

NOTES

Reconceptualizing Public Housing: Not as a Policed Site of Control, but as a System of Support

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America's system of mass incarceration is the product of the over-policing of low-income people of color, often for minor offenses. A critical site of entrenched policing takes place in the public housing context. Public housing residents live under a system of surveillance in which they are constantly monitored and policed. Harsh federal public housing policies – built on racist housing prioritization for whites at the expense of Black communities – are compounded by constitutional jurisprudence justifying outsized police intrusion. Together, these policies and practices work to criminalize public housing residents.

This Note argues that draconian and paternalistic public housing policies and policing practices must be abolished. As harmful drivers of mass incarceration, these policies further entrench poverty and dangerous racialized notions of people living in poverty. American history includes two contrasting stories of public housing: one for white people, involving trust, unquestioned support, and investment, and one for Black people, characterized by distrust, criminalization, and disinvestment. It is long past time that we reconceptualize public housing by applying the same worth to Black residents as has been historically and is still regularly accorded to white residents. This can be done by envisioning public housing not as a site of marginalization and control, but as a system of support that enables mobility and trusts those whom it purports to help.

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I. INTRODUCTION

The home is often viewed as a comfortable place free from government intrusion. However, public housing residents across the United States (U.S.) live under constant surveillance and in a state of social control. Undergirding this reality is a system of harsh federal policies, built upon an unsteady foundation of racist housing prioritization for whites at the expense of Black people, which work to penalize rather than support.

The surveillance and over-policing of low-income communities of color have driven mass incarceration in the United States.¹ President Nixon’s declaration of a “War on Drugs” in 1971 and its subsequent expansion by the Reagan administration led to the explosion of incarceration rates as law enforcement agencies across the country, responding largely to federal incentives, began to prioritize arrests for low-level drug offenses.² Tragically, the policing tactics employed during the War on Drugs, which continue to this day, reflect the institutionalized racism grounding much of policing in America.³

1. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 130-37 (2010).

2. See *A Brief History of the Drug War*, DRUG POLICY ALLIANCE, <https://www.drugpolicy.org/issues/brief-history-drug-war> (last visited Dec. 6, 2020); ALEXANDER, *supra* note 1, at 72-84 (describing the Reagan administration’s use of federal incentives to expand the reach of the War on Drugs).

3. See ALEXANDER, *supra* note 1, at 7 (studies show that while “people of all colors *use and sell* illegal drugs at remarkably similar rates,” in some states, Black men are incarcerated for drug crimes “at rates twenty to fifty times greater than those of white men”).

Modern policing in the U.S. is a central tool used to achieve racial containment through isolation of “the ghetto.”⁴ Scholars use the term “ghetto” to describe an unfounded racialized threat that holds in the public imagination and, in turn, helps establish spatial containment and control of communities of color.⁵ The term “ghetto” operates in a distinctive way in society that is defined by “how strongly it limits the opportunities of its residents...and how effectively mainstream institutions maintain the boundaries around it.”⁶ Policing neighborhoods labeled as “the ghetto” results in both the physical containment of “undesirable” people in particular neighborhoods and the reinforcement of negative stereotypes. In other words, racially driven police surveillance is justified by the notion that particular racial groups are in fact undesirable, rendering them worthy of having the force of the state brought down on them.⁷

As an important part of this picture, public housing communities are a critical site of police intrusion that drives and maintains racial containment and control. Facilitated by the mainstream news and entertainment media, public housing communities have been cast to the public as a place that breeds violence and drugs, representing inner city decay and crime.⁸ The expansion of public housing and evolution of federal housing policy has generated a system of surveillance under which public housing residents are constantly monitored. Harsh federal public housing policies criminalize low-income public housing residents and their communities, while weak constitutional protections grant law enforcement wide latitude to surveil and maintain an overbearing presence in the daily lives of residents.

This Note argues that draconian public housing policies and policing practices must be abolished as harmful drivers of mass incarceration that further entrench poverty and segregation. The Note also explores how policing and surveillance render public housing a site of marginalization and control and argues that public housing should be reconceptualized to better enable mobility and foster trust among those whom it purports to help. Part II provides historical background on the creation and policing of public housing. Part II first describes how public housing was initially conceptualized as a national project and discusses the policies that produced a segregated housing landscape critical to the formation of what we consider public housing today. Next, Part II examines the history of policing public housing, focusing specifically on how policing has made public housing a racialized space and animates anti-Black stereotyping. Part III explores the modern surveillance employed in public housing complexes. Part III outlines the tactics law enforcement departments use to monitor public housing complexes and how current constitutional jurisprudence enables these policing strategies. This part

4. See John R. Logan & Deirdre Oakley, *Black Lives and Policing: The Larger Context of Ghettoization*, 39 J. URB. AFF. 1031, 1031-32 (2017).

5. See *id.* at 1032.

6. *Id.*

7. See Deborah N. Archer, *Exile from Main Street*, 55 HARV. C.R.-C.L. L. REV. 1, 23 (2020); Jeffrey Fagan, Garth Davies & Adam Carlis, *Race and Selective Enforcement in Public Housing*, 9 J. EMPIRICAL LEGAL STUD. 697, 697 (2012).

8. See Jesse Kropf, *Keeping “Them” Out: Criminal Record Screening, Public Housing, and the Fight Against Racial Caste*, 4 GEO. J. L. & MOD. CRITICAL RACE PERSP. 75, 85 (2012); Nicola Mann, *Criminalizing “The Hood”: The Death of the Projects in the American Visual Imagination*, 38 AFTERIMAGE 21, 22 (2011).

includes an analysis of the U.S. Department of Housing and Urban Development (HUD) and Public Housing Authorities (PHAs) policies that compound outsized police intrusion. Part IV proposes a new framework for conceptualizing public housing. Rather than continuing to surveil, incarcerate, and further isolate low-income communities in public housing, this Note proposes that we reimagine public housing as a community-controlled system of support and catalyst of social mobility.

II. HISTORICAL BACKGROUND

Understanding housing policy's historical context is critical to analyzing public housing as an institution and the role policing plays in maintaining public housing as a segregated, racialized space. After exploring those circumstances, this Note will focus on how that history drives the over-policing of public housing.

A. The Creation of Public Housing

Although federal involvement in public housing dates back to as early as the 1880s,⁹ the modern federal housing framework as we know it began with the New Deal.¹⁰ A Great Depression invention, Congress's creation of the Federal Housing Administration (FHA) in 1934 and its passage of the Housing Act of 1937 made the federal government the largest provider of low-income housing in the country.¹¹ The 1937 Act was meant to remedy the housing crisis in the wake of the Great Depression by supporting the middle class. Its primary purpose was job creation, and its secondary goal was slum clearance.¹² Under the Act, the federal government provided funding, but local public housing agencies owned and operated the housing units.¹³ Because rents were meant to pay for maintenance costs (rent amounts were not yet income-based) only those with high enough incomes had access to the housing.¹⁴

Later, Congress passed the World War II era Lanham Act, which prioritized housing for war workers.¹⁵ Federal lawmakers reconsidered public housing again after the war, passing the Housing Act of 1949, which authorized urban renewal slum clearance and redevelopment programs that provided housing units to those

9. See Michael S. FitzPatrick, *A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan*, 7 GEO. J. POVERTY L. & POL'Y 421, 424 (2000).

