

# **Recommendations on the Department of Justice's Administrative Enforcement of Title VI and the Safe Streets Act**

## **Local Nuisance Ordinances and Crime-Free Housing Programs**

Submitted by: the American Civil Liberties Union, National Housing Law Project, Lawyers' Committee for Civil Rights Under Law, NAACP, National Fair Housing Alliance, National Network to End Domestic Violence, and the Shriver Center on Poverty Law

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We write to you in response to the September 15, 2021 memorandum, *Review of the Department's administrative enforcement of Title VI and the Safe Streets Act*. As the Department of Justice (DOJ) evaluates how to better prevent federal public dollars from financing illegal discrimination, we wanted to provide you with information on an issue of particular concern to our organizations: the growing number of local governments who are recipients of federal financial assistance that have crime-free housing programs and/or nuisance property ordinances. These ordinances target, criminalize, and evict renters of color, persons with disabilities, and survivors of violence, and should be discouraged accordingly.

We ask the Civil Rights Division, the Office of Justice Programs, the Office of Community Oriented Policing Services, and the Office on Violence Against Women to consider these laws and programs when examining criteria for compliance reviews and complaint investigations; making recommendations for improvements to strengthen grantees' data collection and reporting efforts; identifying any measures that would enhance coordination between the Department's grant-making and enforcement components; examining any necessary changes to strengthen the Department's compliance procedures; and assessing whether the Department's Title VI and SSA regulations, coordination regulations, enforcement guidelines, or other regulations or guidance should be revised. An improved set of criteria and methods for compliance reviews, coordination, and enforcement can reduce the prevalence of these discriminatory and harmful crime-free programs and nuisance property ordinances by federal funding recipients.

### **I. Background on Crime-Free Housing Programs and Nuisance Property Ordinances**

Since the 1990s, there has been a proliferation of local jurisdictions adopting crime-free housing programs and nuisance property ordinances targeted at rental property owners and prospective and actual renters. These programs and ordinances threaten the housing of the most vulnerable tenants, particularly low-income tenants of color, survivors of domestic violence, and tenants with disabilities. While they vary slightly by jurisdiction, crime-free programs typically require or encourage property owners to: (1) utilize a "crime free lease addendum," which require the eviction of the entire household if one tenant is accused of violating the lease addendum (typically by having any contact with the police – convictions and often even arrests are not required); (2) conduct criminal background checks of applicants, as well as ongoing screening for new criminal activity by current tenants; and (3) participate in mandatory training on operating "crime-free housing," which encourage landlords to police their property in potentially discriminatory ways. The programs are typically operated by local law enforcement

agencies. Nuisance ordinances, which often go hand-in-hand with crime-free programs, single out properties where alleged “nuisance” activity—such as calls for emergency services, alleged misdemeanor or felony criminal activity, or local ordinance violations such as noise disturbances—has occurred. Such ordinances and programs aim to hold a tenant and/or owner responsible for this alleged conduct by demanding the eviction of all of the tenants in a home and fining or otherwise penalizing landlords who do not comply with that demand.

In 2016, HUD issued Guidance on the Application of Fair Housing Act Standards on the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services.<sup>1</sup> In this guidance, HUD noted that jurisdictions often fail to distinguish between perpetrating acts of domestic violence and being the victim of such violence when identifying “nuisance” conduct. This is especially true when overly broad nuisance and crime-free ordinances define nuisance behavior as “conduct such as disturbing the peace, excessive noise, [or] disorderly conduct,” which may cover domestic violence incidents.<sup>2</sup> As a result, many nuisance ordinances and crime-free programs impose unreasonable and life threatening choices on survivors of domestic violence, the vast majority of whom are women – forcing them to choose between calling for emergency assistance or putting their housing at risk. HUD also noted that many ordinances and crime-free programs negatively impact communities of color and persons experiencing disabilities.<sup>3</sup> It is important to note the intersectional discrimination experienced by survivors of color who often become the target of these laws and programs.<sup>4</sup> Black women and survivors of gender-based violence are disproportionately harmed.<sup>5</sup>

As has been well-documented by Professor Deborah Archer and others, these programs and ordinances have been used to maintain residential segregation and racial boundaries within a community.<sup>6</sup> They tacitly authorize discriminatory policing and permit white neighbors to influence the racial make-up of the neighborhood, by invoking the ordinance or program to push for the eviction of Black and Latinx neighbors. This is especially true where the threshold for nuisance enforcement is low. In many jurisdictions, a few calls to the police, even if they do not result in an arrest, charge, or conviction, can result in a person or household being labeled a “nuisance.”

