

Testimony of Carmelyn P. Malalis
Chairperson and Commissioner, New York City Commission on Human Rights
Before the New York Advisory Committee to the U.S. Commission on Civil Rights
June 23, 2021

Good afternoon members of the New York Advisory Committee to the U.S. Commission on Civil Rights. Thank you for the opportunity to speak with you today about housing discrimination in New York City and its impact on, and relationship to, the eviction crisis in New York. My name is Carmelyn P. Malalis and I am the Chairperson and Commissioner of the New York City Commission on Human Rights (“Commission”).

This past year and a half has been a historically difficult time as a result of the pandemic and the strains it has placed on people’s family, work, and personal lives. The pandemic has laid bare many longstanding problems in our communities, including race- and gender-based inequities and the lack of economic and housing security that are at the heart of today’s inquiry. The history of displacement, particularly of Black, Indigenous, and other people of color, has long roots in New York City tracing back to the original dispossession of the Lenape people from their homeland, an experience shared by other Indigenous peoples across this country. New York City’s history is stained by examples of intentional exclusion and displacement of communities of color through a variety of practices. After the Great Depression, the federal government redlined parts of New York City, identifying regions that were deemed ineligible for guaranteed home loans because the residents were Black or were otherwise regarded as “detrimental influences.” The exclusionary whites-only housing policy of Stuyvesant Town, a subsidized housing complex, was upheld by the state’s highest court in 1949. And under the banner of “development,” urban planners bulldozed poor Black and brown communities in the 1930s through 1960s to make way for city parks, highways, Lincoln Center, and other projects. These are just a few examples, but I note them because their vestiges remain with us even today, and I encourage the Committee to acknowledge these historical underpinnings in its report.

First, allow me to provide some background about the Commission’s work. The New York City Commission on Human Rights is responsible for enforcing the New York City Human Rights Law. It’s one of the broadest and most protective anti-discrimination and anti-harassment laws in the country, with 27 protected categories that reach nearly all aspects of city living, including, but not limited to, housing, employment, and public accommodations. The large number of protected categories is in part attributable to the fact that the Commission and New York City legislators have recognized the need to address situations in which certain forms of discrimination may function as proxies for more recognized types of discrimination or have disproportionate impact on marginalized communities. For instance, disability, immigration status, and lawful source of income discrimination (*i.e.*, where current or prospective tenants are denied housing opportunities or steered away from opportunities because they are paying for housing with some form of government housing assistance such as rental vouchers) are three

areas of protection under our law in which people of color, particularly Black and Latinx people, tend to be overrepresented.¹

The Commission accomplishes its mandate by affirmatively providing public education regarding our law and human rights issues; engaging in affirmative outreach addressing inter-group tensions in the City; releasing public information and art campaigns to provide visibility to the City’s diverse communities and human rights issues; and through civil legal enforcement of the City Human Rights Law.

The Commission’s Community Relations Bureau (“CRB”) is responsible for the agency’s community outreach and public education, and responds to bias incidents throughout the City. CRB utilizes the over 30 languages spoken by Commission staff to provide free workshops educating individuals on their rights, as well as businesses, employers, and housing providers on their obligations under the law. It also develops a range of community-centered programming creating visibility for the City’s diverse communities and addressing issues relevant to the Commission’s mandate. Examples of housing-related programming include restorative justice circles, Fair Housing symposia, town halls on gentrification and displacement, tenant and homeowner resource fairs in different languages, and mobile clinics addressing lawful source of income discrimination.

The Commission’s law enforcement function is performed by our Law Enforcement Bureau (“Bureau”), which investigates and prosecutes alleged violations of our law. Members of the public may file an administrative complaint at our agency. The Bureau also affirmatively initiates its own investigations into specific incidents or potential patterns of discrimination upon receipt of tips from the public, media, or other sources, or in situations where the Bureau’s Testing Unit has confirmed discriminatory activity.

In 2016, the Commission revamped its testing program to augment the Bureau’s affirmative investigations, especially in the area of housing. Bureau testers, identifying as members of a protected class, perform tests to ensure that they are not treated differently by landlords or real estate brokers solely because of their protected class. The Bureau may issue a cease-and-desist letter to a landlord or broker, directing them to take specific actions within a date certain to comply with our law. The Bureau may also file a complaint, investigate further, and litigate the matter. In the last five years, the Bureau conducted 1,298 different housing-related tests in New York City.

¹ For example, Hispanic people represent 45 percent and Black people represent 36 percent of all housing choice voucher participants in New York City. City of N.Y., “Explore Data,” *Where We Live NYC: Fair Housing Together*, <https://wherewelive.cityofnewyork.us/explore-data/housing-conditions/> (accessed May 11, 2021).

