



Racial Injustice in Housing and Homelessness in the United States

List of Themes Submission to the Committee on the Elimination of Racial Discrimination (CERD) For the United States Review

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I. INTRODUCTION

1. In its prior review of the United States (U.S.), this Committee has underscored the need to address the disproportionate number of minorities experiencing homelessness, as well as discrimination and segregation in housing. Specifically, this Committee expressed its “concern” “at the high number of homeless persons, who are disproportionately from racial and ethnic minorities, particularly African Americans, Hispanic/Latino Americans and Native Americans, and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying in public spaces.”² Moreover, this Committee noted “the persistence” of racial discrimination in access to housing and “the high degree of racial segregation and concentrated poverty.”³
2. Racial injustice in homelessness and housing in the U.S. remains a serious problem. Homelessness is closely linked to racial discrimination. Black Americans make up 40% of the homeless population, even though only 13% of the overall population is Black.⁴ Additionally, American Indian, Alaska Native, Pacific Islander, and Native Hawaiian people make up 1% of the total population but 5% of people experiencing homelessness and 7% of unsheltered residents.⁵ Hispanic and Latino people make up 16% of the U.S. population and 23% of people experiencing homelessness.⁶
3. Intersecting discrimination based on race and gender exacerbates homelessness. In 2018 and 2019, Black women made up 30% of women who died experiencing homelessness in Los Angeles County and Hispanic/Latina women made up 29%.⁷ Further, of families experiencing homelessness, about 60% were single mothers with children and about 50% of them were Black single mothers.⁸ Overall, single women with children make up about 21% of the country’s total homeless population.⁹
4. Black, Indigenous and other LGBTQ people of color are disparately impacted by homelessness. One in four LGBTQ Black men from 18 to 25 years old have experienced homelessness.¹⁰ 51% of Black transgender women, 59% of American Indian transgender women, 51% of multiracial

² COMM. ON ELIMINATION RACIAL DISCRIMINATION, CONCLUDING OBSERVATIONS ON THE COMBINED SEVENTH TO NINTH PERIODIC REPORTS OF UNITED STATES OF AMERICA, ¶ 12, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014) [hereinafter CERD CO SEVENTH TO NINTH].

³ *Id.* at ¶ 13.

⁴ U.S. DEP’T OF HOUS. & URB. DEV., THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 1 (2019), <https://www.huduser.gov/portal/sites/default/files/pdf/2019-AHAR-Part-1.pdf>.

⁵ U.S. DEP’T HOUS. & URB. DEV., THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 1 (2021).

⁶ *Id.*

⁷ SOFIA HERRERA, PHD, ET AL., HUB FOR URBAN INITIATIVES, BLACK WOMEN DYING HOMELESS IN LOS ANGELES CITY AND COUNTY 2 (2020) available at <https://files.constantcontact.com/52d2438b001/766bb699-b2e2-4e24-a6cc-dadc5332431e.pdf>.

⁸ *Single Mother Statistics*, SINGLE MOTHER GUIDE (May 17, 2021), <https://singlemotherguide.com/single-mother-statistics>.

⁹ *Id.*

¹⁰ Dylan Waguespack & Brandy Ryan, *2019 State Index on Youth Homelessness*, TRUE COLORS UNITED & NAT’L L. CTR. ON HOMELESSNESS & POVERTY (2019), https://drive.google.com/file/d/1VjGf9oFzjMJKn6_5TztjzxOtaSJOBU/view.

transgender women, 49% of Middle Eastern transgender women, and 35% of Latina transgender women surveyed stated that they had experienced homelessness.¹¹

5. Gender-based violence is both a cause and a consequence of homelessness, disproportionately impacting women and LGBTQ individuals of color.¹² Unsheltered Black trans women are at extreme risk for both private violence and law-enforcement harassment living on the streets.¹³ In fact, 56% of unsheltered Black transgender people are attacked while homeless and 60% face legal issues, while 26% of unsheltered White transgender people are attacked and 38% face legal issues.¹⁴ According to a study of Native American women trafficked in Minnesota, 98% of the women surveyed were experiencing homelessness or had experienced it previously.¹⁵
6. The COVID-19 pandemic has disparately impacted Black, Indigenous, and other people of color.¹⁶ The federal eviction moratorium and pandemic aid programs under the CARES Act and American Rescue Plan undoubtedly saved lives and preserved housing stability for many, but these protections have expired, and minority communities will suffer the most.¹⁷ Guidance from the Centers for Disease Control and Prevention (CDC) stating homeless encampments should not be evicted unless non-congregate shelter (e.g. hotel rooms) can be provided, and instead sanitation and other services should be provided in place led to a temporary reduction in encampment evictions, and some states like California housed thousands of disparately minority homeless persons in hotel rooms using Federal Emergency Management Agency reimbursement.¹⁸ However, as the pandemic has progressed, communities are returning to previous practices of criminalization and forced evictions of homeless encampments despite the lack of adequate alternatives.¹⁹

II. THE CRIMINALIZATION OF HOMELESSNESS AND RACIAL INJUSTICE

¹¹ ADAM ROMERO, ET AL., UCLA SCH. L. WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS 15 (April 2020), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹² *Facts on Homelessness, Housing & Violence Against Women*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY, https://nlchp.org/wp-content/uploads/2018/10/DV_Fact_Sheet.pdf; *Unique Challenges of Women Experiencing Homelessness*, CAREER & RECOVERY RES., INC., <https://www.careerandrecovery.org/unique-challenges-of-women-experiencing-homelessness>.

