Washington, D.C.: the Capital of Fair Housing Act Violations

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Amid the ongoing COVID-19 pandemic, the United States is battling yet another deadly emergency: a crisis of unhoused people. The rate of unhoused people and homeless individuals in the United States has steadily increased in recent years, affirming that the country is neither properly addressing the causes of this issue nor the needs that stem from it.1 Now, over two years into the pandemic, high rates of unemployment and evictions throughout the nation—especially in the nation’s capital—indicate that the homelessness crisis will only worsen.2 This crisis, which implicates the human right to housing,3 requires immediate attention and action.

While local government agencies are in a unique position to assist unhoused people,4 frequently, some agencies use methods that can cause significantly more harm than relief5 In Washington, D.C. (“D.C.”)—the city with the highest per-capita rate of unhoused individuals in the country6—the Office of the Deputy Mayor for Health and Human Services (DMHSS), is one such agency and the Coordinated Assistance and Resources for Encampments Pilot Program (Pilot Program) is one such method of harm.

This Article will examine how DMHSS’s Pilot Program is not just harmful to unhoused people but illegal under U.S. federal law. DMHSS and the Pilot Program violate Title VIII of the Civil Rights Act of 1968 when the agency conducts encampment evictions before securing alternative, permanent housing for subsequently displaced persons. Moreover, because most encampment residents are

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**INTRODUCTION**

Amid the ongoing COVID-19 pandemic, the United States is battling yet another deadly emergency: a crisis of unhoused people. The rate of unhoused people and homeless individuals in the United States has steadily increased in recent years, affirming that the country is neither properly addressing the causes of this issue nor the needs that stem from it.1 Now, over two years into the pandemic, high rates of unemployment and evictions throughout the
Black, DMHSS effectively makes housing unavailable to encampment residents on the basis of race.

I. BACKGROUND

A. The United States’ Homelessness Crisis

According to the Department of Housing and Urban Development’s (HUD) 2021 Annual Homeless Assessment Report, there were 326,126 “sheltered homeless” people living in the United States during a single night in January 2021. Disturbingly, the actual number of total unhoused people living in the United States is certainly much higher. First, because the report does not include the number of unsheltered persons living throughout the country, second, because the pandemic caused significant disruptions to the counting process, and finally, because housing experts estimate that HUD’s methodology, generally, undercounts people by a significant margin. While the sheer number of unhoused people is alarming, of significant concern is that homelessness disproportionately impacts minority populations.

B. Unhoused Persons in the Nation’s Capital

The rates of unhoused people in Washington, D.C.—and the accompanying racial disparities—are especially troubling. Per capita, Washington, D.C. has the highest rate of unhoused people in the country at two times the national average. Further, while Black people make up 46.6 percent of D.C.’s population, they make up 86.4 percent of the city’s unhoused population. Due to a severe lack of affordable housing, and unsafe and restricting conditions within homeless shelters, many unhoused people in D.C. reside in encampments throughout the city. According to the most recent data, there are 199 encampments, including 327 tents, across D.C.
II. DMHSS’ Pilot Program—A Failed Response to D.C.’s Homelessness Crisis

A. Aspirational in Theory; A Deceptive Failure in Practice

In August 2021, in response to the high number of individuals living in encampments, DMHSS quietly unveiled its Pilot Program with the expressed “goal of relocating [encampment residents] to safer permanent housing options.”18 Conceptually, the Pilot Program was designed to permanently shut down encampment locations after DMHSS provided assistance to encampment residents.19 However, a closer look at the Pilot Program quickly reveals that only certain encampment residents may receive and benefit from the program’s services.20 Those who are not eligible for assistance, those who chose not to participate in earlier outreach efforts, and those who did not have the opportunity to work with DMHSS’s outreach efforts have been and continue to be evicted by the agency without first receiving any means of alternative, permanent housing.21 Further, though some individuals who were eligible and willing to participate in the Pilot Program were connected with short-term housing, the Pilot Program has failed to secure alternative, permanent housing for even a single encampment resident thus far.22