10. See *id.*

11. See *id.* at 427.

12. See United States Housing Act of 1937 (Wagner-Steagall Housing Act), Pub. L. No. 75-412, 50 Stat. 888 (codified as amended in scattered sections of 42 U.S.C.) (defining "slum clearance" as the demolition of dwellings which "by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals."). The purpose of the Wagner-Steagall Act was to alleviate unemployment and remedy the "unsafe and insanitary housing conditions...that are injurious to the health, safety, and morals of the citizens of the Nation." *Id.* at ch. 896, § 1; FitzPatrick, *supra* note 9, at 428; MAGGIE MCCARTY, CONG. RESEARCH. SERV., INTRODUCTION TO PUBLIC HOUSING 2 (2014).

13. See Wagner-Steagall Act, *supra* note 12.

14. See FitzPatrick, *supra* note 9, at 428; See also McCarty, *supra* note 12, at 2 (because rent payments sustained public housing operations, residents had to have incomes high enough to afford set rents, though tenants' income could not exceed five times the rent).

15. See MCCARTY, *supra* note 12, at 2.

whom these programs displaced.¹⁶ The 1949 Act lowered maximum rent amounts and income eligibility limits, changing the composition of public housing.¹⁷ Specifically, low-income families moved into public housing complexes and the proportion of Black families increased as urban renewal displaced more families of color.¹⁸ As a result of these changes, public housing developments could no longer keep up with their operation and maintenance costs.¹⁹ Lower rent payments and a lack of funding meant that housing managers had to choose which repairs to make among widespread need.²⁰ Across the country, this meant that buildings, particularly segregated developments designated for Black people, were inadequately maintained.²¹ Amidst these institutional changes and the shifting racial and income composition of public housing communities, poor residents of color were increasingly funneled into dilapidated units.²²

Meanwhile, other federal programs and policies encouraged and subsidized the development of the largely white suburbs, from which Black residents were explicitly excluded.²³ The FHA and the Veterans Administration established mortgage programs to assist white families in accessing affordable homes in the suburbs.²⁴ Redlining, by which the federal government measured how risky neighborhoods were for mortgage support along racial lines, systematically locked Black families out of the same assistance being handed out to whites.²⁵ Further, on the rare occasion that a Black family was able to purchase a home in the suburbs, they sometimes faced violence upon moving into white neighborhoods.²⁶ White neighborhoods also utilized restrictive covenants and deed restrictions to keep Black neighbors out.²⁷

This confluence of factors resulted in a “more permanent, federally sponsored ‘second ghetto,’” in which low-income communities of color were socially isolated and economically deprived.²⁸ Against this backdrop and the 1960s race riots that followed, Congress funded new affordable housing programs, mainly designed around utilizing private housing markets. These new programs, however, maintained racial segregation in public housing. The following decades saw a series of reforms, which included halting construction of public housing units and demolishing some of the public housing stock in favor of prioritizing new voucher

16. Housing Act of 1949, Pub. L. 81-171, 63 Stat. 413.

17. See MCCARTY, *supra* note 12, at 3-4.

18. See *id.* at 4.

19. See FitzPatrick, *supra* note 9, at 428-29 (because the financial operating structure relied on rents, as lower-income residents moved in these maintenance costs could not be met and additional funding was not directed to remedy this problem).

20. See *id.*

21. See *id.*

22. See MCCARTY, *supra* note 12, at 4 (primarily low-income families of color were moving into public housing complexes at this time); FitzPatrick, *supra* note 9, at 428-29 (new low-income tenants were placed in deteriorating units).

23. See Raphael Bostic & Arthur Acolin, *Affirmatively Furthering Fair Housing: The Mandate to End Segregation*, in *THE FIGHT FOR FAIR HOUSING* at 192-93 (Gregory D. Squires ed., 2018).

24. See *id.* at 192.

25. See *id.* at 192-93.

26. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 58 (1993).

27. *Id.*

28. *Id.*

mobility programs,²⁹ contributing to the poor quality of public housing – an issue which persists to this day.³⁰

B. The History of Criminalizing Public Housing

1. Public Housing in the Public Imagination

Though decades of housing policy generated the conditions in public housing, the resulting problems with public housing were quickly attributed to public housing residents themselves.³¹ Public housing became associated with an environment of dysfunction and decay that poor Black people brought upon themselves.³² The Wendell O. Pruitt Homes and William Igoe Apartments in St. Louis, known as Pruitt-Igoe, and the Cabrini-Green Homes in Chicago, were prime representations of the racialized myth of public housing as a doomed site of criminality.

In St. Louis, Pruitt-Igoe was constructed under a system of mandated housing segregation.³³ The Pruitt half of the complex was designated for Black people, while the Igoe half housed whites.³⁴ The entire project was soon exclusively occupied by Black residents, however, after the phenomenon known as “white flight” occurred in the 1950s and 1960s.³⁵ Significant financial disinvestment, neglect, and reduced economic opportunity followed, leading to perceived social deterioration.³⁶ While residents fought for better conditions through organizing and rent strikes, the rest of the country saw what appeared to be vandalism and chaos through the lens of media coverage.³⁷ Only two decades after its construction, the housing complex was demolished.³⁸ Pruitt-Igoe became a national symbol for associating public housing with lawlessness and violence.³⁹ This narrative not only penalized people for being poor, but also branded public

29. See Kropf, *supra* note 8, at 86; MCCARTY, *supra* note 12, 5-6; Jeff R. Crump, *The End of Public Housing as We Know It: Public Housing Policy, Labor Regulation and the US City*, 27.1 INT’L J. URB. & REGIONAL RES. 179, 181-82 (2003). The Section 8 Housing Choice Voucher program, by which tenants are given a portable voucher to rent a market rate apartment, is beyond the scope of this paper but raises similar issues with regard to the relationship between public housing policies and policing, also motivated by a perceived threat of poor Black folks. See, e.g. Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540, 1568-72 (2012).

30. See MCCARTY, *supra* note 12, at 4-5.

31. See Kropf, *supra* note 8, at 85.

32. See *id.*

33. See Documentary Film: THE PRUITT-IGOE MYTH: AN URBAN HISTORY (First Run Features 2011) (on file with the Georgetown University Law Library [hereinafter THE PRUITT-IGOE MYTH]).

34. Colin Marshall, *Pruitt-Igoe: The Troubled High-Rise That Came to Define Urban America – A History of Cities in 50 Buildings, Day 21*, THE GUARDIAN (Apr. 22, 2015, 7:52 PM), <https://www.theguardian.com/cities/2015/apr/22/pruitt-igoe-high-rise-urban-america-history-cities>.

35. *Id.*

36. See THE PRUITT-IGOE MYTH, *supra* note 33.

37. See Rowan Moore, *Pruitt-Igoe: Death of the American Urban Dream*, THE GUARDIAN (Feb. 25, 2012, 7:04 PM), <https://www.theguardian.com/artanddesign/2012/feb/26/pruitt-igoe-myth-film-review#maincontent>.