¹³ *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us*, NAT'L ALL. TO END HOMELESSNESS (2020), <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>.

¹⁴ *Id.*

¹⁵ MELISSA FARLEY ET AL., GARDEN OF TRUTH: THE PROSTITUTION AND TRAFFICKING OF NATIVE WOMEN IN MINNESOTA (2011).

¹⁶ *See, e.g.*, PHILA. RENTERS REP., COVID-19'S IMPACT ON RACE AND HOUSING SECURITY ACROSS PHILADELPHIA (n.d.), available at <https://clsphila.org/wp-content/uploads/2021/02/20210222-Philadelphia-Renters-Report.pdf>.

¹⁷ Carl Romer, Andre M. Perry, and Kristen Broady, *The coming eviction crisis will hit Black communities the hardest*, BROOKINGS (Aug. 2, 2021), <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest>.

¹⁸ CODY ZEGER, EVALUATING PROJECT ROOMKEY IN ALAMEDA COUNTY: LESSONS FROM A PANDEMIC RESPONSE TO HOMELESSNESS (2021), available at <https://homelessness.acgov.org/homelessness-assets/img/reports/Final%20PRK%20Report%20Summary.pdf>.

¹⁹ Teresa Wiltz, *Against CDC Guidance, Some Cities Sweep Homeless Encampments*, PEW TRUSTS (Apr. 28, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/04/28/against-cdc-guidance-some-cities-sweep-homeless-encampments>.

7. Criminalization of homelessness both disproportionately impacts people of color and further exacerbates racial disparities, violating the right to equality and non-discrimination.²⁰ As the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recognized, “the enforcement of minor law enforcement violations . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”²¹
8. In its previous review, this Committee called for the U.S. to “(a) Abolish laws and policies making homelessness a crime; (b) Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; (c) Offer incentives to decriminalize homelessness, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness.”²²
9. The U.S. has taken some commendable steps to address the criminalization of homelessness in response to the Committee’s recommendations, but they have not yet stemmed the growth of criminalization. In the U.S.’s June 8, 2021 Report submitted to this Committee, the country notes that the U.S. Interagency Council on Homelessness (USICH) has released guidance to state and local governments, re-entry service providers, and corrective agencies on ways to remove the barriers that people experiencing homelessness with criminal records face to accessing housing and other services available to them.²³ Additionally, the U.S. notes that the Department of Housing and Urban Development (HUD) requires Continuum of Care organizations to explain how their communities are fighting the criminalization of homelessness in order for these organizations to receive funding to assist with homelessness.²⁴ The Department of Justice (DOJ) for the first time included concerns regarding evictions of homeless encampments in their civil rights investigation of the city of Phoenix, AZ’s police department.²⁵
10. Despite these measures, cities across the country continue to focus on hiding homelessness from public view rather than addressing it by criminalizing life-sustaining activities in public such as sleeping, eating, or sitting.²⁶ Out of 187 cities surveyed, 72% have at least one law that prohibits

²⁰ International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(c), *ratified* Oct. 21, 1994, 660 U.N.T.S. 1 [hereinafter ICERD] (“Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”).

²¹ Hum. Rts. Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diene, Mission to the United States of America*, ¶ 64, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).

²² CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶¶ 12(a)-(c).

²³ U.S., COMBINED TENTH TO TWELFTH REPORTS SUBMITTED BY THE UNITED STATES OF AMERICA UNDER ARTICLE 9 OF THE CONVENTION, DUE IN 2017 ¶ 47, U.N. Doc. CERD/C/USA/10-12 (2021).

²⁴ *Id.* at ¶ 46.

²⁵ U.S. DEPT. OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, JUSTICE DEPARTMENT ANNOUNCES INVESTIGATION OF THE CITY OF PHOENIX AND THE PHOENIX POLICE DEPARTMENT (Aug. 5, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department>.

²⁶ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014) [hereinafter NLCHP RACIAL DISCRIMINATION]; *see also* MIA., FLA., CODE 2020 § 37-3

camping or sleeping in public.²⁷ Additionally, since 2006, laws that prohibit sleeping in public have increased by 50%, including 18% just since the Committee’s last review.²⁸ These laws are enforced predominantly against people experiencing homelessness, and predominantly against Black, Indigenous, and other people of color.²⁹ However comprehensive enforcement data does not exist because most jurisdictions, and the federal government, do not require collection and disaggregation of data by housing status.³⁰

