

**NCCRC**  
National Coalition for a  
Civil Right to Counsel



**N** Northeastern Law  
**Program on Human Rights  
and the Global Economy**

# **Race and Representation in the United States: Civil Right to Counsel as a Human Right**

For the 107<sup>th</sup> Session of the U.N. Committee on the Elimination  
of Racial Discrimination  
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## Introduction and Issue Summary

In the United States, the lack of a categorical right to counsel in civil cases disproportionately harms people of color and further widens the justice gap in underserved communities. The U.S. Supreme Court’s repeated refusal to extend a guaranteed right to counsel beyond criminal matters contravenes the human rights norms in the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) that support this right. This submission reveals the U.S. government’s noncompliance with its international legal obligations by examining the disproportionate effects that lack of access to counsel in civil cases have on people of color facing eviction and provides examples of successful local models supporting a civil right to counsel that should be replicated nationally.

In ratifying ICERD, the United States assumed responsibility “for the observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.”<sup>1</sup> To fulfill this commitment, State Parties must guarantee the right to equality before the law – notably the enjoyment of the “right to equal treatment before the tribunals and all other organs administering justice” – in accordance with Article 5.<sup>2</sup> Furthermore, Article 6 requires that State Parties provide “effective protection and remedies through competent national tribunals and other State institutions” to victims of racial discrimination where a human right or fundamental freedom has been violated.<sup>3</sup> Addressing fair procedures and adjudication through a lens of equality and nondiscrimination, these provisions encompass both civil and criminal matters and States parties, such as the United States, to proactively pursue equal access to justice for all.

The civil right to counsel is receiving increasing recognition on the international stage as a basic right. The World Justice Project’s 2021 Rule of Law Index ranks the United States 126th out of 139 countries on “access and affordability of civil justice,” an 18-spot drop since 2020.<sup>4</sup> This score measures “the accessibility and affordability of civil courts, including whether people are aware of available remedies; can access and afford legal advice and representation; and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers.”<sup>5</sup> This standard shows a growing international consensus that upholding basic rights requires a right to counsel in civil cases, particularly where fundamental needs are at stake. The United States is an outlier among countries such as Canada, Australia, New Zealand, Brazil, and South Africa that have statutes or a constitutional provision providing for free civil counsel for the indigent.<sup>6</sup>

### I. Racial Impacts of the Lack of a Right to Counsel in Civil Cases

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<sup>1</sup> International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, T.I.A.S. 94-1120, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

<sup>2</sup> *Id.* at art. 5(a).

<sup>3</sup> *Id.* at art. 6.

<sup>4</sup> *U.S. Rank on Access to Civil Justice in Rule of Law Index Drops to 126<sup>th</sup> out of 139 Countries*, NAT’L COAL. FOR A CIV. RT. TO COUNSEL (Dec. 10, 2021), [http://civilrighttocounsel.org/major\\_developments/217](http://civilrighttocounsel.org/major_developments/217).

<sup>5</sup> *WJP Rule of Law Index*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/rule-of-law-index/factors/2021/Civil%20Justice/> (last visited July 11, 2022).

<sup>6</sup> *International Perspective on Right to Counsel in Civil Cases*, NAT’L COAL. FOR A CIV. RT. TO COUNSEL, [http://civilrighttocounsel.org/about/international\\_perspective](http://civilrighttocounsel.org/about/international_perspective) (last visited July 11, 2022).

Access to effective civil aid remains out of reach for most Americans, exacerbating the gap between the legal needs of low-income individuals – who are disproportionately people of color – and available civil legal assistance. In the U.S., Black and Hispanic Americans are more likely to have low incomes compared with non-Hispanic whites and Asian Americans:<sup>7</sup> recent data discloses that more than one-quarter (twenty-six percent) of all Black Americans and nearly one-quarter (twenty-three percent) of Hispanic Americans live in households with incomes below 125 percent of the federal poverty level.<sup>8</sup>

In its 2022 Justice Gap Study, the Legal Services Corporation (LSC) estimated that ninety-two percent of low-income Americans get any or insufficient legal assistance.<sup>9</sup> Perpetuating poverty and racism at a systemic level, these statistics reveal that one in two (forty-six percent) low-income Americans who did not seek legal help for civil legal problems cite cost as a reason why, and one in two (fifty-three percent) did not know if they could afford a lawyer if they needed one.<sup>10</sup> Of the 1.9 million requests for civil help from low-income individuals that LSC-funded organizations receive in a year, one out of every two (forty-nine percent) are turned away due to limited resources.<sup>11</sup>