38. *Id.*

39. See *id.*

housing residents as poor *criminals*.⁴⁰ This inaccurate labelling of public housing residents continued even though crime rates in other St. Louis neighborhoods were consistently higher than in Pruitt-Igoe.⁴¹

Chicago's Cabrini-Green Homes occupied a similar position to Pruitt-Igoe in the public consciousness. The towers and row houses were built over a twenty-year period beginning in 1942, contemplated as a way to revitalize the "slums" of Chicago.⁴² By the 1970s, however, the housing development had become the new face of public housing's failure.⁴³ Media representations of the housing complex presented it as gang- and violence-ridden.⁴⁴ Located adjacent to Chicago's wealthiest neighborhoods, Cabrini-Green was regularly portrayed as "a world of utter deprivation and unrelenting violence," playing on stereotyped racialized fears to exaggerate the dangers of the housing project.⁴⁵ Cabrini-Green, like Pruitt-Igoe, came to symbolize public housing as a site to be feared.⁴⁶ Its residents were not viewed as law-abiding individuals and families seeking a safe, affordable place to live, as most were, but instead were pathologized as dangerous, undeserving criminals.⁴⁷

The Pruitt-Igoe and Cabrini-Green communities highlight the stereotyped view of public housing as inherently linked to Blackness, and Blackness as linked to criminality. Yet, most people receiving housing assistance are not Black.⁴⁸ The false image public housing typically conjures in the public imagination, however, is in reference to public housing complexes in large cities, where the majority of city residents are low-income people of color.⁴⁹ Outsized media and public attention directed at the so-called failures of these particular public housing projects stigmatizes the Black residents who live there, making them the target of public scorn. It is this narrative that sets the stage for society's embrace of the punitive relationship between the state and public housing residents.

2. Reinforcing Racialized Perceptions through Policing

Punitive policing became a tool to maintain segregated public housing, deemed a site of violence and social deterioration.⁵⁰ The post-1960s public housing reforms included a number of exclusion and termination policies to target

40. See Joseph Heathcott, *Pruitt-Igoe and the Critique of Public Housing*, 78 J. OF THE AM. PLANNING ASS'N 450 (2012).

41. See *id.*

42. See BEN AUSTEN, *HIGH RISERS: CABRINI-GREEN AND THE FATE OF AMERICAN PUBLIC HOUSING* 4-8 (2018).

43. See Ben Austen, *Cabrini-Green and a Horror Film that Captured the Fears of Public Housing*, CHI. TRIB. (Aug. 16, 2019, 9:35 AM), <https://www.chicagotribune.com/opinion/commentary/ct-perspec-flashback-cabrini-green-candyman-public-housing-austen-0819-20180815-story.html>.

44. See Mann, *supra* note 8, at 22.

45. AUSTEN, *supra* note 42, at 22.

46. See Mann, *supra* note 8, at 21.

47. See *id.* at 25.

48. See *Who Lives in Federally Assisted Housing?*, NAT'L LOW INCOME HOUSING COALITION 3 (2012), <https://nlhc.org/sites/default/files/HousingSpotlight2-2.pdf> (about 45% of public housing residents nationwide are Black).

49. See Emily Badger, *How Section 8 became a 'Racial Slur'*, WASH. POST (June 15, 2015, 7:53 AM), <https://www.washingtonpost.com/news/wonk/wp/2015/06/15/how-section-8-became-a-racial-slur/>.

50. See Fagan et al., *supra* note 7, at 699.

individuals with criminal histories.⁵¹ For example, in 1988, Congress passed the Anti-Drug Abuse Act (ADAA), which authorized PHAs to evict tenants who engaged in “criminal activity.”⁵² The statute stated: “Congress finds that drug dealers are increasingly imposing a *reign of terror* on public and other federally assisted low-income housing tenants.”⁵³ The stated intent of the ADAA was to protect public housing residents, but its effect further marginalized low-income residents and promoted racial prejudice.⁵⁴ Two years later, the Cranston-Gonzalez National Affordable Housing Act of 1990 extended ADAA policies to hold residents accountable for the criminal activity of their family members or guests.⁵⁵

Subsequently, in 1996, President Bill Clinton announced the “One Strike and You’re Out” guidelines,⁵⁶ following which, Congress passed the perhaps unfittingly named Housing Opportunity Extension Act of 1996 (HOPE), strengthening the eviction and screening policies of the ADAA.⁵⁷ Though the policies were initially enacted in 1988, PHAs did not consistently implement and enforce them.⁵⁸ A year after the passage of the HOPE Act, however, 75% of the housing authorities that participated in a HUD survey stated that they had implemented One Strike policies.⁵⁹ HUD recognized this law as its “toughest admission and eviction policy,”⁶⁰ requiring PHAs to amend their policies to ban those “it has reasonable cause to believe” were using drugs or alcohol in a manner that could “interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.”⁶¹ Those evicted for drug-related criminal activity could not be granted admission for three years following eviction.⁶² Further, PHA funding was tied to “effective applicant screening,” creating a strong incentive for PHAs to establish and enforce harsh screening practices.⁶³

Punitive public housing policies bolster the anti-Black stereotyping that motivates the policing and criminalization of public housing residents. These expansive policies capture a broad range of people in their grip, including those

51. See Archer, *supra* note 7, at 4. In 1975, the Department of Housing and Urban Development issued regulations instructing consideration of criminal histories when assessing housing applicants. See *id.*

52. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 5101. 102 Stat. 4181, 42 U.S.C. § 11901 (1988) [hereinafter Anti-Drug Abuse Act]; Archer, *supra* note 7, at 9.

53. Anti-Drug Abuse Act, *supra* note 52 at § 5121 (emphasis added).

54. See Archer, *supra* note 7, at 9 n.29 (explaining that implementation of the Act disproportionately impacted poor people of color by allowing PHAs to exercise discretion in evicting people. This meant that racial prejudices could influence eviction decisions and lead to homelessness for the poor in scenarios where the middle class would likely be subjected only to drug treatment).

55. Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 504, 104 Stat. 4079 (1990).

56. See Archer, *supra* note 7, at 10; Kropf, *supra* note 8, at 86.

57. Housing Opportunity Extension Act of 1996, Pub. L. No. 104-120, § 9(e)(1)(A)(ii), 110 Stat. 834 (1996) [hereinafter Housing Opportunity Extension Act].

58. See U.S. DEP’T OF HOUS. & URBAN DEV., MEETING THE CHALLENGE: PUBLIC HOUSING AUTHORITIES RESPOND TO THE “ONE STRIKE AND YOU’RE OUT” INITIATIVE (1997), <https://www.ncjrs.gov/pdffiles1/Photocopy/183952NCJRS.pdf>.

59. *Id.*

60. *Id.*

61. Housing Opportunity Extension Act, *supra* note 57, at § 9(e)(1)(A)(ii).

62. *Id.* at § 9(c).

63. Kropf, *supra* note 8, at 86.

who are not involved in what society traditionally considers as “criminal.”⁶⁴ Set within the context of mass criminalization and mass incarceration, overbroad public housing policies entangle an increasing number of people in the criminal legal system.⁶⁵ The myth associating people of color with criminality, fueled by mass criminalization, perpetuates that narrative in public housing settings. The message that these policies send is that, as a defined group, public housing residents are criminals.⁶⁶ Defining public housing residents as a threat and inviting intense scrutiny into their lives enables and justifies the use of police to disproportionately target people of color.⁶⁷

III. MODERN SURVEILLANCE OF PUBLIC HOUSING

Understanding public housing’s history as one of racial isolation and control, this Note turns to the ramifications of this history on the modern era of policing in public housing. It will first explore the constitutionally protected policing tactics that enable the invasive presence of police in public housing complexes. It will then describe modern HUD policies, which in conjunction with policing practices continue to fuel the criminalization of low-income communities of color and impose barriers to re-entry for those with criminal records.

