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## A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity

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# A PLACE TO CALL HOME: TENANT BLACKLISTING AND THE DENIAL OF OPPORTUNITY

*Paula A. Franzese\**

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“Until the lions have their own historians, the history of the hunt will  
always glorify the hunter.”<sup>1</sup> (Nigerian proverb)

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1. See Annalisa Quinn, *Chinua Achebe and the Bravery of Lions*, NPR: THE TWO-WAY (Mar. 22, 2013), <https://www.npr.org/sections/thetwo-way/2013/03/22/175046327/chinua-achebe-and-the-bravery-of-lions> [<https://perma.cc/737M-K9WD>].

## INTRODUCTION

Every day across the United States vast numbers of residential tenants face the specter of eviction.<sup>2</sup> In New Jersey, where it is estimated that thirty-seven percent of residents are among the ranks of the working poor,<sup>3</sup> one in six tenants faced eviction in the year ending June 30, 2016.<sup>4</sup> The majority of those tenants remain voiceless, without legal counsel or the opportunity to be meaningfully heard in housing court.<sup>5</sup>

A tenant faced with the prospect of eviction and without the effective assistance of counsel is at a particular disadvantage.<sup>6</sup> Without the requisite expertise needed to navigate the intricacies of housing court, she is apt to find herself lost, confused and summarily dispossessed.<sup>7</sup> The aims of fairness and justice are frustrated when,

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2. See, e.g., Shaila Dewan, *Evictions Soar in Hot Market; Renters Suffer*, N.Y. TIMES (Aug. 28, 2014), <https://www.nytimes.com/2014/08/29/us/evictions-soar-in-hot-market-renters-suffer.html> [<https://nyti.ms/2qfBAVu>] (“For tens of thousands of renters, life has become increasingly unstable in recent years, even as the economy has slowly improved . . . . The result is a surge in eviction cases that has abruptly disrupted lives.”). See generally Emily Badger, *What Happened to the American Boomtown?*, N.Y. TIMES: THEUPSHOT (Dec. 6, 2017), <https://www.nytimes.com/2017/12/06/upshot/what-happened-to-the-american-boomtown.html> [<https://nyti.ms/2AX5Eh2>] (“Since the 1970s, land use restrictions have multiplied in coastal metros, making it harder to build . . . . And the politics of development have become tense, too . . . . As a result, housing prices have soared in the most prosperous places, making them inaccessible to lower-income workers and negating much of the allure of the higher wages there.”). With few alternatives readily available, low-income tenants are heavily dependent on their current residences.

3. Stephen Stirling, *37 Percent of People in N.J. Are Among the Working Poor*, *Study Says*, NJ.COM (Jan. 16, 2017, 4:51 PM), [http://www.nj.com/news/index.ssf/2017/01/37\\_percent\\_of\\_people\\_in\\_nj\\_are\\_among\\_the\\_working\\_poor\\_study\\_says.html](http://www.nj.com/news/index.ssf/2017/01/37_percent_of_people_in_nj_are_among_the_working_poor_study_says.html) [<https://perma.cc/W7CY-B2WX>].

4. Kate M. Kelly, *161,239 NJ Renter Households Faced Eviction in 2016*, MONARCH HOUSING ASSOCIATES (Oct. 2, 2017), <https://monarchhousing.org/2017/10/02/eviction-crisis-2> [<https://perma.cc/C2Q5-8MKV>]; *Panel with Sen. Cory Booker to Examine Eviction in New Jersey*, N.J. HILLS MEDIA GROUP (Oct. 3, 2017), [http://www.newjerseyhills.com/panel-with-sen-cory-booker-to-examine-eviction-in-new/article\\_ca168473-4c52-59ae-9fb0-b79a7d9584a7.html](http://www.newjerseyhills.com/panel-with-sen-cory-booker-to-examine-eviction-in-new/article_ca168473-4c52-59ae-9fb0-b79a7d9584a7.html) [<https://perma.cc/QRH7-UX5Z>].

5. Lauren Sudeall Lucas & Darcy Meals, *Every Year, Millions Try to Navigate US Courts Without a Lawyer*, CHI. TRIB. (Sept. 22, 2017), <http://www.chicago.tribune.com/sns-every-year-millions-try-to-navigate-us-courts-without-a-lawyer-84159-20170922-story.html> [<https://perma.cc/9LCE-KHC2>] (“Across the county [sic], roughly 90 percent of landlords are represented by counsel, while 90 percent of tenants are not.”).

6. See Andrew Scherer, *Why People Who Face Losing Their Homes in Legal Proceedings Must Have a Right to Counsel*, 3 CARDOZO PUB. L. POL’Y & ETHICS J. 699, 702 (2006).

7. See *id.*

with the peril of eviction hanging in the balance, approximately ninety percent of landlords have legal counsel while ninety percent of tenants do not.<sup>8</sup>

There are catastrophic personal and societal consequences of housing displacement and homelessness.<sup>9</sup> To add offense to the injury of eviction, tenants named in an eviction proceeding, no matter the outcome or the context, find themselves placed on damning registries collected and maintained by “tenant reporting services.”<sup>10</sup> Tenants whose names appear on these so-called “blacklists” are often denied future renting opportunities,<sup>11</sup> stigmatized,<sup>12</sup> and excluded from the promise of fair housing.<sup>13</sup> At a time of continued rollbacks

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8. See *id.*; Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, INST. FOR RES. ON POVERTY: FAST FOCUS, Mar. 2015, at 5, <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf> [<https://perma.cc/4XL7-YPEP>] (“Owing to cutbacks to legal aid to the poor, in many housing courts around the country 90 percent of landlords have attorneys, and 90 percent of tenants do not.”); Lucas & Meals, *supra* note 5.

9. See, e.g., REG’L PUB. HEALTH, HOUSING DISPLACEMENT AND HEALTH 1, 4 (2011), <http://www.rph.org.nz/content/e3f1f46f-25d8-4e04-b9e1-0ee864865ae8.cmr> [<https://perma.cc/28JD-M8XF>] (“Evidence suggests that housing displacement and subsequent relocation is a traumatic experience with considerable short term and long-term health costs.”).

10. See Robert R. Stauffer, Note, *Tenant Blacklisting: Tenant Screening Services and the Right to Privacy*, 24 HARV. J. ON LEGIS. 239, 240–46 (1987). Tenant screening services are “private agenc[ies] that sell[ ] information about prospective tenants to landlords.” *Id.*; see also Gary Williams, *Can Government Limit Tenant Blacklisting?*, 24 SW. U. L. REV. 1077, 1082–83 (1995) (“The unlawful detainer databases maintained by tenant screening services are lists of persons to be boycotted or refused service.”).

11. See Anne Machalinski, *The Dreaded Tenant Blacklist: What You Need to Know*, BRICK UNDERGROUND (Oct. 23, 2017, 2:45 PM), [https://www.brickunderground.com/blog/2014/05/tenant\\_blacklist](https://www.brickunderground.com/blog/2014/05/tenant_blacklist) [<https://perma.cc/AB94-EEPB>] (“People are denied apartments based upon the fact that they were sued by a previous landlord regardless of why or what happened.”).

12. See Rudy Kleysteuber, Note, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1363 (2007) (“[T]enant-screening reports . . . attach excessive stigma to involvement in the legal process.”).

13. See Lauren A. Lindsey, Comment, *Protecting the Good-Faith Tenant: Enforcing Retaliatory Eviction Laws by Broadening the Residential Tenant’s Options in Summary Eviction Courts*, 63 OKLA. L. REV. 101, 112 (2010). The promise of fair housing depends upon eliminating discriminatory housing policies and practices and the enforcement of federal and state fair housing laws. See generally Jorge Andres Soto & Deidre Swesnik, *The Promise of the Fair Housing Act and the Role of Fair Housing Organizations*, AM. CONST. SOC. FOR L. & POL’Y: ISSUE BRIEF, Jan. 2012, at 5, [https://www.acslaw.org/sites/default/files/Soto\\_and\\_Swesnik\\_-\\_Promise\\_of\\_the\\_Fair\\_Housing\\_Act.pdf](https://www.acslaw.org/sites/default/files/Soto_and_Swesnik_-_Promise_of_the_Fair_Housing_Act.pdf) [<https://perma.cc/D4US-E4EW>].

and dramatic cuts to housing voucher programs,<sup>14</sup> even as the need for subsidized housing continues to exceed supply<sup>15</sup> and waiting lists for affordable units often extend for years,<sup>16</sup> a candidate named on a dreaded blacklist is apt to suffer swift rejection of her housing application and relegation to “the back of the line.”<sup>17</sup> In congested housing markets with wait times of three years or longer for subsidized rentals,<sup>18</sup> that tenant can find herself on a path to homelessness.<sup>19</sup>

That tenant blacklisting has been allowed to persist is emblematic of how powerless many tenants—and particularly public housing tenants—have become. The devastating consequences of eviction are compounded when its victims are rendered pariahs, shut out of future renting opportunities because their names appear on a list that functions as a modern-day scarlet letter. Blacklisting compounds the harms imposed by dwindling stocks of affordable rental units, leaving

14. See, e.g., Megan R. Wilson, *Carson Likely to Roll Back Housing Equality Rule*, THE HILL (Jan. 12, 2017, 11:42 AM), <http://thehill.com/homenews/administration/313970-carson-likely-to-roll-back-housing-equality-rule> [<https://perma.cc/MRF4-AG8J>].

15. Alicia Mazzara, *Housing Vouchers Work: Huge Demand, Insufficient Funding for Housing Vouchers Means Long Waits*, CTR. ON BUDGET & POL’Y PRIORITIES: OFF THE CHARTS (Apr. 19, 2017, 10:45 AM), <https://www.cbpp.org/blog/housing-vouchers-work-huge-demand-insufficient-funding-for-housing-vouchers-means-long-waits> [<https://perma.cc/E8SD-F366>].

16. See, e.g., *After Applying, How Long Will My Wait Be?*, AFFORDABLE HOUSING ONLINE, <https://affordablehousingonline.com/housing-help/How-Long-Will-My-Wait-Be> [<https://perma.cc/4UPR-A3JG>]; see also Mazzara, *supra* note 15 (“Many housing agencies close their voucher waitlists to new applicants, sometimes for years at a time, because applications significantly exceed available vouchers.”).

17. Owners are encouraged to consider a family’s background with respect to a number of factors, including prior payment of rent and utilities and compliance with other essential conditions of tenancy. See U.S. Dep’t of Hous. & Urb. Dev., *Chapter 8: Housing Search and Leasing*, in HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK 8-1, 8-20 (2001), [https://www.hud.gov/sites/documents/DOC\\_11752.PDF](https://www.hud.gov/sites/documents/DOC_11752.PDF) [<https://perma.cc/9E8A-HX5L>].

18. See Nat’l Low Income Hous. Coal., *The Long Wait for a Home*, 6 HOUSING SPOTLIGHT 3, 3 (2016), [http://nlihc.org/sites/default/files/HousingSpotlight\\_6-1.pdf](http://nlihc.org/sites/default/files/HousingSpotlight_6-1.pdf) [<https://perma.cc/N945-FG5E>] (“Twenty-five percent of [housing choice voucher] waiting lists had a wait time of 3 years or longer.”).

