanently excluding an individual or evicting a family actually achieves public safety or increases public safety when we have some evidence that it doesn't always do that. That, in fact, when you take away someone's housing, when you take away their family supports, what you're doing is creating instability that can actually lead to further offending. But also you're taking away the types of supports that help a person engage in rehabilitative programming. So permanent exclusion doesn't necessarily increase public safety. In fact, it can be counter productive to increasing public safety. The second thing that the report missed was really it assumed without discussion that aggressively pursuing permanent exclusion outweighs the heavy cost to families and to individuals and to communities. And in particular the report by the IG didn't talk to any tenants, and in the case examples given, it didn't talk about any tenant circumstances, which may have been mitigating, but may have weighed

on NYCHA's decision not to exclude a family. And we as advocates and the group of people who are really working on exclusion, we have many examples where we have elderly tenants who need someone to remain in the household to help them. We have examples of young kids 16 and 17-year-olds who were excluded, but really should be there with their family. And so without having consulted residents or having consulted advocates, the IG Reports miss this entire piece about all of the circumstances that affect families, and where family stability is--is--would be, you know, conducive to--to safety. And then the third piece is that the report didn't really consider the criminal court process that happens after an arrest. Counsel--General Counsel Farber said that NYCHA is--I think--let me just[pause]--is not a public safety agency, and that's absolutely true. There is an entire criminal court process that addresses punishment and all of these other things. NYCHA doesn't need to do that. NYCHA's obligation here is to really promote the safety of their developments, but permanent exclusion shouldn't be used as a punitive process, and by not really focusing on the fact that there is an entire criminal

1 court process that happens outside of an arrest, the-
2 -the IG Report missed everything that happens in the
3 criminal justice system including the fact that
4 judges often believed that a person could benefit
5 from rehabilitative programming. And that someone
6 staying in their home and having a stable home would
7 really increase their likelihood of not reoffending.
8 And this is one of the things that NYCHA has actually
9 been better at in recent years is paying attention to
10 what's happening in the criminal courts and where
11 someone is engaging in rehabilitative programming or
12 is otherwise being supervised in the community.
13 They've been more careful about not disrupting that
14 process, and not just moving to exclude someone
15 without monitoring, and see what happens with--seeing
16 what happens with that process. I hope this is as
17 they move forward to try and expedite certain cases
18 that they don't lose that piece and--and lose their
19 ability to stay in touch with the criminal court
20 process and not disrupt rehabilitative programming
21 that happens. I would be happy to take any questions
22 after.
23

24 CHAIRPERSON TORRES: I actually have--I
25 do have a few questions if I--

2 ALLISON LOKEY: Please.

3 CHAIRPERSON TORRES: So I--I hear your
4 point about recidivism declines--

5 ALLISON LOKEY: [interposing] Uh-huh.

6 CHAIRPERSON TORRES: --over time. Does
7 the research show--I'm not familiar with the research
8 so this is not a leading question at all. Does the
9 research show that that's true of sex offenders as
10 well?

11 ALLISON LOKEY: I--I mean I could say
12 specifically, but one--one important thing that I
13 know the research does talk about is that sex
14 offenders actually have some of the lower rates of
15 recidivism of all types of offenders. So they're
16 less likely to reoffend.

17 CHAIRPERSON TORRES: So that's a--in your
18 opinion that's a misconception or that's--

19 ALLISON LOKEY: [interposing] Yes, yes.

20 CHAIRPERSON TORRES: --or they have
21 persistently higher--

22 ALLISON LOKEY: Yes.

23 CHAIRPERSON TORRES: Okay. The General
24 Counsel seemed to suggest that far from short
25 circuiting due process that in some sense permanent

2 exclusion is a vehicle for family incarceration. Do-
3 do you agree with that and the characterization of
4 permanent exclusion or--?

5 ALLISON LOKEY: Well, if permanent
6 exclusion is targeted on people who really pose a
7 risk to the safety of developments, then it can be,
8 but I don't think we're at that point right now.

9 CHAIRPERSON TORRES: Okay, so you're not
10 against permanent exclusions per se. You could--you
11 could live with the term--the targeted application of
12 it I guess?

13 ALLISON LOKEY: Very targeted where
14 someone is staying in housing increases the
15 likelihood that they are going to reoffend, and where
16 they're causing a real public safety risk for the
17 neighbors.