A. Policing Tactics

1. Fourth Amendment Jurisprudence

The Fourth Amendment offers few safeguards to public housing residents. The protections it offers that are typically attached to the home⁶⁸ are limited in the context of apartment buildings.⁶⁹ Courts have held, for instance, that there is no reasonable expectation of privacy⁷⁰ in the common spaces of apartment complexes.⁷¹ For public housing occupants in particular, the constitutionally permissible targeting of public housing residents under Fourth Amendment doctrine further limits these protections.⁷²

Under *Terry v. Ohio*, police officers may stop an individual if they have a reasonable suspicion, based on articulable facts, that the individual is involved in

64. See Archer, *supra* note 7, at 34 (explaining that these broad policies criminalize relatively innocuous behavior).

65. See *id.*

66. See *id.* at 43.

67. See I. Bennet Capers, *Policing, Race, and Place*, 44 HARV. C.R.-C.L. L. REV. 43, 69-70 (2009).

68. See *Jones v. United States*, 357 U.S. 493, 498 (1958) (“it is difficult to imagine a more severe invasion of privacy than the nighttime intrusion into a private home.”).

69. See Alexis Karteron, *When Stop and Frisk Comes Home: Policing Public and Patrolled Housing*, 69 CASE W. RES. L. REV. 669, 692-93 (2019).

70. See *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (holding that application of the Fourth Amendment depends on whether the individual has a legitimate expectation of privacy, determined by whether the individual exhibited a subjective expectation of privacy that society is prepared to recognize as “reasonable”).

71. See Karteron, *supra* note 69, at 692-93.

72. See *id.*

criminal activity.⁷³ This standard has been interpreted to allow for a broad range of factors to be considered within the reasonable suspicion analysis, including whether the stop takes place in a “high crime area.”⁷⁴ What constitutes a “high crime area,” however, is self-fulfilling. Crime data does not necessarily reflect the accurate rate of crime, but instead how police respond to crime and enforce criminal laws.⁷⁵ Furthermore, the definition of “high crime area” relies heavily on the individual arresting officer’s testimony.⁷⁶ This means that when police choose to surveil public housing—a decision correlated with perceptions of criminality’s connections to race and class⁷⁷—and inevitably arrest people in that area, it may become properly categorized as a “high crime area,” justifying virtually unfettered stops under the Fourth Amendment.⁷⁸ Thus, the Fourth Amendment, designed to safeguard the protection of the home, has become a tool for social control and mass criminalization of public housing.⁷⁹

2. Broken Windows Policing

Law enforcement also targets public housing through “broken windows” policies.⁸⁰ The broken windows theory, first proposed by criminologists James Q. Wilson and George L. Kelling, posits that visible signs of disorder, regardless of how minor, invite further criminal activity by signaling that the area tolerates wrongdoing.⁸¹ Broken windows policing, then, targets low-level quality of life crimes with the idea that this will prevent more serious crime.⁸²

Broken windows policing is particularly prevalent in the public housing context. The stereotype of public housing as a place of social disorder seemingly supports such police practices, in turn justifying the use of broken windows policing.⁸³ Consequently, broken windows as a policing strategy in public housing disproportionately impacts low-income communities of color because it relies on associations between perceptions of social disorder and race.⁸⁴ Taken together, the conflation of race, poverty and disorder result in law enforcement’s targeting of low-income people of color as suspected criminals.⁸⁵

73. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). This case approved the police practice of “Terry stops,” otherwise known as “stop and frisk.”

74. *See Illinois v. Wardlow*, 528 U.S. 119, 119 (2000).

75. *See Logan Koepke, Predictive Policing Isn’t About the Future*, SLATE MAGAZINE (Nov. 21, 2016, 12:30 PM), <https://slate.com/technology/2016/11/predictive-policing-is-too-dependent-on-historical-data.html>.

76. *See Karteron, supra* note 69, at 700.

77. *See Archer, supra* note 7, at 38.

78. *See Karteron, supra* note 69, at 700-01.

79. *See id.* at 693.

80. Fagan et al., *supra* note 7, at 700.

81. *Id.*; Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L. J. 457, 464-465 (2000).

82. *See Fagan & Davies, supra* note 81, at 461.

83. *See Fagan et al., supra* note 7, at 700.

84. *See Eric Klinenberg, The Other Side of “Broken Windows,” THE NEW YORKER* (Aug. 23, 2018), <https://www.newyorker.com/books/page-turner/the-other-side-of-broken-windows>.

85. *See Fagan & Davies, supra* note 81, at 501.

Police departments continue to target low-level offenses despite empirical studies that debunk the proposed efficacy of broken windows policing.⁸⁶ One study reviewed the evidence used to make Wilson and Kelling's original conclusions and found no support for the disorder-crime relationship posited by the theory; in particular, the idea that targeting minor crime reduces violent crime was unsupported.⁸⁷ Broken windows policing does not reduce crime or make communities safer.⁸⁸ Instead, it is an incredibly dangerous practice, and even fatal, for those whom it targets.⁸⁹ Meanwhile, the broken windows are not fixed.⁹⁰ While public housing developments are outfitted with police patrols, the dilapidated conditions of the buildings remain.⁹¹ The causal logic of disorder that the broken windows theory takes for granted is that "a piece of property is abandoned" and *then* "a window is smashed."⁹² Public policy, however, skipped addressing the perceived underlying causes of the "broken windows" and went straight to locking people up.⁹³ Even though investing in housing and resource allocation rather than punishment has been shown to actually reduce crime, "law and order" rhetoric more consistently wins the day.⁹⁴

3. Modern Technological Surveillance in Public Housing

A modern mode of policing is taking hold across the country which targets public housing residents as among its primary subjects. Police departments have increasingly employed facial recognition software and high-tech surveillance cameras in public housing.⁹⁵ Currently, the federal government does not regulate facial recognition software and HUD does not have plans to do so.⁹⁶

There are significant privacy and civil liberty dangers accompanying the use of these technologies. First, facial recognition technology has a disparate impact

86. *See id.* at 467.

87. *See* Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHICAGO L. R. 271, 315 (2006).

88. Broken windows policing was heralded as reducing crime in New York in the 1990s, but this was at a time when crime rates dropped dramatically in cities across the country, including cities that did not use broken windows policing, seriously calling into question broken windows' success. *See* Shankar Vedentam, Chris Benderez, Tara Boyle, Renee Klahr, Maggie Penman & Jennifer Schmidt, *How A Theory of Crime and Policing Was Born, and Went Terribly Wrong*, NPR (Nov. 1, 2016, 12:00 AM), <https://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong>.

89. Broken windows policing has led to fatal encounters with police, including the killings of Eric Garner, Akai Gurley, and Michael Brown. *See* K. Babe Howell, *The Costs of "Broken Windows" Policing: Twenty Years and Counting*, 37 CARDOZO L. REV. 1059, 1061-62 (2016).

90. *See* Ginia Bellafante, *In New York Public Housing, Policing Broken Lights*, N.Y. TIMES (Nov. 26, 2014), <https://www.nytimes.com/2014/11/30/nyregion/in-new-york-public-housing-policing-broken-lights.html>.

91. *See id.*

92. Klinenberg, *supra* note 84.

93. *See id.*

94. *See id.*

95. *See* Lola Fadulu, *Facial Recognition Technology in Public Housing Prompts Backlash*, N.Y. TIMES, (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/us/politics/facial-recognition-technology-housing.html>.

