

# HOUSING JUSTICE

National Housing Law Project

Newsletter July 2013

## Domestic Violence Survivor Challenges Nuisance Ordinances

Nuisance ordinances can impose penalties on landlords. These sanctions are assessed when the police are called a certain number of times to respond to disturbances that occur on the landlords' properties. Often, these ordinances aim to recover the costs associated with excessive police service and attempt to incentivize landlords to prevent criminal activity on their premises. Such laws are becoming increasingly common throughout the country both in large cities, such as Los Angeles and Chicago, and smaller localities. Some of these ordinances explicitly exempt incidents of domestic violence. However, a significant proportion of the ordinances specifically list domestic violence as a nuisance activity. These laws are problematic for domestic violence survivors seeking protection from the police for abuse being committed against them. In many situations, the ordinances force survivors to choose between protecting themselves or maintaining their housing.

Few cases have addressed the legality of these laws as applied to survivors. However, recently, in *Briggs v. Borough of Norristown*, a survivor sued the Borough of Norristown, Pennsylvania in federal court, claiming that its enforcement of certain nuisance ordinances against survivors violated a number of federal and state laws. The outcome of this case may set a legal precedent on whether these ordinances can be applied to survivors seeking protection from further abuse.

In *Briggs v. Borough of Norristown*, Lakisha Briggs, a domestic violence survivor and single

mother of two children, challenged Norristown's former and current nuisance ordinances. Norristown's original ordinance provided that landlords would have their rental licenses revoked if three instances of "disorderly behavior" were reported by the police within a two-month span. It further permitted the forcible removal of a tenant from any property under a three-strike condition. The ordinance not only granted the Chief of Police sole discretion in determining whether "disorderly behavior" existed, but also explicitly stated that "domestic disturbances" would be considered such behavior. Norristown eventually repealed the law and enacted a subsequent ordinance that replaced license revocations with large fines, but retained similar provisions as the original ordinance. For example, the new law calls for a series of daily and escalating criminal fines against landlords of any property where the police have responded to three instances of "disorderly behavior" within a four-month period. Additionally, the current ordinance strongly encourages all landlords to include in their leases language indicating that convictions of "disorderly behavior" constitute a breach of the lease.

According to the complaint, after responding to a number of domestic disturbances at Ms. Briggs's residence, the police began assessing "strikes" to Ms. Briggs's property, and warning her that three such "strikes" would lead to her eviction. Ms. Briggs alleged that after her ex-boyfriend assaulted her and her older daughter's boyfriend on separate occasions, she was left in a position where she could not contact the police without

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fearing eviction. This fear, according to Ms. Briggs, forced her to avoid police assistance when further violent incidents occurred and left her essentially defenseless when she was once again targeted by her ex-boyfriend. In one incident, Ms. Briggs's ex-boyfriend attacked her with a brick; in another, he smashed a glass ashtray against her head and stabbed her in the neck. Ms. Briggs had to be taken to an area hospital for emergency medical care and almost died. Ms. Briggs contended that despite these incidents, Norristown's officials quickly revoked Ms. Briggs's landlord's rental license and actively attempted to evict Ms. Briggs. She also alleged that it was only after her attorneys had confronted Norristown's officials did such enforcement attempts cease.

Ms. Briggs has criticized the new ordinance as a feigned repeal of the old law and has asserted that the new ordinance is plagued by the same legal deficiencies. She argues that these ordinances violate the First, Fourth, and Fourteenth Amendments of the United States Constitution and their equivalents under Pennsylvania law, as well as federal and state housing laws, including the Violence Against Women Act, Fair Housing Act and the Pennsylvania Human Relations Act. Specifically, Ms. Briggs contends that certain features of Norristown's ordinances, common in local nuisance laws across the country, are unconstitutional. These characteristics include the inability of an individual to contest the seizure of their property rights and the vague statutory description of what may constitute a "strike."

In addition, Ms. Briggs, who receives a housing subsidy from the Section 8 Choice Voucher program, alleges that the Violence Against Women Act (VAWA) prohibits Norristown from evicting survivors due to the abuse being committed against them. Specifically, she claims that there is a direct link between her calling the police because of the domestic violence and the penalty of eviction under the ordinances. VAWA provides that incidents of domestic violence do not constitute good cause for terminating tenancy of the victim of such violence. Finally, under the Fair

### **For More Information on *Briggs v. Borough of Norristown***

<http://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al>

Housing Act and related Pennsylvania laws, Ms. Briggs argues that that the Borough, by including "domestic disturbances" within the definition of "disorderly behavior" in the ordinances, intentionally discriminated against women, who make up the majority of survivors. She further alleges that these ordinances had a disparate impact on women in violation of the Fair Housing Act. ■

### **New Report Describes Obstacles for Limited English Proficient Survivors Seeking Police Protection**

A recent report issued by the National Immigrant Women's Advocacy Project (NIWAP), entitled "National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access," highlights the difficulties that limited English proficient, immigrant survivors of crimes such as domestic violence, dating violence, sexual assault, and stalking often experience in reporting abuse to the police and interacting with the justice system. Individuals who are "limited English proficient" (LEP) are people whose primary language is not English and who have a limited ability to communicate in English. The linguistic and cultural barriers between LEP immigrant survivors and local police departments can create serious safety concerns for survivors trying to protect themselves. Furthermore, NIWAP's report shows that immigrant survivors encounter difficulties in obtaining certification for U Visas, which confer temporary immigration status to survivors who cooperate with law enforcement. The report surveyed 722 service

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providers that assist immigrant survivors of crimes, including domestic violence, sexual assault, dating violence, stalking, kidnapping, and human trafficking. Survey respondents provided information from over 22,000 cases.

