



**HOUSING RIGHTS OF PEOPLE LIVING WITH
HIV/AIDS: A PRIMER**

THE CENTER FOR HIV LAW AND POLICY

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I. Introduction

Safe, stable, and affordable housing is a basic human right. Such housing is vital to those living with HIV, who often must contend with compromised immune systems, complex drug regimens that often require refrigeration, and increased poverty due to disability and high medical costs. Nonetheless, finding and securing such housing can be extremely difficult for people living with HIV.

Discrimination poses a significant obstacle to people living with HIV, who often encounter prejudice when they attempt to rent an apartment or are denied an opportunity to live in a dwelling because of misinformed beliefs about the communicability of HIV. For others, the decision to live in a group home may foment intense community opposition; as a result, group homes are often zoned out of a city. People living with HIV may also be unable to meet minimum income qualifications because of their disability or may simply be unable to afford safe housing without assistance.

People living with HIV face many obstacles in obtaining the housing that is crucial to their well being. There are, however, federal, state, local, and common law protections that prohibit housing discrimination, as well as several federal funding programs that are designed to help people living with HIV obtain appropriate housing.

II. Housing Discrimination

A. The Fair Housing Act

1. Overview

The Fair Housing Act¹ (FHA) is the primary legal mechanism by which persons living with HIV can protect themselves against discrimination. The FHA makes it unlawful to discriminate in the sale or rental of, or otherwise make unavailable or deny, a dwelling to a buyer or renter because of his or her disability or the disability of a person associated with the buyer or renter.² The legislative history surrounding the 1988 Amendments to the FHA, which added people with disabilities to the list of protected classes, strongly suggests that Congress intended persons living with HIV to be considered handicapped under the FHA.³ In its regulations implementing the FHA, the U.S. Department of Housing and Urban Development (HUD) explicitly included HIV infection within the definition of a “handicap.”⁴ Courts also have consistently concluded that HIV infection constitutes a disability under the FHA.⁵

¹ 42 U.S.C. §§ 3601-3631 (2008).

² *Id.* § 3604. The statute uses the language of “handicap,” but courts use this interchangeably with the preferable term “disability.”

³ See H.R. Rep. No. 100-711, at 18 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2179.

⁴ 24 C.F.R. § 100.201 (2008).

⁵ See, e.g., *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003) (HIV infection can substantially limit major life activities); *Baxter v. City of Belleville*, 720 F. Supp. 720, 729-30 (S.D. Ill. 1989) (legislative record demonstrates Congressional intent to include persons with HIV and AIDS within the FHA); *Support Ministries for Persons with AIDS, Inc. v. Vill. of Waterford*, 808 F. Supp. 120, 130-132 (N.D.N.Y. 1992) (histories of the Americans with Disabilities Act and the Rehabilitation Act evidence that even asymptomatic HIV is a handicap under the FHA).

In order to bring a claim alleging a FHA violation, plaintiffs must demonstrate one of three actions on the part of the housing owner: (1) the contested action was animated by discriminatory intent, (2) the action disparately impacted people with disabilities, even if it was not animated by illegitimate motive,⁶ or (3) the owner failed to make “reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy such a dwelling.”⁷ Each of the FHA’s prongs may be differentially implicated for people with HIV in obtaining and maintaining housing.

2. Obtaining Housing

The FHA provides protection against discrimination in attempting to rent or buy a home. Most refusal to rent claims fall under the discriminatory intent prong of the FHA. Plaintiffs generally need not show that their disability was the sole reason for the discrimination, only that it was one factor.⁸ Because HIV status is not as readily apparent as other disabilities, courts have been willing to consider evidence that a defendant suspected a person had HIV or AIDS, even where there is sparse proof of actual knowledge. In *Neithamer v. Brenneman Property Service, Inc.*, for example, a court found that a plaintiff’s mention of his HIV-positive partner’s illness and death were sufficient to give rise to the inference that the defendants knew or suspected he was HIV-positive and that this was sufficient to preclude summary judgment.⁹

A person is also disabled under the FHA if they are regarded as having an impairment,¹⁰ which may help prove violations where a person’s HIV status may not be known to the defendant. In one case, the court found a possible violation of the FHA where a man living with AIDS was denied an apartment. The rental agency did not know that he had AIDS, but they did know he was receiving Social Security Disability benefits as part of his income. The court found that it was not necessary that the plaintiff’s specific disability be known, so long he was regarded as having one.¹¹ Discrimination against those perceived to have HIV, even when they do not, may also be covered. In a case tried under New Jersey’s Law Against Discrimination,¹² which is similar to the FHA in its protections, a court found that refusal to rent an apartment to three gay (but not HIV-positive) men for fear that they might acquire AIDS violated the law.¹³

Depending on the jurisdiction, the reasonable accommodations prong of the FHA might also be applicable if the plaintiff cannot rent or buy because the plaintiff’s income is restricted due to his or her HIV status. In *Giebler v. M & B Associates*, rental property owners refused to waive a no-cosigner policy for a man who had been disabled by his AIDS and thus did not meet the apartment’s minimum income qualifications.¹⁴ Because the plaintiff’s limited income was due to his disability, the

⁶ See *Metro. Hous. Develop. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1288-90 (7th Cir. 1977).

⁷ 42 U.S.C. § 3604.

⁸ See *Stewart B. McKinney Found., Inc. v. Town Plan and Zoning Comm’n of Fairfield*, 790 F. Supp. 1197, 1210-11 (D. Conn. 1992); *Ryan v. Ramsey*, 936 F. Supp. 417, 423 (S.D. Tex. 1996).

⁹ 81 F. Supp. 2d 1, 4-6 (D.D.C. 1999).

¹⁰ 42 U.S.C. § 3604.

¹¹ *Ryan v. Ramsey*, 936 F. Supp. 417, 425-26 (S.D. Tex. 1996).

¹² N.J. STAT. ANN. § 10:5-1, *et seq.* (2008).

¹³ *Poff v. Caro*, 549 A.2d 900, 903 (N.J. Super. Ct. Law Div. 1987).

¹⁴ 343 F.3d 1143, 1144 (9th Cir. 2003).

Ninth Circuit found that defendant's refusal to waive the policy was a violation of the FHA.¹⁵ In doing so the court rejected cases in both the Second and Seventh Circuits, which indicated that financial accommodation of people with disabilities was not required under the FHA.¹⁶ Although it is unclear which Circuit's approach will prevail, it is notable that the contrary Second and Seventh Circuit cases were decided before the Supreme Court's decision in *U.S. Airways, Inc. v. Barnett*,¹⁷ a case that considered the Americans with Disabilities Act and greatly influenced the Ninth Circuit's decision in *Giebler*.¹⁸ *Barnett* suggested that a reasonable accommodation may result in a preference for people with disabilities over those who are not, and also that accommodations may address not only the immediate effects of a disability, but also the practical effects.¹⁹ The Ninth Circuit's reading of *Barnett* may provide means for people living with HIV to request and receive reasonable financial accommodations when searching for housing.²⁰

3. Maintaining Housing

The FHA also provides some protection for people living with HIV once a proper dwelling has been secured, including in the area of evictions. For example, it is a violation of the FHA to treat a tenant in a discriminatory manner, which in itself can constitute constructive eviction—the unlawful act of making a dwelling uninhabitable by a tenant.²¹ But a tenant's HIV status is not a blanket protection against eviction or other negative action if one of the FHA's three major prongs is not implicated.