The race-based impacts of lack of civil counsel are plainly visible in cases that involve basic human needs, such as housing, education, health care, income maintenance, and safety. Significantly high among the civil legal issues that have such high-stakes consequences is housing security, with forty-three percent of low-income, renter households experiencing at least one civil legal problem relating to housing in the past year compared to twenty-three percent of homeowner households.<sup>12</sup> Compounding this reality, survey data reveals that households experiencing issues with eviction are disproportionately likely to have experienced multiple legal problems in the past year.<sup>13</sup>

A deeper investigation into the eviction crisis demonstrates that nearly one in four Black renters (23.7 percent) live in a county in which the Black eviction rate is more than *double* the white eviction rate.<sup>14</sup> Based on data compiled from the Eviction Lab, Black individuals are overrepresented in the evicted defendant population, comprising 19.9 percent of all adult renters but 32.7 percent of all eviction-filing defendants.<sup>15</sup> In contrast, white renters made up 51.5 percent of all adult renters but only 42.7 percent of all eviction filing defendants.<sup>16</sup> These

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<sup>7</sup> *Section 2: Today's Low-Income America*, LEGAL SERV. CORP., <https://justicegap.lsc.gov/resource/section-2-todays-low-income-america/> (last visited July 11, 2022).

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

<sup>9</sup> *Executive Summary*, LEGAL SERV. CORP., <https://justicegap.lsc.gov/resource/executive-summary/> (last visited July 11, 2022).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Section 3: The Prevalence of Civil Legal Problems*, LEGAL SERV. CORP., <https://justicegap.lsc.gov/resource/section-3-the-prevalence-of-civil-legal-problems/> (last visited July 11, 2022).

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

<sup>14</sup> Peter Hepburn, Renee Louis, & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 653 (2020), [https://sociologicalscience.com/download/vol-7/december/SocSci\\_v7\\_649to662.pdf](https://sociologicalscience.com/download/vol-7/december/SocSci_v7_649to662.pdf).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

disparities continued during the COVID-19 pandemic despite overall lower eviction filing rates.<sup>17</sup>

Landlords seeking to evict tenants take advantage of an exceptionally imbalanced power dynamic that falls heaviest on people of color because they are disproportionately subjected to eviction proceedings. The National Coalition for a Civil Right to Counsel (“NCCRC”) recently found that on average three percent of tenants are legally represented compared to 81 percent of landlords.<sup>18</sup> In the courts, the odds are stacked against tenants: any defenses available are virtually impossible to prove without a lawyer.<sup>19</sup> As a result, some landlords take advantage of the pro se status of tenants and file meritless eviction cases while other landlords prevail simply because their attorneys can more effectively present the facts and the law.<sup>20</sup> Being forced to leave their homes is far from the only harmful consequence: many landlords will not even consider an applicant with a prior eviction filing, even if it did not ultimately result in a final eviction judgment.<sup>21</sup> The devastating and long-lasting impacts of evictions that prevent future access to safe and affordable housing come with a host of other collateral consequences, such as adverse physical and mental health outcomes, interrupted employment or job loss, additional child care and transportation expenses, food insecurity, and homelessness.<sup>22</sup>

A new research report released by the American Civil Liberties Union (“ACLU”) shows immigrants also face pervasive barriers to legal representation in Immigration and Customs Enforcement (“ICE”) detention facilities.<sup>23</sup> So far in fiscal year 2022, seventy-nine percent of detained people in civil removal proceedings lacked counsel.<sup>24</sup> Much like the fate of unrepresented tenants in eviction cases, detained immigrants who lack access to counsel often experience damaging consequences. Detained immigrants who are represented are over *ten times* more likely to win their immigration cases than those without an attorney.<sup>25</sup> Detained people without counsel are more likely to be held in detention for longer periods of time: those with

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<sup>17</sup> See, e.g., Edwin Rios, *New Data Shows Who, Exactly, Got Evicted the Most During the Pandemic*, MOTHER JONES (Apr. 15, 2022), <https://www.motherjones.com/crime-justice/2022/04/eviction-coronavirus-racism-california/> (“A Mother Jones analysis of census data and sheriff’s department lockout notices in five California counties from March 13, 2020, to October 2021 found that even as evictions proceeded at lower rates during the pandemic, they continued to disproportionately affect residents of majority-Latino and majority-minority neighborhoods.”)

