



National Housing Law Project

Newsletter November 2014

## HUD Issues Discrimination Charge Against Landlord for Trying to Evict Survivor Because of Attack

On October 31, 2014, the U.S. Department of Housing and Urban Development announced that the agency had issued a charge of discrimination (“charge”) against a Maryland landlord for attempting to evict a domestic violence survivor because of the violence committed against her. Specifically, HUD alleges that the landlord discriminated against the survivor on the basis of sex, in violation of the Fair Housing Act and HUD regulations.

### Background

#### *The Attack*

The domestic violence survivor rented an apartment with a Section 8 voucher beginning in 2007. She resided there with her two sons, aged 4 and 18. In 2012, the survivor’s boyfriend stabbed her and her 18-year-old son. As a result of their injuries, the survivor and her older son required hospitalization. In fact, the survivor had to stay at the hospital for several days.

While the attack was ongoing, shots were also fired near the survivor’s apartment. The HUD charge suggests that the individual who fired the weapon was not the perpetrator, nor was that individual a guest of the survivor or her older son. It is unclear from the public version of the HUD charge whether the gunfire was at all related to the domestic violence incident.

Police arrested the perpetrator at the scene of the attack. Eventually, a local court convict-

### Resources

Charge of Discrimination, *HUD v. Southgate Apartment Co., LLP et al.*, FHEO No. 03-13-0007-8 (Oct. 30, 2014).

HUD, *HUD Charges Owner of Maryland Housing Complex With Discriminating Against Victim of Domestic Violence*, HUD No. 14-137 (Oct. 31, 2014), available at: [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2014/HUDNo\\_14-137](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-137) (Press release includes a link to the discrimination charge.)

ed the perpetrator of reckless endangerment; the court also concluded that the attack constituted a crime involving domestic violence.

#### *Attempted Eviction*

After returning home, the survivor’s landlord served her with a 30-day notice to vacate her residence. The notice cited the survivor’s “domestic issues” as well as the fact that weapons had been discharged on the date of the attack. The notice cited several lease provisions that the survivor had presumably violated, including a requirement to supervise family members and other visitors such “that their conduct [would] not disturb others.” Another lease section cited in the notice prohibited “illegal pursuits or purposes” on

(Continued on page 2)

### IN THIS ISSUE

HUD Issues Discrimination Charge Against Landlord for Trying to Evict Survivor

Survey Finds Gaps in Immigrant Survivors’ Access to Transitional Housing

*(Continued from page 1)*

the property.

#### *Advocate's response*

The survivor and her family did not comply with the 30-day notice, and remained in their unit. The landlord then sent a follow-up letter threatening to refer her file to the landlord's attorneys if the family did not leave the unit within four days. The survivor then obtained an attorney, who wrote a letter to the landlord's counsel. The letter advised the landlord that survivors of domestic violence are protected by both state and federal law.

Additionally, the letter noted that because the survivor was a Section 8 voucher holder, a HUD-required lease addendum included federal legal protections. Along with the letter, the survivor's lawyer included a copy of the lease addendum, which cited HUD regulations regarding the Violence Against Women Act (VAWA). These regulations state that "[c]riminal activity directly relating to abuse" committed against the tenant or a tenant's family members generally cannot constitute grounds for eviction.

However, the regulations include a narrow exception where the survivor may be evicted if the tenancy causes an "actual and imminent threat" to residents or housing provider employees. Even where such a threat exists, the regulations require that a landlord only evict a survivor as a last resort such that "no other actions" could be taken "to reduce or eliminate the threat." (**Note:** Advocates who work with survivors of domestic violence, dating violence, sexual assault, and stalking should note that the HUD regulations discussed in this article reflect protections from VAWA 2005; however, as HUD has not yet issued VAWA 2013 regulations, the 2005 regulations remain in effect.) The survivor's attorney also informed the landlord that the survivor and her family would remain in the unit, and asked that the landlord reevaluate its decision to end the survivor's tenancy.

Eventually, the landlord refused to renew the survivor's lease, and then proceeded to file an

action in state court against her for breach of her lease. The survivor filed a fair housing complaint with HUD, whereupon the landlord decided not to pursue the court case.