96. *See id.*

on communities of color.⁹⁷ Research shows that the algorithms used in facial recognition systems are less accurate when used on Black people as compared to whites.⁹⁸ Biased policing practices also result in the overrepresentation of people of color in the databases relied upon for facial recognition, thereby compounding the problem.⁹⁹ Given that these technologies are used primarily against people of color, who make up the majority of public housing residents, the use of these technologies in public housing complexes will likely further entangle public housing tenants in the criminal legal system.¹⁰⁰ Moreover, HUD and law enforcement have not fully addressed how this data is stored and can be used in the future.¹⁰¹

Other less technologically advanced but still highly intrusive policing practices have been employed in the public housing context. In July 2014, for example, while New York City's residents of color recovered from failed stop-and-frisk policies, the city's police department positioned floodlights in New York City Housing Authority housing facilities in order to create an "omnipresence," as Mayor Bill de Blasio put it, a sense that police were watching.¹⁰² Police in New York also regularly engage in the routine vertical patrols of public housing complexes, methodically monitoring each building to catch potential criminal wrongdoers, non-resident trespassers, or violators of other PHA policies.¹⁰³ Some police departments bring K-9 drug teams into public housing buildings "for the dogs to train."¹⁰⁴ New York police have also used the Racketeer Influenced and Corrupt Organizations Act (RICO) to conduct and justify large-scale raids in public housing projects when there is no individualized probable cause for arrest.¹⁰⁵

New York City's policing practices have been the subject of several lawsuits, including a class action challenging the city's police department's practices of unlawfully stopping and arresting public housing residents and their guests for criminal trespass on the basis of race.¹⁰⁶ In May 2019, a federal judge approved public housing training for New York Police Department officers as part of the settlement.¹⁰⁷ Similarly, Oakland's public housing loitering ordinance is also being

97. See *Coalition Letter to the Department of Justice Civil Rights Division Calling for an Investigation of the Disparate Impact of Face Recognition on Communities of Color*, ACLU 1 (Oct. 18, 2016), <https://www.aclu.org/letter/coalition-letter-department-justice-civil-rights-division-calling-investigation-disparate>.

98. See *id.*

99. See *id.* at 2.

100. Recognizing the implications of the technology, Congresswomen Yvette Clarke, Ayanna Pressley, and Rashida Tlaib introduced the No Biometric Barriers to Housing Act in 2019 which would ban facial recognition software in federally funded public housing. See No Biometric Barriers to Housing Act of 2019, H.R. 4008, 116th Cong. (2019).

101. See Fadulu, *supra* note 95.

102. See Barton Gellman & Sam Adler-Bell, *The Disparate Impact of Surveillance*, THE CENTURY FOUND. (Dec. 21, 2017), <https://tcf.org/content/report/disparate-impact-surveillance/>.

103. See Fagan et al., *supra* note 7, at 702; Gellman & Adler-Bell, *supra* note 102.

104. See Gellman & Adler-Bell, *supra* note 102.

105. See *id.*

106. *Davis v. City of New York*, 959 F.Supp.2d 427, 427 (S.D.N.Y. 2013).

107. See Press Release, NAACP Legal Defense Fund, Federal Judge Approves Public Housing Training for NYPD Officers (May 29, 2019), <https://www.naacpldf.org/press-release/federal-judge-approves-public-housing-training-nypd-officers>.

challenged as unconstitutional under the Due Process Clause of the Fourteenth Amendment.¹⁰⁸

B. HUD Policies

Weak Fourth Amendment protections and modern police surveillance tactics are compounded by harsh federal HUD and local public housing policies, which further criminalize public housing residents' activities and grant police increased authority to enforce those policies.

1. Banishment and No-Trespass Policies

An extension of broken windows policing, HUD banishment policies allow PHAs to evict and formally ban residents, by placing them on a no-trespass list, for any criminal activity connected with the apartment and arrest them for trespassing.¹⁰⁹ PHAs are given discretion to specify the criteria for banning residents, which are often articulated in vague or broad terms.¹¹⁰ In line with broken windows theory, PHAs argue that prohibiting particular people from entering their public housing complexes will reduce and prevent more serious crime.¹¹¹ Banishment policies allow PHAs to formally ban nonresidents for criminal as well as noncriminal acts, and use the police to enforce these policies by arresting them for trespassing if they are subsequently found on the property.¹¹² The breadth of these policies means that tenants are restricted from inviting guests, friends, and family members to their homes, often with little to no explanation or justification.¹¹³

Though Fourth Amendment standards are already limited, these policies allow the police to circumvent existing constraints on police stops.¹¹⁴ Police officers, for instance, may make pretextual stops under the guise of determining whether someone is violating a no-trespass policy.¹¹⁵ Studies have called into question banishment policies' deterrent effect and have shown that these policies do not

108. See Press Release, ACLU of Northern California, Civil Rights Groups File Lawsuit Challenging Constitutionality of Oakland Public Housing Loitering Ordinance (Sept. 19, 2018), <https://www.aclunc.org/news/civil-rights-groups-file-lawsuit-challenging-constitutionality-oakland-public-housing>.

109. Contract provisions and requirements; loans and annual contributions, 42 U.S.C. § 1437d(1)(6)-(9) (2013); Elena Goldstein, *Kept Out: Responding to Public Housing No-Trespass Policies*, 38 HARV. C.R.-C.L. L. REV. 215, 216 (2003).

110. Jose Torres, Jacob Apkarian & James Hawdon, *Banishment in Public Housing: Testing an Evolution of Broken Windows*, 5 MDPI SOC. SCI. 61, 3 (2016).

111. See *id.* at 1.

112. Jose Torres & Jacob Apkarian, *Banishment: A Test of Specific Deterrence in Public Housing*, 17 CRIMINOLOGY & PUB. POL'Y. 911, 912 (2018).

113. Goldstein, *supra* note 109, at 216-17 ("Officials have barred nonresidents without inquiry into the legitimacy of their reasons for being on the property and often in spite of their having legitimate business at the development. In fact, nonresident visitors have been banned from PHA property for literally 'just standing there.'").

114. See *id.* at 217.

115. See *id.*

significantly reduce serious crime or drug arrests.¹¹⁶ For example, in their study of banishment policies in public housing, Jose Torres, Jacob Apkarian, and James Hawdon demonstrated that while these policies have only a modest impact on property crime and no significant impact on violent crime, they increase incarceration rates of low-income communities of color.¹¹⁷ Their study also revealed an increase in arrests for trespassing, indicating that those banned are not substantially deterred from returning to the housing complex.¹¹⁸ Given the limited efficacy of banishment policies in relationship to their disproportionate and harmful effects on people of color, the benefits of the policies are not worth the costs.¹¹⁹

The legal source of HUD's banishment policies is 42 U.S.C. § 1437d(l)(6),¹²⁰ the federal statute under which tenants may be evicted if either they, their guests, or relatives are caught using or possessing drugs on the premises.¹²¹ The U.S. Supreme Court upheld HUD's strict liability interpretation of § 1437d(l)(6) in *HUD v. Rucker*, despite the constitutional due process concerns that such a policy penalizes innocent individuals for others' criminal wrongdoing.¹²² Giving the statute its stamp of approval, the Court institutionalized another avenue by which public housing residents may be subject to a wide array of criminal penalties and pushed out of affordable housing options.

2. Screening Policies

Those with prior criminal records are also screened out of public housing, thereby restricting successful re-entry of the formerly incarcerated.¹²³ Screening policies share many justifications with banishment policies.¹²⁴ Further, given the limited supply of public housing stock, criminal background screening is an easy means for housing authorities to narrow the applicant pool.¹²⁵ Automatically denying anyone with a criminal record, however is counterproductive to

116. See Torres et al., *supra* note 110, at 2; Torres & Apkarian, *supra* note 112, at 928 (“[I]f a goal of the policy and those enforcing it is to reduce drug and violent offending by banning individuals from public housing, that goal seems to only be reached by banning *and* arresting a specific kind of offender. This in fact undermines the effectiveness of the ban policy by demonstrating that bans alone do not have an effect on drug and violent crime.”).

