From: RTC Coalition
Re: Legality of Defend RTC Demands
Date: May, 2023

"Defend RTC Demands" or "Demands"

(a) require that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a right to counsel attorney;
(b) reduce the volume of eviction cases on the court calendars so the number of new cases matches legal service providers capacity to provide full representation to eligible tenants

Issue 1: Does the Chief Judge have the power to implement the Defend RTC Demands?

Yes, the Demands are consistent with existing law and an appropriate administrative solution to the mismatch between eviction case numbers involving Right to Counsel (RTC)-eligible tenants and attorney provider capacity. These Demands are similar to other readily-adopted procedural changes to court processes and calendaring that have occurred during and after the height of the global pandemic.

a. Chief Judge Has Power to Issue an Administrative Order to Stay Cases

While the legislature has the power to regulate "the jurisdiction and proceedings in law and equity," pursuant to the New York State Constitution, it may delegate "any power" to the appellate division or to the chief administrator of the courts.[1] As such, "the court may formulate its own procedure where the statute provides none."[2] The Judiciary Law requires the chief judge to establish standards and administrative policies, including the "adoption, amendment, rescission, and implementation of rules and orders regulating practice and procedures in the courts" where "procedural hurdles . . . impair statutory remedies."[3]

While "a court may not significantly affect the relationship between litigating parties through the exercise of its rule-making authority,"[4] it must be balanced by the Court's obligation to ensure due process for litigants, to comply with statutory rights and requirements, and to manage its operations in a manner that is responsive to changing circumstances and fluctuating case demands. Here, the Demands do not exceed the authority of the courts any more than any of the numerous changes to court procedures implemented by the courts during and after the COVID-19 pandemic state of emergency expired.[5]

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[1] N.Y. Const. art. VI, § 30
[2] *Hayman v. Morris*, 37 N.Y.S.2d 884, 895 (Sup. Ct. N.Y. Cnty.), *supplemented,* 179 Misc. 265, 38 N.Y.S.2d 782 (Sup. Ct. 1942); *see Fisher v. Gould,* 81 N.Y. 228, 232 (1880).
[3] N.Y. Judiciary Law § 211; *see also* N.Y. Judiciary Law § 212.
[4] *People v. Ramos*, 85 N.Y.2d 678, 687 (1995) (holding that the court's requirement that defendants be served with the prosecution's brief exceeded the court's judicial authority).
[5] New York State was in a state of emergency from March 7, 2020 though June 25, 2021. *See* EO 202 (declaring a state of emergency effective 3/7/20); EO 210 (rescinding EO 202 effective 6/25/21).

Throughout and after the state of emergency expired, the Court routinely and unilaterally took such actions pursuant to the New York State Constitution and Judiciary Law through issuance of administrative orders ("AO") and directives, rules and procedures ("DRP"), including those: requiring a settlement conference for certain cases to move forward out of a stay, creating and then consolidating various intake parts for new and existing cases, creating a small property part to aid small property owners by allocating specialized resources to hear and thereby expedite their cases, requiring various default procedures and judges to vacate defaults in some cases, establishing procedures for when a legal services provider declined a case due to capacity, and most recently - on January 11, 2023, the Court issued a January 31, 2023 deadline for landlords to file orders to show cause to keep unanswered nonpayment cases from being administratively dismissed for failure to prosecute.[6]

Most and nearly all courts recognized the Court's inherent authority to implement the policies within the above-mentioned AOs and DRPs to better serve and protect the rights of litigants, as well as to preserve vital judicial resources and ensure the effective functioning of the court system. Similarly, we must also recognize the Court's ability and authority to temporarily stay