B. A Closer Look at The Harmful and Illegal Impacts of DMHSS’s Pilot Program

In October 2021, DMHSS established the Pilot Program’s first target: the “NoMa encampment.”23

Previously located in the NoMa neighborhood at the K, L, and M Street underpasses, the NoMa encampment was among the most well-known in the city.24 For well over a decade, an established community of unhoused individuals resided in the area, with up to sixty people living there at a time.25 However, DMHSS—citing the Pilot Program—forcibly evicted encampment residents and did so without first guaranteeing alternative, permanent housing despite the agency’s promise that it would.26

The NoMa encampment was not the only community of unhoused people to suffer due to DMHSS’s harmful program. Before the end of 2021, DMHSS forcibly evicted residents from at least one other encampment.27 Additional evictions are scheduled for this year as well.28

III. Homelessness Is a Human Rights Issue

Homelessness is not just a racial and socioeconomic justice issue; it is also an internationally fundamental human right. When the Universal Declaration of Human Rights was adopted in 1948, the right to adequate housing was officially recognized as a universally applicable and accepted principle of human rights law.29 Further, in 1966, when the International Covenant on Economic, Social and Cultural Rights (ICESCR) was drafted in 1966,

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18 Id.
20 Id.
22 Id.
25 Id.
26 Id.
IV. Analysis

A. Encampments Are Dwellings

Encampments are legitimate dwellings, and as such, the FHA applies. Although federal and local legislatures go to great lengths to criminalize unhoused people and restrict what can be classified as a dwelling, cases throughout the United States have ruled in a wide range of circumstances that tents, as structures intended to be used for human habitation, are dwellings. In addition to the caselaw, DMHSS’ own definition of an encampment acknowledges that encampments are dwellings, stating that an encampment is “an abode such as a tent or unmovable structure . . ..” Moreover, the experiences of encampment residents themselves further affirm that encampments are dwellings, protected under the FHA. Countless individuals have lived in tents under the L Street underpass for years, some for over a decade. These people call the NoMa encampment home.

B. DMHSS Pilot Program Denies Housing to Persons Based on Race

The FHA further applies because DMHSS’ Pilot Program effectively denies housing to encampment residents based on race.

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30 Id.
32 Id.
33 42 U.S.C. § 3604(a) 1968.
34 Id.
35 The United States Supreme Court held in Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. that disparate impact claims are cognizable under the FHA. 576 U.S. 519, 545 (2015).
36 Akalonu, supra note 12.
39 Austermuhle, supra note 14.
40 Id.
residents based on race, given that the majority of encampment residents are Black. While no data currently exists regarding the precise racial makeup of encampment residents, the racial makeup of D.C.’s unhoused population supports the claim that the overwhelming majority of encampment residents are Black. Accordingly, because DMHHS evicts encampment residents, most of whom are Black, without first ensuring that individuals receive guaranteed, alternative permanent housing before evictions take place, the agency and its Pilot Program deny and make unavailable housing to persons on the basis of race.

V. RECOMMENDATIONS AND CONCLUSION

Ultimately, the existing legal protections under the Fair Housing Act that prohibit government agencies from denying a person a dwelling based on race protect encampment residents facing evictions. To ensure that DMHSS is compliant with the FHA and with the model standard set by ICESCR in recognizing a legal right to adequate housing, the agency must not close encampments until after encampment residents secure alternative, permanent housing.

41 Letter from Brian McClure, Director, Council Office of Racial Equity, to the Honorable Phil Mendelson, Chairman, Council of the District of Columbia (May 12, 2021), https://lims.dccouncil.us/downloads/LIMS/46864/Other/B24-0168-REIA_-_DOPA_Amendment_Act_of_2021.pdf (providing a survey of people experiencing homelessness conducted in January 2021, which found that 86.5% of the residents who experienced homelessness were Black or African American and that according to The Community Partnership for the Prevention of Homelessness, Black residents are disproportionately affected by homelessness in the District).

42 Id.