19. See generally *Why Are People Homeless?*, NAT’L COAL. FOR THE HOMELESS (July 2009), <http://www.nationalhomeless.org/factsheets/why.html> [<https://perma.cc/6ZYU-YUBD>]. See also Editorial, *Vouchers Little Help if Landlords Reject Them*, THE OLYMPIAN (Jan. 31, 2016, 4:01 PM), <http://www.theolympian.com/opinion/editorials/article57346003.html> [<https://perma.cc/T3N4-DPXH>] (“Worse yet, a person can become or remain homeless while searching for a landlord who will accept vouchers. And if one isn’t found in time, the voucher expires, extinguishing hope of getting off the street or out of a shelter.”).

vast segments of the population without the assurance of a safe and enduring place to call home.<sup>20</sup>

Tenant blacklisting is but one manifestation of the many breakdowns in a system that was intended to assure the provision of safe and affordable rental housing for the poor. Its hardships are imposed against a backdrop of scarcity and need. Since 1995, the median cost of rent has risen between 70% and 100%, and yet the median income, particularly for the working poor, has remained largely stagnant.<sup>21</sup> Today, the majority of low-income renters spend more than 50% of their income on rent, with many spending in excess of 70%.<sup>22</sup> A recent study found that a full one-third of Americans struggle to get by on a daily basis.<sup>23</sup> Nationwide, two-thirds of renting families living below the poverty line receive no housing assistance.<sup>24</sup> Notwithstanding those stark realities, rollbacks to government housing vouchers continue<sup>25</sup> and the chasm between those of little or no means and those of vast wealth widens.<sup>26</sup>

Tenant blacklisting compounds the harms suffered by the poor. As part of comprehensive federal and state efforts to realize the promise of safe and affordable housing, the practice must end. This Article aims to strengthen that resolve by telling the stories of some of the practice's victims. Those stories, and countless others still untold, make plain that the problems associated with vindicating the statutory

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20. Editorial Board, Opinion, *New York City Has Been a Problem Landlord*, N.Y. TIMES (Nov. 26, 2017), <https://www.nytimes.com/2017/11/26/opinion/nyc-housing-landlords-housing.html> [<https://nyti.ms/2i8oSZp>] (“Since the mid-1990s, a quarter-million [affordable] units were demolished or removed nationally because of poor conditions, and the cost of unmet repairs reached tens of billions of dollars.”).

21. See Brad Tuttle, *It's Not Just You: 5 Signs Rent Is Totally Out of Control*, TIME (June 26, 2017), <http://time.com/money/4830674/rent-afford-increase-prices> [<https://perma.cc/NG4R-AU7G>] (“Without adjusting for inflation, today's median rent is roughly double that of 1995, when it was around \$425.”); *Public Policy Forum at Drew Tackles Eviction Crisis*, DREW U. (Oct. 2017) [hereinafter *Public Policy Forum at Drew*], <http://www.drew.edu/news/2017/11/07/public-policy-forum-at-drew-tackles-eviction-crisis> [<https://perma.cc/BYS7-5ZGH>].

22. See Desmond, *supra* note 8, at 2.

23. Greg Kaplan et al., *The Wealthy-Hand-to-Mouth*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2014, at 77, 80, 101, 113, <https://www.brookings.edu/bpea-articles/the-wealthy-hand-to-mouth/> [<https://perma.cc/FM7N-LRLZ>].

24. Desmond, *supra* note 8, at 3 fig.2; *Public Policy Forum at Drew*, *supra* note 21.

25. See generally Wilson, *supra* note 14.

26. Richard Fry & Rakesh Kochhar, *America's Wealth Gap Between Middle-Income and Upper-Income Families Is Widest on Record*, PEW RES. CTR. (Dec. 17, 2014), <http://www.pewresearch.org/fact-tank/2014/12/17/wealth-gap-upper-middle-income/> [<https://perma.cc/UWU3-ZN9Z>].

and judge-made rights to safe and inhabitable housing<sup>27</sup> cannot be solved until aggrieved tenants are assured that they will not be stigmatized and denied future renting opportunities should they assert those rights.<sup>28</sup>

Part I describes the practice of tenant blacklisting and its devastating consequences on renters' abilities to secure future housing. Part II recounts a number of stories of tenants who became ensnared in the tenant blacklisting epidemic. Part III assesses the common threads that run through these stories, highlighting the gravity of the tenant blacklisting problem. Part IV discusses both federal and state reform efforts to curb the deleterious effects of the practice of tenant blacklisting. Part V proposes a meaningful step towards a solution: an unequivocal right to counsel for those in housing court.

### I. THE PRACTICE OF TENANT BLACKLISTING

Landlords routinely conduct background checks on applicants for rental housing<sup>29</sup> and set a particularly high bar when vetting candidates for government-subsidized rentals.<sup>30</sup> That harsher lens of review is attributable in part to flawed perceptions of the poor as wrongdoers<sup>31</sup> and in part to lessors' interest in assuring a steady stream of rent income from compliant tenants and, in the case of subsidized housing, from the government.<sup>32</sup> Most essentially, because

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27. See Paula Franzese, Abbott Gorin & David Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS L. REV. 1, 1 (2016); see also Paula Franzese, *Less Than 1% of N.J. Tenants Know Their Rights. Fix It This Way*, NJ.COM (Oct. 18, 2016, 6:30 AM), [http://www.nj.com/opinion/index.ssf/2016/10/property\\_law\\_scholar\\_more\\_nj\\_tenants\\_need\\_to\\_know.html](http://www.nj.com/opinion/index.ssf/2016/10/property_law_scholar_more_nj_tenants_need_to_know.html) [<https://perma.cc/E6TW-9PRK>].

28. Franzese, *supra* note 27; see also Paula Franzese, *Tenants Shouldn't Be 'Blacklisted' for Asserting Their Rights*, NJ.COM (July 21, 2017, 11:41 AM), [http://www.nj.com/opinion/index.ssf/2017/07/tenants\\_shouldnt\\_be\\_blacklisted\\_for\\_asserting\\_their.html](http://www.nj.com/opinion/index.ssf/2017/07/tenants_shouldnt_be_blacklisted_for_asserting_their.html) [<https://perma.cc/T3ZG-49AZ>]. See generally Franzese, Gorin & Guzik, *supra* note 27.

29. See Kleysteuber, *supra* note 12, at 1346.

30. See, e.g., *Screening Tenants for Low Income Housing*, HOPE HOUS. FOUND. (Jan. 12, 2016, 4:11 PM), <http://www.hopehousingfoundation.org/blog/screening-tenants-for-low-income-housing-2016-01-168> [<https://perma.cc/VHJ5-VKM4>].

31. See generally DOUGLAS S. MASSEY ET AL., *CLIMBING MOUNT LAUREL: THE STRUGGLE FOR AFFORDABLE HOUSING AND SOCIAL MOBILITY IN AN AMERICAN SUBURB* (2013). The study conducted, and others like it, dispel the perception that those of low income are bad actors.

32. See Kleysteuber, *supra* note 12, at 1347 ("In an ideal world, tenant-screening reports would help landlords know which tenants are more likely to fall behind on their rent payments."); see also OFFICE OF PUB. & INDIAN HOUS., U.S. DEP'T OF

the demand for affordable housing so vastly exceeds supply,<sup>33</sup> landlords who are in the business of leasing subsidized dwellings to the poor have dramatically superior bargaining power.<sup>34</sup> The tilted playing field leads to inequities that run as common threads from the tenant vetting process,<sup>35</sup> to the mechanics of eviction,<sup>36</sup> to the blacklisting of tenants who, for whatever reason and at any point in the entirety of their rental histories, find themselves named in a landlord-tenant court proceeding.<sup>37</sup>

In exchange for a fee remitted by the prospective tenant when she applies for a rental, the landlord will request a report about that candidate from any one of a number of private, for-profit “tenant screening services.”<sup>38</sup> Court systems across the country inadvertently feed the practice as tenant screening agencies readily access public records of landlord-tenant court filings to generate their reports.<sup>39</sup>

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HOUS. & URBAN DEV., PIH 2015-19, GUIDANCE FOR PUBLIC HOUSING AGENCIES (PHAS) AND OWNERS OF FEDERALLY-ASSISTED HOUSING ON EXCLUDING THE USE OF ARREST RECORDS IN HOUSING DECISIONS 6 (2015), <https://www.hud.gov/sites/documents/PIH2015-19.PDF> [<https://perma.cc/N9UK-ZAA2>] (“Some PHAs have adopted lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and/or the type of conduct. For example, when screening HCV applicants, one PHA has adopted a twelve-month lookback period for drug-related criminal activity and a twenty-four month lookback period for violent and other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.”).

33. See Mazzara, *supra* note 15.

34. See Charles J. Goetz, *Wherefore the Landlord-Tenant Law “Revolution”?* *Some Comments*, 69 CORNELL L. REV. 592, 598 (1984).

35. See Kleysteuber, *supra* note 12, at 1385 (“[I]t is not in fact ‘paternalistic’ to level the informational playing field between landlords and tenants by making it harder for landlords to harm a tenant’s reputation without justification or process.”).

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

37. See generally *Tenant Blacklist Can Haunt New York Renters for Years*, NAT’L PUB. RADIO (Dec. 14, 2014, 7:46 AM), <https://www.npr.org/2014/12/14/367833532/tenant-blacklist-can-haunt-new-york-renters-for-years> [<https://perma.cc/LN5X-NFJZ>].

38. The tenant screening service industry is not new. See Kleysteuber, *supra* note 12, at 1346, 1356–57, 1360–62; see also Julie Satow, *On the List, and Not in a Good Way*, N.Y. TIMES (Oct. 16, 2014), <https://www.nytimes.com/2014/10/19/nyregion/a-tenant-blacklist-culled-from-tedium.html> [<https://nyti.ms/2m6WaVS>]. Blacklists have existed since the 1970s, but have grown exponentially in the past several decades, due in large part to the advent of quicker and more accessible technologies. Stauffer, *supra* note 10, at 240–41. Currently, there are more than 650 tenant screening agencies operating across the nation. Ronda Kaysen, *Recourse for ‘Blacklisted’ Tenants*, N.Y. TIMES (Dec. 19, 2015), <https://www.nytimes.com/2015/12/20/realestate/recourse-for-blacklisted-tenants.html> [<https://nyti.ms/2pyBo3t>].

39. See Kim Barker & Jessica Silver-Greenberg, *On Tenant Blacklist, Errors and Renters with Little Recourse*, N.Y. TIMES (Aug. 16, 2016),



Using information retrieved from housing court data banks, the service will create a report that indicates whether the applicant was ever named in a landlord-tenant proceeding and, if so, the type of case and the amount of rent or damages sought by the landlord.<sup>40</sup> The reporting system has three major flaws: (1) it provides no context and no mention of the given matters' surrounding circumstances, including case dispositions; (2) the prospective tenant is afforded no notice; and (3) there is no appeal process or assured opportunity for the adversely affected tenant to explain how and why she came to appear on the list.<sup>41</sup>

The report that is issued notes all instances in which that tenant was ever listed as either a plaintiff or defendant in a housing court action.<sup>42</sup> The report reveals nothing about the given circumstances, not even indicating whether the tenant prevailed in the matter—whether the case cited was dismissed, resolved in the tenant's favor, brought by the tenant, or brought by the landlord in error.<sup>43</sup> In addition, there is no statute of limitations built into the system of data collection, and reporting stale claims can readily form the basis for an adverse report about a given tenant.<sup>44</sup>

There is no uniform duty to provide the rental applicant with a copy of the report that she paid for as part of her rental application fee.<sup>45</sup> In many instances, the tenant is unaware even that her name appears on the dreaded list.<sup>46</sup> The registries, privately compiled and administered, are without the due process guarantees of notice and an opportunity to be heard for those impacted.<sup>47</sup>

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<http://www.nytimes.com/2016/08/17/nyregion/new-york-housing-tenant-blacklist.html>  
[<https://nyti.ms/2mpPhS2>].