18 CHAIRPERSON TORRES: So--so what--what
19 would you envision as the ideal form of permanent
20 exclusion?

21 ALLISON LOKEY: I--I kind of--

22 CHAIRPERSON TORRES: [interposing] If you
23 had to write NYCHA's policy, how would you write that
24 policy?

ALLISON LOKEY: I--I couldn't say. I mean there needs to be a great deal of research into what the public safety consideration that we're trying to address is, and how and what a permanent exclusion does that. I think there needs--it needs to be a lot more targeted, but the--that's research based, and I think one of the things that we're dealing with right now is that there isn't great data on permanent exclusion and the types of people being excluded and what they look like and what their age is. So I--I just don't think we're there at this point.

CHAIRPERSON TORRES: I--I hear you. So one of the arguments I made was why not have--because you seem to suggest NYCHA is not a public safety agency.

ALLISON LOKEY: Uh-huh.

CHAIRPERSON TORRES: Right, NYCHA is not--it's not NYCHA's job to, you know, undertake findings of guilt or innocence.

ALLISON LOKEY: Yes.

CHAIRPERSON TORRES: That's why we have a criminal justice for--system for. Do you think conviction should be a necessary condition for

permanent exclusion, or is that too high of a standards?

ALLISON LOKEY: No, I believe it should be.

CHAIRPERSON TORRES: Okay. Are you sympathetic to NYCHA's argument that there are cases where you have a known hyper violent active, but we can't quite get him convicted. What do you do in those cases with the standard as conviction?

ALLISON LOKEY: Well, I mean I think NYCHA needs--has to move forward on information it has, but--but conviction in criminal court provides, you know, an assurance that you're not unfairly excluding and penalizing people who are potentially innocent, or that didn't commit the level of crime that they're charged with. And one of the dangers of proceeding on arrest information only is that arrest charges are quite different than arraignment charges, which are quite different than--than conviction charges. These things throughout the criminal court process. So conviction assures that you're really going forward on--on the best information, and conviction allows NYCHA to really look at whether court has determined that someone can live safely in

the community. Meaning that if someone goes through the criminal court process and a judge determines that probation is appropriate, the judges determine that there's a public safety risk, that the person can live appropriately in the community. A conviction allows NYCHA to actually take that information into account.

CHAIRPERSON TORRES: Well, NYCHA would argue that permanent exclusion is something of a misnomer. It's not actually permanent, that you can apply to remove the status.

ALLISON LOKEY: Uh-huh.

CHAIRPERSON TORRES: So is that insufficient? Why is that insufficient?

ALLISON LOKEY: Well, I--we have some of the numbers, and I believe at a prior hearing General Counsel Farber presented those numbers, and there are only a couple hundred or a 100 to 200 applications every year. I think tenants don't know about that process.

CHAIRPERSON TORRES: You would allow the status to expire automatically.

ALLISON LOKEY: Expire automatically and the second point that I'll make is that although the

numbers from the most recent year are a little bit higher from the years before that, the approval rate of those applications to lift permanent exclusion were less than 50%. And as far as--I'm not aware of what NYCHA's criteria are in--in assessing those applications, and--and I think that having them automatically lift after a certain period of time plus a process where a person can demonstrate to NYCHA that they're no longer a public safety risk prior to that is--is important.

CHAIRPERSON TORRES: Okay. Thank you so much.

ALLISON LOKEY: Sure.

CHAIRPERSON TORRES: Kate.

KATE RUBIN: Thank you Council Member Torres. I'm Kate Rubin, Director of Policy at Youth Represent as of last month.

CHAIRPERSON TORRES: Okay.

KATE RUBIN: Thanks for the chance to testify. So two weeks ago my Executive Director sat before you I think and talked about our client Anthony. When Anthony was 19 he made a mistake. He succumbed to peer pressure, and he ended up with at gun possession conviction. But the criminal justice