[6] *See*

- 8/13/21: Marks' AO/244/21 concerning implementation of ERAP
- 8/13/21: Marks' AO/245/21 requiring courts to initiate settlement/status conferences for all pre-pandemic cases, including referrals to legal providers
- 8/16/21: Walker-Diallo DRP 217 requiring petitioners seeking to enforce a pre-pandemic warrant to bring a motion that includes notice to Respondent
- 9/8/21: Marks AO/261/21 creates mechanism for hearing challenging hardship declarations, vacating default judgments between 8/13/21 and 9/2/21, and holding a hearing for nuisance holdovers
- 9/10/21: Walker-Diallo's DRP-218 stating the Housing Part will resume regular calendars for newly-filed cases, creating the IP part for new cases that's presumptively virtual and is meant to assign tenants to counsel
- 9/23/21: Walker-Diallo's DRP-219 making default motions returnable to the HMP part for a hearing on whether there was proper notice to tenants, but any default issued before CEEFPA's enactment should be vacated upon tenant's request
- 1/17/22: Walker-Diallo's DRP 220 creating the "Small Property Part" of the Housing Part
- 3/28/22: Judge Schneider announced for all counties except Richmond: all trials would presumptively be in-person; HPs with pro se litigants would be in-person; SPP cases would be in person; all intake part cases would be in person on the first resolution part appearance and virtual appearances would be case-by-case
- 3/28/22: OCJ issued memo detailing that where a legal service provider declined a case due to capacity, the case would be sent back to OCJ for re-assignment; all providers will conditionally accept all respondents unless there's an identified conflict; limits the length of the first adjournment to 3 weeks.
- 6/30/22: NYC Civil Court Directive advising judges they retain discretion to require a motion where one respondent appears and others don't; requiring default motions to be made returnable to the HMP part
- 10/12/22: Walker-Diallo issues DRP-224 concerning proof required for default judgments in nonpayment proceedings
- 1/11/23: Walker-Diallo issues Court Notice with January 31, 2023 deadline for landlords to file orders to show cause to avoid unanswered nonpayment cases filed before December 31, 2020 from being administratively dismissed for failure to prosecute.

eviction cases where an attorney could not be assigned due to the volume of eviction case filings exceeding legal services provider capacity. The Court not only has the power to implement the Defend RTC Demands, in fact this proposal would be most consistent with the Court's approach to establishing necessary procedures throughout the entirety of the pandemic, including AOs and DRPs that altered the timing and process of summary eviction proceedings.

b. Issuance of an Administrative Order Does Not Violate Existing Statutes

The Demands are consistent with the requirements of the New York State Real Property and Procedures Law ("RPAPL") relating to the calendaring of eviction cases.

RPAPL § 733 states that a holdover proceeding must be made returnable 10-17 days after the petition is served and RPAPL § 732 states that a nonpayment petition must be answered within 10 days. The Demands do not propose that the Court implement any policies inconsistent with these statutory requirements. These provisions, when properly applied, result in the first date of an eviction proceeding occurring within a month from the filing and service of petition date; however, nothing in the language of these statutes mandates the case be settled or decided within that same month or in any defined amount of time.[7]

Any argument that the courts cannot slow down calendaring of new cases or moving cases forward in the absence of an attorney for an eligible tenant without violating existing statutes is without merits. There is no provision of the RPAPL or any other controlling rule or statute governing housing court cases that requires a case be settled or decided within a specific time period. It is true that housing court cases are summary proceedings commenced pursuant to Article 4 of the New York Civil Practice Rule and Procedure ("CPLR"), which allows a speedier time frame for service of pleadings and permits pre-trial discovery by leave of court only, the same does not require a summary proceeding to start and finish by a date certain.[8] In the absence of such a statute, all housing court judges have discretion on when to grant an adjournment and for how long. Similarly, the Court possesses the authority to issue an administrative order mandating stays of cases where eligible tenants have not yet retained counsel.