40. See Kleysteuber, *supra* note 12, at 1346, 1356–57, 1360–62; see also Satow, *supra* note 38.

41. See Machalinski, *supra* note 11. Instead of a formal appeals process to remedy errors or explain misleading information, renters are limited to attempting to explain, on their own, to a potential landlord why they were placed on the report. *Id.*

42. See Williams, *supra* note 10, at 1079 (“Tenant screening services collect the names of individuals who have been defendants in unlawful detainer actions.”).

43. See Machalinski, *supra* note 11 (“[F]or tenants, the major issue is that the information is incomplete. The blacklist doesn’t provide any context for the case, such as who sued whom, the winning party, or whether there was a settlement.”).

44. See Satow, *supra* note 38.

45. A tenant sued a tenant screening company after his request to obtain the files relating to his report was refused. See, e.g., Williams, *supra* note 10, at 1106.

46. See Barker & Silver-Greenberg, *supra* note 39 (“Until they are denied housing, some tenants have no idea they are on the list at all.”).

47. See, e.g., Kleysteuber, *supra* note 12, at 1375 (“[B]asic ideas of fairness and due process suggest that tenants should have an opportunity to prove their innocence before having their names added to blacklists.”).

In most cases, the negatively affected tenant is given no opportunity to clear her name or add context to the report that destroyed her application. She cannot, for example, explain that she in fact prevailed in the listed matter,<sup>48</sup> had a lawful basis for withholding rent,<sup>49</sup> missed a rent payment due to illness,<sup>50</sup> or had an action brought against her in error.<sup>51</sup> Invariably, mistakes are made in reporting.<sup>52</sup> Still, it can take months and even years of dogged persistence on the part of the prejudiced tenant to correct the record,<sup>53</sup> assuming of course that she even becomes aware of the basis for the problem, for instance, by a prospective landlord informing her that her prior eviction history prevented her from receiving a rental unit.

A rental applicant's presence on that list of past landlord-tenant court proceedings will all but assure denial of her rental application.<sup>54</sup> In the words of an industry insider who runs a tenant screening service in New York, "[i]t is the policy of 99 percent [of landlords] to flat out reject anybody with a landlord-tenant record, no matter what the reason is and no matter what the outcome is, because if their dispute has escalated to going to court, an owner will view them as a pain."<sup>55</sup> Instead, that applicant, a presumed troublemaker, will have her housing application summarily denied in favor of the next candidate in line.<sup>56</sup>

For the past several years this Author and her colleagues, Abbott Gorin and David Guzik, have studied the experiences of low-income residential tenants facing eviction in Essex County, New Jersey.<sup>57</sup>

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48. See Elizabeth A. Harris, *Tenant Sues to Stay Off List of Tenants Who Are Sued*, N.Y. TIMES: CITY ROOM (Nov. 2, 2011, 1:45 PM), <https://cityroom.blogs.nytimes.com/2011/11/02/tenant-is-suing-to-stay-off-list-of-tenants-who-get-sued> [<https://perma.cc/2ME4-XB5L>] ("But those screening lists do not make a distinction between renters who ultimately win their cases (perhaps they withheld rent because they had no heat) and those who lose (say, they bought some nice jewelry instead of paying their landlord what they owed).").

49. See discussion *infra* Section II.A.

50. See discussion *infra* Section II.B.

51. See discussion *infra* Section II.C.

52. See discussion *infra* Section II.C.

53. See discussion *infra* Section II.C.

54. Teri Karush Rogers, *Only the Strongest Survive*, N.Y. TIMES (Nov. 26, 2006), <http://www.nytimes.com/2006/11/26/realestate/26cov.html> [<https://nyti.ms/2FJqFvv>].

55. *Id.*

56. See, e.g., Machalinski, *supra* note 11 ("People are denied apartments based upon the fact that they were sued by a previous landlord . . .").

57. See generally Franzese, Gorin & Guzik, *supra* note 27.

Essex County has a population of 796,914,<sup>58</sup> with more than 281,764 individuals living in its largest city, Newark,<sup>59</sup> and its surrounding towns. In Newark, more than 29.1% of residents live at or below the poverty line.<sup>60</sup> The city's subsidized rental market is crowded, and waitlists for units can extend for years.<sup>61</sup> Federal and state subsidized apartment complexes in the city have been cited for flagrant health and safety violations.<sup>62</sup> Most recently, a class action was filed against one of the allegedly worst offenders—the Pueblo Homes apartments—citing rodent and rat infestation, toxic mold, and significant disrepair.<sup>63</sup>

Still, even derelict landlords have the upper-hand and use the city's housing court as an eviction factory.<sup>64</sup> Indeed, 40,000 eviction actions were filed in Essex County, New Jersey in one year alone.<sup>65</sup> Astonishingly, only eighty of those cases (less than 0.2%) had tenants asserting as a defense their right to withhold rent when the premises they lease are unsafe and uninhabitable.<sup>66</sup> A confluence of factors contributes to that bleak state of affairs.<sup>67</sup>

58. *Essex County, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/essexcountynewjersey/pst045216> [<https://perma.cc/QG6V-4UK6>].

59. *Newark City, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/newarkcitynewjersey/pst045216> [<https://perma.cc/QV82-TMBZ>].

60. *Id.*

61. *See, e.g.*, David Giambusso, *Newark Housing Authority Plans to Empty Waiting Lists, Hand Out \$10M in Section 8 Housing Vouchers*, STAR LEDGER (June 17, 2010, 6:37 AM), [http://www.nj.com/news/index.ssf/2010/06/section\\_8\\_housing\\_vouchers\\_to.html](http://www.nj.com/news/index.ssf/2010/06/section_8_housing_vouchers_to.html) [<https://perma.cc/ZY5F-6NPU>].

62. *See* Shannon Mullen & Ken Serrano, *Renter Hell: Rat-Plagued Tenants Sue Landlord*, ASBURY PARK PRESS (Sept. 17, 2017, 5:03 PM), <http://www.app.com/story/news/local/communitychange/2017/09/27/newark-tenants-sue-landlord/702062001> [<https://perma.cc/D8PA-BGUA>].

63. *Id.*

64. *See, e.g.*, Amy Zimmer & Jeanmarie Evely, *Beware of Tactics Landlords Use to Evict Rent-Stabilized Tenants*, DNA INFO (Oct. 25, 2016, 3:58 PM), <https://www.dnainfo.com/new-york/20161025/central-harlem/rent-stabilized-eviction-apartments-problems-what-to-do-housing-court> [<https://perma.cc/A7E5-KNW4>].

65. *See* Franzese, Gorin & Guzik, *supra* note 27, at 22.

66. *Id.* at 21.

67. *Id.* at 42 (“The considerable challenge is to remove obstacles to its assertion, whether in the form of onerous rent deposit requirements, the absence of centralized databases for courts and rent subsidizing agencies to use when making decisions regarding substandard premises’ eligibility for continued government subsidies in view of their given defects, the subversive practice of ‘tenant blacklisting,’ the scarcity of effective assistance of counsel, or tenants’ lack of awareness of their basic rights.”); *see also* Paula Franzese, *Why N.J. Should Provide Low-Income Tenants Facing Eviction Free Legal Help*, NJ.COM (Nov. 2, 2017), [http://www.nj.com/opinion/index.ssf/2017/11/why\\_nj\\_should\\_provide\\_low-income\\_tenants\\_facing\\_ev.html](http://www.nj.com/opinion/index.ssf/2017/11/why_nj_should_provide_low-income_tenants_facing_ev.html) [<https://perma.cc/W6SG-8FGK>]; Tom Moran, *How to Stop Slumlords from Abusing*

The implied warranty of habitability is supposed to assure a residential tenant that the premises she leases will be safe and suitable for dwelling.<sup>68</sup> It was created to give aggrieved tenants who are, for example, without heat or running water or whose premises are fraught with rodent, bug, or mold infestation, the right to lawfully withhold rent until the landlord makes the necessary repairs.<sup>69</sup> It is meant to be a defense to an eviction action for nonpayment of rent and to compel landlords' compliance with basic standards of safety and decency in the apartments that they lease.<sup>70</sup> Tenants living in an unfit rental are thus permitted to withhold rent until the problems complained of are abated.<sup>71</sup> A tenant may withhold rent in an attempt to compel landlord compliance with the law, but this often results in an eviction proceeding, and without the assistance of counsel, the tenant will find herself evicted, and then blacklisted, despite having acted lawfully.<sup>72</sup>

Through the study of low-income renters' experiences in Essex County, it became clear that tenant screening reports have become weaponized as a means to penalize tenants who in the past faced an eviction action, whether that action was brought with or without cause.<sup>73</sup> Such tenants in Essex County who fight back against unsafe and unlivable conditions by withholding rent (a right assured by law) find themselves punished when their non-payment prompts a swift and sure eviction action.<sup>74</sup> To compound the harm, as a consequence of having been sued for eviction, the tenant's record will be tarnished, often irreparably.<sup>75</sup> She will then be placed on the dreaded

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*Poor Tenants*, NJ.COM (Feb. 27, 2017), [http://www.nj.com/opinion/index.ssf/2017/02/a\\_qa\\_how\\_to\\_stop\\_slumlords\\_from\\_abusing\\_poor\\_tenan.html](http://www.nj.com/opinion/index.ssf/2017/02/a_qa_how_to_stop_slumlords_from_abusing_poor_tenan.html) [https://perma.cc/T35B-VQP5].

68. See Franzese, Gorin & Guzik, *supra* note 27, at 7–8.

69. *Id.* at 5.

70. *Id.* at 4.

71. See, e.g., REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 402 (UNIF. LAW COMM'N 2015) (amending UNIF. RESIDENTIAL LANDLORD & TENANT ACT (UNIF. LAW COMM'N 1972) and continuing to provide tenant-protective measures in a uniform act to which all states were urged to subscribe). See generally Charles Donahue, Jr., *Change in the American Law of Landlord and Tenant*, 37 MOD. L. REV. 242, 245–46 (1974) (discussing the shortcomings of the U.S. development of landlord-tenant law); Myron Moskowitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CALIF. L. REV. 1444, 1446 (1974) (describing the benefits of landlords enjoyed before the adoption of the warranty).