<sup>18</sup> *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, NAT’L COAL. FOR A CIV. RT. TO COUNSEL, [http://civilrighttocounsel.org/uploaded\\_files/280/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_\\_NCCRC\\_.pdf](http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf) (last modified April 2022).

<sup>19</sup> Sandra Park & John Pollock, *Tenants’ Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond*, ACLU (Jan. 12, 2021), <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Evidence Matters: Prevalence and Impact of Evictions*, OFF. OF POL’Y DEV. AND RSCH., <https://www.huduser.gov/portal/periodicals/em/Summer21/highlight2.html> (last modified Summer 2021).

<sup>23</sup> Aditi Shah & Eunice Hyunhye Cho, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Centers*, ACLU (June 6, 2022), [https://www.aclu.org/sites/default/files/field\\_document/no\\_fighting\\_chance\\_aclu\\_research\\_report.pdf](https://www.aclu.org/sites/default/files/field_document/no_fighting_chance_aclu_research_report.pdf)

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.* at 5-6.

representation are almost seven times as likely to be released from custody than those without counsel.<sup>26</sup>

## II. CERD Committee Position

In its 2014 Concluding Observations, the Committee on the Elimination of Racial Discrimination (the Committee) expressed its continuing concern at the lack of a generally recognized right to counsel in civil proceedings, “which disproportionately affects indigent persons belonging to racial and ethnic minorities” seeking effective judicial remedies.<sup>27</sup> The Committee strongly recommended that the United States “allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability.”<sup>28</sup>

In monitoring the implementation of ICERD, the Committee has recognized the importance of legal aid to ensure equal access to the courts as a means of combating racial discrimination.<sup>29</sup> In General Recommendation No. 34, the Committee urged State Parties to “[t]ake all the necessary steps to secure equal access to the justice system for all people of African descent including by providing legal aid, facilitating individual or group claims, and encouraging non-governmental organizations to defend their rights.”<sup>30</sup> Additionally, in General Recommendation 31, the Committee stressed the importance of making it easier for victims of acts of racism to seek civil redress in the court by, inter alia, providing free assistance of counsel.<sup>31</sup> Specifically, the Committee commented that steps should be taken to “grant[] victims effective judicial cooperation and legal aid, including the assistance of counsel.”<sup>32</sup>

## III. U.S. Government Response

Despite these clear and repeated directives over the last several decades, the United States did not cite any efforts to remedy this issue in its one-year follow-up submission responding to the Committee’s key recommendations in 2015. Furthermore, the United States did not recognize a general civil right to counsel in its most recent State Party Report submitted on June 2, 2021.<sup>33</sup> Mere reliance on “strategic partnerships with civil legal aid organizations” and “collabor[ations] with state and local entities” has proved inadequate to remove barriers to civil justice, leaving the

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<sup>26</sup> *Id.* at 6.

<sup>27</sup> Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, ¶ 23, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

<sup>28</sup> *Id.*

<sup>29</sup> Martha F. Davis, *In the Interests of Justice: Human Rights and the Right to Counsel in Civil Cases*, 25 *TOURO L. REV.* 147, 171 (2009), <https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1357&context=lawreview>.

<sup>30</sup> Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 34: Racial Discrimination Against People of African Descent*, ¶ 35, U.N. Doc. CERD/C/GC/34 (Oct. 3, 2011).

<sup>31</sup> Davis, *supra* note 29, at 170.

<sup>32</sup> Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, at 98-108, ¶ 17(b), U.N. Doc. A/60/18(SUPP) (Aug. 19, 2005).

<sup>33</sup> *Tenth to Twelfth Periodic Reports of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination*, U.N. Doc. CERD/C/USA/10-12 (June 8, 2021).

delivery of civil legal assistance to the discretion of the states.<sup>34</sup> Without a comprehensive plan to provide a civil right to counsel at the federal level, access to civil legal services is contingent on geography and uncertain governmental funding.