system didn't see him as a lost cause. He was allowed to enroll in a program. He eventually was able to vacate his felony plea. NYCHA recognized that he was not a threat to the--to the development where he lived and his neighbors, and they let him stay in his home. In our testimony we said there are thousands of Anthonys in New York City, and a week later the DOI came out with this report, and underscored that point. Indeed, they looked at dozens of termination proceedings that like Anthony's did not end in termination or exclusion. They only highlighted 28 of those cases that were withdrawn in the report, but I looked through them. They're in Appendix B. We don't know anything about the human beings involved in them. As Allison pointed out, we didn't hear from them, the tenants, their families, but here's what we know. Ten of the 28 cases were withdrawn because the underlying criminal charges were sealed, either dismissed outright or disorderly conduct in one case of Family Court adjudication, a 15-year-old. Four more were withdrawn because the most serious conviction was marijuana possession. Three were duplicates, three more were withdrawn because NYCHA was already pursuing eviction of the

household for other reasons. So I could go on and do go on in my written testimony, but basically our review suggests that in many--most cases, almost all cases NYCHA is doing exactly what it should be doing in delaying final determination until criminal conduct has been adjudicated by the criminal justice system, as Allison was talking about rather than acting on unproven allegations. Safety at NYCHA is a problem. It's a real problem, but I want to point out that our city has a history of addressing real concerns about public safety with overly punitive and racially biased policies that we later regret. In the '80s and '90s it was the War on Drugs. In the 2000s it was Stop and Frisk. You know a lot about that. We'll be repairing the damage of those policies for many year to come, and in the same vain I think it's been a grave mistake to make permanent banishment of a person from his family forever our default sanction even for serious criminal convictions. Especially in the context of a national conversation about promoting successful reentry. To speak to a couple of the questions that you asked I think way earlier, I also think it would be a mistake to have a set list of charges or convictions that

2 trigger permanent exclusion. I think it's so
3 important to look at everybody on a case-by-case
4 basis and to look at individual context. To sort of
5 jump into the conversation you were just having, I
6 think and this echoes what Allison was saying, but I
7 think it's

8 CHAIRPERSON TORRES: [interposing] Can
9 I--can I challenge that?

10 KATE RUBIN: Yeah.

11 CHAIRPERSON TORRES: In a case like
12 Anthony's I get--

13 KATE RUBIN: [interposing] Yeah.

14 CHAIRPERSON TORRES: --right, but it
15 allows the possibility that he could be
16 rehabilitated, but the opposite--when you have an
17 open-ended policy like NYCHA does, the opposite is
18 true as well. Where a minor crime can result in, and
19 that's the concern that's-- Do you understand?

20 KATE RUBIN: I totally do, and this is
21 like what we--I think we all--

22 CHAIRPERSON TORRES: [interposing] And
23 I'm not suggesting--

24 KATE RUBIN: --as advocates kind of live
25 with that.

2 CHAIRPERSON TORRES: --I'm not suggesting
3 a rigid list that--

4 KATE RUBIN: [interposing] Yeah.

5 CHAIRPERSON TORRES: --automatically, but
6 a list that would guide the--

7 KATE RUBIN: Right and it always come
8 down to--

9 CHAIRPERSON TORRES: --the application of
10 the--

11 KATE RUBIN: --the prosecutor or in this
12 case the NYCHA attorney and the judge will use their
13 discretion sometimes in favor of our clients.
14 Sometimes not in favor of our clients. [bell] So,
15 but I think given that at the end of the day having
16 the opportunity to make the case for each individual
17 person in their context and who they are and their
18 family, and why it's safe for them to stay is I think
19 usually going to be better than having a set list of
20 crimes that automatically trigger exclusions. And I
21 think that there-- You know, again, like the
22 criminal justice system says this person is safe to
23 live in the community. There has to be a really
24 specific reason why it's not safe for them to live in
25 that specific NYCHA building. And in those cases,

exclusion might be appropriate, but it has to be so specific, and it should never be permanent, and it should never be young people. I mean that just should be a given. And then to the question about you can't always lift an exclusion, my sort of first thought was we're already spending a lot of money on legal services, and I think a lot of our groups would be happy to take money to represent money in lifting permanent exclusions. But that's such a waste of money for the City, right.

CHAIRPERSON TORRES: [interposing] That's there true motive, right.

KATE RUBIN: Like we should just be letting them expire at a point where it's not going to be a danger for people, you know, to live in the development any more. So thank you.

CHAIRPERSON TORRES: If I understand your testimony correctly it seems you feel that NYCHA actually has a pretty stacked sensitive and virtualized process?

KATE RUBIN: Well, so--

CHAIRPERSON TORRES: Certainly compared to the DOI Reports.