72. See generally Satow, *supra* note 38.

73. See *infra* Part III.

74. See Franzese, Gorin & Guzik, *supra* note 27, at 41.

75. See *infra* Part II.

“blacklist” and her appearance on that list will all but assure denial of future rental, and particularly subsidized rental, applications.<sup>76</sup> Meanwhile, the landlord who betrays habitability standards by leasing that grossly unacceptable unit will continue to receive steady state and federal subsidies for that dwelling and others like it.<sup>77</sup> He will be assured of a demand even for those dilapidated premises because, for whole segments of low-income populations, there simply is no other choice.<sup>78</sup>

Blacklists stigmatize, precluding future renting opportunities and rendering affordable housing options even less accessible.<sup>79</sup> What is more, the lists skew market efficiencies, creating “false negatives” of prospective renters who would in fact be fine tenants.<sup>80</sup> The very specter of being blacklisted can impose a considerable chilling effect, dissuading tenants from exercising otherwise assured rights and remedies.<sup>81</sup>

For too long, housing markets have been stacked against low-income tenants struggling to live in safe and affordable housing.<sup>82</sup> Tenant blacklisting renders that struggle all the more fraught. The practice is real, and its consequences often devastating. The stories of its victims present snapshots of despair.

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76. See Williams, *supra* note 10, at 1112 (“[M]any landlords, supplied with information that a prospective tenant is or was a defendant in an unlawful detainer action, treat that tenant as an unacceptable credit risk by denying him or her rental housing.”).

77. In one such instance, a tenant was required to place the rent money into escrow for the six months of the eviction proceeding’s pendency. In that time, lack of a conclusory ruling allowed the landlord to continue receiving his government subsidies. Franzese, Gorin & Guzik, *supra* note 27, at 28.

78. See *id.* at 29.

79. See Kleysteuber, *supra* note 12.

80. See Williams, *supra* note 10, at 1154–56.

81. *Id.* at 1140 (“Tenant blacklisting thus forces the tenant to choose between acquiescing in the landlord’s action or being labeled a bad credit risk. That choice imposes a chilling effect on tenants considering invocation of repair and deduct remedies, or resisting illegal rent increases, retaliatory evictions, or unlawful evictions.”).

82. See, e.g., Patrick Sisson, *Why the Rent Is Too Damn High: The Affordable Housing Crisis*, CURBED (May 19, 2016, 12:47 PM), <https://www.curbed.com/2016/5/19/11713134/affordable-housing-policy-rent-apartments> [https://perma.cc/43SD-FFNP].

## II. IN THEIR OWN WORDS: TENANTS' STORIES

James Baldwin wrote, “[n]ot everything that is faced can be changed, but nothing can be changed until it is faced.”<sup>83</sup> Achieving the promise of social justice depends in significant measure on cultivating proximity to the excluded, the marginalized, the left out, and the left behind. Otherwise, the victims of any system that silences and disempowers too readily become the invisible “other,” out of the collective’s consciousness and removed from the scope of the larger community’s daily preoccupations and concerns.

Proximity to experiences different from what we know and presume to be true helps to foster recognition that the burdens of our own struggles do not relieve us of the responsibility to see others in theirs. Most suffering yearns for a benevolent witness. Bearing such witness allows “us/them” archetypes to yield to more inclusive perceptions of *the other as me*. Each of the people who shared their experiences here could well be our own sisters, brothers, parents, children, friends, and neighbors. We are all but a few bad breaks away from any one of these accounts.

These stories were selected because they are emblematic of the sorts of contexts in which tenant blacklisting occurs and the range of people swept into its net.<sup>84</sup> In these accounts, blacklisting occurred when the underlying legal matter that set its mechanics in motion was baseless.<sup>85</sup> It took place when the originating cause of action had merit.<sup>86</sup> It adversely affected tenants who resided in government-subsidized housing<sup>87</sup> and non-subsidized housing.<sup>88</sup> Its reach extended to senior dwelling<sup>89</sup> and manufactured homes communities.<sup>90</sup> The stories told here provide a snapshot of a far larger national picture.<sup>91</sup> They are told with this Author’s great respect and gratitude.

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83. James Baldwin, *As Much Truth as One Can Bear*, N.Y. TIMES BOOK REV., Jan. 14, 1962, at BR11 [<https://nyti.ms/2GIuFgo>].

84. Each of these stories is told with the tenants’ permission. Notes of the tenant interviews are stored and on file with author.

85. See discussion *infra* Section II.C.

86. See discussion *infra* Section II.B.

87. See discussion *infra* Section II.A.

88. See discussion *infra* Section II.F.

89. See discussion *infra* Section II.G.

90. See discussion *infra* Section II.D.

91. See, e.g., Dewan, *supra* note 2.

### A. Yanira Cortes

Yanira Cortes, mother to four young children, lives in government subsidized housing in Newark, New Jersey's Pueblo Homes apartment complex.<sup>92</sup> Her apartment is unsafe, infested by rats, roaches, and mold.<sup>93</sup> Her many complaints to the landlord about the condition of the premises have gone unheeded.<sup>94</sup> Finally, when the premises' bathroom ceiling collapsed, Ms. Cortes withheld rent, as is her right, and was promptly sued for eviction.<sup>95</sup> As a result, she was placed on the list of tenants named in landlord eviction actions and her appearance on that list inhibited her chances of finding another apartment.<sup>96</sup> In her words, "[n]ow when I try to apply to other places, they tell me, '[y]ou went to court for an eviction, you're a bad tenant.'"<sup>97</sup>

Ms. Cortes expressed frustration and sadness at what she perceives to be the entrenched and, in her case, inter-generational failures of affordable housing rentals to meet even the most basic standards of habitability. Her childhood apartment was unsafe, with dozens of rats nesting in the bathroom, kitchen, and bedroom.<sup>98</sup> Her mother was once forced to kill a live rat as it attacked the family cat.<sup>99</sup> When the family's requests for remediation were denied, her mother actually went so far as to bring that dead rodent to the landlord to make even more apparent the extent of the problems on site.<sup>100</sup> Still, the landlord refused to address the problems.<sup>101</sup>

Ms. Cortes and her family fared no better in Pueblo Homes.<sup>102</sup> Since the start of the lease, the apartment has been unsafe and unfit.<sup>103</sup> In the face of the landlord's inaction, Ms. Cortes tried, unsuccessfully, to abate the mold infestation herself, but her attempts only compounded the mold problem as other unsafe conditions worsened.<sup>104</sup> When she withheld rent to apply those monies to

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92. See Mullen & Serrano, *supra* note 62.

93. Telephone Interview with Yanira Cortes (Oct. 24, 2017) (notes on file with author).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

essential repairs, as is her right by law,<sup>105</sup> she was swiftly sued her for eviction.

Through a series of unlikely and fortuitous connections, Ms. Cortes secured counsel.<sup>106</sup> A class action is now pending on behalf of Ms. Cortes and other residents in the building.<sup>107</sup> In the meantime, conditions in her apartment continue to deteriorate. At night, rats run brazenly, darting across the bed sheets and scrounging through the children's toys as Ms. Cortes' young children sleep.<sup>108</sup> Bathroom trips during the night are an ordeal, with rats and roaches scurrying when lights are turned on.<sup>109</sup> Every morning Ms. Cortes checks her children for rat bites before they leave for school.<sup>110</sup> The children feel no peace at home. Ms. Cortes said, “[p]sychologically, mentally, it’s not fair for them to have to go through all of this.”<sup>111</sup> She continued, “[a]nd it’s hard for me as a mom to have to go through all of this with them and not be able to say ‘[l]et’s go live somewhere else.’ I can’t afford a nice place and the fact that the landlord sued me gets my applications to live anywhere else denied.”<sup>112</sup>

Ms. Cortes has channeled some of her frustrations into advocacy efforts. She speaks up at Newark city council meetings and has met with the city’s mayor, Ras Baraka.<sup>113</sup> She has met with state senators and produced videos to document her apartment’s problems.<sup>114</sup> Throughout, her mother cautioned her against rocking the boat, fearful that Ms. Cortes’ activism will bring even harsher consequences.<sup>115</sup> Ms. Cortes concedes that the fear of being blacklisted is real.<sup>116</sup> The fear of being blacklisted has made most of her neighbors afraid to complain about unsafe conditions—the harsh reality, known to both derelict landlords and low-income tenants, is that challenging the status quo comes at a significant price.<sup>117</sup> In crowded rental markets where the demand for affordable housing vastly exceeds supply, the waiting lists for subsidized rentals stretches

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105. *See generally* Franzese, Gorin & Guzik, *supra* note 27, at 6.

106. Telephone Interview with Yanira Cortes, *supra* note 93.

107. Mullen & Serrano, *supra* note 62.

108. Telephone Interview with Yanira Cortes, *supra* note 93.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*



for years.<sup>118</sup> Such is the case in Newark.<sup>119</sup> Thus, Ms. Cortes said, “everyone turns a blind eye [to problems on site] and makes no trouble.”<sup>120</sup> Otherwise, she noted, “[y]ou get sued, and then you get blacklisted which ruins your chances with other landlords.”<sup>121</sup>

Ms. Cortes spoke of the shame that tenants feel “because we live in a project . . . . Many of us believe that we are not worthy of a good home or peace of mind or a nice quality apartment because the government is paying for more than half of our rent. We are poor and don’t deserve anything better than this.”<sup>122</sup> She feels for the “many Yaniras in the world. There are other people like me but they don’t want to fight back because they feel defeated. They won’t go to court because they assume that the judge will be on the landlord’s side. Because that’s how they’ve seen it work.”<sup>123</sup>

Before she was able to secure counsel, Ms. Cortes reported feeling “crushed” in court.<sup>124</sup> She said that during the initial eviction proceeding (before the filing of the pending class action), “the judge did not ask why I was withholding the rent, but only wanted to know if I had the money to pay the back rent that was owed.”<sup>125</sup> She did have that sum, and paid it, thereby avoiding immediate eviction.<sup>126</sup> Still, she felt denied the opportunity to be heard because she was given no chance to present the very basis for her decision to withhold the rent due—the premises’ dilapidated, unsafe, and uninhabitable condition.<sup>127</sup> She added, “I can do as much as I possibly can, but I’m labeled. I’m labeled ‘the bad tenant.’ I’m labeled the person who just wants a handout and now wants even more because she’s coming in to complain about her living conditions.”<sup>128</sup>

Stigmatized as “the bad tenant,” on a blacklist and with no choice but to remain in that grossly substandard dwelling where the problems that she complained of persist, Ms. Cortes refuses to give up hope. She finds promise in the power of collective action and the pending class action brought against her landlord.<sup>129</sup> Nonetheless, she

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118. *Id.*

119. *See generally* Giambusso, *supra* note 61.