117. See Torres et al., *supra* note 110, at 19.

118. See *id.* at 17.

119. See *id.* at 19.

120. § 1437d(l)(6).

121. See *id.*

122. Dep't. of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, 134 (2002); Evi Schueller, *HUD v. Rucker, Unconscionable Due Process for Public Housing Tenants*, 37 U.C. DAVIS L. REV. 1175, 1195-96 (2003-2004).

123. See Kropf, *supra* note 8, at 78; CORINNE A. CAREY, HUMAN RIGHTS WATCH, NO SECOND CHANCE: PEOPLE WITH CRIMINAL RECORDS DENIED ACCESS TO PUBLIC HOUSING 31 (2004), <https://www.hrw.org/reports/2004/usa1104/usa1104.pdf>; Valerie Schneider, *Racism Knocking at the Door: The Use of Criminal Background Checks in Rental Housing*, 53 U. RICH. L. REV. 923, 928 (2019); Lahny R. Silva, *Criminal Histories in Public Housing*, 2015 WIS. L. REV. 375, 379-80 (2015); Ann Cammett, *Confronting Race and Collateral Consequences in Public Housing*, 39 SEATTLE U. L. REV. 1123, 1124 (2015-2016).

124. See Silva, *supra* note 123, at 379.

125. See *id.*

community safety and the re-entry needs of prior offenders because it creates a spiraling effect of continued marginalization.¹²⁶

In 2016, HUD's Office of General Counsel issued guidance instructing housing providers to take into account the disparate effects that these policies have on racial minorities.¹²⁷ The guidance also reiterated the Federal Housing Act's disparate impact analysis and how to apply the analysis in the context of disparate effects on racial minorities.¹²⁸ On September 4, 2020, HUD rolled back this guidance when it issued a final rule adopting the disparate impact analysis applied by the U.S. Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*¹²⁹ The new HUD rule created a burden-shifting framework, making it incredibly difficult for plaintiffs to bring successful disparate impact claims.¹³⁰ Local housing providers, however, can continue to interpret and give the 2016 HUD guidance effect through legislative changes and exercising their discretion to make individualized assessments to protect tenants.¹³¹

Some fair housing groups and legal service agencies have put pressure on local PHAs to exercise their discretion in considering applications with prior criminal records.¹³² Yet, class-action challenges to PHA policies are more limited because federal law prevents legal service agencies that are receiving federal funding from

126. See Carey, *supra* note 123, at 2; Schneider, *supra* note 123, at 935.

127. HELEN R. KANOVSKY, U.S. DEP'T OF HOUS. & URBAN DEV., 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 (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [hereinafter HUD Guidance].

128. *Id.* at 2; 24 C.F.R. § 100.500 (2013).

129. 24 CFR § 100 (2020); Tex. Dep't. of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 576 U.S. 519 (2015).

130. HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, FEDERAL REGISTER 60332-33 (Sept. 24, 2020), <https://www.federalregister.gov/documents/2020/09/24/2020-19887/huds-implementation-of-the-fair-housing-acts-disparate-impact-standard>. Under the burden-shifting framework, a plaintiff must at the pleading stage state "a discriminatory effects claim based on an allegation that a specific, identifiable policy or practice has a discriminatory effect" and must sufficiently plead facts to support each of five elements: "(1) That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law; (2) That the challenged policy or practice has a disproportionately adverse effect on members of a protected class; (3) That there is a robust causal link between the challenged policy or practice and the adverse effect on members of a protected class, meaning that the specific policy or practice is the direct cause of the discriminatory effect; (4) That the alleged disparity caused by the policy or practice is significant; and (5) That there is a direct relation between the injury asserted and the injurious conduct alleged." The plaintiff must prove each of these five elements by a preponderance of the evidence. The defendant may then rebut the plaintiff's allegation under element (1) by producing evidence that the policy advances a valid interest and is therefore not arbitrary, artificial, and unnecessary. If the defendant does this, the plaintiff must then prove by a preponderance of the evidence either that the interests advanced by the defendant are not valid or that a less discriminatory policy or practice exists that would serve the defendant's identified interest in an equally effective manner without imposing materially greater costs on, or creating other material burdens for, the defendant.

131. See Schneider, *supra* note 123, at 942-44 (several jurisdictions, including the District of Columbia, have passed legislation codifying aspects of the 2016 HUD guidance and requiring individualized assessments).

132. See Carey, *supra* note 123, at 59.

the Legal Services Corporation from filing class action litigation.¹³³ Some organizations have brought class action suits challenging criminal screening policies which were resolved with class-wide settlements for residents. In Atlanta, for instance, a consent decree was entered prohibiting the PHA from considering criminal convictions beyond five years of an individual's application.¹³⁴ Now, the PHA is allowed to consider only convictions, and not arrests, with rehabilitation remaining a required consideration.¹³⁵ Further, in Baltimore, after the Homeless Persons Representation Project threatened a lawsuit, the PHA revised its zero-tolerance policies.¹³⁶

Taken as a whole, the policing practices and public housing policies discussed in this Section cause harmful and often irreparable damage to communities of color. Mass incarceration and criminalization not only remove individuals from their communities and systems of support but cause severe psychological damage to those impacted, their families, and their communities.¹³⁷ As the most likely group to be assaulted and murdered by police, Black Americans live with the individual and intergenerational trauma inflicted by systemic police violence.¹³⁸ Race-based trauma affects individuals' relationships, health, and overall quality of life.¹³⁹ Criminal penalties also lead to a host of life-changing collateral consequences, including disenfranchisement and restricted access to employment opportunities, education, and government benefits.¹⁴⁰

IV. RECONCEPTUALIZING PUBLIC HOUSING

As this Note shows, the over-policing of public housing makes it a site of control rather than of support and opportunity for those experiencing poverty. Furthermore, attempting to tackle crime in public housing with pervasive policing is relatively ineffective as a crime reduction mechanism. It is past time that the United States abolish its punitive policing-oriented approach and reimagine public housing as a supportive institution.

A. Legal Challenges

Disparate impact discrimination claims brought under Title VII of the Fair Housing Act provided one avenue for advocates to challenge HUD policies and practices.¹⁴¹ As the 2016 HUD Guidance indicated, HUD banishment and screening policies have a disparate impact on minority groups.¹⁴² In *Landers v.*

133. See *Carey*, *supra* note 123, at 59 n. 178.

134. See *id.* at 59-60.

135. See *id.*

136. See *id.* at 60.

137. See Thema Bryant-Davis, Tyonna Adams, Adriana Alejandre, & Anthea A. Gray, *The Trauma Lens of Police Violence against Racial and Ethnic Minorities*, 73 J. OF SOC. ISSUES 852 (2017).