The FHA also might prevent inquiries into a person's HIV status. HUD's implementing regulations make it unlawful under the FHA to inquire into the “nature or severity” of a person's disability,²² which would seem to preclude inquiries into HIV status. However, the FHA and the implementing regulations also provide that it is not required to make a dwelling available to a tenant where doing so would pose a direct threat to the health or safety of others.²³ Some courts have interpreted this to mean that, where a tenant's HIV status might pose a “direct threat,” inquiries about it may be acceptable. In *Kelly v. Williams*, for example, an administrative law judge found that because a defendant's minor children were responsible for cleaning the bathroom of the plaintiff, who had AIDS, his inquiry into the plaintiff's HIV status was protected by the direct threat exemption.²⁴ This may mean that, despite the facial prohibition, the FHA may not prohibit all inquiries into a person's HIV status.

¹⁵ See *id.* at 1155.

¹⁶ See *id.* at 1153-55 (citing *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437 (7th Cir. 1999) (accommodation is limited to accommodation of the disability itself, not subsequent financial situations); *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998) (even where reduced income is the result of a disability, accommodation of a person's financial situation is outside the scope of the FHA).

¹⁷ 535 U.S. 391 (2002).

¹⁸ See 343 F.3d at 1149-51.

¹⁹ 535 U.S. at 397-99.

²⁰ The court in *Giebler* specifically disclaimed such requests as lowered rents for people with disabilities as likely being unreasonable though other requests for accommodations of financial policies may survive scrutiny. See 343 F.3d at 1154.

²¹ See *Kelly v. Williams*, Fair Housing - Fair Lending (P-H) ¶ 25,007, 20 (H.U.D.A.L.J.1991).

²² 24 C.F.R. § 100.202(c) (2008).

²³ 42 U.S.C. § 3604(f)(9) (2008); 24 C.F.R. § 100.202(d).

²⁴ Fair Housing - Fair Lending (P-H) ¶ 25,007 at 17. Note that while this court found the inquiry *itself* to be lawful under the FHA, the timing, content, and circumstance of the inquiry were not.

In the Ninth Circuit, *Giebler* suggested that the reasonable accommodations prong of the FHA includes accommodations to the real and not merely obvious or immediate effects of a disability.²⁵ For persons living with HIV this might include accommodations that reflect the demands their increased need for medical care can create. In *McGary v. City of Portland*, a man disabled by AIDS was unable to comply with a city's nuisance abatement order to clear his yard, partly due to his hospitalization during the grace period.²⁶ The plaintiff had requested additional time to clear the yard because of his disability and hospitalization. The city denied the request and subsequently placed a lien on his house in order to collect the fine.²⁷ The Ninth Circuit did not rule on whether or not the request was a reasonable accommodation in remanding the case, but it did find that such a request might be reasonable as a matter of law and that placing a lien on the home interfered with plaintiff's use or enjoyment of the dwelling, thus making the denial of the accommodation a possible violation of the FHA.²⁸

4. Group Home Restrictions

a. Zoning Laws

One area in which people living with HIV have consistently faced housing discrimination is in the administration of zoning laws, which are often used to prevent the group homes that serve them from being established. A number of cases demonstrate the vehemence with which neighborhoods, zoning boards, and other municipal bodies will fight group homes. However, several courts have found that using zoning to restrict group homes for persons with HIV violates the FHA,²⁹ often implicating both the discriminatory intent and disparate impact prongs.

While discriminatory intent may be difficult to prove, courts have accepted evidence of intent by examining the context of the decision to create zoning laws. Even where a defendant government agency does not itself express prejudice, intent may be demonstrated by how such an agency reacts to community opposition. In *Ass'n of Relatives and Friends of AIDS Patients v. Regulations and Permits Administration*, for example, the court found that, while most of the hostility and prejudice expressed against an AIDS hospice came from community opposition groups, rather than the permit administration itself, the administration had "acted in furtherance of the misguided and discriminatory notions" of those groups, and had thus implicated the FHA's discriminatory intent prong.³⁰

²⁵ 343 F.3d at 1150 ("[A]ccommodations may adjust for the practical impact of a disability, not only for the immediate manifestations of the physical or mental impairment giving rise to the disability.").

²⁶ 386 F.3d 1259, 1260 (9th Cir. 2004).

²⁷ *Id.* at 1260-61.

²⁸ *Id.* at 1264.

²⁹ *See, e.g.,* Stewart B. McKinney Found., Inc. v. Town Plan and Zoning Comm'n of Fairfield, 790 F. Supp. 1197, 1214 (D. Conn. 1992) (holding that requiring a special exception to use a two-person home as housing for HIV-positive persons violates the FHA); Support Ministries for Persons with AIDS, Inc. v. Vill. of Waterford, 808 F. Supp. 120, 133 (N.D.N.Y. 1992) (changing zoning laws to exclude a residence for HIV-positive homeless persons violates the FHA); Ass'n of Relatives and Friends of AIDS Patients v. Regulations and Permits Admin., 740 F. Supp. 95, 107 (D. P.R. 1990) (denial of a special use permit to an AIDS hospice violated the FHA); Baxter v. City of Belleville, 720 F. Supp. 720, 733 (S.D. Ill. 1989) (denying special use permit to a group home for homeless persons living with AIDS is a violation of the FHA).

³⁰ 740 F. Supp. at 104.

Where evidence of discriminatory intent is lacking, courts also have been willing to examine zoning law administration through the disparate impact prong of the FHA. First, courts have recognized that the special needs of persons with disabilities, including people with HIV, make them more likely to require a group environment than those without disabilities.³¹ Once this has been established, zoning laws that exclude group homes are more likely to be viewed as disparately affecting people with disabilities. Courts also consider burdensome administrative hurdles often imposed on group homes for people with HIV as evidence that zoning laws are disparately affecting them.³²

Group homes encountering burdensome zoning-related barriers might also look to the reasonable accommodations prong of the FHA. Even where a court has declined to hold that a zoning ordinance inherently runs afoul of the FHA, failure to exempt a group home from a zoning law may violate the reasonable accommodations prong of the FHA.³³

b. Covenants

Group homes may be excluded from residential areas not only by zoning laws, but by neighborhoods themselves. Many residential neighborhoods have covenants that restrict the use of land within neighborhood borders through both property law and contract law mechanisms. Often such covenants restrict home occupancy to “single family” use, which can preclude group homes. At least one court has found that such restrictions, when applied to group homes for people living with AIDS, violate the FHA and may also be precluded by other common law protections. In *Hill v. Community of Damien of Molokai*, the court examined a neighborhood’s restrictive covenant, which limited occupancy to single family use.³⁴ The neighborhood attempted to use this covenant to prevent the use of a property as a group home for persons living with AIDS.³⁵ However, the court found that public policy in favor of integrating people with disabilities into mainstream residential life and common law principals favoring free enjoyment of property meant that the group home, which was designed to provide a “familial” atmosphere, would not violate the covenant.³⁶ Moreover, the court found that even if the group home could not be considered single family use, attempting to enforce the covenant against it would violate the disparate impact and reasonable accommodations prongs of the FHA.³⁷ This case and the general trend of zoning cases discussed above indicate that the FHA, as well as common law protections, can help protect the right of people living with HIV to live in group homes in mainstream residential settings.