120. Telephone Interview with Yanira Cortes, *supra* note 93.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

sees that the most challenging aspect of the suit has been finding other tenants who are willing to come forward.<sup>130</sup> She noted, “I went through a lot, and I’m still going through a lot. So I can understand why people don’t want to be involved with it, but I have to be. At the end of the day, it is where you live.”<sup>131</sup>

Ms. Cortes spoke to the sense of responsibility that she feels for other tenants who have been silenced and worn down by what they perceive to be the betrayals of a broken system. She asked, “[h]ow can you ever have peace of mind in your own home if you were left with no other choice but to live this way? It’s not right. No one should have to live this way.”<sup>132</sup> She added, “[a]nd no one should have to pay such big a price for standing up for their rights.”<sup>133</sup>

Ms. Cortes proposes that courts and government agencies embrace a zero-tolerance policy for offenses committed by repeatedly and egregiously remiss landlords. In her view, “[f]ines would not be sufficient. When the problems have been serious and repetitive, more drastic measures should be taken. Landlords who put people’s lives in danger again and again should go to jail.”<sup>134</sup>

Ms. Cortes said that of all the possible consequences of her activism, the ordeal of being blacklisted has weighed heaviest on her. That assessment in and of itself speaks volumes, in view of the range of indignities that she endured.<sup>135</sup> Even more than the injustice of having to remit rent for the crumbling apartment while the landlord continues to receive sizable government subsidies for that unit, and even more than the inequity of having to absorb the out-of-pocket expenses that she incurs in an attempt to abate the problems on site, she worries about what blacklisting has done to her future as a renter.<sup>136</sup> She said, “[y]our home is everything. You should be able to be given the chance to live there in peace.”<sup>137</sup> Renters should be assured, she added, “that when you qualify for an affordable apartment you won’t be shut out because you stood up for your rights. Because when that is not the case, your whole world feels like it’s caving in. Like you don’t have anything.”<sup>138</sup>

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130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

### B. Ada Lopez

Ada Lopez, a mother of two, had worked her whole life.<sup>139</sup> When she became ill, she lost her job and without that paycheck she was unable to pay her rent.<sup>140</sup> She was summarily evicted.<sup>141</sup> Thereafter, with no income, she qualified for government-subsidized housing and began the costly and labor-intensive process of submitting applications for affordable housing.<sup>142</sup> Ms. Lopez was required to pay a \$25 to \$45 nonrefundable fee for each application submitted.<sup>143</sup> That fee covered the costs to prospective landlords of obtaining a tenant screening report on Ms. Lopez.<sup>144</sup> Unbeknownst to her at the time, those reports would doom her applications because they indicated that she had been sued for eviction.<sup>145</sup> Ms. Lopez was indeed rejected by landlord after landlord.<sup>146</sup> Finally, one of those landlords happened to tell her that she was an “unacceptable tenant” on account of her prior eviction.<sup>147</sup>

Thereafter, Ms. Lopez and her children spent four years living in homeless shelters throughout Union County, New Jersey. Recently, with the assistance of the social services agency Family Promise,<sup>148</sup> Ms. Lopez finally found a landlord willing to rent to her and her family.<sup>149</sup> That result came as a consequence of the fierce determination and advocacy efforts of Family Promise and its Union County Executive Director, Geleen Donovan.<sup>150</sup> Ms. Donovan reported, “[w]e tried everything with dozens of landlords, with offers to paint and repair for free the subject premises and even other units to persuade a landlord to give the family a chance. Still, no one would budge.”<sup>151</sup> Ms. Donovan explained that, “[m]ost did not want

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139. Telephone Interview with Ada Lopez (July 20, 2017) (notes on file with author).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Family Promise is a nonprofit that aims to help homeless and low-income families achieve sustainable independence through a community-based response. *Mission Statement*, FAMILY PROMISE, <https://familypromise.org/mission-statement> [<https://perma.cc/87WA-KJ52>].

149. Interview with Geleen Donovan, Exec. Dir. Family Promise of Union Cty., in Newark, N.J. (July 17, 2017).

150. *Id.*

151. *Id.*

to rent due to her past eviction, but what is really shocking is how many landlords told us that they would not rent to anyone who has a subsidized housing voucher.”<sup>152</sup> Ms. Donovan would then explain that “this is against the law, they said they did not care, and to go ahead and report them!”<sup>153</sup>

Ms. Lopez described the process of tenant blacklisting as at the heart of her family’s struggles to find housing. She noted that the “tenant screening reports” sent to prospective landlords simply stated “evicted,” without context or any reference to surrounding circumstances.<sup>154</sup> That was enough to assure that she would be shut out of the promise of an affordable place to live.<sup>155</sup> She recounted that she felt betrayed by a system that left no room for the accommodation of those who suffer extenuating circumstances beyond their control, such as debilitating illness or accident, that render them unable to meet rent obligations.<sup>156</sup> She said, “I got very sick. I never thought that would put my family on the street. Until it did.”<sup>157</sup>

### C. Maurice Smith

The case of Newark, New Jersey tenant Maurice Smith demonstrates that even the successful defense of an eviction action does not mitigate the harsh consequences of blacklisting. Over the course of nine months, Mr. Smith raised successful defenses in two separate non-payment of rent proceedings.<sup>158</sup> The first proceeding involved an eviction action in which Mr. Smith’s landlord attempted to remove tenants from an illegal rooming house without providing relocation assistance as is required under state law.<sup>159</sup> Mr. Smith was able to secure counsel through the auspices of Essex-Newark Legal Services,<sup>160</sup> and that proceeding was eventually dismissed.<sup>161</sup> Mr.

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152. *Id.*

153. *Id.*

154. Telephone Interview with Ada Lopez, *supra* note 139.

155. *Id.*

156. *Id.*

157. *Id.*

158. Franzese, Gorin & Guzik, *supra* note 27, at 40.

159. *Id.* See generally Relocation Assistance Act, N.J. STAT. ANN. §§ 20:4-1 to -22 (West 2017) (ensuring the equitable treatment of individuals displaced by government action).

160. Legal Services seeks to secure equal substantive and procedural justice for all economically disadvantaged people. See *Vision & Mission*, LEGAL SERVS. OF N.J., <https://www.lsnj.org/AboutUS.aspx> [<https://perma.cc/JW56-SRDQ>].

161. Franzese, Gorin & Guzik, *supra* note 27, at 40 n.141.

Smith's landlord remitted the relocation costs and provided Mr. Smith with a positive recommendation.<sup>162</sup> When Mr. Smith subsequently applied for housing, however, that information was never included on the later report issued by a tenant screening service.<sup>163</sup>

At the time of the second proceeding, Mr. Smith's apartment building had been foreclosed on.<sup>164</sup> Even though Mr. Smith remitted rent to the building's creditor on a timely basis, the original landlord brought a non-payment proceeding against Mr. Smith.<sup>165</sup> Again, with the assistance of counsel, Mr. Smith was able to successfully defend against the claim.<sup>166</sup> Nonetheless, because he had been sued, he now appeared twice on the dreaded blacklist.<sup>167</sup> Mr. Smith's subsequent rental applications were summarily denied by two separate subsidized housing managers, notwithstanding the fact that he had prevailed in those preceding actions and had actually received a favorable recommendation from one of his prior landlords.<sup>168</sup> As one building manager said to Mr. Smith, "You've been in housing court for nonpayment of rent. We are not going to rent to you."<sup>169</sup>

As a result of his dogged persistence for more than one year, Mr. Smith eventually succeeded in convincing the company to remove his name from the blacklist.<sup>170</sup> Thereafter, he successfully applied for a suitable apartment.<sup>171</sup> Still, Mr. Smith remains mindful that the resources that enabled him to successfully defend the wrongful eviction actions and subsequently secure removal of his name from the dooming tenant registries are not available to most.<sup>172</sup>

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162. Payton Guion & Shannon Mullen, *Renter Hell: Blacklisted*, ASBURY PARK PRESS (Dec. 30, 2016), <http://www.app.com/story/insider/extras/2016/12/30/renter-hell-blacklisted/95767588> [<https://perma.cc/DA6A-N5SM>].

163. Franzese, Gorin & Guzik, *supra* note 27, at 40.

164. Guion & Mullen, *supra* note 162.

165. Franzese, Gorin & Guzik, *supra* note 27, at 40.

166. *Id.*

167. *Id.*

168. *Id.*; Guion & Mullen, *supra* note 162.

169. Guion & Mullen, *supra* note 162.

170. Franzese, Gorin & Guzik, *supra* note 27, at 41.

171. *Id.*

172. Guion & Mullen, *supra* note 162.

#### D. Lori Dibble

Lori Dibble is a self-described activist and advocate who focuses her efforts on behalf of the manufactured housing community.<sup>173</sup> She serves as the Northeastern Regional Vice President of the National Manufactured Home Owners Association.<sup>174</sup> As a manufactured homeowner herself, Ms. Dibble knows of the unique challenges that members of her community face, both as owners of the mobile homes in which they reside and as tenants of the underlying land on which those homes sit.<sup>175</sup> In the past, she brought a successful suit against developers to allow manufactured home owners to secure the right of first refusal to purchase the parks in which their homes are located.<sup>176</sup>

In 2012, Superstorm Sandy destroyed Ms. Dibble's manufactured home and the development in which it sat in Atlantic Highlands, New Jersey.<sup>177</sup> Since then she has been unable to find a landlord willing to lease to her because of the prior lawsuit that she brought against the park owner, who was effectively her landlord at the time.<sup>178</sup> Ms. Dibble explained that she "has been blacklisted because of that litigation."<sup>179</sup>

Ms. Dibble cited the imbalance of power inherent in manufactured home living and residents' hybrid status as both owners of their mobile homes and lessees of the land and common areas on which those homes rest.<sup>180</sup> She noted, "The thing is, you are talking about a home. A home that you own. And it makes you more aware, acutely aware, of the unfairness of the relationship between the landlord and

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173. Telephone Interview with Lori Dibble, Ne. Reg'l Vice President, Nat'l Manufactured Home Owners Ass'n (Oct. 30, 2017) (notes on file with author). More commonly referred to as trailer homes, manufactured homes are constructed in one, two, or three sections, assembled in a factory and then transported to the home site for installation. *What Is a Manufactured Home?*, CASCADE LOANS, <https://www.cascadeloans.com/what-is-a-manufactured-home/> [https://perma.cc/43AN-CZG6]; see *Manufactured Home Construction and Safety Standards*, U.S. DEP'T OF HOUS. & URBAN DEV., <https://www.hud.gov/hudprograms/mhcss> [https://perma.cc/R2G9-LJ5H].

174. Telephone Interview with Lori Dibble, *supra* note 173. The National Manufactured Home Owners Association ("NMHOA") aims "to promote, represent, preserve, and enhance the rights and interests of manufactured homeowners throughout the United States." *Who We Are*, NMHOA, <http://www.nmhoa.org/about.html> [https://perma.cc/UMC2-C7DG]. There are seventeen million Americans who live in manufactured homes. *Id.*

175. Telephone Interview with Lori Dibble, *supra* note 173.

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

the landowner or the community owner, in the land-lease situation.”<sup>181</sup> She added, “You own your home, but you don’t own the land beneath that home.”<sup>182</sup> She stated that this situation means that residents are often at the mercy of their landlords to assure the provision of essential services and land maintenance.<sup>183</sup>

Ms. Dibble hopes one day to see a more even playing field, though, in the meantime, she has been unsuccessful in her efforts to secure another rental.<sup>184</sup> She has concerns about the stigma that her activism has wrought: “I worry about continuing to have to face questions about the past litigation. And then I won’t be selected or get into the community.”<sup>185</sup>

### E. Ebony Watson

Ebony Watson, a tenant in Camden, New Jersey, began having trouble with her next-door neighbors as soon as she and her son moved in.<sup>186</sup> She had never had any trouble with past rentals or neighbors and largely kept to herself, going to work and bringing her child to and from school every day.<sup>187</sup> Her new neighbors were different. She described how they “would deliberately make noise, stomping up and down the stairs, throwing objects at our adjoining wall, and slamming cabinets and doors.”<sup>188</sup> Ms. Watson told the landlord of the noise disruption, but he ignored her complaints.<sup>189</sup> Eventually, Ms. Watson tried to “tune out the noise” by playing music at a reasonable volume.<sup>190</sup> In response, the noisy neighbors called the police to report that Ms. Watson’s music was too loud.<sup>191</sup> The neighbors proceeded to file a police report.<sup>192</sup> As a result, the landlord sued to evict Ms. Watson.<sup>193</sup> The case was dismissed.<sup>194</sup>

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181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. Telephone Interview with Ebony Watson (Nov. 1, 2017) (notes on file with author).