Jeopardizing the housing stability of people who have had contact with the criminal legal system has broad implications, given the disproportionate rates at which people of color are arrested and incarcerated. Yet this remains a key aspect of many crime-free housing programs and nuisance ordinances, both in terms of aggressive criminal records screening of tenant

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<sup>1</sup> Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), available at <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 13.

<sup>4</sup> See, e.g., Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, 7 Sociological Science 649-662 (Dec. 2020).

<sup>5</sup> Matthew Desmond & Nicole Valdez, Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women, 78 Am. Sociological Rev. 117-141 (2013), [http://scholar.harvard.edu/files/mdesmond/files/unpolicing.asr2013.online.supplement\\_0.pdf](http://scholar.harvard.edu/files/mdesmond/files/unpolicing.asr2013.online.supplement_0.pdf).

<sup>6</sup> See, e.g., Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019); Deborah N. Archer, ‘Crime-Free’ Housing Ordinances, Explained, The Appeal (Feb. 17, 2021), <https://theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained/>.

applicants, often done by the local government or at their direction, and the aggressive efforts to force the eviction of tenants when the police are called to their homes. These programs and policies are likely to run afoul of the Title VI, the Safe Streets Act, and the Fair Housing Act given the disproportionate contacts that people of color, people with disabilities, survivors of domestic violence, and members of protected classes have with the criminal legal system.<sup>7</sup> As explained by HUD's 2016 Guidance on the application of the FHA to the use of criminal records by landlords, arrests alone are not evidence of criminal activity and not all criminal convictions are relevant to the inquiry of whether someone would make a good tenant.<sup>8</sup> Adopting a policy of evicting tenants based on arrests that do not lead to eviction has an unjustifiably discriminatory impact. At the same time, the blanket policy of excluding individuals from housing who have convictions typically violates civil rights protections.<sup>9</sup>

## **II. Law Enforcement Agencies across the Country are Implementing Policies that Undermine Effective Policing and the Housing Security of Residents in their Communities, Particularly People of Color, Survivors of Domestic Violence, and People with Disabilities.**

As explained above, it is usually police departments that are charged with enforcing local nuisance and crime-free ordinances and housing programs.<sup>10</sup> Police officers carry out a wide range of actions, which vary depending on the policy in question, but frequently include notifying landlords of alleged criminal activity, training landlords about the law or program, deciding when properties are in violation of the law or program, and requiring landlords to penalize or evict tenants. Police enforcement of these policies has resulted in individuals being evicted or denied housing throughout the country.

Research has established that the adoption of these laws and policies are often motivated by discriminatory animus, and/or that they are enforced with discriminatory effects. For example, federal lawsuits challenging these ordinances and programs in Hesperia, CA, Bedford, OH, Faribault, MN, and Peoria, IL all detailed the racial animus that led to their adoption.<sup>11</sup> Researchers also have demonstrated that these laws and policies particularly harm people of color, survivors of domestic violence, and people with disabilities, endangering their housing and creating greater distrust of law enforcement.<sup>12</sup>

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<sup>7</sup> [Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#) (April 4, 2016).

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> See, e.g., Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019); Deborah N. Archer, 'Crime-Free' Housing Ordinances, Explained, *The Appeal* (Feb. 17, 2021), <https://theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained/>.