And while Black families represent about 22 percent of all households in New York City, they make up 27 percent of households headed by a person with a disability. *See* U.S. Census Bureau, 2014-2018 American Community Survey—Public Use Microdata File. Similarly, Latinx families make up about 29 percent of the city population overall, but approximately 35 percent of households headed by a person with disabilities. *Id.* This pattern is reversed among white families, who represent about 32 percent of all households but only 28 percent of households headed by a person with disabilities. *Id.*

In some cases, as an alternative to filing a formal complaint, the Bureau may pursue pre-complaint intervention to quickly resolve a dispute without the need for investigation or litigation. The Commission has been particularly successful in preventing evictions through this process, often in cases in which a tenant is seeking to utilize a rental voucher for their current apartment or where the tenant withheld rent due to a landlord's failure to provide a reasonable accommodation for a disability. In the last four years, the Bureau successfully intervened in 39 cases in which some form of race-, color-, or national origin-based housing discrimination was alleged.

Lawful source of income discrimination is the leading basis for housing-related pre-complaint interventions, making up 50 percent of all such interventions at the Commission. In Fiscal Year 2020 alone, the Bureau successfully intervened in 177 cases in which people were denied continued or prospective housing opportunities because they were seeking to pay for housing with some form of government assistance. The Bureau has pursued cases alleging disparate racial impacts where housing providers have adopted policies that exclude or otherwise disadvantage housing voucher recipients and people with disabilities, among other protected categories. In 2019, recognizing the need to provide immediate housing security to a growing homeless population, the Commission began securing broad-reaching relief in the form of housing set-asides, whereby landlords accused of discriminating against a complainant based on their lawful source of income agree to resolve the complaints by designating a certain number of rental units in the future for voucher holders. To date, the Commission has secured 127 such set-asides through pre-complaint intervention or conciliation.

After a complaint is filed at the Commission, the parties may agree to settle their dispute or conciliate the claims; the complainant may withdraw their complaint; the Bureau may dismiss it; or, after an investigation, the Bureau may issue a finding of probable cause or no probable cause. If the Bureau issues a finding of probable cause, the case is referred to the New York City Office of Administrative Trials and Hearings, where an administrative law judge ("ALJ") holds a trial to make a recommendation on liability and remedies, which is eventually sent to the Commission's Office of the Chair for final adjudication. The Office of the Chair reviews the trial record and ALJ's recommendations *de novo*, then issues a decision and order including the Commission's final determination as to whether a violation of the City Human Rights Law occurred and, if appropriate, issues an order for remedies. Remedies can include damages to the complainant, civil penalties of up to \$250,000 per discriminatory act, and other forms of affirmative relief, such as a requirement to undergo training, revise policies consistent with our law, perform community service or other types of restorative remedies, or undergo monitoring to ensure that violations do not recur, among other things. In the last five years, the Bureau filed 853 claims of housing discrimination alleging race-, color-, national origin-, or lawful source of income-based discrimination.

In Fiscal Year 2020, complaints filed with the Commission alleging housing discrimination based on race or color comprised approximately 5 percent of all housing discrimination cases.² Complaints involving discrimination based on national origin also comprised 5 percent. In comparison, the leading bases for housing complaints were lawful source of income, constituting

² N.Y.C. Comm'n on Human Rights, Fiscal Year 2020 Annual Report, 49-50 (2021).
https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf

29 percent of all housing complaints; disability, constituting 25 percent; and immigration or citizenship status, constituting 9 percent.

In a recent decision and order issued by the Commission in November 2020, a landlord discriminated against a tenant based on her perceived immigration status as an undocumented immigrant during the course of eviction proceedings, then retaliated against the tenant for seeking assistance from the Bureau. In an effort to harass and intimidate the tenant, the landlord threatened to contact, and did contact, federal immigration authorities to take action against the tenant. The Commission found the landlord liable for discrimination and retaliation; awarded Complainant \$28,000 in emotional distress damages; ordered the landlord to undergo training; and imposed a civil penalty of \$12,000, which could be set aside in its entirety if the landlord elected to complete, in good faith, a restorative justice process. Notably, while the claim brought in that case was based on immigration status, it had the effect of pushing a single Black mother out of her home.

In light of such cases, I encourage the Committee to think broadly about intersectional identities and proxies that can be used for race, even when race discrimination is not directly alleged in a particular case. Housing policies that discriminate based on a tenant's use of a housing assistance voucher, immigration status, disability, or criminal history may have a disproportionate impact on Black and Latinx people. Housing reform efforts should account for these realities as we look for solutions to the deep-seated problems of racial disparities in secure and affordable housing.

Thank you for inviting me to speak with you today. I am happy to answer any questions that you have.