



February 2, 2015

Donna Leong, Corporation Counsel  
530 S. King Street, Room 110  
Honolulu, HI 96813  
Via e-mail: [dleong@honolulu.gov](mailto:dleong@honolulu.gov)

Re: Housing First – unlawful exclusion of new Hawai‘i residents

Dear Ms. Leong:

For many years, our offices have been able to work cooperatively to resolve issues without litigation whenever possible. To that end, we wish to bring a matter to your immediate attention.

As you may know, the City & County awarded a contract to the Institute for Human Services (“IHS”) to provide services for the City & County’s “Housing First” program. Troublingly, the City & County’s contract with IHS expressly allows for unconstitutional discrimination against (and exclusion from programs for) recent arrivals to the State of Hawai‘i. Specifically, IHS’s proposal to the City – expressly incorporated into the contract itself – provides as follows: “We intend to exclude newly arrived homeless persons from outside the State so as not to reinforce more of the same immigration of homeless persons from out of State, unless the City has objections.” IHS Contract, page 41 (attached).

The United States Supreme Court has been clear that the government may not deny benefits – or offer less generous benefits – to recent arrivals to the State. *See Saenz v. Roe*, 526 U.S. 489, 502 (1999) (“What is at issue in this case, then, is . . . the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State. That right is protected not only by the new arrival’s status as a state citizen, but also by her status as a citizen of the United States.”); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) (“We do not doubt that the one-year waiting period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and

start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.”), *overruled in part on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974). The Supreme Court has unwaveringly held that any law that is enacted with the purpose of deterring in-migration faces insurmountable constitutional difficulties. *Hooper v. Bernalillo Cty. Assessor*, 472 U.S. 612, 620 n. 9 (1985) (quoting *Zobel v. Williams*, 457 U.S. 55, 62 n.9 (1982)); *see also Saenz v. Roe*, 526 U.S. 489, 506 (1999) (“[S]uch a purpose would be unequivocally impermissible[.]”); *Memorial Hosp. v. Maricopa Cty.*, 415 U.S. 250, 263-64 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

Your office may also recall a similar case that the ACLU brought against the City & County in 2005, in which the United States District Court granted the Plaintiff’s Motion for Preliminary Injunction in a case challenging pre-employment residency requirements for City & County employees. *Walsh v. City & County of Honolulu*, 423 F. Supp. 2d 1094 (D. Haw. 2006). The City and County cannot condition the receipt of essential benefits to the length of residence. *See Saenz*, 526 U.S. at 505-506 (striking as unconstitutional a California law that denied TANF benefits to recent arrivals in the State).

Although IHS implements the rules that result in these unconstitutional deprivations to new arrivals, the City & County cannot abdicate its constitutional responsibilities by contracting with a private entity to violate the law in this manner.

We ask that your office take immediate steps to end these practices, and that the City & County ensure that all future contracts make clear that contractors may not discriminate against recent arrivals to our State. We ask that your office contact us no later than Friday, February 13, to discuss the remedies we have set forth herein.

Please feel free to contact me at 522-5908 or [dgluck@acluhawaii.org](mailto:dgluck@acluhawaii.org). Thank you for your prompt attention to this matter.

Sincerely yours,



Daniel M. Gluck  
Legal Director

Attch.

cc: Dawn Spurlin (by email/with attch.)

Unsheltered Children in Families	38	4	32	74	106	69.81%
Unsheltered People in Families	62	9	64	135	188	71.81%
Unsheltered Non-Family Individuals	536	312	254	1,102	1445	76.26%
Total Unsheltered Persons	598	321	318	1,237	1,633	75.75%

Table 2. PIT 2014 Regional Distribution of Unsheltered Chronically Homeless Singles by Project Geographic Area

Region	# People	TOTAL	%
1: Downtown Honolulu	225	516	43.6%
2: East Honolulu	142	288	49.3%
7: Waianae Coast	85	228	37.3%
Total Area	452	1032	43.80%
Oahu Total	558	1327	42.0%

The population of focus for this project comprises: 1) Unsheltered homeless and 2) Chronically Homeless adult individuals and families both (sheltered and unsheltered) in the target geographical area described above. To qualify for housing assistance under this project, clients must have an assigned case manager prior to placement. Specific exclusionary criteria for participation in this project include:

- 1) Persons convicted of a violent crime within two years prior to the application for rental assistance. This will be screened using both the local Hooiki web-based database as well as the national e-Crim service that provides for national background checks
- 2) Persons who are not citizens or resident aliens of the United States of America, or who otherwise do not possess documentation evidencing a legal basis to remain in the United States of America. This will be checked through the national database that is provided by U.S. Homeland Security and the presentation of personal documentation if available.

3) We intend to exclude newly arrived homeless persons from outside the State so as not to reinforce more of the same immigration of homeless persons from out of State, unless the City has objections. These persons will be served through the offer of emergency/transitional programs that require personal investment on their part. Every effort will be made to assist the person to return to their place of meaningful tie if they are not capable of securing employment or arrived "by mistake", particularly if they are more familiar with a service system in another state or have social supports there.

Because IHS is also undertaking a separate intensive Outreach program focusing on Waikiki Homeless, those resources are expected to project a wide spectrum of services to address the broad needs of various subpopulations of homeless including those who are NOT chronically homeless. The services funded by the City grant will of course be focused on chronically homeless; but in order to achieve a visible reduction of homeless persons, the other populations must be served as well. Should IHS be funded for this project, our collaboration with other service providers will enable a fuller spectrum of outreach, housing options and services to be applied to a wider geographical region than has ever been experienced before.