<sup>11</sup> See *United States v. City of Hesperia et al.*, First Am. Compl. and Demand for Jury Trial, No. 5:19-cv-02298 (C.D. Cal. Sept. 10, 2020); *Victor Valley Fam. Res. Ctr. v. City of Hesperia*, Compl. For Injunctive and Declaratory Relief and Damages, No. 5:16-CV-00903 (C.D. Cal. May 4, 2016); *Somai v. City of Bedford*, No. 1:19-CV-373, Second Am. Compl. (N.D. Ohio Jan. 30, 2020); *Jones v. City of Faribault*, Am. Compl. For Declaratory and Injunctive Relief and Damages, No. 0:18-CV-01643 (D. Minn. June 29, 2018); *HOPE Fair Housing Center v. City of Peoria, IL.*, No. 17-cv-01360, Compl. (C.D. Ill. Aug. 10, 2017).

<sup>12</sup> See, e.g., NYCLU & ACLU, *More Than A Nuisance: The Outsized Consequences of New York's Nuisance Ordinances* 13 (2018), [https://www.nyclu.org/sites/default/files/field\\_documents/nyclu\\_nuisancereport\\_20180809.pdf](https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf); Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, Urb. Publ'n (Nov. 8, 2017), [https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2513&context=urban\\_facpub](https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2513&context=urban_facpub); Gretchen W.

Many residents, once learning that they could be evicted for seeking police or emergency assistance, stop calling 911 and therefore sacrifice access to services and protection. These types of laws and programs thus undermine effective law enforcement, by chilling the reporting of criminal activity and skewing crime data. For that reason, law enforcement officials have recognized that local nuisance ordinances and crime-free housing programs thwart their efforts to build relationships with communities and instead divert police attention from investigating serious criminal activity.

### **III. Examination of Local Nuisance Ordinances and Crime-Free Housing Programs Raises Significant Intersectional Concerns and Should be Prioritized in DOJ's Implementation of Title VI and the Safe Streets Act.**

We urge the DOJ to prioritize this issue while reviewing administrative enforcement and compliance efforts of Title VI and the Safe Streets Act. As explained above, local nuisance ordinances and crime-free housing programs raise serious concerns under both Title VI of the Civil Rights Act,<sup>13</sup> which prohibits discrimination on the basis of race, color, or national origin, and the Safe Streets Act,<sup>14</sup> which prohibits discrimination on the basis of race, color, national origin, religion, and sex in connection with any program or activity funded with specific law enforcement assistance funds. As an issue that implicates both policing practices and fair housing, and particularly affects people of color and survivors of domestic violence, it would be most effectively addressed through a comprehensive DOJ approach that recognizes the intersectional harms, takes compliance and enforcement action when necessary, and proactively educates funding recipients about these policies' civil rights implications. DOJ could also draw on its prior and current work, including litigation challenging jurisdictions' discriminatory policing practices that also deny housing opportunities and guidance on gender-biased policing of domestic and sexual violence, as well as the body of work HUD has developed.<sup>15</sup>

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Arnold, *From Victim to Offender: How Nuisance Property Laws Affect Battered Women*, J. of Interpersonal Violence 1 (2016), <https://drive.google.com/file/d/0B4jt0vmC0QwES2NwN1ZFb3kxRVE/view?resourcekey=0-9DrJKiLuBVxzc1Fqk07PBQ>; ACLU, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York 2* (2015), [https://www.aclu.org/files/field\\_document/equ15-report-nuisanceord-rel3.pdf](https://www.aclu.org/files/field_document/equ15-report-nuisanceord-rel3.pdf); Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 28 Am. Socio. Rev. 117 (2012), [https://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr\\_0.pdf](https://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf).

<sup>13</sup> 42 U.S.C. § 2000d.

<sup>14</sup> 34 U.S.C. § 10228(c)(1).