#### **HUD Charge of Discrimination**

After investigating the fair housing complaint, HUD decided to issue its charge of discrimination. A charge means that HUD has determined that "reasonable cause exists to believe that a discriminatory housing practice has occurred." The charge includes allegations that the landlord discriminated against the survivor on the basis of her sex. Specifically, the charge alleges that a male tenant had a son who was arrested for armed robbery. Despite these alleged criminal offenses by the son, the male tenant was not told to vacate his unit. Instead, the landlord simply banned the son from the premises. Thus, the charge alleges that the landlord discriminated against the survivor by treating her differently than the male tenant regarding criminal activity by someone associated with the household. In the charge, HUD asks for an order to be issued that would (1) declare that the landlord violated the Fair Housing Act; (2) prevents the landlord from engaging in such discriminatory activities in the future; and (3) award damages to the survivor and her family members.

Now that the charge has been filed, the parties will have the matter heard by an administrative law judge. However, this could change if one of the parties decides to have the matter heard in a federal court.▪

*(Continued on page 3)*

#### **NHLP State Law Compendium**

This resource is a compilation of state and local housing protections for domestic violence survivors. The compendium is available at: <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>

*(Continued from page 2)*

## **Survey Finds Gaps in Immigrant Survivors' Access to Transitional Housing**

Emergency shelters and transitional housing serve as crucial resources for immigrants seeking to leave an abusive relationship. Immigrant survivors, particularly those who are undocumented, face challenges such as abusers who attempt to assert control over them by denying access to documents and information about immigration procedures. Since shelters and transitional housing programs protect the lives and safety of their clients, immigrant survivors of domestic violence and other forms of abuse are legally entitled to access these services regardless of their immigration status.

The National Immigrant Women's Advocacy Project (NIWAP) recently surveyed professionals who work with immigrant survivors about their clients' experiences in applying for transitional housing. The survey found that many advocates were unaware that their undocumented clients were entitled to these services. Additionally, the survey found that substantial numbers of undocumented survivors of domestic violence and other crimes did not seek access to emergency shelters or transitional housing. Further, among those survivors who did apply for these services, many undocumented immigrants were denied housing, either explicitly because of their undocumented status, or because they lacked certain documentation or identification. This article summarizes certain aspects of the NIWAP report as well as the survey results on which parts of the report are based.

### **Overview of Legal Authority**

The report details the federal statutes and agency guidance that provide for access to emergency shelters and transitional housing for individuals experiencing domestic violence and other crimes, regardless of the individual's immigration status. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)

deemed undocumented immigrants ineligible for many federal benefits. However, PRWORA also gave the Attorney General the authority to categorize certain types of programs or services as being necessary to protect life or safety, meaning that, under the law, these types of programs or services were not restricted on the basis of immigration status. The Attorney General issued a subsequent order stating that in order for a program to qualify for the exception to immigration status requirements, the program must: (1) "deliver in-kind (non-cash) services at the community level"; (2) not "condition the provision, amount, or cost of the assistance on the individual recipient's income or resources"; and (3) serve purposes "for the protection of life or safety." The order emphasized that a service provider must meet all three criteria to obtain this exception from PRWORA immigration status requirements. Furthermore, the order stated that unless an undocumented individual was otherwise not eligible, "benefit providers may not restrict the access of any alien to the services covered" by the order "including, but not limited to, emergency shelters." The Department of Housing and Urban Development (HUD) subsequently issued guidance on this issue. HUD's guidance stated that HUD-funded emergency shelters and transitional housing programs that provide services for two years or less would be accessible to survivors regardless of immigration status.

Although immigrants should be able to access emergency shelters and transitional housing regardless of immigration status, the results of the NIWAP survey suggest that filing for immigration relief increases the likelihood that an individual will gain access to these services. Undocumented immigrant survivors may seek immigration relief by taking steps such as filing a Violence Against Women Act (VAWA) self-petition (which allows survivors to seek legal status without relying on an abusive partner to sponsor their applications), or applying for a U-visa (which provides immigration protections to victims of certain crimes, including domestic violence).

*(Continued on page 4)*

(Continued from page 3)

## Survey Results

### *Methodology*

The NIWAP report compiled responses from attorneys and advocates from 655 agencies that work with immigrant survivors of domestic violence and other crimes. The respondents worked for advocacy organizations, victim services groups, state and local government agencies, and legal services organizations—representing all 50 states as well as the District of Columbia, the Virgin Islands, and the Northern Mariana Islands.

The respondents reported on their work with a total of 4,482 immigrant clients who applied for transitional housing between 2001 and 2013. Most of their clients were immigrant survivors of domestic violence (3,738) and sexual assault (495). Other clients included immigrant survivors of human trafficking, as well as immigrant children who had been abused or abandoned, or who had run away from their homes.