When NYC's Right to Counsel legislation was passed in 2017, it was predicated on an understanding that cases should only fully be decided on the merits where tenants - like the vast majority of landlords - have the assistance and full benefit of counsel. In practice, it is common for housing court practitioners to have cases that span several years where both sides possess meritorious claims, defenses, and counterclaims, which must all be litigated in order to reach full resolution. Recognizing the need to balance the power inequity that exists in housing court between pro se tenants and represented landlords, in passing the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") the state legislature amended RPAPL § 745 to remove timing

[7] RPAPL §§ 732, 733.
[8] CPLR, Article 4.

restrictions and fees from "an adjournment requested by a [tenant] unrepresented by counsel for the purposes of securing counsel[.]"[9] The Court must always balance moving summary proceedings forward efficiently, with the need to ensure that cases may be fully litigated and litigants' rights protected, including tenants' right to counsel.

c. Stays Are Necessary to Protect Due Process Rights of RTC-Eligible Tenants

Housing Court judges have the discretion to adjourn cases at any time, for any length of time, and for nearly any reason. The same discretion exists for granting a stay in a housing court proceeding as long as the stay would be in furtherance of the interests of justice. This discretion should be exercised to ensure that cases do not proceed until all eligible tenants have access to retain a RTC attorney with meaningful capacity to take the case and to do otherwise would result in a due process violation.

Where a case is permitted to move forward without meaningful access to counsel for the tenant, the case often results in a judgment or stipulation prior to a hearing on the merits and without the tenant asserting meritorious defenses. When a tenant subsequently retains an attorney, the attorney then seeks to have the judgment and/or stipulation vacated which returns the proceeding to its starting place. Thus, if the judge were to exercise this discretion to stay cases until meaningful access to counsel is possible, it will undoubtedly prevent the need for extended motion practice at a later date and result in speedier resolutions.

An administrative stay to secure counsel with capacity to take on a tenant's case is essential to ensure due process for each tenant. The right to counsel for those unable to afford an attorney on their own is recognized in many civil proceedings, particularly those that have especially grave consequences. For example, indigent parents are provided a court-appointed attorney in parental proceedings in Family Court and indigent elders are provided counsel when asked to involuntarily transfer nursing homes.[10] Courts have reasoned that where an erroneous determination could have a substantial or life threatening impact on one's life, that person should not face the proceeding alone. In fact, some courts believe that their ability to properly function is obstructed where an attorney is not provided to a vulnerable person.[11] These civil courts routinely adjourn cases so that a person may retain and meaningfully engage with appointed counsel.

Similarly, Criminal Courts value the importance of effective assistance of counsel in criminal proceedings where a person's liberty is at stake. In New York, the right to counsel is grounded on State constitutional and statutory guarantees of the privilege against self-incrimination, the right to the assistance of counsel, and due process of law; it extends well beyond the right to counsel

[9] Laws of 2019, Chapter 36, Part M, § 17.
[10] *Trent v. Loru*, 57 Misc. 2d 382, 292 N.Y.S.2d 524 (Fam. Ct. Bx. Cty. 1968); *In re St. Luke's-Roosevelt Hosp. Ctr.*, 159 Misc. 2d 932, 607 N.Y.S.2d 574 (Sup. Ct. N.Y. Cty. 1993).
[11] *N.Y. County Lawyers' Ass'n v. State*, 196 Misc. 2d 761, 763 N.Y.S.2d 397 (Sup. Ct. N.Y. Cty. 2003).

afforded by the Sixth Amendment of the United States Constitution and other State Constitutions.[12] In fact, New York criminal courts find the need for counsel so essential that it is a right provided to a defendant at every stage of the case and will often adjourn or stay a case for the purpose of obtaining and/or meeting with counsel to adequately prepare a defense.[13]