³¹ See *Hill v. Cmty. of Damien of Molokai*, 911 P.2d 861, 873 (N.M. 1996) (some persons with AIDS may require congregate living in order to remain in a residential community); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1183 (E.D.N.Y. 1993) (recovering alcoholics need to live in a group home for proper support, so zoning out group homes disparately affects them); *Support Ministries*, 808 F. Supp. at 132 (some persons living with HIV may not be able to live outside a group home).

³² See *Baxter*, 720 F.Supp. at 732; *Stewart B. McKinney Found.*, 790 F. Supp. at 1219-20.

³³ See *Oxford*, 819 F. Supp. at 1185-6 (noting that even if a town’s definition of “family” for the purposes of its zoning laws did not itself violate the FHA by disparately affecting people with disabilities, failure to reasonably accommodate the group home by not applying the definition against it would be a violation).

³⁴ 911 P.2d 861 (N.M. 1996).

³⁵ *Id.* at 865.

³⁶ *Id.* at 866-69.

³⁷ *Id.* at 873-76.

B. Additional Protections for Women and Transgender Individuals

Women and transgender people living with HIV may face obstacles related to their gender or gender identity that limit their ability to obtain and retain stable housing. Many women living with HIV in the United States are low-income women of color with parental responsibilities.³⁸ Transgender individuals, a significant proportion of whom are HIV positive,³⁹ also face housing instability, in part due to the severe stigma surrounding their gender identity.⁴⁰ Socioeconomic factors, coupled with sexual harassment and gender-based discrimination, domestic violence, and power imbalances between landlords and low-income tenants, create barriers to safe, affordable housing for women and transgender individuals living with HIV.

Various federal, state, and municipal rules help eliminate gender-based barriers to stable housing. The federal Fair Housing Act (FHA) prohibits housing providers from denying housing and discriminating against a person in the “terms and conditions” of housing on the basis of sex.⁴¹ However, no reported court opinion has interpreted this prohibition to protect transgender individuals from discrimination based on their gender identity.⁴² Relying on federal employment law, courts also interpret the FHA to prohibit sexual harassment that conditions housing benefits on sexual favors,⁴³ or that is frequent and severe enough to create an unreasonably hostile living environment.⁴⁴ Because not all sexual harassment is actionable under the FHA, the Act may not adequately protect the interests of women living with HIV who find their living environment unsafe as consequence of sexual harassment but have limited resources with which to obtain alternative housing.⁴⁵ HUD’s proposed guidelines for sex-based discrimination claims under the FHA could broaden the scope of prohibited harassment; however, the agency has not yet adopted them.⁴⁶ Women who have been victims of domestic violence may find relief from courts that interpret the FHA as prohibiting actions that discriminate against victims of domestic violence given that such discrimination disproportionately impacts women.⁴⁷ The Violence Against Women Act and HUD’s

³⁸ HENRY J. KAISER FAMILY FOUNDATION, HIV/AIDS POLICY FACT SHEET: WOMEN AND HIV/AIDS IN THE UNITED STATES 1 (2008), available at <http://www.kff.org/hivaids/upload/6092-061.pdf>.

³⁹ Jeffrey H. Herbst, Elizabeth D. Jacobs, Teresa J. Finlayson, Vel S. McKleroy, Mary Spink Neumann & Nicole Crepez, *Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review*, 12 AIDS BEHAV. 1 (2008).

⁴⁰ Daniella Lichtman Esses, *Afraid to Be Myself, Even at Home: A Transgender Cause of Action Under the Fair Housing Act*, 42 COLUM. J.L. & SOC. PROBS. 465, 481-85 (2009).

⁴¹ Fair Housing Act, 42 U.S.C. § 3604(a),(b).

⁴² Esses, *supra* note 40, at 500.

⁴³ *Honce v. Vigil*, 1 F.3d 1085, 1089 (10th Cir. 1993) (citing *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1413 (10th Cir. 1987)).

⁴⁴ See *DiCenso v. Cisneros*, 96 F.3d 1004,1008-09 (7th Cir. 1996) (single incident of caressing a tenant’s arm and suggesting sex as an alternative to rent is not sufficiently severe or pervasive sexual harassment).

⁴⁵ See *Honce*, 1 F.3d at 1094 (Seymour, J. dissenting) (recognizing a single mother’s financial difficulty in leaving a housing situation in which offensive conduct has occurred).

⁴⁶ Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases, 65 Fed. Reg. 67666, 67667 (proposed Nov. 13, 2000) (to be codified at 24 CFR pt. 100) (unwelcome verbal or intentional touching of any body part may constitute sexual harassment under the FHA); ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 11C:2 (Supp. 2009).

⁴⁷ See *Bouley v. Young-Sabourin*, 394 F.Supp.2d 675, 677, 678 (D. Vt. 2005) (recognizing a prima facie case of sex discrimination where landlord evicted tenant less than 72 hours after the tenant’s husband assaulted her); *but cf.* *Robinson v. Cincinnati Metro. Hous. Auth.*, No. 08-CV-238, 2008 WL 1924255 at *3 (S.D. Ohio Apr. 29, 2008) (evicting victims of domestic violence may constitute sex discrimination, but denying a victim’s request to transfer to another unit is not).

accompanying regulations affirmatively prohibit housing agents from using a documented incident of domestic or dating violence or stalking to evict or deny housing to victims and their family members who are recipients of Section 8 federal housing assistance.⁴⁸ State and local laws are an additional source of housing protection for victims of domestic violence.⁴⁹

The FHA also prohibits housing discrimination on the basis of familial status, and may also prohibit housing policies that have a disproportionate impact on families with children.⁵⁰ Though this area of housing law remains underdeveloped, it could potentially provide an additional tool to ensure that housing for people living with HIV accommodates the needs of HIV-positive individuals with children, who are disproportionately women.⁵¹

While federal law provides little protection for transgender individuals seeking stable housing,⁵² transgender individuals may find legal remedies in state or municipal law. Twelve states plus the District of Columbia and at least 104 cities or counties have enacted anti-discrimination laws that prohibit housing discrimination against transgender individuals.⁵³ Several other states have interpreted statutes that prohibit sex discrimination to include gender identity discrimination.⁵⁴

C. International Human Rights Law

1. Using the Human Rights Framework in U.S. Courts

International human rights law can be a useful tool to advocate for the housing rights of people living with HIV/AIDS. This section provides specific background information and guidance on how international human rights law can strengthen domestic protections of the right to housing.