2 KATE RUBIN: So--so I'm looking at the
3 cases where NYCHA withdrew--

4 CHAIRPERSON TORRES: Yeah.

5 KATE RUBIN: Right?

6 CHAIRPERSON TORRES: Okay.

7 KATE RUBIN: But I could review because
8 they only--they included 28. So I'm not looking at
9 cases where NYCHA--

10 CHAIRPERSON TORRES: [interposing] So
11 that's not a general judgment then?

12 KATE RUBIN: No.

13 CHAIRPERSON TORRES: Okay.

14 KATE RUBIN: So NYCHA made I think in
15 our, you know, I think we've all seen at least
16 anecdotally and would love to see data. We've all
17 seen anecdotally cases where NYCHA pursued eviction
18 or termination, you know for contact that was not
19 very serious. But I'm looking at cases where they
20 withdrew and from my review of the 28 in this report,
21 you know, again ten sealed, four marijuana
22 possessions and a whole--you know, three duplicates.

23 CHAIRPERSON TORRES: Okay. Brooklyn
24 Defenders.

1 SERGIO JIMENEZ: Thank you. My name is
2
3 Sergio Jimenez and I'm the Director of the Civil
4 Justice Practice of Brooklyn Defender Services. I
5 think it's important to take this hearing viewed
6 through the lens of HUD recently releasing an RFP
7 that encourages reentry into public housing
8 authorities. Now, I know the City Council has made
9 some wonderful efforts at giving or providing legal
10 assistance within the context of NYCHA termination
11 proceedings with the great work that an organization
12 like Housing Court Answers has done, particular Jenny
13 Larry (sp?) or Lloyd Boozer (sp?) have done a
14 fantastic job in setting up that program, but as--
15 going back to something that General Counsel Farber
16 said that they're in the business of--one of things
17 they touted was persuading folks to take permanent
18 exclusions and stipulations. Stipulations, which I
19 might suggest five pages of legalese that are not
20 easy to understand. The word persuasion strikes as--
21 --as better suited to be coercion. When given the
22 option of housing your four families and excluding
23 one as opposed to the five of you being homeless, I
24 think the folks for a lot of folks is not only a
25 difficult one but a very real one. We have submitted

written testimony, and I don't want to bore everyone with just rereading it and I can see the clock running down already. But you asked my panel member Allison if--what would be the perfect NYCHA permanent exclusion guideline. I don't think any of us here in this room can answer that. However, I think that we should be part of that conversation. Having NYCHA and the NYPD formulate these procedures behind closed doors, I don't think helps, and I think they would be better educated by having some sort of advocate in the room making those decisions, writing those policies. Particularly advocates and organizations that have experiences representing folks in these exact same situations. Very quickly one area of concern was the use of the data sharing that the representative from the NYPD spoke about with the-- during the previous testimony. He went over very quickly the fact that the legal of NYPD was limiting what kind of information could be given, what kind could be shared. And that is one of the great aspects of--of waiting until conviction where you will know exactly what documents can be used, and what can't be used. Otherwise, you're asking probably for a lawsuit from one of the bar agencies

to try to enforce the ceiling statutes that--instead of New York. [bell] And I--thank--thank you for your attention. I obviously have a lot to say about this, and I would be glad to hear any questions. So thank you.

RUNA RAJAGOPAL: Okay. So I also will try to keep it short because my co-panelists have covered the majority of things I want to cover.

CHAIRPERSON TORRES: Is there a lack of diversity of opinion here.

RUNA RAJAGOPAL: [laughter] On some things, no, council member.

CHAIRPERSON TORRES: Do you want to say nice things about the DOI Report.

RUNA RAJAGOPAL: So my name is Runa Rajagopal. I'm the Director of Civil Action Practice at the Bronx Defenders, and I know I--I also testified a couple of weeks ago. So you know how our organization feels on this matter. So I just wanted to highlight a couple of things in response to some questions. But I just do want to start by saying, Council Member, that everyday you're standing beside people, human beings who are accused of a whole host of things. The majority of issues and accusations

