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VIA FIRST CLASS MAIL AND EMAIL

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**Re: Enforcement of N.J.S.A. 2C:33-11.1**

Dear Attorney General Grewal and Colonel Callahan:

I write on behalf of a coalition of advocates for the rights of tenants. This coalition includes the signatories listed at the end of this letter. We write to seek your assistance in addressing the growing problem of property owners and/or their agents conducting illegal lockouts. This practice is unlawful and problematic at any time, but has even more significant economic and public health consequences during the current state of emergency. We believe that educating police departments and their personnel about law enforcement officers' legal duty to protect tenants from illegal lockouts would go a long way towards curbing this unlawful practice.

Although New Jersey tenants are currently protected, except in certain circumstances, from physical removal from their homes under Governor Murphy's [Executive Order 106](#), many landlords are increasingly resorting to "self-help" evictions through illegal lockouts and/or shutting off their tenants' utilities. As advocates and legal counsel, we advise tenants to contact their local police department when this happens so that they may regain access to their homes. However, there have been numerous occasions where law enforcement officers did not recognize or fulfill their obligations to assist tenants who have been actually or constructively locked out of their homes in violation of the law. We have even seen instances where the police have assisted landlords in removing tenants from their homes without a court order. As explained below, such conduct contravenes law enforcement officers' legal obligation to protect tenants from landlords who are committing disorderly persons offenses.

New Jersey law states that:

A person commits a disorderly persons offense if, after being warned by a law enforcement or other public official of the illegality of that action, the person (1) takes possession of residential real property or effectuates a forcible entry or detainer of residential real property without lawful execution of a warrant for possession in accordance with the provisions of section 2 of P.L.1974, c.47 (C.2A:42-10.16) or without the consent of the occupant solely in possession of the residential real property; or (2) refuses to restore immediately to exclusive possession and occupancy any such occupant so displaced. Legal occupants unlawfully displaced shall be entitled without delay to reenter and reoccupy the premises, and shall not be considered trespassers or chargeable with any offense, provided that a law enforcement officer is present at the time of reentry. *It shall be the duty of such officer to prevent the landlord or any other persons from obstructing or hindering the reentry and reoccupancy of the dwelling by the displaced occupant.*

N.J.S.A. 2C:33-11.1 (emphasis added). Furthermore, to ensure compliance and facilitate law enforcement's role in preventing illegal lockouts, the Attorney General was required to prepare a notice within 30 days of the effective date of N.J.S.A. 2C:33-11.1 that explained the law, "with particular emphasis on the responsibilities of law enforcement officers and other public officials," and to disseminate the notice to "every law enforcement officer." N.J.S.A. 2C:52:17B-4.6. This was not a one-time notice requirement. To the contrary, the statute mandates that the notice "*shall be reinforced at roll calls and academy service training and continuing education programs so as to ensure that all officers and prosecutors are educated of their responsibilities*" under the law. *Id.* (emphasis added).

On July 20, 2009, Attorney General Anne Milgram reiterated the duty of law enforcement officers to intervene when she issued a [Revised Notice to Law Enforcement Concerning Unlawful Eviction Law](#) and included the following under the "Responsibilities Imposed Upon Law Enforcement Officers":

This law requires law enforcement offices to first warn the landlord or other person that his/her attempts to forcibly enter and detain the property is illegal. If the landlord or other person continues his/her efforts in attempting to enter and detain the property, they can be cited for a disorderly persons offense. Further, the law imposes a duty on law enforcement officers to prevent the landlord or any other person from obstructing or hindering the reentry and reoccupancy of the dwelling by the tenant.

Given the previous notices to law enforcement and statutory obligation to provide ongoing education of law enforcement officers on this issue, we are deeply troubled by the number of instances where officers refused to protect tenants who have been illegally evicted from their homes. Moreover, this is a statewide problem, and not isolated to one or two municipalities; we have received at least a dozen complaints in recent weeks. In fact, we are fearful that the number of illegal lockouts is far greater than what we are seeing, given how few tenants have access to legal assistance for eviction-related matters.