Before discussing substantive international norms, it is first necessary to understand how they can be used. This subsection briefly outlines how these international human rights norms are used by advocates in U.S. courts.

The human rights norms discussed in subsection B below stem from several sources. Several are derived from treaties, also known as “conventions,” which the United States has either signed and ratified or has signed without ratifying. Under international law, the United States is bound to

⁴⁸ 42 U.S.C.A. § 1437f(c)(9)(a); U.S. DEP’T OF HOUS. AND URBAN DEV., OFFICE OF HOUS., NOTICE: H08-07, IMPLEMENTATION OF THE VIOLENCE AGAINST WOMEN AND JUSTICE DEPARTMENT REAUTHORIZATION ACT OF 2005 FOR THE MULTIFAMILY PROJECT-BASED SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM (2008), *available at* www.hud.gov/offices/adm/hudclips/notices/hsg/files/08-07HSGN.doc.

⁴⁹ NAT’L COALITION AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE AND HOUSING, *available at* http://www.ncadv.org/files/Housing_.pdf (last visited June 12, 2009).

⁵⁰ 42 U.S.C. 3604; *see* Schwemm, *supra* note 46 *Doe v. City of Butler*, 892 F.2d 315, 323-24 (3d. Cir. 1989) (dwelling occupancy limit may have a discriminatory effect on women with children).

⁵¹ SCHWEMM, *supra* note 46, at § 11E:4.

⁵² *See* Esses, *supra*, note 40. While the ADA protects people from discrimination based on their HIV status, it does not recognize gender-identity-disorder as a disability. 42 U.S.C. § 12211(b).

⁵³ NATIONAL GAY AND LESBIAN TASK FORCE, SCOPE OF EXPLICITLY TRANSGENDER-INCLUSIVE ANTI-DISCRIMINATION LAWS (2008), *available at*

http://www.thetaskforce.org/downloads/reports/fact_sheets/TI_antidisc_laws_7_08.pdf

⁵⁴ ACLU, TRANSGENDER PEOPLE AND THE LAW, *available at*

http://www.aclu.org/lgbt/transgender/kyr_transgender.html (last visited June 12, 2009).

uphold obligations under the treaties it has ratified. Where the United States has signed but not ratified a treaty, it is obligated not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention on the Law of Treaties.⁵⁵ Another source of international law is “customary international law”—norms established by the customs of nations,⁵⁶ which may also be reflected in treaties, declarations, and other international agreements. Finally, this section also cites documents that are non-binding in themselves but that interpret binding treaty obligations or customary international law.

The role of these international obligations in U.S. law is complex and often contradictory. Under U.S. law, treaties and customary international law are binding, but do not necessarily give rise to a private right of action. The Constitution declares that treaties are the “supreme Law of the Land”⁵⁷ and federal common law has accorded the same status to customary international law.⁵⁸ However, it is difficult to bring private causes of action in U.S. courts under international law because of significant procedural obstacles. For example, the United States has declared most treaties “non-self-executing,” meaning that ratification in itself does not create a private cause of action under the treaty. Moreover, the United States often ratifies treaties with “reservations” limiting their legal effect and ability to be enforced through private actions in courts. As a result, while the U.S. is bound by the treaties it ratifies and by customary international law, it is difficult to enforce international law in U.S. courts.

However, even without creating a private cause of action, international human rights law may still play a vital role in defending the housing rights of people living with HIV/AIDS. Public interest lawyers have successfully used international human rights treaties and other documents interpreting international human rights law to inform judges’ decisions by framing domestic legal issues in a broader international context.⁵⁹ Many courts, including the Supreme Court, have been receptive to domestic legal arguments that incorporate international human rights norms as a source of support. The Supreme Court has cited international human rights standards in finding unconstitutional laws prohibiting sodomy,⁶⁰ and laws allowing the imposition of the death penalty for juveniles⁶¹ and defendants with mental retardation,⁶² and in upholding race-conscious admissions policies in higher education.⁶³

The importance of international human rights norms is not limited to treaties that the United States

⁵⁵ The Vienna Convention on the Law of Treaties is a separate treaty governing treaty interpretation and adherence that the United States has ratified. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331, 336 (entered into force on Jan., 27, 1980); *see also* Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 NEV. L.J. 966, 969 (2006).

⁵⁶ U.N. Charter, art. 38, para. 1(b).

⁵⁷ U.S. CONST., art. VI, cl. 2.

⁵⁸ *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 cmt. j. (1987); *see also* Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L. J. 891, 983-84 (2008); *c.f.* Beharry v. Reno, 183 F.Supp.2d 584, 597-601 (E.D.N.Y. 2002) (stating that the Convention on the Rights of the Child is binding on U.S. courts as a source of customary international law), *rev’d on other grounds*, Beharry v. Ashcroft, 329 F.3d 51 (2d Cir. 2003).

⁵⁹ *See* Cummings, *supra* note 58, at 985-87.

⁶⁰ *See* Lawrence v. Texas, 539 U.S. 558, 573 (2003).

⁶¹ *See* Roper v. Simmons, 543 U.S. 551, 575-78 (2005).

⁶² *See* Atkins v. Virginia, 536 U.S. 304, 316 n.21 (2002).

⁶³ *See* Grutter v. Bollinger, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring).

has ratified. While ratification demonstrates the formal incorporation of an international agreement into U.S. law, courts have also relied upon non-ratified treaties, customary international law, and general state practice in their decisions. For example, in *Roper v. Simmons*, the Supreme Court cited the Convention on the Rights of the Child (CRC), a treaty that the U.S. has not ratified but which is widely acknowledged as customary international law,⁶⁴ in determining that the execution of minors is unconstitutional.⁶⁵ The Court also looked to the practice of other states in making its determination.⁶⁶ At least one federal court in the United States has explicitly cited sections of the CRC as customary international law binding on United States courts.⁶⁷ Thus, international human rights norms may be particularly useful for framing issues in the context of international practice where a U.S.-based practice falls out of line with a general international consensus.⁶⁸

2. International Human Rights Norms Protecting the Right to Safe, Stable, and Affordable Housing

International human rights law also supports the right of persons living with HIV/AIDS to safe, stable, and affordable housing free from harassment or intimidation.⁶⁹ This right is protected by numerous provisions of international human rights instruments, several of which are outlined below:

Protected Right	International Human Rights Instrument	Corresponding Obligations of the United States
The right to non-discrimination, equal protection, and equality before the law	<ul style="list-style-type: none"> • Art. 7 of the Universal Declaration of Human Rights (“Universal Declaration”)⁷⁰ • Art. 3 and Art. 26 of the International Covenant on Civil and Political Rights (“ICCPR”)⁷¹ • The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)⁷² • Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”)⁷³ • The Convention on the Rights of Persons 	<ul style="list-style-type: none"> • The Universal Declaration is non-binding, but is considered customary international law. • The United States has signed and ratified the ICCPR, making it binding on the United States. • The United States has signed but not ratified the CEDAW, and thus has an obligation not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention. • The United States has signed and ratified the ICERD, making it binding

⁶⁴ See, e.g., Barbara Atwood, *The Voice of the Indian Child: Strengthening the Indian Child Welfare Act through Children’s Participation*, 50 ARIZ. L. REV. 127, 139-40 (2008) (citing the Convention as the “consensus of world opinion regarding children’s rights”)

⁶⁵ 543 U.S. at 575-78.