With Local Law 136 fully implemented, guaranteeing an attorney to all eligible tenants in Housing Court, tenants have due process rights to obtain an attorney *before* their case proceeds. The Court must prohibit eviction cases from moving forward where an eligible tenant has not yet been referred to a legal services office with adequate capacity to zealously represent the tenant. Requiring a tenant to face eviction before they have secured a free attorney deprives them of fundamental due process under the New York State Constitution and United States Constitution. Tenants' right to counsel can only be meaningfully exercised, and the tenants' due process rights protected, if the Court issues an order staying a summary eviction proceeding until the tenant can retain a qualified attorney with capacity to undertake representation in their case. Where a tenant's case proceeds before that can happen, due process has not been afforded.[14]

Housing Court itself has interpreted New York City's Right to Counsel Law as creating a right for eligible tenants to representation. The Right to Counsel Law shows a "clear public policy of keeping rent-stabilized tenants in their homes whenever possible." *Diego Beekman Mut. Hous. Assoc. Hous. Dev. Fund Corp. v. McClain*, 2019 NY Slip Op 50580(U), *3 (Civ. Ct.). Thus, New York City Civil Courts have vacated stipulations tenants improvidently entered into while unrepresented, when they qualified for appointed counsel under the law. *See, e.g.*, *id.* at *4 (vacating stipulation where the litigant did not know she had defenses she could have raised but did not know of because she was unrepresented). Where eligible tenants stipulated to judgments because of administrative or clerical errors that denied them counsel, the Court has vacated those judgments. *See 2247 Webster Ave. HDFC v. Galarce*, 2019 NY Slip Op 29007, * 6 (Civ. Ct.) (vacating judgment where litigant not connected to right to counsel because of clerical error). That is because the right to counsel is not an "empty right." *3225 Holdings LLC v. Imeraj*, 2019 NY Slip Op 51763(U), ¶ 2 n.5 (Civ. Ct.); *Ollie Assocs. LLC v. Santos*, 2019 NY Slip Op 51085(U), ¶ 3 n.10 (Civ. Ct.). Rather, it shows a legislative commitment to giving each eligible tenant the opportunity for legal representation.

As such, the right to counsel in New York City is an essential part of the fabric of due process protections in Housing Court. To ensure due process for respondents in Housing Court, the

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[12] *People v. O'Neil*, 43 Misc.3d 693, 986 N.Y.S.2d 302 (Dist. Ct. Nassau Cty. 2014).
[13] Criminal Procedure Law § 210.15.
[14] *People v. Grice*, 100 N.Y.2d 318, 320-21, 763 N.Y.S.2d 227, 229 (2003) (discussing the "indelible right to counsel" in criminal cases that "guarantees due process of law" attaches as soon as an accusatory instrument is filed or when an individual requests an attorney, which prohibits further proceedings against a defendant, including interrogations without the presence of counsel); *N.Y. County Lawyers' Ass'n v. State*, 196 Misc. 2d at 779, 763 N.Y.S.2d at 410-11 (observing that criminal defendants and family court litigants are entitled to "meaningful and effective legal representation at every critical stage of a proceeding").

Office of Court Administration must exercise its power to implement a policy that automatically stays all cases for as long as is necessary, so that tenants may avail themselves of their right to counsel.

Issue 2: Are the Defend RTC Demands Constitutionally Defensible?

The Demands likely do not violate the Contract Clause, Takings Clause, or Due Process Clause for many of the same reasons - they do not eliminate any rights, remedies, or obligations of either landlords or tenants. At most, they could potentially add to the temporary delay of eviction proceedings in order to protect the significant public interest in avoiding homelessness and fulfilling the 2017 right to counsel law's statutory protections that have due process implications.

a. The Demands Do Not Violate the Contract Clause

Any Contract Clause challenge to a policy implementing the Demands is likely to fail. The Contract Clause is only violated where two elements are met: (1) a law substantially impairs a contractual relationship, and if so, (2) the law is not an appropriate or reasonable means of advancing a significant and legitimate public purpose.[15]

The "substantial impairment" element looks at numerous factors, the most important of which is whether the parties' reasonable expectations at the time a contract was entered are altered by the law.[16] Where an industry is already highly regulated, a Contract Clause challenge "normally cannot prevail."[17] The real estate industry is one such highly-regulated industry.[18]