are very low-level offenses in the city, but it runs the spectrum, right. Some are turnstile jumps and some are more serious offenses. Some of the offenses that were mentioned by, you know, the General Counsel. But what he talked about on paper sounds great for the most part in terms of criteria and really focusing and tailoring the most serious offenders. But NYCHA practice and you are asking right now on paper the regulations that NYCHA follows pursuant to HUD regs--and regulations right on paper in that they are facts specific and fact sensitive in case by case, but in practice that's not what we're seeing, and we are seeing a more blanket approach in terms of terminations and denials of--for admissions. And the very point that an arrest is what's going to lead and trigger the system means that turning a record is going to be pushed into the termination process. You may wait to actually move to terminate or more likely persuade or coax or coerce the tenant of record into a stipulation or a permanent exclusion. But we have to remember that tenants are pushed into the termination process, which creates a whole havoc in their entire life, right. So must by saying that, you know, we're not using arrest only

information. We're only using on the most serious offenders, we know in practice that's not what-- what's happening for the majority of our clients in our community on the ground. In terms of the admission process, again, what we're seeing is the-- the laws. The policy on the books look great in terms of NYCHA does have a discretionary ineligibility period, but they are also supposed to look at the tenant and their family, and look at potential rehabilitation. But again as a practice and we have seen it better under this administration. But as a practice, we are still seeing an automatic decision about our clients. And just any contact in the criminal justice system, and I do talk about an anecdote [bell] anecdote about a client of ours. To answer--I'm sorry. Just to answer--to follow up about your questions about whether a conviction is necessary, we absolutely think that a conviction should be necessary. That the criminal process and court system, and the protections that go with it should be respected. And I would go so far as that we should only look at convictions. Because as we know, in terms of the national and international conversation that's happening around the criminal

justice system, a lot of people taking convictions don't go to trial, never get adjudicated on the facts, and the accusations, but take a plea up front because they can't afford bail. Because they're sitting in Rikers. Because of a whole host--because of going back and forth to court. Certainly in the Bronx this is true where our clients month after month after month for years, two years, three years they're saying I didn't do what I'm being accused of, but I have a job that I'm going to lose. I have, you know, property I'm going to lose. I have income I'm going to lose if I don't take this plea. I need to get on with my life. So I would go so far as to say that we shouldn't just look at convictions, and understand again take circumstances by a case--a case by case look. Take people in their context, in their lives, and really understand what's going on instead of just looking at a piece of paper and a conviction or an arrest. And we really, you know, echo the sentiments of my co-panelists, but we really want to be a part of this conversation because we haven't. And the DOI Report is very frightening in terms of the small sample cases that they've looked at, the failure to talk to people who are the most affected,

NYCHA residents, and other stakeholders. And, you know, without giving any look at the criminal court process of what happened in the cases, and that we have a situation right now where tenants are still at risk of termination. And even if not termination, probation and permanent exclusion of close family members completely devastating their families without having any kind of disposition in the courts.

CHAIRPERSON TORRES: [interposing] So I have another question. So it sounds like you're going the farthest. So maybe everyone is in agreement that conviction is a necessary, but insufficient condition for permanent exclusion that it should actually take more than a sheer conviction to result in a permanent exclusion. Is that a fair description of your--?

RUNA RAJAGOPAL: Absolutely, I think--

CHAIRPERSON TORRES: [interposing] But I--I guess at some point it seems like-- You know, if I murder someone, and I go to prison for 25 years, what's the value of permanently excluding me? It seems like the practical effect of your position is just--you might as well get rid of permanent exclusion.

1 RUNA RAJAGOPAL: Yes, I--Council Member,
2
3 I'll tell you that I represented a client in that
4 circumstance where her son was convicted of--not
5 charged with murder, but convicted of a lesser
6 offense, aggravated assault, and did serious time.
7 Before she took, you know, her son to the conviction
8 she brought for termination proceedings. She agreed
9 to permanently exclude him, and this was in the 90s.
10 He came back after he was released ten years later,
11 and really seemed a completely different person, but
12 let's say not. And he ended up coming into her home
13 when she was not in her apartment, actually. She was
14 in the emergency room. I'm not making that up. A
15 family member let him in, and it so happened that her
16 brother had died, and there was going to be a funeral
17 and he came to change. And that triggered
18 termination proceedings, but based on a violation of
19 permanent exclusion, right. So just permanent--
20 permanently excluding family members.

21 CHAIRPERSON TORRES: So what is it that
22 inhibits you from just advocating an abolition of
23 permanent exclusion?

24 RUNA RAJAGOPAL: Well, I'm not
25 advocating--

CHAIRPERSON TORRES: [interposing] It seems like--it seems like those who genuinely deserve permanent exclusion probably committed a crime that it was so severe that they got serious time. And by the time they got out, they're a different person.