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

The noise from next door continued, and Ms. Watson began looking for a new apartment. Her son was having trouble completing his homework because of the noise disruption, and it had become clear that the landlord would take no measures to abate the nuisance.<sup>195</sup> She recalled, “I even went as far as to record the noise, and management had the nerve to say to me, ‘[h]ow do we know you didn’t make that noise from within your unit?’”<sup>196</sup> She noted, “I felt hopeless, angry, and very stressed out.”<sup>197</sup>

Ms. Watson’s applications for other rentals were denied because she had been sued for eviction.<sup>198</sup> When she learned that she had been blacklisted, she quickly supplied prospective landlords with the court order that ruled her eviction dismissed without prejudice.<sup>199</sup> That effort was to no avail.<sup>200</sup> With nowhere else to go, Ms. Watson was left with no choice but to live in the same apartment described in that eviction action.<sup>201</sup>

Recently, Ms. Watson was able to find a new apartment because that landlord never sought a background check.<sup>202</sup> Shortly after moving in, she understood why her new landlord never conducted a background check.<sup>203</sup> The premises are run in a disorderly and chaotic manner, with upwards of ten people or more staying in the apartment right above hers at any given time.<sup>204</sup> The noise, crowding, and conditions are untenable.<sup>205</sup> In her words, “[n]ow I’m at another hellhole, honestly.”<sup>206</sup>

Recounting her housing struggles makes Ms. Watson “devastated and angry.”<sup>207</sup> She is still in disbelief that the earlier eviction action, baseless and dismissed, continues to haunt her.<sup>208</sup> She observed that it is “not right to try to take someone for eviction when you have no real reason for doing that. It’s even worse because now I’m stuck. I’m still being punished for something I didn’t do because that

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195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*



eviction action prevents me from finding a safe and quiet place to live.”<sup>209</sup> She has modest hopes for the future, stating, “I would love for us to be somewhere where we could just get some peace and not to be judged because of an eviction complaint that was dismissed.”<sup>210</sup>

#### F. Roger Ross

As soon as Roger Ross moved with his wife, Genevieve, and two teenage daughters into an apartment in Newark, New Jersey, it became obvious that the premises were in a state of significant disrepair.<sup>211</sup> The apartment suffered from, among other problems, damaged ceilings and a leaking roof.<sup>212</sup> Mr. Ross described the unit as plagued by a rodent and ant infestation, “with ants marching up and down the walls like it’s an expressway, mice running around and water coming in. But the landlord wouldn’t repair, wouldn’t exterminate and wouldn’t respond.”<sup>213</sup> He added that drug users frequented the hallways and common areas and that residents behaved in menacing and predatory ways.<sup>214</sup>

Mr. Ross researched his rights and learned that he could withhold rent until the premises were rendered inhabitable.<sup>215</sup> But rather than prompt remediation of the problems, withholding rent triggered the landlord’s eviction action.<sup>216</sup> This happened regardless of the fact that Mr. Ross had endeavored to meet with building management to explain that he was not withholding rent due to an inability to pay, but rather because he and his family could not continue to live in an uninhabitable apartment.<sup>217</sup> After several failed attempts, he finally succeeded in having that meeting, where he articulated his concerns and presented documentary evidence to support his claims.<sup>218</sup> Mr. Ross recounted that his complaints were mocked and brushed aside.<sup>219</sup> He said of management’s response, “They were challenging your heart, your mindset, your intelligence, your tenacity. Their attitude is: ‘[w]e own you. How dare you come in here and tell us

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209. *Id.*

210. *Id.*

211. Telephone Interview with Roger Ross (Oct. 31, 2017) (notes on file with author).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

what you don't like? Pay your rent and shut up and be happy you have a place to call home."<sup>220</sup>

Mr. Ross described the feeling of helplessness that followed. He felt as though he was "being tormented where [he] live[d]."<sup>221</sup> He added, "You have a lot of anger there. Especially when it is your children, and your family's safety. And you are working, you are paying a big price, and you are dealing with the hazards of being in that environment. It is a very stressful way to live."<sup>222</sup> He worries most about his daughters: "I'm angry for them. I'm anxious for them. I'm very concerned."<sup>223</sup>

Once the matter landed in housing court, Mr. Ross and his wife decided that instead of fighting back, their family would be better served by finding another place to live.<sup>224</sup> When they made that decision, they had no idea that the filing of the eviction action against them would doom their chances for another rental.<sup>225</sup> Application after application was denied, until Mr. Ross realized that the eviction action had blacklisted him.<sup>226</sup>

Mr. Ross believes that the shortage of affordable housing gives landlords, including egregious wrongdoers, the upper-hand: "[t]hese landlords, they will keep you if you have the money to pay the rent, but if you are complaining about repairs or you are complaining about safety issues, they want you out."<sup>227</sup> He attributes this power dynamic to a larger problem and the shortage of available housing, as "they can fill your spot in a minute, have tenants living like animals, and then at the end of the day, if a tenant makes trouble he is given the boot, and then blacklisted."<sup>228</sup>

Tenants who know their rights "are a liability to wrongdoing landlords," Mr. Ross declared, "because now those landlords have to do what they are supposed to do. Now they have to go and get those security cameras. Now they have to go and get a real superintendent. They want the money, but they don't want any responsibilities."<sup>229</sup> He sees many residential landlords in the inner-city as profiteers,

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220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

simply “looking to pocket as much as they can. But once a tenant becomes a problem [by asserting his rights] he has to go.”<sup>230</sup>

It has taken time for the Ross family to find an apartment. They lived without stability, shuttling from hotel to hotel, and only recently found a new place just outside of Newark.<sup>231</sup> The landlord, who lives on site, has agreed to work with Mr. Ross by helping his family move in and get a fresh start.<sup>232</sup> Mr. Ross remains cautious, but he will allow himself this hope: “[t]here has to be some way to make landlords who are hurting tenants think on a humane level, and when they don’t, their actions need to affect them where it hurts: in the pocket.”<sup>233</sup>

### G. Elaine Piccione

Several years ago while visiting a friend in Newark, New Jersey, Ms. Elaine Piccione became ill. She was rushed to a local hospital where doctors discovered a life-threatening condition.<sup>234</sup> The emergency surgery she received saved her life, but she needed continued treatment.<sup>235</sup> In her seventies, Ms. Piccione moved to Newark to be close to the medical team she credits with saving her life.<sup>236</sup>

Ms. Piccione moved into a Newark apartment complex known as New Community that, among other things, provides housing for seniors.<sup>237</sup> Once there, she found that the building was unsafe, run down, and all but taken over by substance abusers.<sup>238</sup> In her words, “[t]he problem is in that place, when people who are alcoholics or drug addicts come in, take over the building, and poor elderly people who should be living their golden years are afraid to leave their apartments.”<sup>239</sup> Ms. Piccione decided to fight back and brought her grievances all the way to Newark’s city hall.<sup>240</sup>

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230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. Telephone Interview with Elaine Piccione (Oct. 31, 2017) (notes on file with author).

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

As a result of her advocacy efforts, Ms. Piccione was summoned to the New Community management office.<sup>241</sup> Once there, the building manager explained that a neighbor, a drug abuser, had contacted the office and complained that Ms. Piccione had been physically aggressive towards him.<sup>242</sup> Ms. Piccione denied the allegation.<sup>243</sup> Nonetheless, the manager demanded that she vacate the premises within six months, offering six months of free rent as an incentive.<sup>244</sup> Ms. Piccione refused, believing that by vacating she would be admitting to an offense that she asserts she did not commit.<sup>245</sup> As a consequence, she was promptly and summarily evicted.<sup>246</sup>

The landlord gave Ms. Piccione just a few days to pack up her belongings and vacate the premises. In the meantime, the landlord resorted to self-help, a practice that is flatly disallowed by law and punishable civilly as well as criminally.<sup>247</sup> He entered her apartment while she was away and discarded her packed bags.<sup>248</sup> Those bags, filled with Ms. Piccione's belongings as well as childhood photographs and family heirlooms, were never found.<sup>249</sup>

Ms. Piccione was blacklisted because of the eviction action and all of her applications for other rentals were denied.<sup>250</sup> With nowhere else to go, Ms. Piccione appealed to a dear friend who reached out to prospective landlords to vouch for Ms. Piccione's character and neighborliness.<sup>251</sup> Unfortunately, those character references were to no avail.<sup>252</sup> Finally, Ms. Piccione moved into that friend's apartment.<sup>253</sup>

Ms. Piccione reflected on her experiences as a renter with sadness. She is particularly troubled by the treatment that elderly, low-income tenants endure.<sup>254</sup> She said, "I believe New Community itself is set up as a system to fail. They have no heart and they don't care about

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241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. N.J. STAT. ANN. §§ 2A:39-1, 2C:33-11.1 (West 2017).

248. *See* Telephone Interview with Elaine Piccione, *supra* note 234.

249. *Id.*

250. *Id.*

251. *Id.*

252. *See id.*

253. *Id.*

254. *Id.*

conditions there or the people there.”<sup>255</sup> She feels compassion for the residents who remain: “What happened to me I also saw happen to other people, elderly people. It’s not fair to them.”<sup>256</sup>

Ms. Piccione hopes one day to see landlords, tenants, and external agencies working together to end wrongful evictions and the practice of blacklisting. She stated, “Before a seventy- or eighty-year-old has her things put outside or thrown away, why don’t they send an inspector and social worker to see what’s going on there? There’s no help, there’s disregard, and people have nowhere to go for help.”<sup>257</sup> She shared an observation and a closing wish: “There’s a lot of hate and harsh treatment that goes on there. And it’s horrible. I just want elderly tenants to be able to live somewhere where they are not going to feel afraid.”<sup>258</sup>

### III. THE EXPERIENCE OF TENANT BLACKLISTING: COMMON THEMES

Several themes emerge from the experiences recounted here. First, tenant blacklisting occurs without context or nuance.<sup>259</sup> The practice is set in motion irrespective of the merits of the legal action that formed its basis.<sup>260</sup> It even applies when the affected tenant has a viable defense for failing to pay rent.<sup>261</sup> It happens to tenants named in court filings because they rightfully withheld rent until the leased premises were rendered habitable.<sup>262</sup> It even occurs when the given tenant has a defense to the non-payment of rent action.<sup>263</sup> It is experienced by tenants evicted because they fell behind on rent due.<sup>264</sup> It takes place in error.<sup>265</sup> When blacklisting occurs, temporary setbacks become permanent roadblocks to finding new and habitable housing.<sup>266</sup>

Blacklisting frustrates the aims of laws that oblige landlords to maintain residential rentals that are safe and fit for human habitation.

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255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *See supra* notes 84–90 and accompanying text.

260. *See supra* notes 84–90 and accompanying text.

261. *See* discussion *supra* Section II.A.

262. *See* discussion *supra* Section II.A.

263. *See* discussion *supra* Section II.A.