Chronic homelessness means: A "chronically homeless" person is defined by HUD as an unaccompanied homeless individual with a disabling condition who is living on the street or other places unfit for human habitation or in emergency shelter and who has either been:

- 1) Continuously homeless for a year or more, or
- 2) At least four episodes of homelessness in the past three years.

A family which has an adult member who meets the criteria above qualifies as a chronically homeless family.

The concept of "vulnerability" refers to weight that chronic and severe medical, mental health, substance abuse disease conditions, behavioral risks, socialization and daily functions patterns and levels, and self care ability impact a homeless client's risk of mortality, emergency care and services utilization, and quality of life. The Vulnerability Index family of tools assesses these factors that have been actuarially demonstrated to decrease with placement in appropriate housing and linkage with needed supportive services. Vulnerability for individuals will be assessed using the Hale O Malama Vulnerability Index & Service Prioritization Decision Assistance Tool (SPDAT) Prescreen Assessment for Single Adults (hereinafter "VI-SPDAT"), while family vulnerability will be assessed using the Vulnerability Index & Family Service Prioritization Decision Assistance Tool (hereinafter "VI-F-SPDAT".) As the VI-F-SPDAT has not yet been implemented within the Oahu Continuum of Care, IHS will work with Hale O Malama and PHOCUSSED to finalize the VI-F-SPDAT form, interviewing process, form remittance, scoring, and provider notification processes for families parallel to that which has already been developed and implemented for the VI-SPDAT for singles.

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



DONNA Y. L. LEONG  
CORPORATION COUNSEL  
PAUL S. AOKI  
FIRST DEPUTY CORPORATION COUNSEL

April 7, 2015

Mr. Daniel M. Gluck  
Legal Director American Civil Liberties Union of Hawaii (ACLU)  
P. O. Box 3410  
Honolulu, Hawaii 96801

Dear Mr. Gluck:

Re: Housing First Clarification Meeting

This responds to your letter of February 2, 2015 expressing concern that the Institute for Human Services (IHS) might be excluding homeless persons from the Housing First Program based on their recent arrival to the State. Your letter was referred to me for response. I apologize for the delay in responding to you and appreciate your patience.

Representatives of the City met with IHS to express the City's position that persons who otherwise qualify for referral to the Housing First Program should not be excluded based on the duration of their residency in Hawaii. IHS clarified that they base their referrals to Housing First on individual assessments and would not require that a homeless person be present in Hawaii for a certain period of time as a condition of referral.

Enclosed is a copy of the letter from Gary K. Nakata, the Director Designate of the Department of Community Services, to IHS, confirming our understanding. I trust this addresses your concerns.

Thank you for your letter. Please let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Kathleen A. Kelly".

KATHLEEN A. KELLY  
Deputy Corporation Counsel

KAK:la

Encl.

cc: Lois Perrin, ACLU

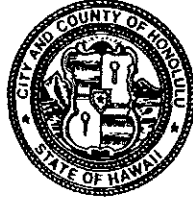
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**Appendix F**

DEPARTMENT OF COMMUNITY SERVICES  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 311 • HONOLULU, HAWAII 96813 • AREA CODE 808 • PHONE: 768-7762 • FAX: 768-7792

KIRK CALDWELL  
MAYOR



GARY K. NAKATA  
DIRECTOR DESIGNATE

March 16, 2015

Ms. Connie Mitchell  
Executive Director  
IHS, the Institute for Human Services, Inc.  
546 Kaaahi Street  
Honolulu, Hawaii 96817

Dear Ms. Mitchell:

**SUBJECT: Housing First Clarification Meeting**

Thank you for meeting with us recently to explain how the Institute for Human Services (IHS) identifies referrals to the City's Housing First Program, and for allowing the City to clarify its position that persons who would otherwise meet the criteria for Housing First's target population should not be disqualified based on the duration of their residency in Hawaii.

We greatly appreciate your clarification that IHS will not exclude or disqualify homeless persons from Housing First based on the length of time they have been in Hawaii. Rather, IHS refers all individuals for services based on their specific needs. As part of its assessment, IHS tries to determine how long a person has been homeless, and where. If IHS' assessment indicates that a homeless person is among the critically vulnerable, chronically homeless whom the Housing First Program is intended to serve, IHS would refer that person to Housing First regardless of how long that person has been in Hawaii.

Ultimately, IHS refers homeless persons to the services most appropriate for them, based on an assessment of the individual's condition and needs. In assessing the level of a homeless person's vulnerability, IHS would take into account a person's past and present activities and functioning, which would include any recent independent travel to or from Hawaii. However, IHS would not require that a homeless person be present in Hawaii for a certain period of time as a condition of referral to Housing First, or any other appropriate program.

Ms. Connie Mitchell  
March 16, 2015  
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We are grateful to have the Institute for Human Services as an important and committed partner in the City's efforts to address homelessness, and look forward to continued, close collaboration between our respective agencies.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary K. Nakata", with a long horizontal stroke extending to the right.

Gary K. Nakata  
Director Designate

GKN:ki

cc: Kathleen Kelly, Deputy Corporation Counsel