Attorney General Grewal, we respectfully request that your office issue updated guidance in order to ensure that uniform practices exist across the state when tenants turn to law enforcement to protect them from landlords who are denying them access to their homes or constructively evicting them by turning off utilities or water. Such guidance would be in line with other actions taken by your office during the

pandemic and prior practices of the Office of the Attorney General. In particular, we believe it is crucial for the guidance to provide clear, specific steps that officers CAN take to assist a tenant who has been illegally removed from their home. We have found that even when officers do understand that they have a duty to assist the tenant, some are uncertain of what concrete steps to take. For example, at the very least, officers should be issuing a summons to a landlord who refuses to immediately restore possession to a tenant. Beyond that, however, there appears to be confusion about what additional steps officers can and should take to protect tenants. Earlier this year, the New York State Office of the Attorney General issued [Guidance to Law Enforcement on Illegal Lockouts](#), which provides a strong model.

Colonel Callahan, we respectfully request that additional training on this issue be provided to law enforcement officers throughout the state. In addition to reiterating the officers' legal duties to tenants when there is an illegal eviction threatened or occurring, the training should ensure that law enforcement officers understand that N.J.S.A. 2C:33-11.1 defines "forcible entry and detainer" to include:

- (1) any kind of violence including threatening to kill or injure the party in possession;
- (2) words, circumstances or actions which have a clear intention to incite fear or apprehension or danger in the party in possession;
- (3) putting outside of the residential premises the personal effects or furniture of the party in possession;
- (4) entering peaceably and then, by force or threats, turning the party out of possession;
- (5) padlocking or otherwise changing locks to the property;
- (6) shutting off, or causing to be shut off, vital services such as, but not limited to, heat, electricity or water, in an effort to regain possession; or by
- (7) any means other than compliance with lawful eviction procedures pursuant to section 2 of P.L.1974, c.47 (C.2A:42-10.16), as established through possession of a lawfully prepared and valid "Execution of Warrant."

In addition, we hope the training will reinforce the practical ways in which law enforcement officers can and must intervene when a tenant or tenant's advocate contacts them for assistance regarding an illegal lockout. We recognize that officers also have to be sensitive to unique circumstances, such as situations involving domestic violence where an abuser might be seeking entry to an apartment when there is a restraining order in place prohibiting such access. The New York Guidance cited above includes some examples of how to provide practical guidance to officers in such instances.

In that same vein, we hope that the training provided to law enforcement officers will be consistent with [Attorney General Law Enforcement Directive No. 2018-6 v2.0](#) (revised September 27, 2019), and account for the fact that some landlords attempt to illegally lockout immigrants by instilling fear in them and threatening to contact immigration authorities if they do not vacate their homes. Such actions by the landlord constitute a "forcible entry and detainer" under N.J.S.A. 2C:33-11.1 and have the additional negative consequence of discouraging immigrants from reporting illegal lockouts to law enforcement agencies. The hesitancy to report the landlords' unlawful and threatening conduct is reinforced when

police officers fail to intervene and protect tenants from illegal lockouts in communities inhabited by immigrants.

Finally, we would encourage you both to also consider issuing a public statement, or holding a press conference, to emphasize the illegality of “self-help evictions” to send a message to landlords and to educate the public at large. You could encourage members of the public to contact an existing state hotline (or set up a dedicated line) to report imminent or actual illegal evictions. New Jersey has taken bold steps to ensure that tenants are protected during the COVID-19 crisis. Now more than ever, it is imperative that this long-standing law preventing illegal lockouts is enforced in all municipalities throughout the state. When tenants are illegally locked out of their homes, their need for immediate shelter can create health risks as they turn to co-habiting with family and friends, entering public shelters, or even sleeping on the street. At a time when isolation and distance are needed to protect the public health, these options are dangerous for the tenants, their loved ones, and our state.

Thank you both for considering these requests. We would be happy to discuss these issues further and are committed to working with you to ensure that existing laws are upheld.

Sincerely,

s/ Jessica Kitson

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s/ Cathy Keenan

Executive Director

Volunteer Lawyers for Justice

s/ Lori Outzs Borgen

Director, Center for Social Justice

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s/ Arnold Cohen

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