RUNA RAJAGOPAL: Not necessarily, Council Member. That's what I'm saying. It all depends on the circumstance. If the facts say looking at the offending member, the history, you know, looking at those kinds of criteria very specifically, there is a circumstance where it may say it makes sense to have a limited exclusion. But there are circumstances where exclusion doesn't make sense at all, right?

CHAIRPERSON TORRES: Yes.

RUNA RAJAGOPAL: So what we're going for or what we're hoping for is something that is contextualized and fact specific, and evidence based. And the--the issue--my issue with the DOI Report there are a number of issues, and it's problematic on many levels. But it's not having that nuanced approach to exclusions and terminations, and even probations setting up people to fail.

CHAIRPERSON TORRES: Yeah. I noticed none of you have mentioned sex offenders in public

housing. So I don't know if you--I suspect the advocates have an opinion on that.

KATE RUBIN: Well, it's governed by federal law.

CHAIRPERSON TORRES: yeah.

KATE RUBIN: That's an area where NYCHA doesn't actually have discretion. They have to do that under federal law.

ALLISON LOKEY: Right, so the Level 2s and 3s like there is none. I mean there is no difference, you know, in the view of what the HUD policy should be, but it's governed by the HUD policy.

CHAIRPERSON TORRES: One could argue it's obviously admission. The issue doesn't seem to be admission. The issue seems to be the sex offenders, the Level 2, Level 3 sex offenders that who are living in public housing without obviously reporting their identify, reporting their income. And so do--do you believe NYCHA should proactively identify those residents, and--and start removing them or what?

2 SERGIO JIMENEZ: Like my co-panelists
3 said, I think it's not an issue of discretion on
4 NYCH's part. It is federally mandated so they--

5 CHAIRPERSON TORRES: [interposing] I
6 think the fed--my understanding is the federal law--
7 maybe I'm wrong--governs admission.

8 SERGIO JIMENEZ: Right.

9 CHAIRPERSON TORRES: Right, but--but--but
10 as you know, public housing is a city unto itself.
11 It probably has an undocumented population of 100,000
12 to 200,000 people. A small percentage of them are
13 probably sex offenders, right. I guess the--that's a
14 policy question. That's not a legal question whether
15 NYCHA should be--

16 RUNA RAJAGOPAL: [interposing] But, I
17 have to confess that I just don't know what the HUD
18 regulations are about--

19 CHAIRPERSON TORRES: [interposing] Yes.

20 RUNA RAJAGOPAL: --whether they mandate
21 public housing authorities to go affirmatively and
22 look. I guess if you're saying assume that it
23 doesn't.

24 CHAIRPERSON TORRES: It seems to apply
25 only to admissions, right. Do you have a--do you

have an opinion on whether NYCHA should--absent of legal requirement whether NYCHA should be prioritizing undocumented sex offenders Level 2 and Level 3 for permanent exclusion as--as--as frankly I proposed?

ALLISON LOKEY I mean I would go back and say that everything should be on a case-by-case basis. So if you find somebody who was convicted of a sex offense and--and, you know, has been registering since 1984 and never reoffended and, you know, in the meantime has, you know, never caused any trouble in the NYCHA property, no I don't think that should be a priority.

CHAIRPERSON TORRES: You would treat it just as any other case?

ALLISON LOKEY : I think it should be looked at. I think it obviously would have to be carefully scrutinized, and the safety of people, you know, who live around the person or is--is paramount. But, you know, but I think that you could--there are reasonable sort of situations where you could enter a decision not to permanently exclude. And you said this yourself like, you know, I lived for 15 years in a variety of rent stabilized apartments in relatively

high crime neighborhoods in Brooklyn, and there was no permanent--permanent exclusion and, you know, generally there as less crime than on my NYCHA--in most NYCHA developments. So there isn't actually evidence that those polices are making building safer.

CHAIRPERSON TORRES: Thank you for your testimony.

PANEL MEMBERS: Thank you.

CHAIRPERSON TORRES: Now, I want to call one more panel. Saundra from--from Child Welfare Organizing Project and Lori Forbes, and that should be our last panel if either one is here. No? Okay. So that looks like that's our last panel. Okay. This hearing is adjourned.

[gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date December 21, 2015