⁶⁶ See *id.*

⁶⁷ See *Beharry*, 183 F.Supp.2d at 600-01.

⁶⁸ See Sarah H. Cleveland, *Our International Constitution*, 31 YALE J. INT’L L. 1, 80 (2006) (noting that international human rights norms are relevant to jurisprudence determining whether a particular form of conduct is “arbitrary and conscience-shocking” or is “implicit in the concept of ordered liberty”).

⁶⁹ “The Commission on Human Rights has confirmed that ‘other status’ in non-discrimination provisions is to be interpreted to include health status, including HIV/AIDS.” Office of the High Comm’r for Human Rights & Joint U.N. Programme on HIV/ AIDS (UNAIDS), *International Guidelines on HIV/ AIDS and Human Rights*, ¶ 108, U.N. Doc. HR/PUB/06/9 (2006) [hereinafter *International Guidelines*]. UNAIDS brings together ten organizations of the United Nations system: the United Nations High Commissioner for Refugees, the United Nations Children’s Fund, the United Nations World Food Programme, the United Nations Development Programme, the United Nations Population Fund, the United Nations Office on Drugs and Crime, the International Labour Organization, the United Nations Educational, Scientific, and Cultural Organization, the World Health Organization, and the World Bank.

	with Disabilities (“CRPD”) ⁷⁴	<p>on the United States.</p> <ul style="list-style-type: none"> • The United States has signed but not ratified the CRPD, and thus has an obligation not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention.
The right to be free from arbitrary interference with the home	<ul style="list-style-type: none"> • Art. 12 of the Universal Declaration • Art. 17(1) of the ICCPR • Art. 16(1) of the Convention on the Rights of the Child (“CRC”)⁷⁵ 	<ul style="list-style-type: none"> • See Universal Declaration above. • See ICCPR above. • The United States has signed but not ratified the CRC, and thus has an obligation not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention.
The right to an adequate standard of living, including housing	<ul style="list-style-type: none"> • Art. 25(1) of the Universal Declaration • Art. 11(1) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)⁷⁶ • Art. 14(1)(h) of the CEDAW • Art. 5(e)(iii) of the ICERD • Art. 27(3) of the CRC • Art. 28 of the CRPD 	<ul style="list-style-type: none"> • See Universal Declaration above. • The United States has signed but not ratified the ICESCR, and thus has an obligation not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention. • See CEDAW above. • See ICERD above. • See CRC above. • See CRPD above.
The right to privacy	<ul style="list-style-type: none"> • Art. 12 of the Universal Declaration • Art. 17 of the ICCPR • Art. 16(1) of the CRC 	<ul style="list-style-type: none"> • See Universal Declaration above. • See ICCPR above. • See CRC above.

The U.N. Committee on Economic, Social and Cultural Rights, the purpose of which is to provide authoritative guidance on the provisions of the ICESCR, has adopted a broad view of what constitutes “adequate housing” pursuant to Art. 11(1) of the ICESCR.⁷⁷ Specifically, the Committee has noted that the ICESCR includes protection against “forced eviction, harassment and other

⁷⁰ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter Universal Declaration].

⁷¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁷² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

⁷³ International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter ICERD].

⁷⁴ Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, U.N. Doc. A/61/611 [hereinafter CRPD]. The CRPD notes that, “[p]ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others,” which would include many persons living with HIV/AIDS. *Id.* at Art. 1.

⁷⁵ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

⁷⁶ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁷⁷ The Committee notes that “adequate housing” includes: legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. U.N. Comm. on Economic, Social and Cultural Rights, General Comment 4: The right to adequate housing (Art. 11(1)), ¶ 8, U.N. Doc. E/1992/23 (Dec. 13, 1991).

threats.”⁷⁸ For instance, it would violate this right for a landlord to evict a person because of their illness, or to otherwise threaten or harass a person with HIV/AIDS. It would also be contrary to international law’s protections against discrimination to refuse to rent or sell a house or apartment to a person with HIV/AIDS, or to refuse to adequately maintain a property because of a person’s illness.

The right to adequate housing is also embodied in the International Guidelines on HIV/AIDS and Human Rights (“International Guidelines”), a document put forth by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (“UNAIDS”).⁷⁹ Although the International Guidelines are not binding law like a ratified treaty, they are a persuasive interpretation of some of the rights embodied in international treaties. In this way, they are useful for putting the treaties into context. The International Guidelines state that the right to adequate housing is an especially important protection for people living with HIV/AIDS in light of their heightened susceptibility to discrimination on the basis of their illness.⁸⁰ Because of this, the International Guidelines direct states to enact anti-discrimination laws that cover both the public and private sector, which means they should cover all forms of privately owned and government-funded housing.⁸¹

A universal commitment to providing adequate housing in a non-discriminatory manner is also embodied in The Habitat Agenda, which is a global plan of action adopted at the second United Nations Conference on Human Settlements (Habitat), held in Istanbul, Turkey in 1996, drafted by the United Nations Human Settlements Programme (UN-HABITAT).⁸² Like the International Guidelines, the Habitat Agenda is not binding law, but is a useful and influential source of treaty interpretation. The Habitat Agenda notes that, “[t]he provision of adequate housing for everyone requires action not only by Governments, but by all sectors of society, including the private sector, nongovernmental organizations, communities and local authorities, as well as by partner organizations and entities of the international community.”⁸³ As a subset of the U.N. Economic and Social Council, the work of UN-HABITAT is geared toward improving the living conditions of all U.N. member states, including the United States.

These international instruments and accompanying interpretive documents provide strong support for the argument that international law requires nations to provide a broad range of protections for the right of all peoples, including those who are living with HIV/AIDS, to safe, stable, affordable, and harassment-free housing. As outlined in the chart above, these rights are derived from various international instruments, many of which are binding on the United States, and all of which obligate the United States, at a minimum, not to act in a contrary manner.