138. See *id.* at 856-60.

139. See *id.* at 857.

140. See Cammett, *supra* note 123, at 1137.

141. See Kropf, *supra* note 8, at 92.

142. See *id.* at 86-87. See also Merf Ehman, Fair Housing Disparate Impact Claims Based on the Use of Criminal and Eviction Records in Tenant Screening Policies 2 (Sept. 2015) (unpublished manuscript), <https://www.nhlp.org/wp-content/uploads/Merf-Ehman-FH-DI-Claims-Based-on-Use-of->

Chicago Housing Authority a public housing applicant argued that the PHA's criminal screening policy had a disparate impact.¹⁴³ Though the court did not reach the disparate impact claim, it did note that there was "no evidence that plaintiff was a potential threat to the health, safety and welfare of the public housing community."¹⁴⁴ The finding indicates the weak connection between an individual's criminal history and overall community safety.¹⁴⁵ Though disparate impact claims in the past served as a creative legal solution, the recent HUD rule creates nearly insurmountable hurdles to bringing such claims.¹⁴⁶ A broader political discussion must therefore take place to address the limited utility of HUD policies and policing practices when compared to the substantial harm they cause to public housing residents and low-income communities of color. Acknowledging this reality, the conversation should move to reconceptualizing public housing as a support system.

B. Public Housing as Support

Creating a public housing system that trusts those whom it benefits and aims to support is possible. This vision is within reach and has been done before. In Part II, this Note referred to the federally subsidized mortgage programs that enabled white homeownership in the suburbs and the accompanying economic capital.¹⁴⁷ Though not typically deemed as such, this can and should be viewed as public housing. After all, it amounts to the federal government investing in housing for its citizens, albeit through a different financial mechanism than a direct appropriation to a public agency. That form of public housing, however, was predicated on completely different principles. The government provided assistance to white families and trusted them to utilize that assistance without punitive conditions or paternalistic government intrusion. While white families were given access to mortgages to purchase private, single-family homes, Black families were increasingly relegated to restrictive spaces stripped of autonomy and dignity. As a result of the United States' legacy of white supremacy, white spaces are historically cultivated as targets of investment, while Black spaces are constructed as sites of disinvestment and isolation.¹⁴⁸ These deliberate practices drove assumptions that white people deserved to live in havens of economic security, while Black people did not.¹⁴⁹ Surveillance and control in public housing is yet another form of maintaining a racial caste system through segregated spaces. It is long past time that we reconceptualize public housing projects by applying the

Criminal-and-Eviction-Records-Sept.-2015.pdf (providing a guide for making disparate impact claims for use of criminal screening policies).

143. See Kropf, *supra* note 8, at 97-98.

144. *Id.* at 98-99.

145. *See id.* at 99.

146. Christopher Friedman & Austin Holland, *HUD Issues Final Rule on the Fair Housing Act's Disparate Impact Standard*, JD SUPRA (Sept. 11, 2020), <https://www.jdsupra.com/legalnews/hud-issues-final-rule-on-the-fair-63161/>.

147. *See supra* Part II.

148. *See* Capers, *supra* note 67, at 55-56 (discussing Cheryl Harris's concept of "whiteness as property"—the idea that there is real property value in whiteness as a result of the set of assumptions and benefits that accompany the status of being white).

149. *See id.*

same worth to Black people as has been historically and is still regularly accorded to white people.

Scholars and advocates have proposed shifting the affordable housing conversation to Opportunity Communities, a model based both on “pursuing housing policies that create the potential for low-income people to live near existing opportunity and pursuing policies that tie opportunity creation in other areas to existing and potential affordable housing.”¹⁵⁰ These voices also note that in recent years—but prior to the current administration—HUD programs and rules began to prioritize an opportunity-based approach.¹⁵¹ Such a structure prioritizes connecting residents to employment, transportation, education, childcare, and other supportive institutions.¹⁵² HUD’s 2015 regulation under the Obama administration (terminated by the Trump administration in 2020) to implement the Affirmatively Further Fair Housing mandate of the Fair Housing Act was meant to increase access to such opportunities.¹⁵³ Conceiving public housing as places of opportunity, including connecting residents to wraparound services and assistance, provides a necessary path forward. Crucially, however, policymakers must recognize the limitations that punitive policies and policing place on achieving these goals. The perceptions of public housing residents held by housing providers and society generally must change, and the policies and practices criminalizing public housing residents must be abolished in order to successfully implement opportunity-based models.

Poverty represents a degree of social exclusion and isolation.¹⁵⁴ Denying opportunity and access to economic resources—actions that punitive policies and policing exacerbate—often both correlate to and engender a lack of belonging.¹⁵⁵ Bolstering family and community networks can help remedy social exclusion. Rather than focusing on physical solutions as the federal government has historically done,¹⁵⁶ a more beneficial approach would focus on the role that relationships and community play in fostering access to opportunity. Lynn Cunningham, professor emeritus of clinical law at George Washington University Law School, offers a valuable proposal in this vein.¹⁵⁷ Specifically, Professor Cunningham writes that, rather than imposing rigid family structures through strict occupancy rules, housing providers should focus on “caring relationships” and allow use by extended families of housing units as a form of “wraparound services”

150. John A. Powell & Stephen Menendian, *Opportunity Communities: Overcoming the Debate over Mobility Versus Place-Based Strategies*, in *THE FIGHT FOR FAIR HOUSING* 207, 219 (Gregory D. Squires ed., 2018).

151. *See id.* at 219-221.

152. *See id.* at 219.

153. Bostic & Acolin, *supra* note 23, at 197-98; *but see* Press Release, *Secretary Carson Terminates 2015 AFFH Rule*, HUD.gov (July 23, 2020), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_109 (HUD press release announcing repeal of the 2015 rule).

154. *See* Powell & Menendian, *supra* note 150.

155. *See id.*; Cammett, *supra* note 123, at 1137 (discussing the social exclusion triggered by contact with the criminal legal system).

156. *See* Lynn E. Cunningham, *Managing Assets/Managing Families: Reconceptualizing Affordable Housing Solutions for Extended Families*, 11 J. AFFORDABLE HOUS. & CMTY. DEV. L. 390, 401 (2002); FitzPatrick, *supra* note 9, at 445 (arguing that due to the unchanged nature of the relationship between tenants and Housing Authorities, the HOPE VI projects “are an invitation to disaster”).

157. *See id.*

for their family members.¹⁵⁸ However, beyond occupancy policies, the connection of HUD's banishment and screening policies to the criminal legal system pose barriers to implementing such a system. To enable the shift Cunningham envisions, PHAs must stop characterizing their residents as criminals and public housing communities as high-crime areas. Instead, PHAs must choose to see them as family members, loved ones, and support systems for those who live in these communities.

While police consistently occupy public housing developments, public housing complexes are typically devoid of programming and services that help residents.¹⁵⁹ Instead of outfitting public housing with new surveillance cameras and assigning more officers to patrol, investments would be better directed at providing support to tenants, such as job training, childcare, and transportation. Given decades of sustained policing practices of control and HUD exclusion policies, a rational observer can determine without much difficulty that this approach has neither made public housing residents safer nor facilitated mobility. Denying people with criminal records access to housing makes recidivism more likely.¹⁶⁰ This is because those without housing are more likely to turn to survival crimes and non-legal income sources, in turn harming rather than helping public safety.¹⁶¹ Consequently, those exiting the criminal legal system are among the most economically vulnerable, and therefore the most likely to turn to public housing. It therefore follows that public housing should serve as a safety net for these individuals rather than as a barrier to re-entry.¹⁶²

Research shows that community investment and social services produce positive outcomes which effectively address crime and safety.¹⁶³ Illustrating this concept, the presence of local community organizations, including local non-profits and organizers, has been shown to enhance community safety and sanitation.¹⁶⁴ For example, the Dudley Street Neighborhood Initiative in Roxbury, Massachusetts built community-controlled affordable housing for community members, provided jobs to young people, and continues to organize around various grassroots campaigns.¹⁶⁵ Community groups in New York City's Washington Heights neighborhood of Manhattan advocated to secure resources to maintain public parks.¹⁶⁶ Neighborhood institutions such as these are key components to building capital and community engagement.