On a more positive note, in response to the COVID-19 pandemic, the United States urged governors, mayors, county executives, and state court administrators to implement proactive measures to keep Americans in their homes during unprecedented times and prevent unnecessary evictions. In a letter to state and local governments, the Secretary of the Treasury, Attorney General of the Department of Justice, and the Secretary of the Department of Housing and Urban Development (“HUD”) encouraged the use of Emergency Rental Assistance (“ERA”) and Fiscal Recovery Funds (“FRF”) to launch right to counsel programs, among other recommendations.<sup>35</sup> The guidance documents for both ERA and FRF explicitly permitted the use of funds for legal representation of tenants facing eviction.<sup>36</sup> Congress also provided HUD \$40 million from 2021-2022 for its Eviction Protection Grant Program to help non-profits and governmental entities provide legal assistance to low-income tenants at risk of or subject to eviction.<sup>37</sup> Such initiatives are important, but should not be contingent on extraordinary circumstances like a global pandemic.

Furthermore, the Biden Administration restored a standalone Office for Access to Justice within the Department of Justice (“DOJ”) and reconvened the Legal Assistance Interagency Roundtable as initiatives to improve the federal government’s understanding of and capacity to address the most urgent legal needs of communities across America.<sup>38</sup> As required by the President’s memorandum that announced these directives, U.S. Attorney General Merrick Garland submitted a phased strategic plan describing the DOJ’s plan to expand its access-to-justice function in September 2021.<sup>39</sup> The report’s expanded priority areas include enhancing navigability of the justice system, supporting access to the courts, expanding civil legal representation, supporting public defenders and indigent defense, pursuing racial equity, and ensuring economic

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<sup>34</sup> *Id.* at ¶ 123.

<sup>35</sup> Letter from Janet L. Yellen, Secretary, Dep’t of Treasury, Merrick B. Garland, Attorney General, U.S. Dep’t of Justice, and Marcia L. Fudge, Secretary, Dep’t of Hous. and Urb. Dev., to Governors, Mayors, County Executives, and Chief Justices/State Court Administrators (Aug. 21, 2021), <https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf>.

(Aug. 27, 2021), <https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf>.

<sup>36</sup> *FAQs: Emergency Rental Assistance Program*, DEP’T OF TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/faqs> (last modified July 6, 2022). DEP’T OF TREASURY, CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUNDS: OVERVIEW OF THE FINAL RULE (January 2022), <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>.

<sup>37</sup> Press Release, U.S. Dep’t of Hous. and Urb. Dev., HUD No. 22-091: HUD Expands Eviction Protection and Diversion Program with Additional \$20 Million (May 9, 2022), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_22\\_091](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_22_091).

<sup>38</sup> Restoring the Department of Justice’s Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 Fed. Reg. 27,793 (May 21, 2021). *See also* Press Release No. 21-1067, Dep’t of Just., Attorney General Merrick B. Garland Restores the Office for Access to Justice (Oct. 29, 2021), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-restores-office-access-justice>.

<sup>39</sup> OFF. OF THE U.S. ATT’Y GEN., A REPORT TO THE PRESIDENT OF THE UNITED STATES FROM THE ATTORNEY GENERAL OF THE UNITED STATES PURSUANT TO THE PRESIDENT’S MEMORANDUM ON RESTORING THE DEPARTMENT OF JUSTICE’S ACCESS-TO-JUSTICE FUNCTION (Sept. 15, 2021), <https://www.justice.gov/ag/page/file/1445351/download>.

opportunity and fairness.<sup>40</sup> An update on how effectively these plans have been implemented has yet to be released.

#### **IV. Other UN and Regional Human Rights Bodies Recommendations**

The U.N. Special Rapporteur on the Independence of Judges and Lawyers has noted that “[l]egal aid is an essential component of a fair and efficient justice system founded on the rule of law... [i]t is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy.”<sup>41</sup> Given that the intention of legal aid is to “contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal “representation and access to the court system,” the Special Rapporteur adopted a liberal definition of legal aid insofar as it should “include not only the right to free legal assistance in criminal proceedings” but apply more broadly to “any judicial or extrajudicial procedure aimed at determining rights and obligations.”<sup>42</sup> As both a right and an essential procedural guarantee for the effective exercise of other human rights, the right to legal aid must “be recognized, guaranteed and promoted in both criminal and non-criminal cases” and “extended to any person who comes into contact with the law and does not have the means to pay for counsel.”<sup>43</sup>