⁷⁸ U.N. Comm. on Econ., Soc. and Cultural Rights, General Comment 7: The right to adequate housing (Art. 11(1)): forced evictions, Annex IV ¶ 1, U.N. Doc. E/1998/22 (May 20, 1997).

⁷⁹ See, e.g., *International Guidelines*, *supra* note 69, ¶ 102 (echoing many of the rights delineated above).

⁸⁰ See *id.* ¶ 147.

⁸¹ See *id.* ¶¶ 9, 22(a).

⁸² The United Nations Centre for Human Settlements (Habitat), About UNCHS, <http://www.un.org/ga/Istanbul+5/aboutunchs.htm> (last visited February 17, 2010). “The United Nations Centre for Human Settlements (Habitat), established in 1978, is the lead agency within the UN system for coordinating activities in the field of human settlements development. It also serves as focal point for monitoring progress on implementation of the Habitat Agenda,” *Id.*

⁸³ UN-HABITAT, *The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action*, ¶ 61, available at http://www.unchsh.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf.

D. Other Protections

While the FHA is a major avenue of redress for housing discrimination claims, it is not the only legal protection for persons living with HIV. In the context of group home exclusion, both Title II of the Americans with Disabilities Act (ADA),⁸⁴ which prohibits discrimination on the basis of disability by public entities, and the Rehabilitation Act,⁸⁵ which prohibits discrimination on the basis of disability by recipients of federal funds, may also provide some protection against discriminatory zoning laws. The Third and Sixth Circuits have both found, for example, that “zoning out” methadone clinics violates Title II of the ADA and the Rehabilitation Act.⁸⁶ Although individuals with HIV are typically considered by courts to be persons with disabilities under the ADA and the Rehabilitation Act, HIV is not a *per se* disability under either; thus, the plaintiff must demonstrate that he or she has a disability as defined by the ADA or Rehabilitation Act.⁸⁷ If this showing can be made, however, the ADA and the Rehabilitation Act can be used to invalidate discriminatory zoning ordinances.

State laws are another source of housing protection for people living with HIV. New York State, for example, prohibits housing discrimination against the people with disabilities through its Human Rights Law,⁸⁸ which New York courts have interpreted to apply to people living with HIV.⁸⁹ Other states, including New Jersey⁹⁰ and California,⁹¹ have similar laws that have been interpreted to protect HIV-positive people. Even where a state’s anti-discrimination law has not yet been judicially construed to apply to people with HIV, as in Massachusetts, courts sometimes indicate that such statutes should be interpreted in harmony with the Fair Housing Act and other federal laws⁹²; this

⁸⁴ 42 U.S.C. § 12101, *et seq.* (2008).

⁸⁵ 29 U.S.C. § 701, *et seq.* (2008).

⁸⁶ *See* *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 305 (3d Cir. 2007) (a zoning ordinance that excluded methadone clinics from the city violated the ADA and the Rehabilitation Act, and the ADA’s reasonable accommodation provision did not apply where an ordinance was facially discriminatory); *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 344-45 (6th Cir. 2002) (same). Similarly, in *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725 (9th Cir. 1999), the Ninth Circuit held that a zoning ordinance that excluded methadone clinics was facially discriminatory under the ADA and Rehabilitation Act, and that the reasonable accommodation provision was inapplicable to a facially discriminatory law. The court remanded the case for a determination of whether methadone clinic patients fell under the “significant risk” exception, unlike the Third and Sixth Circuit, which found that the methadone clinic posed no significant risk. *See id.* at 737. However, the court’s language warned against relying on stereotypes, prejudices, and unfounded fears in making this determination. *See id.* at 736-37.

⁸⁷ In *Brugdon v. Abbott* the Supreme Court addressed when HIV infection would be a disability under the ADA. The court held that HIV could be considered “an impairment from the moment of infection,” but must also substantially limit a major life activity to trigger the statute’s protections. 524 U.S. 624, 637 (1998). The court held that the respondent’s HIV-positive status was a physical impairment that substantially limited a major life activity, but declined to find that HIV was a *per se* disability under the ADA. *Id.* at 641-2.

⁸⁸ N.Y. EXEC. LAW § 296 (McKinney 2008).

⁸⁹ *See, e.g.,* *Petri v. Bank of N.Y. Co., Inc.*, 58 N.Y.S.2d 608, 611-12 (N.Y. Sup. Ct. 1992) (asymptomatic HIV is a disability under § 296).

⁹⁰ *See, e.g.,* N.J. STAT. ANN. § 10:5-1, *et seq.* (2008); *Poff v. Caro*, 549 A.2d 900, 903 (N.J. Super. Ct. Law Div. 1987) (AIDS is a disability protected by the Law Against Discrimination).

⁹¹ *See* CAL. GOV’T CODE § 12955 (2008) (making housing discrimination against people with disabilities unlawful); CAL. GOV’T CODE § 12926.1(c) (2008) (HIV/AIDS are disabilities under the law).

⁹² *See, e.g.,* MASS. GEN. LAWS ANN. ch. 151B § 4(6) (2008) (making housing discrimination against the handicapped unlawful); *Commonwealth v. Dowd*, 638 N.E.2d 923, 925 (Mass. App. Ct. 1994) (Fair Housing Act is statutory prototype for state antidiscrimination law); *Cox v. New England Tel. and Tel. Co.*, 607 N.E.2d 1035, 1039 (Mass. 1993) (Rehabilitation Act case law should guide interpretation of antidiscrimination statute).

suggests that the HIV-positive are included in the state law's protections. Other states, like Texas,⁹³ simply define disability in language similar or identical to the federal antidiscrimination statutes, which may indicate that courts are willing to interpret them to include HIV, at least to the extent those courts include HIV within the relevant federal law ambit. Some jurisdictions, including Florida⁹⁴ and Missouri,⁹⁵ may even specifically protect people with HIV from housing discrimination.

Municipal codes are another source of housing protections. New York City's charter, for example, has been interpreted to make housing discrimination against those living with HIV illegal.⁹⁶ Other cities, including Washington, D.C.⁹⁷ and West Hollywood,⁹⁸ have similar ordinances and codes, which may either have been interpreted to apply to people with HIV or explicitly provide protection for them. While the FHA remains the major avenue to vindicate housing rights for the HIV-positive, state law and municipal codes can also provide a source of protection.

III. Housing Assistance

A. Housing Opportunities for Persons with AIDS

1. Overview

While people living with HIV often face adversity in the form of housing discrimination and prejudice, they may have access to housing programs that can help them secure and remain in safe, affordable housing. The largest federal program for people living with HIV is Housing Opportunities for Persons with AIDS (HOPWA).⁹⁹ Eligible persons under HOPWA include people with "acquired immunodeficiency syndrome or a related disease."¹⁰⁰ HUD implementing regulations have included HIV infection as a related disease,¹⁰¹ which means that a person need not be diagnosed with AIDS to be eligible for HOPWA funding. Recipients of HOPWA funding must also be low-income, which is defined as below 80% of the area median income.¹⁰² HOPWA is allocated

⁹³ TEX. PROP. CODE ANN. § 301.003(6) (2007) (defining "disability" for the purpose of the Texas Fair Housing Act with language identical to that of the ADA, but with explicit exceptions, such as sexual orientation, not applicable here).