Here, the nature of the landlord-tenant relationship would not be altered by the Demands. The Demands do not relieve tenants of any obligations, and landlords maintain their remedy of eviction. Rather, the Demands ask only for a modification of existing court processes to protect the important public interest in preventing evictions. Landlords should reasonably expect delays in court processes to protect the rights of tenants because delays are already a part of existing court processes. For example, tenants may make motions, request leave for discovery, and have a right to a trial - all of which may delay resolution of a case, but are critical to protect tenants' due

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[15] *Sveen*, 138 S.Ct. at 1822 *quoting Energy Reserves Group, Inc. v. Kansas Power & Light*, 459 U.S. 400, 411-412 (1983); *see General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992).
[16] *Buffalo Teachers Fed'n v. Tobe*, 446 F. Supp. 2d 134, 143 (W.D.N.Y. 2005), *aff'd,* 464 F.3d 362 (2d Cir. 2006) citing *Sanitation & Recycling Indus.,* 107 F.3d at 993 (citing *Energy Reserves,* 459 U.S. at 411, 103 S.Ct. 697).
[17] *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 993 (2nd Cir. 1997) *citing Veix v. Sixth Ward Bldg. & Loan Ass'n,* 310 U.S. 32, 38 (1940).
[18] See *Kraebel v. New York City Dep't of Hous. Pres. & Dev.*, 959 F.2d 395, 403 (2d Cir. 1992); *Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 2020 N.Y. Slip Op. 02127 (2020) ("[N]o party doing business in a regulated environment like the New York City rental market can expect the [Rent Stabilization Laws] to remain static"); Andrew Scherer, Residential Landlord-Tenant Law in New York, § 1.1 (Nov. 2021 Update) ("The residential landlord-tenant relationship in New York is now one of the most regulated of private economic relationships").

process rights. Similarly, as noted above, the 2019 HSPTA modified RPAPL 745 to build in at least one adjournment after the filing of an Answer "for the purpose of securing counsel." Finally, throughout the pandemic, the Court frequently developed new procedures and requirements to connect tenants with lawyers and prevent excusable defaults, which in turn altered the application of various statutes and rules related to the timing of summary proceedings. All landlords should therefore anticipate that the pace of eviction proceedings will be limited by statute and court policies and rules. Therefore, any delay caused by implementation of the Demands would not alter the reasonable expectations of landlords.

Further, there are clear societal interests involved in keeping tenants housed and preventing evictions that has been well-demonstrated. Since implementation of the Right to Counsel, eviction filings decreased 72% between 2019 and 2021, and 84% of tenants with attorneys facing eviction were allowed to remain in their homes.[19] Thus, even if it were found that the Demands substantially impair the contractual relationship, the Demands do not violate the contract clause because the temporary stay required is for the purpose of advancing the significant societal interest in preventing evictions.

Therefore, the Demands would survive a Contracts Clause challenge.

b. The Demands Do Not Violate the Takings Clause

A Takings Clause challenge is also likely to fail. There are generally two types of Takings Clause challenges: categorical takings and regulatory takings. Any Takings challenge would likely be regulatory, since categorical takings require permanent physical occupation or completely depriving a property owner of all economic benefit to their land.[20]

A regulatory taking is defined by the *Penn Central* factors, which consider the economic impact of a regulation, the extent to which it interferes with distinct investment-backed expectations, and the character of the government action.[21] Small diminutions in value are not sufficient, but rather, a challenger must show that the law destroys "all but a bare residue of the economic value."[22]

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[19] "Universal Access to Legal Services: A Report on Year Four of Implementation in New York City," Office of Civil Justice, New York City Human Resources Administration (Fall 2021), https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf

[20] *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005); *Loretto v. Teleprompter Manhattan CSTV Corp.*, 458 U.S. 419 (1982).