### *Need for assistance*

Respondents reported that battered immigrant clients “represented the largest population in need of transitional housing to escape their abusers” (83%). Of this group, 73% were undocumented immigrants. Most of the immigrants (66%) who have needed transitional housing had previously visited an emergency shelter, suggesting, as the report observes, that access to short-term shelters alone often does not provide the protection and stability to permanently leave an abusive environment.

### *Awareness of eligibility*

The majority of respondents (64%) stated that they knew that undocumented survivors of domestic violence or sexual assault who are homeless or at risk of being homeless are eligible for emergency shelter and transitional housing. However, the remaining 36% *did not know* that undocumented immigrants were eligible for these

services.

In fact, the report notes that only slightly more than half of the immigrants who experienced domestic violence and needed transitional housing applied for access. Additionally, over a third of immigrant survivors of sexual assault who needed transitional housing did not apply for it. The lack of uniform awareness of eligibility among advocates may help explain why many immigrants who needed housing never applied for it.

### *Acceptance into transitional housing*

Only 47% of immigrants who had experienced domestic violence and applied for transitional housing were accepted. Survivors of domestic violence were accepted at a lower rate than immigrant survivors of human trafficking (79% accepted). However, immigrant survivors of domestic violence were more successful than survivors of sexual assault by a non-intimate partner—of whom nearly all (94%) were denied access to transitional housing. Of these sexual assault survivors, nearly all denials were premised on the fact the survivor was undocumented. The report noted that sexual assault survivors also faced difficulties obtaining transitional housing because they were not survivors of domestic violence.

Immigration status seemed to significantly affect the chances of immigrant survivors of domestic violence being accepted into transitional housing. Of those who successfully obtained access, most had received or applied for some type of immigration relief, generally either a VAWA self-petition or a U-visa. In addition, 2% of successful applicants were lawful permanent residents or U.S. citizens.

### *Reasons for denials*

When immigrant domestic violence survivors were denied access to transitional housing, a large majority (86%) received an explanation for the denial.

(Continued on page 5)

(Continued from page 4)

According to the survey, the most common reasons the housing programs provided for denying applicants included:

- the housing program did not have space for the applicant (35%);
- the applicant did not produce documentation of immigration status (34%);
- the applicant was undocumented (26%);
- the applicant did not meet the program's income requirements (24%); and
- the applicant did not produce government-issued identification (18%).

Because transitional housing programs have limited resources, they are permitted to deny an applicant because of a lack of space. The other explanations given to denied applicants, though, suggest that immigration status may continue to affect immigrants' access to transitional housing despite existing legal protections. This reality is most obvious for the applicants expressly told they were denied because they were undocumented or because they could not provide documentation of their immigration status.

Additionally, as the report points out, many of the other explanations also related indirectly to the applicant's immigration status. For example, the report noted that applicants who were denied for failing to meet the program's income requirements may not have been able to provide proof of legal work authorization or current employment because of their undocumented status. Similarly, some programs denied applicants because they were unable to provide government-issued identification. While requiring such identification does not necessarily impose a requirement of legal immigration status, this requirement functionally bars all undocumented immigrants in many states.

### Conclusion

Despite existing legal protections, many undocumented immigrant survivors of domestic

violence and other crimes are turned away from transitional housing programs, while others never apply. Advocates who work with immigrant survivors should familiarize themselves with the legal issues surrounding access to transitional housing to ensure that their clients receive the services to which they are entitled.▪

### Resources

National Immigrant Women's Advocacy Project (NIWAP), *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime* (June 3, 2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/housing/Transitional-Housing-Report.pdf/view?searchterm=%22Access%20to%20emergency%20shelters%20and%20transitional%20housing%22>

U.S. Department of Justice, *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 Fed. Reg. 3613 (Jan. 16, 2001), available at: [http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG\\_order.protection\\_life\\_or\\_safety.pdf](http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf)

U.S. Department of Housing & Urban Development, HUD Guidance Letter re: Access to Transitional Housing and Emergency Shelters (Jan. 19, 2001), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>

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

Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org)  
 National Housing Law Project  
 703 Market Street Ste. 2000  
 San Francisco, CA 94103  
 Phone: (415) 546-7000, x. 3121  
[www.nhlp.org/OVWgrantees](http://www.nhlp.org/OVWgrantees)

*This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*