<sup>15</sup> See, e.g., *United States v. City of Hesperia*, First Am. Compl. and Demand for Jury Trial, No. 5:19-cv-02298 (C.D. Cal. Sept. 10, 2020); *United States v. County of Los Angeles*, Compl., No. 2:15-cv-03174 (C.D. Cal. Apr. 28, 2015); Dep't of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2015), <https://www.justice.gov/opa/file/799366/download>; Voluntary Compliance Agreement between U.S. Dep't of Hous. and Urb. Dev. Off. of Fair Hous. and Equal Opportunity and the City of Hemet, CA, HUD Case NO. 09-20-0002-6 (Dec. 10, 2020), <https://www.hud.gov/sites/dfiles/FHEO/images/Hemet%20-%20HUD%20Voluntary%20Compliance%20Agreement%20-%20FINAL%20but%20not%20signed.pdf>; U.S. Dep't of Hous. and Urb. Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>; U.S. Dep't of Hous. & Urban Dev., Conciliation Agreement between U.S. Dep't of Hous. and Urb. Dev. and Municipality of Norristown, PA, Secretary Initiated Complaint Nos. 03-13-0277-8 and 03-13-0277-9 (Sept. 17, 2014), <https://www.aclu.org/legal-document/hud-v-norristown-hud-conciliation-agreement>.

The following are factors that DOJ could use to flag recipients' laws or programs for further review:

- A vague or broad definition of disorderly conduct, nuisance, or other activity that triggers violation of the law or program, granting wide discretion to police officers to find violations;
- Inclusion of any number of police calls for service as possibly triggering violation of the law or program;
- Inclusion of domestic violence, criminal trespass, or disturbances as possibly triggering violation;
- Encouragement of evictions of tenants, without regard to whether the underlying conduct related to a protected status such as mental disability, is based on crimes committed against tenants, or is based upon police contact that does not result in a conviction or upon behavior unrelated to the tenant's ability to substantially perform under the terms of the lease;
- Required use of a crime-free lease addendum, authorizing eviction based on any alleged criminal activity, including alleged conduct by minors under state juvenile delinquency laws;
- Encouragement of exclusion of housing applicants based on criminal record screening, without an individualized consideration of the type or age of the record or mitigating circumstances;
- Adoption of an ordinance or program based on a perceived change in the demographics of a community connected to race, national origin, disability, or gender;
- Enforcement of the ordinance or program by police departments accused or suspected of discriminatory policing practices on the basis of race, national origin, and/or gender;
- Ordinances or programs that rely upon complaints by neighbors, who often use the process to exclude and target renters of color in order to remove them from the community.

#### **IV. The DOJ Should Issue Legal and Policy Guidance as well as Data Collection and Reporting Requirements that Could Show the Discriminatory Effects of the Laws and Programs and Discourage Grantees from Adopting them.**

In considering whether to revise or update guidance or regulations, the DOJ should prioritize revisions that address the critical intersectional harms we described above. Helpful guidance could include a Dear Colleague letter or joint guidance with HUD which further describes how federal funding recipients' enforcement of these ordinances and programs act contrary to Title VI and other civil rights laws, as well as the Safe Streets Act, and potentially jeopardize their continued access to those funds.

Other than data collected through open records requests or through litigation against local governments with crime free programs and nuisance property ordinances, there is no reporting data from local police, sheriff's offices, or local governments about the level and type of enforcement, any disparities in enforcement by protected class, the impact on housing stability and the racial demographics of communities and neighborhoods, the use of arrests or convictions to automatically deny tenants admission or evict them, the use of databases to track arrests and/or

convictions of tenants/applicants and who has access to those databases, and the impact of these programs on survivors of violence, including the reduction in the number of survivors seeking assistance from law enforcement. Grantees could be asked to report if they have a crime-free program and/or nuisance ordinance, and if they do, be obligated to provide additional data collection in the areas described above.

## **V. Conclusion**

Thank you for the opportunity to provide information on how better to ensure that federal public dollars are not being used to finance illegal discrimination, particularly as it relates to local governments who are recipients of federal financial assistance and have crime-free programs and/or nuisance property ordinances. We welcome the opportunity to continue to discuss this important matter with you. Please feel free to contact Sandra Park of the ACLU ([spark@aclu.org](mailto:spark@aclu.org)) and Kate Walz ([kwalz@nhlp.org](mailto:kwalz@nhlp.org)) and Natalie Maxwell ([nmaxwell@nhlp.org](mailto:nmaxwell@nhlp.org)) of the National Housing Law Project with any questions.