[21] *See Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 124-25 (1978).

[22] *de St. Aubin v. Flacke*, 68 N.Y.2d 66, 496 (1986); *see also Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 131 [1978], *citing Euclid v. Ambler Realty Co.*, 272 U.S. 365 [1926] (finding a 75% diminution in value caused by zoning law did not result in a takings); *Hadacheck v. Sebastian*, 239 U.S. 394 [1915](finding a 87 1/2 % diminution in value did not constitute a takings); *See also Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 602 [1993] (finding a reduction in 46% shareholder equity was not sufficient to establish a takings); *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 [9th Cir.

Here, the Demands do not amount to a regulatory taking. Property owners would need to prove that the delay caused by the Demands deprived them of nearly all of the value of their property, which would be extremely difficult. Even in the rare instance of a small landlord facing foreclosure due to a tenant's nonpayment of rent, the landlord is not deprived of the rent owed, they are not deprived of their remedy to pursue a monetary and possessory judgment in housing court, and they are not deprived of their ability to obtain a monetary judgment in civil court. Additionally, given that foreclosure proceedings generally take longer than housing court proceedings, it would be difficult to establish a causal link between the additional time needed for an attorney to be assigned and the issuance of a judgment of foreclosure, given that the average foreclosure proceeding in New York State is 2.5 years.[23]

Additionally, a significant number of the evictions prevented by having an RTC attorney are because the provider facilitated rental payments from HRA to the landlord. Thus, the Demands assist landlords in getting more value from their property because tenants are more likely to pay their back rent with an RTC attorney.

C. The Demands Do Not Violate the Due Process Clause

Two possible challenges under due process might be based on retroactivity, or deprivation of property without due process.

i. Retroactivity

There is a strong argument that the Demands are not retroactive. "Changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity."[24] Rather, a statute only has retroactive effect if it would impair rights a party possessed when he acted, increase a party's liability for past conduct; or impose new duties with respect to transactions already completed.[25] Thus, post-*Regina* it was held that the HSTPA's prohibition on a landlord recovering more than one unit for owners use applied to a pending pre-judgment owners-use holdover since "the application of a new statute to a pending case is not automatically retroactive."[26]

2013](finding that a hypothetical 81% diminution in value due to lost revenue streams would not establish a takings).

[23] *See* "Foreclosure Update From a Local Government Perspective", Office of the New York State Comptroller (April 2016), https://www.osc.state.ny.us/files/local-government/publications/pdf/foreclosure0416.pdf;

[24] *Landgraf v. USI Film Prod.*, 511 U.S. 244, 275 (1994)

[25] *Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal,* 35 N.Y.3d 332, 365, 154 N.E.3d 972, 988 (2020) *citing Landgraf*, 511 U.S. at 278-280.

[26] *Karpen v. Castro*, 72 Misc. 3d 852, 857 (Civ. Ct. Kings Cnty. 2021)

Here, the Demands do not impair a landlord's right to an eviction proceeding, or change landlord's liability, or impose any new duties on the landlord. Rather, the Demands merely change the "procedural rules" governing eviction cases by enacting automatic stays in certain situations and changing how cases are calendared and scheduled. Just as in *Karpen*, the fact that it would apply to existing cases does not make the law retroactive.

Further, even if the demands *were* retroactive, they would meet the exceptions for retroactivity. A state act (whether legislation or policy change) is permitted to have a retroactive effect if there is a clear affirmative direction to do so.[27] *Regina* failed to meet this exception because there was "no indication … that the Legislature considered the harsh and destabilizing effect on owners' settled expectations," if the policy in question were retroactively applied.[28] Here, the Order enacting the Demands could acknowledge that it would have the effect of delaying certain cases, but determine that doing so was necessary in order to stymie the eviction crisis and fulfill the promise of the 2017 RTC legislation. This would both clearly express an intent and also likely pass rational basis review.[29]

ii. Matthews Balancing

In determining whether an act violates a due process right, such as property rights, courts will balance "the governmental and private interests that are affected."[30] Here, the landlord's property interest would be weighed against the government interest in affording tenants adequate procedural due process protections through assignment of counsel, preventing evictions, and maintaining the quality of the housing stock.