⁹⁴ FLA. STAT. ANN. § 760.50(4)a (2008) ("A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.").

⁹⁵ See e.g. MO. ANN. STAT. § 213.040 (2008) (making housing discrimination against people with disabilities unlawful); MO. ANN. STAT. § 191.665 (2008) (the provisions of § 213.040 cover people with HIV).

⁹⁶ See e.g. N.Y.C. ADMIN CODE § 8-107(5) (2008); *Barton v. N.Y.C. Comm'n on Human Rights*, 531 N.Y.S.2d 979, 983 (N.Y. Sup. Ct. 1988) (people with AIDS are disabled under the New York City Administrative Code).

⁹⁷ See e.g. D.C. CODE § 2-1402.21(a) (2008) (making housing discrimination against people with disabilities unlawful); *Joel Truitt Management, Inc. v. Dist. of Columbia Comm'n of Human Rights*, 646 A.2d 1007, 1009 (D.C. 1994) (People living with AIDS are protected by the Code).

⁹⁸ See e.g. WEST HOLLYWOOD MUN. CODE § 9.40.040 (1985) (prohibiting housing discrimination for people with HIV); *Jaspersen v. Jessica's Nail Clinic*, 265 Cal. Rptr. 301 (Cal. Ct. App. 1989).

⁹⁹ 42 U.S.C. § 12901 *et seq.* (2008).

¹⁰⁰ *Id.* § 12902(12).

¹⁰¹ 24 C.F.R. § 574.3 (2008).

¹⁰² 42 U.S.C. § 12901(3).

to cities and states through a grant formula that weights both an area's population and its AIDS rate. These grantees then allocate funding within their areas to both state and non-state agencies.¹⁰³

Obtaining HOPWA funding may pose a problem for people living with HIV insofar as it requires disclosure of their status to a governmental or other agency. HOPWA's statutory authorization attempts to remedy this by providing that all recipients of funds (both the initial state and city grantees and the agencies that they subsequently grant to) keep the names of all individual HOPWA recipients confidential.¹⁰⁴ However, this right to confidentiality may be difficult for grantees and individuals to enforce. At least one court has found that while a state body's demand for unrestricted access to HOPWA patient files would violate the beneficiaries' constitutional privacy rights, as well as the statutorily created privacy rights, HOPWA does not allow for a private right of action to remedy the violation.¹⁰⁵ The court also denied a remedy on the constitutional violation.¹⁰⁶ There is nothing to suggest that violations of HOPWA's confidentiality clauses are common, but they are possible and may be difficult for individuals to remedy if and when they occur.

While HOPWA benefits may be terminated for violating program requirements or conditions of occupancy, regulations require that assistance be terminated "only in the most severe cases."¹⁰⁷ Before this is done, programs must provide a due process procedure that includes, at minimum, an initial written notice of termination, opportunity for review, and a written notice of a final decision.¹⁰⁸

HOPWA funding can be used for a variety of activities related to housing, ranging from providing assistance for housing searches,¹⁰⁹ to case management.¹¹⁰ Most important, HOPWA can provide financing for the housing itself. It does so primarily through the programs detailed below.

2. Rental Subsidies

Under HOPWA, people living with HIV who are income eligible can receive a rental subsidy,¹¹¹ which covers the difference between the rent standard or reasonable rent and the expected client contribution, which is either 30% of adjusted monthly income or 10% of gross income.¹¹² HOPWA rental assistance is an important means by which safe, healthy housing for people with HIV can be assured.

¹⁰³ For information on where and how HOPWA funding is distributed in your state, see website of U.S. Dept. of Hous. and Urban Dev. (visited Aug. 7, 2008) <http://www.hud.gov/offices/cpd/aidshousing/local/index.cfm>.

¹⁰⁴ 42 U.S.C. § 12905(e).

¹⁰⁵ *See Idaho AIDS Found., Inc. v. Idaho Hous. & Fin. Ass'n*, 422 F. Supp.2d 1193, 1200-02 (D. Idaho 2006).

¹⁰⁶ *Id.* at 1200, 1202.

¹⁰⁷ 24 C.F.R. § 574.310(e)(2) (2008).

¹⁰⁸ *Id.*

¹⁰⁹ 42 U.S.C. § 12906(1) (2008).

¹¹⁰ *Id.* § 12907(b)(6).

¹¹¹ *Id.* § 12908.

¹¹² 24 C.F.R. § 574.310(d) (2008).

3. Short Term Supported Housing

People living with HIV are often at increased risk of homelessness,¹¹³ which is why HOPWA includes funding for Short Term Supported Housing. This funding is used to provide temporary (no more than 60 days in any 6 month period)¹¹⁴ shelter for homeless persons living with HIV. While the Short Term Supported Housing itself is temporary, the program is meant to help transition clients into permanent housing, including transfer into other HOPWA funded programs.¹¹⁵

4. Short Term Rent, Mortgage, and Utility Assistance

For people living with HIV who are currently housed but at risk for homelessness, HOPWA also administers Short Term Rent, Mortgage and Utility (STRMU) Assistance. STRMU assistance is meant to be a short-term intervention that can cover rent, mortgage and utility payments in order to prevent homelessness and increase housing stability among people living with HIV.¹¹⁶

5. Permanent Housing Placement Services

In addition to actually providing housing and subsidizing housing costs, HOPWA funding is also used to provide placement services. These placement services can include housing referrals and tenant counseling, as well as costs associated with housing placement, such as security deposits, first month's rent, application fees, and credit checks.¹¹⁷

B. Other Housing Programs

People living with HIV may also be eligible for other HUD housing programs, depending on income and other factors, including current living situation (e.g., homelessness or risk thereof). For example, HUD administers Shelter Plus Care (S+C), which is a rental assistance program for the disabled homeless—including persons with HIV—that includes supportive services.¹¹⁸ Homeless persons with HIV might also be indirectly eligible for money coming from HUD's Supportive Housing Program, which funds public entities and non-profits in their provision of housing services to the homeless.¹¹⁹

Homelessness or risk of homelessness is not a requirement for all HUD assistance. Housing programs also exist for low-income populations, including Section 8 Rental Assistance and the HOME Program. Section 8 Rental Assistance,¹²⁰ for example, provides rental subsidies similar to

¹¹³ The homeless population has a median prevalence rate of HIV three times higher than that of the general population. *See* AIDS HOUSING OF WASHINGTON, HOMELESSNESS AND HIV: AHW FACT SHEET 1 (2003).

¹¹⁴ 24 C.F.R. § 574.330(a) (2008).

¹¹⁵ OFFICE OF HIV/AIDS HOUSING, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, SHORT TERM SUPPORTED HOUSING 1.