158. See Cunningham, *supra* note 156, at 402.

159. See FitzPatrick, *supra* note 9, at 445.

160. See Valerie Schneider, *The Prison to Homelessness Pipeline: Criminal Record Checks, Race, and Disparate Impact*, 93 IND L. J. 421, 432 (2018).

161. See *id.* at 432-33.

162. See Carey, *supra* note 123, at 15-19 (explaining the need to expand affordable housing for formerly incarcerated individuals and address the barriers to reentry embedded in public housing policies).

163. LEAH SAKALA, SAMANTHA HARVELL & CHELSEA THOMSON, URBAN INSTITUTE, PUBLIC INVESTMENT IN COMMUNITY-DRIVEN SAFETY INITIATIVES 3 (Nov. 2018), https://www.urban.org/sites/default/files/publication/99262/public_investment_in_community-driven_safety_initiatives_1.pdf.

164. See Patrick Sharkey, Gerard Torrats-Espinosa & Delaram Takyar, *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 AM. SOCIO. REV. 1214, 1217-18 (2017).

165. See *id.* at 1216-17.

166. See *id.* at 1217.

Additionally, investing in community programs connecting people to employment, healthcare, and education goes hand in hand with housing stability and security.¹⁶⁷ Many community organizations and social services providers already have a sizeable presence in public housing residents' lives.¹⁶⁸ Thus further investment in them would likely increase their presence and the quality of life they help to ensure for these residents. Place-based supportive services can be coordinated within public housing developments to increase access to community-based resources.¹⁶⁹ Without addressing the over-policing that exists in public housing, however, and shifting the structure for providing social services, such programs' utility will continue to be limited.

Rather than stigmatizing public housing residents by making them surmount bureaucratic hurdles grounded in distrust, our society should do better and provide residents with choice and agency over their lives through built-in supportive systems. Participatory governance structures would form one important feature of such a system, in which residents' input would be formally solicited and valued by the local housing agency as to operations within the housing site.¹⁷⁰ Shared-equity homeownership structures, such as community land trusts, should act as models for such a system in the public housing context. These structures are partially predicated on participatory governance and homeowner/resident-initiated community development, leading to increased neighborhood stability.¹⁷¹ In a report proposing various inclusive housing models, the Right to the City Alliance, a non-profit organization dedicated to supporting city residents against the influences of displacement from gentrification, emphasized its five housing equity principles critical to building an equitable affordable housing system: community control, affordability, permanence, inclusivity, and health and sustainability.¹⁷² These principles prioritize democratic decision-making processes, dignified housing, and maximizing the health and well-being of residents.¹⁷³ Through the lens of these guiding principles, a just public housing system is one based in support and autonomy, not punishment and control. Applying this model and these principles to public housing would increase resident empowerment and improve

167. See ELAYNE WEISS, CAMPAIGN FOR HOUSING AND COMMUNITY DEVELOPMENT FUNDING, A PLACE TO CALL HOME: THE CASE FOR INCREASED FEDERAL INVESTMENTS IN AFFORDABLE HOUSING (2017), <https://nlhdc.org/sites/default/files/A-Place-To-Call-Home.pdf>.

168. See SARAH GILLESPIE & SUSAN J. POPKIN, URBAN INSTITUTE, BUILDING PUBLIC HOUSING AUTHORITY CAPACITY FOR BETTER RESIDENT SERVICES 4 (Aug. 2015), <https://www.urban.org/sites/default/files/publication/65441/2000333-Building-Public-Housing-Authority-Capacity-for-Better-Resident-Services.pdf> (explaining that the social services system is fragmented such that low-income public housing residents face barriers to accessing services).

169. See REBECCA COHEN, CTR. FOR HOUS. POL'Y, CONNECTING RESIDENTS OF SUBSIDIZED HOUSING WITH MAINSTREAM SUPPORTIVE SERVICES: CHALLENGES AND RECOMMENDATIONS 21 (2010), <https://www.urban.org/sites/default/files/publication/26871/1001490-Connecting-Residents-of-Subsidized-Housing-with-Mainstream-Supportive-Services-Challenges-and-Recommendations.PDF>.

170. See Jaime Alison Lee, *Poverty, Dignity, and Public Housing*, 47 COLUM. HUM. RTS. L. REV. 97, 130 (2015).

171. See Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 112 (2011).

172. See HOMES FOR ALL CAMPAIGN OF RIGHT TO THE CITY ALL., COMMUNITIES OVER COMMODITIES: PEOPLE-DRIVEN ALTERNATIVES TO AN UNJUST HOUSING SYSTEM 8 (2018), https://homesforall.org/wp-content/uploads/2018/03/Communities-Over-Commodities_Full-Report.pdf [hereinafter RIGHT TO THE CITY ALL.].

173. See *id.*

conditions.¹⁷⁴ Importantly, prioritizing residents' vocalized concerns and needs would facilitate the self-determination public housing residents deserve.

V. CONCLUSION

The legacy of discriminatory housing policy and racist policing practices converged to make public housing a central site of surveillance and racial control rather than a safe or dignified space. Paternalistic public housing policies and American constitutional jurisprudence reinforce false and dangerous racialized notions of public housing residents as predisposed to crime and violence. This history includes two stories of public housing: one for white people, involving trust, unquestioned support, and investment, and one for Black people, characterized by distrust, criminalization, and disinvestment. To forge a path forward for public housing, our policymakers must fundamentally reconceptualize it as a place of support and investment. They must scrap the ineffective punitive policies and policing practices currently overburdening public housing residents and their guests and instead institute new services, investments in community engagement, and other tools that facilitate residents' self-determination and autonomy.

Of course, lawmakers will not achieve such reform without challenges. Making these changes requires political will on the local and federal level, not only to bring public housing back into the public policy debate, but also to restructure how we envision an equitable public housing system.¹⁷⁵ Currently, relying on the federal government to implement changes may seem like a non-starter.¹⁷⁶ However, given the discretion local PHAs are afforded to implement and interpret policies, grassroots organizing on the local level should be galvanized to push for changes. Primary among these changes must be ending criminal screening and banishment policies and modifying public housing governance structures to better incorporate the voices of the people actually living within them. Furthermore, law enforcement policy and practices happen primarily on the local and state level; it is not necessary to rely on federal government support to begin enacting changes to harmful policing practices now. Housing reform advocates can instead apply their efforts at the state and local level to begin making potentially immediate positive impacts in people's lives. Many possible solutions exist for reimagining public housing as a supportive institution. Ultimately, though, it must be up to residents and to the communities impacted by decades of damaging housing policy and policing practices to determine what sorts of supports are needed and desired, as well as how to best implement them.

174. See *Participatory Democracy and Public Housing*, WILSON CENTER (Dec. 3, 2012), <https://www.wilsoncenter.org/event/participatory-democracy-and-public-housing>.

175. See RIGHT TO THE CITY ALL., *supra* note 172, at 6 (noting that mainstream housing policy debate centers on the idea that the market should provide housing and public housing is not given serious consideration).

176. It is important to note, however, that many housing justice groups are fighting the current administration's cuts to HUD's budget and are calling on Congress to reinvest in public housing. See Jimmy Tobias, *Meet the Rising New Housing Movement That Wants to Create Homes for All*, THE NATION (May 24, 2018), <https://www.thenation.com/article/archive/the-way-home/>.