264. *See* discussion *supra* Section II.B.

265. *See* discussion *supra* Section II.G.

266. *See* discussion *supra* Section II.C.

The purpose of the implied warranty of habitability is foiled when tenants are punished for asserting its breach.<sup>267</sup> What is more, the specter of appearing on a blacklist can silence claims and calls for redress from tenants who simply cannot afford to be sued and then shut out of future affordable rental opportunities.<sup>268</sup> That chilling effect, in turn, all but assures the perpetuation of grossly substandard rental housing for the poor.

The experiences of the tenants whose stories are recounted here share certain commonalities. One common theme was the imbalance of power between landlords and tenants, particularly when the subject premises were subsidized. Without exception, tenants spoke of how the scarcity of affordable rental dwellings and the fear of being evicted prompted them to tolerate deplorable living conditions to avoid being viewed as troublemakers.<sup>269</sup> Those who did assert their rights did not anticipate the long lasting effects that blacklisting would have on their lives.<sup>270</sup>

Those who endeavored to assert their rights when their leased premises violated standards of habitability reported feeling unheard, ignored, and then powerless as their complaints went unheeded.<sup>271</sup> A certain fatalism infects the narratives as those who complained saw that fighting back did them more harm than good, resulting in eviction and then blacklisting.<sup>272</sup> The tenants here clearly perceived that being involved in a prior landlord-tenant court proceeding cast them as “bad tenants,” difficult, or both.<sup>273</sup> Their attempts to provide context or explanation to rebut those inferences were unsuccessful.<sup>274</sup>

The tenants who went through the judicial process felt that the system was stacked against them before they entered the courthouse.<sup>275</sup> Once involved in the judicial system, their experiences in court left them with the indelible impression that there was no concern for *why* the rent was withheld and only for whether the rent owed was in hand.<sup>276</sup> If rent in arrears was not remitted at the time the case was called, the tenant would be summarily evicted.<sup>277</sup>

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267. *See, e.g.*, Franzese, Gorin & Guzik, *supra* note 27, at 41.

268. *Id.*

269. *See supra* Part II.

270. *See supra* Part II.

271. *See supra* Part II.

272. *See supra* Part II.

273. *See supra* Part II.

274. *See supra* Part II.

275. *See supra* Part II.

276. *See supra* Part II.

277. *See supra* Part II.

All described experiences were with neglectful and/or retaliatory landlords who, from the tenants' view, seemed interested only in collecting rent and receiving government subsidies when available.<sup>278</sup> Each tenant wondered why landlords, whose rentals betray basic standards of safety and habitability, continued to receive government entitlements for those substandard dwellings.<sup>279</sup> Those whose experiences are recounted here understood that as long as that revenue flows, tenants are left powerless.<sup>280</sup>

Tenants with families spoke of the difficult conversations that blacklisting required them to have with their children and spouses.<sup>281</sup> They recounted the pain of having to tell those who depended on them that it had become just about impossible to be accepted into a safer and healthier living environment.<sup>282</sup> They described the experience of hopes dashed with each subsequent denial of their rental application.<sup>283</sup>

Most of the people who told their stories here recounted their circumstances with a certain resignation and weariness, as if the indignities imposed by grossly substandard housing “come with the territory” of living hand to mouth.<sup>284</sup> Their reflections in that regard corroborated the observation that few working poor “have the luxury of rage.”<sup>285</sup> Still, while most believed that when it came to housing they lacked both choice and leverage, none were prepared for the enduring effects that blacklisting caused.<sup>286</sup>

#### IV. TOWARDS MEANINGFUL FEDERAL AND STATE REFORM

Several federal and state reform efforts have emerged in recent years in response to calls for reform of the practice of tenant blacklisting.<sup>287</sup> In 2017, U.S. Senator Cory Booker (D-NJ) introduced legislation into Congress that would curb tenant screening practices

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278. *See supra* Part II.

279. *See supra* Part II.

280. *See supra* Part II.

281. *See supra* Part II.

282. *See supra* Part II.

283. *See supra* Part II.

284. *See supra* Part II.

285. DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* ix (2004).

286. *See supra* Part II.

287. *See, e.g.*, Colleen O’Dea, *Legislating Against Blacklisting to Help Tenants Find Better Housing*, NJ SPOTLIGHT (July 18, 2017), <http://www.njspotlight.com/stories/17/07/18/legislating-against-blacklisting-to-help-tenants-find-better-housing> [https://perma.cc/J24S-N5EH].

by amending the Fair Credit Reporting Act.<sup>288</sup> Such an amendment would exclude from tenant screening reports any landlord-tenant court matter that did not result in a judgment of possession in favor of the landlord and all matters that are more than three years old.<sup>289</sup> Its provisions would help to assure fair and accurate reporting and guarantee that tenants receive a free copy of the screening report and the opportunity to correct inaccuracies through a central clearinghouse maintained by the Consumer Financial Protection Bureau (“CFPB”).<sup>290</sup> That proposed federal legislation mirrors in certain respects some recent state and local legislative enactments.<sup>291</sup> Still, passage of the federal bill is by no means assured.<sup>292</sup>

On the state level, New York, California, Minnesota, and Wisconsin are among the few jurisdictions to enact statutory reform measures aimed at assuring accuracy and fairness in reporting.<sup>293</sup> In 2015, the New York City Council (“Council”) passed a bill to render a landlord’s rejection of a tenant’s rental application unlawful when that rejection is based solely on the candidate’s appearance on a list provided by a tenant screening service.<sup>294</sup> The law endeavors to

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288. *See* Tenant Protection Act, S. 1758, 115th Cong. (2017). The Fair Credit Reporting Act “promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies,” but does not impose time limitations on the information collection. *See A Summary of Your Rights Under the Fair Credit Reporting Act*, FED. TRADE COMM’N, <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf> [<https://perma.cc/4CGX-HLPP>].

289. Tenant Protection Act, S. 1758, 115th Cong. (2017).

290. *Id.*

291. *See, e.g.*, MINN. STAT. ANN. § 504B.241 (West 2016); N.Y.C. ADMIN. CODE §§ 20-807, 20-808 (2017); A.B. 2819, 2015–2016 Gen. Assemb., Reg. Sess. (Cal. 2016); Wis. Sup. Ct. R. 72.01(9), <https://www.wicourts.gov/sc/scrule/DisplayDocument.pdf?content=pdf&seqNo=171244> [<https://perma.cc/HBW5-7LU5>].

292. Tenant Protection Act, S. 1758, 115th Cong. (2017); *see also* S. 1758: *Tenant Protection Act*, GOVTRACK, <https://www.govtrack.us/congress/bills/115/s1758/details> [<https://perma.cc/C5D9-ZU39>]. The bill has no cosponsors, and no vote has been called to get it out of committee. *Id.*

293. *See generally* Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records*, CLEARINGHOUSE COMMUNITY (Sept. 2017), <http://povertylaw.org/clearinghouse/article/blacklisting> [<https://perma.cc/PZ X2-9HJE>].

294. N.Y. City Council Res. 0625-2015, 2015 Council (N.Y. 2015), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2141275&GUID=A28C7554-0B3F-4529-8CC2-455DBD9E6D3D> [<https://perma.cc/AL3L-G53E>] (calling on the state legislature to pass and the Governor to amend the administrative code of the city of New York). The proposed bill adds the following language to the list of protected classes: “because such person or persons were a party in a past or current landlord-tenant action or housing court proceeding, except where the tenant or tenants have not satisfied the terms of an order issued in such action or proceeding.” *Id.* The list of protected classes currently includes “race, creed, color, national origin,



further insulate tenants by deeming one who participates in a housing proceeding a member of a protected class and therefore under the purview of the New York City Administrative Code.<sup>295</sup> As one of the bill's sponsors noted, “[n]o one should be condemned to being homeless just because they were in housing court.”<sup>296</sup> In 2016, the Council introduced another bill, Licensing Tenant Screening Bureaus,<sup>297</sup> to require that residential tenant screening reports include the disposition of each matter cited.<sup>298</sup> The ordinance requires tenant screening bureaus to be licensed by the city's Department of Consumer Affairs (“DCA”).<sup>299</sup> In doing so, the bill “would grant DCA enforcement authority, would establish civil penalties for violations, and would create a private right of action for tenants and prospective tenants injured by violations.”<sup>300</sup>

In 2016, Minnesota enacted a reform measure, entitled “Residential Tenant Reports; Disclosure and Corrections,” aimed at assuring the accuracy of tenant screening reports.<sup>301</sup> The statute requires that the affected tenant receive a copy of the report and mandates that tenants be given the opportunity to contest any perceived inaccuracies that the report might contain.<sup>302</sup> The reporting service must reinvestigate reports that are disputed and must correct the record when mistakes are found or reported entries are unverifiable.<sup>303</sup> To prevent the reporting of stale claims, and to facilitate aims of fairness and equity, the statute gives courts the “inherent authority” to seal eviction records when appropriate.<sup>304</sup>

Also in 2016, California enacted a reform measure, entitled “Unlawful Detainer Proceedings,” to prevent access to eviction

gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, [or] because children are, may be or would be residing with such person or persons.” N.Y.C. ADMIN. CODE §§ 20-807, 20-808 (2017).

295. *See supra* note 294 and accompanying text.

296. *See* Barker & Silver-Greenberg, *supra* note 39 (quoting Councilman Benjamin J. Kallos, a Manhattan Democrat, who introduced the legislation to the City Council's Consumer Affairs Committee).

297. N.Y.C. ADMIN. CODE §§ 20-807, 20-808 (2017).

298. N.Y. City Council Res. 1250, 2016 Council (N.Y. 2016), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2813474&GUID=42E16D45-2E30-47DB-B82C-97A3FFAF187F&FullText=1> [<https://perma.cc/R7M7-N3D7>].

299. *Id.*

300. *Id.*

301. MINN. STAT. ANN. § 504B.241 (West 2017).

302. Kleysteuber, *supra* note 12, at 1368.

303. MINN. STAT. ANN. §§ 504B.241(1)(b), (2).

304. *Id.* §§ 484.014, 504B.345(1)(c)(2).

records until sixty days after the eviction action was filed.<sup>305</sup> The law bars the disclosure of any matter in which the named tenant prevailed within that sixty-day window.<sup>306</sup>

In Wisconsin, court rules stipulate that dismissed cases are visible online for only two years,<sup>307</sup> but this rule is rarely followed, which often gives landlords access to records that theoretically should be sealed.<sup>308</sup>

The New Jersey legislature now has before it a bill that would keep court filing records in eviction proceedings confidential and unavailable to the public for a period of time.<sup>309</sup> The bill, which has bipartisan support, would allow those records to be subsequently disclosed only if the given matter did not result in a resolution favorable to the tenant.<sup>310</sup> The proposed law would also add court filing discrimination to the list of discriminatory actions prohibited by the New Jersey Law Against Discrimination.<sup>311</sup> Among other remedies, the bill provides aggrieved parties with the right to seek multiple damages, penalties, and attorneys' fees.<sup>312</sup>

## V. FINDING MORE COMPREHENSIVE SOLUTIONS

While meaningful reform to mitigate the harsh consequences of tenant blacklisting is necessary, that effort becomes painstakingly inadequate without a national resolve to stem the high incidence of evictions in the first place. That commitment must begin with the expansion of affordable housing initiatives. Sociologist Matthew Desmond notes that, “the high cost of housing is consigning the urban poor to financial ruin. We have ushered in a sad and unreasonable moment in the history of the United States if thousands of poor families are dedicating upward of eighty and ninety percent of their income to rent.”<sup>313</sup>

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305. A.B. 2819, 2015–2016 Gen. Assemb., Reg. Sess. (Cal. 2016).