### **Lack of Language Access for LEP Survivors**

NIWAP's survey found that police officers responding to calls made by immigrant survivors often encountered basic difficulties – including identifying the language spoken by the survivor. When LEP survivors called the police, the responding officer improperly identified the survivor's language in more than half of the cases analyzed. Because the police officers could not effectively communicate with survivors, these officers often failed to complete police reports when responding to calls, even in situations where the survivors bore visible injuries or other signs of abuse. For instance, in about 84 percent of the cases in which the police did not complete a report, service providers reported that survivors had visible injuries, torn clothing, or property in disarray.

Additionally, the report noted that language barriers between survivors and responding officers had other consequences. According to the report, when responding to a call from an LEP immigrant survivor, police officers would obtain a written statement in the survivor's native language; rely on the survivor's limited English, instead of obtaining qualified interpretation assistance; or not use an interpreter at all. The report identified one case in which a police officer told a survivor requesting an interpreter: "Come on, you can speak English, just tell me what happened." Furthermore, the report noted that in some instances where a qualified interpreter or language line was not utilized, the police would only converse with the English-speaking abuser and not the survivor.

The study also found that police officers sought interpretation assistance from the children of the victim or of the perpetrator, friends or neighbors, adult relatives, or other people claiming to know the victim's language. Language access advocates

## **Resources**

A copy of the NIWAP report is available at: [http://www.njcbw.org/documents/PoliceResponseUVisasLanguageAccessReport-NIWAP41613FINAL\\_000.pdf](http://www.njcbw.org/documents/PoliceResponseUVisasLanguageAccessReport-NIWAP41613FINAL_000.pdf)

National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law  
<http://www.wcl.american.edu/niwap/>

U.S. Department of Justice, "Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field," (Sept. 21, 2004), available at: <http://www.justice.gov/crt/about/cor/lep/Final%20Tips%20and%20Tools%20Document.%209%2021%202004.pdf>

New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 F.R. 53014 (Sept. 17, 2007), available at: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-137708.html>

U.S. Department of Homeland Security, "U Visa Law Enforcement Certification Resource Guide," available at: <http://www.dhs.gov/xlibrary/assets/>

strongly discourage using friends or relatives (particularly minor children) as interpreters due to concerns about confidentiality, as well as concerns over the inability to ensure the accuracy of the translation. In addition, the report noted that the U.S. Department of Justice has cautioned against using children as interpreters in situations involving domestic violence because doing so can result in "psychological harm from having to recount details of the crime." The report also highlighted that unqualified interpreters can "generalize statements due to misunderstanding, lack of

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patience with the victims or because they did not understand the victim's dialect."

The report described other issues confronting LEP immigrant survivors, such as female survivors' discomfort in discussing sexual assault or domestic abuse with male interpreters. The survey found that male interpreters would often not believe the victim's statements or "generalize or leave out crucial information in the translation due to their own biases regarding issues of domestic violence or sexual assault." Respondents also reported that female interpreters were not sufficiently available. According to the report, the absence of effective language access for LEP immigrant survivors often impacted a survivor's decision to report crimes such as family violence, sexual assault, or human trafficking. The survey suggested that a lack of culturally appropriate interpretation made reporting crime considerably more difficult for the survivor. However, the report also noted that when service providers had ongoing relationships with law enforcement, the likelihood of survivors receiving necessary language assistance increased.

### **Misconceptions About U Visa Certification**

NIWAP's report further focused on immigrant survivors obtaining U Visas, a type of temporary immigration status available to survivors of certain crimes who cooperate with authorities in the investigation and prosecution of those crimes. Such qualifying crimes include domestic violence, sexual assault, rape, incest and trafficking. To obtain a U Visa: (1) the survivor must have endured physical or mental abuse as a result of a qualifying crime; (2) the survivor must have information about the qualifying crime; (3) the survivor must cooperate with law enforcement in the investigation and/or prosecution of the qualifying crime; and (4) the crime must have occurred in the United States, or violated U.S. law. Only certain entities, such as prosecutors or police departments, can provide U Visa certification. The report found that misinformation exists among entities eligible to certify U Visas, specifically concerning the reasons for denying certification. For example,

some survey respondents stated that their clients were denied U Visa certification because the perpetrator was not prosecuted; however, Department of Homeland Security (DHS) policy maintained that no prosecution was required for the cooperating survivor to receive certification.

### **Advocates and Authorities Should Collaborate**

A significant takeaway from this report was the importance of collaboration between survivor advocates and local authorities. Advocates should strive to establish working relationships with police and other government entities as means of beginning to address the many issues facing immigrant survivors outlined in the study. As the report states, "A working partnership between the law enforcement agencies and victim services programs is essential in ensuring that all parties are familiar with immigrant rights, and to ensure that immigrants have access to justice system assistance." ■

**For technical assistance or requests for trainings or materials, please contact:**

Karlo Ng, [kng@nhlp.org](mailto:kng@nhlp.org)  
 Catherine Bishop, [cbishop@nhlp.org](mailto:cbishop@nhlp.org)  
 National Housing Law Project  
 703 Market Street Ste. 2000  
 San Francisco, CA 94103  
 Phone: (415) 546-7000, x. 3117  
[www.nhlp.org/OVWgrantees](http://www.nhlp.org/OVWgrantees)

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