¹¹⁶ OFFICE OF HIV/AIDS HOUSING, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, SHORT TERM RENT, MORTGAGE, AND UTILITY (STRMU) ASSISTANCE 1.

¹¹⁷ OFFICE OF HIV/AIDS HOUSING, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, Permanent Housing Placement Services 1.

¹¹⁸ 42 U.S.C. § 11403 (2008).

¹¹⁹ OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, FEDERAL HOUSING PROGRAMS FOR PERSONS WITH HIV/AIDS 2 (2001).

¹²⁰ *See* 42 U.S.C. § 1437f (2008) (authorizing establishment of rental assistance programs).

those provided by HOPWA.¹²¹ The HOME Program is a flexible, community-based resource that, depending on local decision-making, can provide housing services including tenant-based rental assistance like that of Section 8 and HOPWA.¹²² Both Section 8 and the HOME Program may also, in certain localities, establish preferences in granting assistance for people living with HIV.¹²³

People living with HIV also benefit from HUD programs designed to help those with disabilities, including the Supportive Housing for Persons with Disabilities Program (Section 811), which provides capital advances and rental assistance to grantees in order to expand the supply of low-income housing for people with disabilities.¹²⁴ Section 811 projects must include supportive services that encourage “optimal independent living and participation in normal daily activities.”¹²⁵ Elderly persons living with HIV might also benefit from the Supportive Housing for the Elderly Program (Section 202), which, in part, provides rental assistance to low-income people over the age of 62.¹²⁶

There may also be limited opportunities for housing assistance funded through the Ryan White HIV/AIDS Treatment Modernization Act of 2006.¹²⁷ The main purpose of this Act and the programs promulgated under it is to “ensure that eligible HIV-infected persons and families gain or maintain access to medical care.”¹²⁸ Because there is a nexus between stable, safe housing and receiving medical care,¹²⁹ agency policy indicates that some funds may be used for certain housing services. Housing referral services may be covered, as well as short term/emergency housing that is connected to access to medical care, supportive housing services, and non-supportive housing services that are necessary to HIV medical treatment.¹³⁰ Ryan White Funds are a payer of last resort, however, and any housing funding it provides must be supplemental to other federal housing funds.¹³¹

C. Effect of Criminal Convictions on Public Housing

Despite the many programs ostensibly available to them, people living with HIV who have criminal histories, particularly those involving drug-related offenses,¹³² may still be excluded from public housing and other federal housing assistance programs, including Section 8. Housing denials may be

¹²¹ See 24 C.F.R. § 982.1 *et seq.* (2008).

¹²² See *Id.* § 92.209 *et seq.*

¹²³ FEDERAL HOUSING PROGRAMS FOR PERSONS WITH HIV/AIDS, *supra* note 119 at 2.

¹²⁴ *Id.* at 2.

¹²⁵ See 42 U.S.C. § 8013(c)(2) (2008).

¹²⁶ See 12 U.S.C. § 1701q (2008).

¹²⁷ Pub. L. No. 109-415, 120 Stat. 2767 (codified at 42 U.S.C. § 300ff *et seq.* (2008)).

¹²⁸ DEPARTMENT OF HEALTH AND HUMAN SERVICES, HAB POLICY NOTICE 08-01, THE USE OF RYAN WHITE HIV/AIDS PROGRAM FUNDS FOR HOUSING REFERRAL SERVICES AND SHORT TERM OR EMERGENCY HOUSING NEEDS (2008).

¹²⁹ Indeed, housing is a critical component of the ongoing health, safety and welfare of persons living with HIV/AIDS. See HUDSON PLANNING GROUP, AN ASSESSMENT OF THE HOUSING NEEDS OF PERSONS WITH HIV/AIDS, NEW YORK CITY ELIGIBLE METROPOLITAN STATISTICAL AREA 41-44 (2004).

¹³⁰ HAB POLICY NOTICE 08-01, *supra* note 128.

¹³¹ *Id.*

¹³² This is of particular concern for people living with HIV because of the connection between HIV and drug use. According to the CDC, approximately 19% of women and 12% of men who were infected with HIV in 2006 were infected via injection drug use. CDC, HIV/AIDS IN THE UNITED STATES (2008), *available at* <http://www.cdc.gov/hiv/resources/factsheets/us.htm>.

based on criteria that require an outright ban, or those that allow housing authorities some discretion in determining whether or not to offer housing assistance.

There are two instances in which housing authorities *must* deny housing: (1) when households include a member who has been convicted of producing methamphetamine on the premises of a federally funded housing program,¹³³ or (2) when a household member is subject to lifetime registration as a sex offender by a state.¹³⁴

In addition to these mandatory denials, federal law grants discretion to public housing authorities to deny other applicants on the basis of drug-related criminal activity. Tenants who have been evicted from public housing as a result of drug-related criminal activity may be deemed ineligible for public housing for up to three years from the date of the eviction,¹³⁵ though the period may be shortened or waived by the agency. Current illegal drug use may also be a basis for denying admission to housing programs, as may a determination that there is reasonable cause to believe that a household member's drug or alcohol use "may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents."¹³⁶ A person may also be turned away from public housing for having engaged in any drug related or other criminal activity during a "reasonable time" before that person sought admission to the housing program.¹³⁷ These laws may prevent people living with HIV from obtaining public housing, even if they would otherwise be entitled to it.

IV. Conclusion

People living with HIV need safe, healthy, and affordable housing. Unfortunately, discrimination, disability, and poverty often interfere. There are a range of federal laws and programs, however, that help people living with HIV overcome the barriers they encounter. These tools, along with state and local law protections, and well-informed advocates,¹³⁸ all help ensure that all people living with HIV obtain the housing they need and deserve.

¹³³ 42 U.S.C. § 1437n(f) (2008); 24 C.F.R. §960.204(a)(3). *See also* 24 C.F.R. §§ 882.518(a)(1)(ii), 982.553(a)(1)(ii)(C) (2008) (related to Section 8 programs).

¹³⁴ 42 U.S.C. § 13663(a); 24 C.F.R. § 960.204(a)(4). *See also* 24 C.F.R. §§ 882.518(a)(2), 982.553(a)(2)(i) (related to Section 8 programs).

¹³⁵ 42 U.S.C. § 13661; 24 C.F.R. § 960.204(a)(1)-(2).

¹³⁶ *Id.* § 13661(b)(1)B).

¹³⁷ *Id.* § 13661(c).

¹³⁸ Housing resources for people living with AIDS include: AIDS Housing Washington (Visted Aug. 7, 2008) <http://www.aidshousing.org>; Housing Works (Visted Aug. 7, 2008); <http://www.housingworks.org>; AIDS Housing Alliance SF (Visted Aug. 7, 2008) <http://www.ahasf.org>; AIDS Housing Corporation (Visted Aug. 7, 2008) <http://www.ahc.org>.