The right to counsel for those unable to afford an attorney on their own is recognized in many civil proceedings, particularly those that have especially grave consequences. For example, indigent parents are provided a court-appointed attorney in parental proceedings in Family Court and indigent elders are provided counsel when asked to involuntarily transfer nursing homes. Courts have reasoned that where an erroneous determination could have a substantial or life threatening impact on one's life, that person should not face the proceeding alone. In fact, some courts believe that their ability to properly function is obstructed where an attorney is not provided to a vulnerable person.[31] These civil courts routinely adjourn cases so that a person may retain and meaningfully engage with appointed counsel. Tenants' right to counsel can only be meaningfully exercised, and the tenants' due process rights protected, if the Court adjourns or stays a summary eviction proceeding until the tenant can retain a qualified attorney with capacity

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[27] Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 833 (1990).
[28] Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal, No. 1, 2020 WL 1557900 (N.Y. Apr. 2, 2020).
[29] Pension Ben. Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 730 (1984).
[30] *Mathews v. Eldridge*, 424 U.S. 319 (1976).
[31] *Trent v. Loru*, 57 Misc. 2d 382 (Fam. Ct. Bx. Cty. 1968); *In re St. Luke's-Roosevelt Hosp. Ctr.*, 159 Misc. 2d 932 (Sup. Ct. N.Y. Cty. 1993).

to undertake representation in their case. Where a tenant's case proceeds before that can happen, due process has not been afforded.[32]

The government has a clear interest in ensuring tenants are assigned attorneys, as it has been demonstrated that access to an attorney in housing court reduces the number of evictions.[33] Further, in New York City, housing court was established for the "maintenance of housing standards."[34] Courts have broad discretion to enforce housing standards "regardless of the relief originally sought."[35] Thus, the government has a further interest in providing counsel with adequate capacity to investigate and pursue the enforcement of housing maintenance standards in eviction matters.

Therefore, given the strong government interest in ensuring tenants are assigned counsel in eviction proceedings, the Demands would likely survive a substantive due process challenge.

Conclusion

The Defend RTC Demands are not just legally possible, they are in fact what is required of the Court to uphold NYC's right to counsel law and to ensure the Court provides due process protections for tenants facing eviction. The global pandemic was and is not an isolated incident; in fact, its impact will continue. The Courts experienced shortages in staff, judges were ill and unable to hear cases, attorneys unable to be physically present in court, and were forced to create and adopt entirely new processes and procedures to adapt to the new normal. Tenants, many of whom are the very essential workers that sustained so many of us during the height of the pandemic or who experienced the harshest blows of the virus, continue to experience financial and other hardships that will have a generational impact. Implementing court procedures to ensure tenants have a meaningful right to counsel is necessary, and is well within the Court's authority.

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[32] *People v. Grice*, 100 N.Y.2d 318, 320-21 (2003) (discussing the "indelible right to counsel" in criminal cases that "guarantees due process of law" attaches as soon as an accusatory instrument is filed or when an individual requests an attorney, which prohibits further proceedings against a defendant, including interrogations without the presence of counsel); N.Y. County Lawyers' Ass'n v. State , 196 Misc. 2d at 779, 763 N.Y.S.2d at 410-11 (observing that criminal defendants and family court litigants are entitled to "meaningful and effective legal representation at every critical stage of a proceeding").

[33] "Universal Access to Legal Services: A Report on Year Four of Implementation in New York City," Office of Civil Justice, New York City Human Resources Administration (Fall 2021).

[34] NYC Civil Court Act 110(a).

[35] NYC Civil Court Act 110(c).