306. Kleysteuber, *supra* note 12, at 1370; *see also* A.B. 2819, 2015–2016 Gen. Assemb., Reg. Sess. (Cal. 2016).

307. Wis. Sup. Ct. R. 72.01(9) (2016), <https://www.wicourts.gov/sc/scrule/DisplayDocument.pdf?content=pdf&seqNo=171244> [<https://perma.cc/HBW5-7LU5>].

308. *See CCAP: The Good, the Bad, and the Ugly*, TENANT RES. CTR. (June 10, 2014), <http://www.tenantresourcecenter.org/ccap> [<https://perma.cc/X387-BJH5>].

309. S.B. 3037, 217th Leg., 2d Reg. Sess. (N.J. 2017).

310. *Id.*

311. *Id.*; N.J. STAT. ANN. § 10:5-12 (West 2017).

312. S.B. 3037, 217th Leg., 2d Reg. Sess. (N.J. 2017).

313. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 122 (2012).

Desmond's study of the experiences of Milwaukee tenants facing eviction<sup>314</sup> found that "an expansion of aid to families experiencing a drastic but temporary loss of income could help thousands stay in their homes."<sup>315</sup> He describes how "stopgap measures" in the form of emergency housing aid could avert the evictions of those who suffer a financial setback, whether because of medical emergency, lost wages, provisional suspension of public assistance, or any of a number of other reasons.<sup>316</sup> His survey of the Milwaukee County eviction records showed that when "tenants facing eviction were given access to emergency housing aid from the American Recovery and Reinvestment Act of 2009, the city's eviction rate fell by 15%."<sup>317</sup>

But the solution requires more than housing aid. Low-income tenants facing eviction must be afforded free legal counsel. Across the board, tenants who are represented by an attorney are far less likely to suffer eviction than those without legal representation.<sup>318</sup> Today the overwhelming majority of those sued for eviction for non-payment or late payment of rent are without an attorney or even a baseline knowledge of their rights.<sup>319</sup> Few are equipped to fight back when the premises that they lease are unsafe, unsanitary, and unsound.<sup>320</sup> None can ever be adequately prepared for the devastation that displacement and homelessness wreak.<sup>321</sup>

Without legal representation, tenants who find themselves in the crosshairs of a wrongful eviction action become easy targets. The principal defenses to nonpayment of rent go unheard.<sup>322</sup> For

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314. *See id.* at 91.

315. *Id.* at 123.

316. *Id.*

317. *Id.*

318. *Id.*

319. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About when Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 47 (2009) ("Tenants rarely are represented by counsel, while the representation rate of landlords varies from low rates in some courts, to highs of 85–90% in others.").

320. *See* Franzese, Gorin & Guzik, *supra* note 27, at 1 (finding that only 80 of the 40,000 residential eviction actions brought in Essex County, New Jersey in one year alone had tenants asserting their most basic right to a safe and inhabitable dwelling).

321. LongTimeMother, *Soon to Be Homeless – Facing Your Fears*, TOUGH NICKEL (Jan. 5, 2018), <https://toughnickel.com/frugal-living/10-Tips-For-A-Better-Life-When-You-Are-Homeless> [<https://perma.cc/6QSB-JH4K>].

322. *See* Franzese, Gorin & Guzik, *supra* note 27, at 2; *see also* Joseph G. Ramsey, *Evict the Landlords*, JACOBIN MAG. (Sept. 6, 2016), <https://www.jacobinmag.com/2016/09/evicted-landlords-tenants-rent-housing-milwaukee-racism> [<https://perma.cc/RQ3U-2J3P>].

example, the aforementioned implied warranty of habitability<sup>323</sup> assures residential tenants that the apartments they rent will be livable, safe, and in good condition, yet, in most cases, that assurance goes unheeded because the injured tenant is without a lawyer to assert its breach.<sup>324</sup> For a tenant to appear in court without legal representation requires that she navigate on her own a procedural labyrinth rife with traps for the unwary.<sup>325</sup> To successfully contest an eviction action involves substantive knowledge of the law and the defenses available for nonpayment of rent.<sup>326</sup> In other words, it requires the effective assistance of counsel.

For a tenant living paycheck to paycheck to even enter a court appearance to defend an eviction action can require taking a day off from work, losing wages, and securing child care.<sup>327</sup> That struggle is apt to be pitifully useless when the *pro se* tenant who does make it to court is ill-prepared for what lies ahead.<sup>328</sup> For instance, a recent National Public Radio investigation revealed how, in Newark's housing court, counsel for the landlord can, contrary to the law and rules of professional responsibility, seek out the unrepresented tenant in that landlord's eviction action, elicit information from her, and then, once in court, use that very information to secure a swift eviction judgment against her.<sup>329</sup>

Even the non-substantive aspects of entering a court appearance are bewildering for *pro se* litigants. Without a lawyer accustomed to what can be a loud and crowded courtroom roll-call, a tenant can suffer default judgment simply because she did not hear her name when it was called.<sup>330</sup> Sometimes the unrepresented tenant gets to

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323. See Franzese, Gorin & Guzik, *supra* note 27, at 1 (“The implied warranty of habitability is an implicit promise that every residential landlord makes to provide tenants with premises suitable for basic human dwelling.”).

324. *Id.* at 6.

325. See generally Scherer, *supra* note 6.

326. *Id.* at 702.

327. See Franzese, *supra* note 27.

328. See *id.* at 17.

329. Karen Rouse, *Why Tenants Lose when They Go Up Against Landlords in Newark*, WNYC (Mar. 6, 2017), <http://www.wnyc.org/story/why-tenants-lose-against-landlords-newark> [<https://perma.cc/K7VC-WCSK>]; Williams, *supra* note 10, at 1114 (“Tenant blacklisting is also unlawful because it is in derogation of the public policy encouraging tenants to use the courts to resolve disputes with their landlords.”). Citizens have the constitutional right to “petition the government” and public policy “encourage[s] judicial resolution of legal disputes” but “tenant blacklisting is in derogation” of these rights and policies “because it punishes tenants for seeking judicial resolution of their legitimate disputes with landlords.” *Id.* at 1122.

330. *Landlords: Going to Court*, LAWHELP, <https://www.lawhelp.org/dc/resource/landlords-going-to-court> [<https://perma.cc/6YQR-RQH4>].

court only to be told that an adjournment has been granted and that she must return on a different date, thereby necessitating another day's lost wages if she gets that additional day off from work without losing her job.<sup>331</sup> Once before the judge, a tenant without a lawyer and without the rent due in an eviction action for nonpayment of rent is all but assured of the entry of a judgment against her.<sup>332</sup>

Last year, the New York City Council passed a ground-breaking law that provides on a pilot, five-year basis free counsel to low-income tenants facing eviction.<sup>333</sup> The bill, entitled Right to Counsel in Housing Court, cited in its legislative history the fact that there is a seventy-seven percent reduction in eviction judgments entered against tenants who are represented by counsel in Housing Court, compared to those without an attorney.<sup>334</sup> The bill's sponsors note the cost effectiveness of affording tenants' legal representation, citing its capacity to help tenants and taxpayers avoid the high costs of housing displacement, disruption, and homelessness.<sup>335</sup> In the words of one of the bill's sponsors, "[n]ever will tenants be evicted to homeless shelters because they could not afford a lawyer."<sup>336</sup>

In response to concerns over the costs of funding a right to counsel, a report<sup>337</sup> issued by an independent global financial advisory firm determined that in addition to keeping 5200 families out of NYC's shelter system, assuring counsel to low-income tenants facing eviction would "not only offset the cost of counsel, it would save NYC an additional \$320 million each year."<sup>338</sup>

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331. See generally Angela Pham, *How to Handle Housing Court Without a Lawyer*, METRO. COUNCIL ON HOUS. (Nov. 2015), [http://metcouncilonhousing.org/news\\_and\\_issues/tenant\\_newspaper/2015/november/how\\_to\\_handle\\_housing\\_court\\_without\\_a\\_lawyer\\_0](http://metcouncilonhousing.org/news_and_issues/tenant_newspaper/2015/november/how_to_handle_housing_court_without_a_lawyer_0) [<https://perma.cc/7SKR-ZQG9>].

332. Emily Jane Goodman, *Facing Eviction – Without the Right to Counsel*, GOTHAM GAZETTE (June 30, 2008), <http://www.gothamgazette.com/development/4014-facing-evictions-without-the-right-to-counsel> [<https://perma.cc/76C4-4JAT>].

333. Shibani Gokhale, *City Bar, Others Laud Passage of Civil 'Gideon' Bill*, N.Y. L.J. (July 21, 2017), <http://www.law.com/newyorklawjournal/almID/1202793645655/?sreturn=20170929152827> [<https://perma.cc/498D-X7PC>].

334. *Id.*

335. *Id.*

336. *Id.*

337. See generally STOUT RISIUS ROSS, INC., THE FINANCIAL COST AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL IN EVICTION PROCEEDINGS UNDER INTRO 214-A (2016), [http://www2.nycbar.org/pdf/report/uploads/SRR\\_Report\\_Financial\\_Cost\\_and\\_Benefits\\_of\\_Establishing\\_a\\_Right\\_to\\_Counsel\\_in\\_Eviction\\_Proceedings.pdf](http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf) [<https://perma.cc/6G77-4KU3>].

338. Susanna Blankley & Andrew Scherer, *Right to Counsel in Housing Court: The Bottom Line*, HUFFINGTON POST (Apr. 18, 2017, 11:56 AM), <https://www.huffingtonpost.com/new-york-legal-assistance-group/right-to-counsel-in->

### CONCLUSION

Hemming the practice of tenant blacklisting must become part of a larger effort to make real the assurances that rental housing, and particularly affordable housing, will be safe, inhabitable, and stable. Those guarantees cannot be sustainably vindicated when the tenants who assert them are consigned to a registry that irreparably tarnishes their rental history. Regulating tenant screening agencies and placing limits on landlords' ability to use data culled from screening reports will help ensure that those impacted by eviction or any other housing court proceeding are not denied future access to housing.

We have reached a tipping point in this nation. Unprecedented income and wealth inequality puts the plight of the working poor and those denied the promise of decent housing into sharper focus. We must do more to prevent the suffering wrought by housing displacement, some of which is compounded by the subversive practice of tenant blacklisting. Ending that practice, as part of an agenda for systemic reform, is an important step.

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housi\_b\_9720712.html [https://perma.cc/7BPK-EUB9]. New York City's law will also require the city to offer "brief legal guidance to all tenants regardless of their income." See Abigail Savitch-Lew, *City Tackles Roll-Out of Right to Counsel in Housing Court*, CITY LIMITS (Jan. 17, 2018), <https://citylimits.org/2018/01/17/city-tackles-roll-out-of-right-to-counsel-in-housing-court/> [https://perma.cc/4ACM-8U34]. The administration's first report on the roll-out is due in September of 2018. *Id.*