The Human Rights Committee has echoed these sentiments, encouraging States to provide legal assistance in cases other than criminal proceedings for individuals who do not have sufficient means to pay for it in its General Comment No. 32.<sup>44</sup> Other human rights treaty bodies have also addressed a civil right to counsel, including the Committee on Economic, Social and Cultural Rights (“CESCR”). In its General Comment No. 7, CESCR included legal aid in the list of procedural guarantees that should be provided to people facing forced evictions and seeking redress from the courts.<sup>45</sup>

#### **V. Recommended Questions**

We respectfully recommend that the Committee ask the U.S. delegation the following questions:

1. What measures is the federal government taking to establish a right to counsel in civil cases where basic human rights are at stake, including eviction proceedings?
2. What measures is the federal government taking to fully fund and ease restrictions on the federal Legal Services Corporation?
3. In response to the report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights published in 2017, what procedures has the federal government implemented to

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<sup>40</sup> *Id.* at 4-5.

<sup>41</sup> Gabriela Knaul (Special Rapporteur), *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, ¶ 20, U.N. Doc. A/HRC/23/43 (Mar. 15, 2013).

<sup>42</sup> *Id.* at ¶ 27.

<sup>43</sup> *Id.* at ¶¶ 28, 35.

<sup>44</sup> Hum. Rts. Comm., *General Comment 32: Article 14, Right to Equality Before Courts and Tribunals and to a Fair Trial*, ¶¶ 9-10, U.N. Doc. CCPR/GC/32 (Aug. 23, 2007).

<sup>45</sup> Comm. On Econ., Soc. and Cultural Rts., *General Comment No. 7: The Right to Adequate Housing: Forced Evictions*, ¶ 15, U.N. Doc. E/1998/22 (May 20, 1997).

collect relevant data to identify the extent to which the poor face barriers to the realization of their right to legal assistance?

4. What is the aggregate annual expenditure in the United States (federal government and state spending) on homeless shelters, health care, foster care, and other social safety net services spent on evicted tenants and their families?

## VI. Suggested Recommendations

Beyond the restoration of the Office for Access to Justice in 2021, the federal government must respond to the urgent legal needs of communities to make the court system accessible to all, regardless of income. As a proven means of keeping more low-income Americans in their homes, a civil right to counsel in eviction cases has been adopted in eighteen localities to ensure litigants have equal access to justice in civil proceedings. We urge you recommend that the newly appointed Director of the Office for Access to Justice immediately expand and replicate the promising right-to-civil-counsel models detailed below as a remedy to the access-to-justice crisis compounding racial disparities in the United States that undermine human rights of marginalized communities.

### a. San Francisco, California

In an ordinance passed in 2012, San Francisco, California declared its intention to become the first “Right to Civil Counsel City” in the United States to “provide representation to all residents involved in civil proceedings that could deny them basic human needs, such as child custody, shelter, sustenance, safety or health, regardless of their income or ability to pay.”<sup>46</sup> On June 5, 2018, voters in San Francisco approved a ballot initiative guaranteeing counsel for all tenants facing possible evictions regardless of income.<sup>47</sup> The program offers full-scope representation with laudable success rates.<sup>48</sup> With representation provided by local legal aid partnerships and funding provided by the city, fifty-nine percent of cases where clients received full-scope representation were able to stay in their homes, with the highest rate of success for Black households at eighty percent.<sup>49</sup> Of the 30.5 percent of cases that resulted in eviction judgments, seventy percent reported they had more time and/or money than they would have received without legal representation.<sup>50</sup> In June 2022, San Francisco voters approved Proposition D, which created a one-year right to counsel pilot for victims of domestic violence.<sup>51</sup>

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<sup>46</sup> S.F., CAL., ADMIN. CODE art. 58 §§ 58.1 – 58.3 (2011),

<https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/committees/materials/rls111189tdr.pdf>.

<sup>47</sup> Adam Brinklow, *SF Voters Guarantee Lawyers for Evicted Tenants*, CURBED SAN FRANCISCO (Jun. 7, 2018, 8:27 AM), <https://sf.curbed.com/2018/6/7/17437548/san-francisco-prop-election-eviction-lawyer>.

<sup>48</sup> *Implementation of Proposition F – Tenant Right to Counsel: Hearing Before the Land Use and Transportation Committee* (February 24, 2020) (presentation of Mayor’s Office of Housing and Community Development to Land Use Committee), <https://sfgov.legistar.com/View.ashx?M=F&ID=8159426&GUID=8A4C2AFF-8E15-4E38-9F6A-AC58CAA46D71>.

<sup>49</sup> *Tenant Right to Counsel Data – Outcomes March 2021 through December 2021*, EVICTION DEFENSE COLLABORATIVE, [http://civilrighttocounsel.org/uploaded\\_files/290/RTC\\_outcomes\\_March\\_2020\\_-\\_Dec\\_2021.pdf](http://civilrighttocounsel.org/uploaded_files/290/RTC_outcomes_March_2020_-_Dec_2021.pdf) (last visited July 11, 2022).

<sup>50</sup> *Id.*

<sup>51</sup> *San Francisco Ballot Initiative Established DV Right to Counsel Pilot*, NAT’L COAL. FOR A CIV. RT. TO COUNSEL (June 6, 2022), [http://civilrighttocounsel.org/major\\_developments/1561](http://civilrighttocounsel.org/major_developments/1561).



b. New York City, New York

In August 2017, New York City enacted legislation to provide access to free legal services to all low-income tenants facing eviction proceedings in housing court and public housing authority termination of tenancy proceedings.<sup>52</sup> This right to counsel law charged the Office of Civil Justice (“OCJ”) of the New York City Human Resources Administration with planning and implementing programs that would provide all tenants facing eviction in New York City Housing Court whose household income is at or below the 200% federal poverty level with access to full representation.<sup>53</sup> In fiscal year 2021, OCJ-funded legal organizations provided legal assistance to approximately 100,000 New York residents in approximately 42,000 households in New York City facing housing challenges including eviction, disrepair, landlord harassment, and other threats to their tenancies.<sup>54</sup> Accordingly, the number of eviction filings fell by approximately 49,000, 46 percent lower than FY2020 and 72 percent lower than FY2019, prior to the COVID-19 pandemic.<sup>55</sup> Since the initiative was established, an overwhelming majority of tenants who have city-funded legal representation have been successful in their proceedings, with 84 percent of households represented by a Right to Counsel lawyer able to remain in their homes.<sup>56</sup>

c. New Orleans, Louisiana

On May 5, 2022, the New Orleans City Council unanimously passed a Right to Counsel ordinance, guaranteeing an attorney for anyone at risk of losing their home in eviction court and creating a permanent framework for the program.<sup>57</sup> Detroit became the most recent city to enact a tenant right to counsel on May 10, 2022, with coverage extending to mortgage and property tax foreclosures.<sup>58</sup>

These cities join dozens of other cities, such as Cleveland, Denver, Kansas City, Louisville, and Minneapolis that have enacted legislation to ensure a right to counsel in eviction proceedings, with many more striving to get similar initiatives on their ballots. Federal leadership in this area is crucial to continuing this expansion.

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<sup>52</sup> *Universal Access to Legal Services: A Report on Year Four of Implementation in New York City*, N.Y.C. HUMAN RES. ADMIN.: DEP’T OF SOC. SERV. (Fall 2021), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf).

<sup>53</sup> *Id.* at 1.

<sup>54</sup> *Id.* at 3.

<sup>55</sup> *Id.*

<sup>56</sup> *New York City’s First-in-Nation Right-to-Counsel Program Expanded Citywide Ahead of Schedule*, CITY OF N.Y. (Nov. 17, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/769-21/new-york-city-s-first-in-nation-right-to-counsel-program-expanded-citywide-ahead-schedule>.

<sup>57</sup> *New Orleans Joins Growing List of Cities with Right to Counsel in Eviction Court*, LA FAIR HOUS. ACTION CTR. (May 5, 2022), <https://lafairhousing.org/new-orleans-joins-growing-list-of-cities-with-a-right-to-counsel-in-eviction-court/>.

<sup>58</sup> *Detroit is the Latest City to Enact Tenant Right to Counsel*, NAT’L COAL. FOR A CIV. RT. TO COUNSEL (May 23, 2022), [http://civilrighttocounsel.org/major\\_developments/1370](http://civilrighttocounsel.org/major_developments/1370).