11. The limited financial incentives from HUD have not been sufficient to stem the tide of anti-homeless ordinances and enforcement. For instance, in 2017, Miami Beach hired a special prosecutor for “nuisance” crimes, such as loitering, jaywalking, or consuming alcohol in public, which have been predominately enforced against people experiencing homelessness.³¹ In 2020, the City of Miami passed an ordinance criminalizing food sharing, or the feeding of people experiencing homelessness in groups of twenty-five or more without a permit and at non-designated feeding locations (with only five inconvenient locations designated).³² Further, in 2021, Miami passed an anti-camping ordinance, which criminalizes any encampment on public property.³³ Stronger incentives, such as those proposed in the Housing is a Human Right Act and Ending Homelessness Act have not yet passed Congress.³⁴
12. In criminalizing activities people must engage in to survive, the U.S. violates the physical integrity of people experiencing homelessness, including the rights to security of person,³⁵ and freedom from cruel, inhuman, and degrading treatment (CIDT).³⁶ The Human Rights Committee explicitly

(“It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places, or upon the private property of another without the consent of the owner thereof.”); MIA., FLA., CODE 2020 § 37-4 (criminalizing living, sleeping, and cooking in vehicles parked on public property or private parking lots).

²⁷ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 12 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [hereinafter NLCHP HOUSING NOT HANDCUFFS].

²⁸ *Id.*

²⁹ NLCHP RACIAL DISCRIMINATION, *supra* note 26. *See also* LAWYERS’ COMMITTEE FOR CIVIL RIGHTS, CITED FOR BEING IN PLAIN SIGHT 5-6 (2020), https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Infraction_report_4WEB-1.pdf [hereinafter LCCR CITED IN PLAIN SIGHT].

³⁰ *See, e.g.* U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, 2020 ANNUAL SURVEY OF JAILS (2020), <https://bjs.ojp.gov/data-collection/annual-survey-jails-asj#surveys-0>.

³¹ UNIV. MIA. SCH. L. HUM. RTS. CLINIC ET AL., A RACIAL JUSTICE RESPONSE TO HOMELESSNESS 1 (2021).

³² MIA., FLA., CODE 2020 § 25-25; Maya Lora, *Miami passes ordinance requiring permits to feed large groups of homeless people*, SUN SENTINEL (Jun. 26, 2020), <https://www.sun-sentinel.com/local/miami-dade/fl-ne-miami-homeless-permits-20200626-qptfs42vsfdr5kr64zpfsgdl4m-story.html>.

³³ *Commission passes anti-camping ordinance*, MIA. TIMES (Nov. 3, 2021), https://www.miamitimesonline.com/news/local/commission-passes-anti-camping-ordinance/article_c5bc6238-3c2c-11ec-9085-4f36d2f85a84.html.

³⁴ H.R. 3772, 117th Cong. §103, 201, 305 (2021), providing, for example “... any grant made using amounts made available by this Act ... matching funding shall not be required for such grant if such recipient demonstrates ...the recipient has created and implemented a formal plan to cease to penalize homelessness”; H H.R. 4496, 117th Cong. §6 (2021), providing “The formula shall provide priority to ... (ii) collaborative applicants for which the local governments have adopted policies that decriminalize homelessness.”

³⁵ ICERD, *supra* note 20 at art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. . . .”).

³⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified* Oct. 21, 1994, 1465 U.N.T.S. 85, 113; International Convention on Civil and Political Rights, art. 7, *ratified* June 8, 1992, 1996, 999 U.N.T.S. 171 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

linked the prohibition against CIDT to the criminalization of homelessness in the U.S., noting that criminalizing eating, sleeping, and sitting in certain areas “raises concerns of discrimination and cruel, inhuman or degrading treatment.”³⁷ Criminalization further places law enforcement as front-line responders to homelessness, all too often resulting in violations of physical integrity that have a disparate impact by race,³⁸ like the La Jolla, California police officers who tackled and beat Jesse Evans, a homeless Black man who needed to urinate in the absence of adequate public toilets.³⁹ However, while viral video incidents like this draw attention, because most jurisdictions do not require law enforcement to collect use-of-force data disaggregated by housing status, the full extent of the problem is not known. The George Floyd Justice in Policing Act would, for the first time, require the collection of housing status data among others in use of force incidents, but it is stalled in the U.S. Senate.⁴⁰

13. Moreover, criminalizing life-sustaining activities violates the right to freedom of movement of people experiencing homelessness.⁴¹ Some cities implement “move along” orders, where people experiencing homelessness are forced to leave the area just because they are present.⁴² In New York City, people have been ordered to move multiple times in one day, with some stating that they are forced to move every thirty to forty-five minutes.⁴³ In a survey of 400 people experiencing homelessness in Denver, Colorado, 57% were approached by police for camping and more than 80% were forced to relocate.⁴⁴ In a similar survey of 350 people in San Francisco, California, 70% were forced to move in the last year and 20% were forced to move on a weekly basis.⁴⁵ Further, punishing people for essential activities, such as camping, lying, sitting, or sleeping in public places, is one of the most extreme forms of restraining freedom of movement.
14. Criminalization perpetuates homelessness by trapping people in a cycle of poverty. The many fines and fees associated with the criminal justice system make it harder for people experiencing homelessness to pay for food or medication and can lead to their incarceration if they are unable

punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”).

³⁷ Hum. Rts. Comm., *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. DOC. CCPR/C/USA/CO/4 (2014)

³⁸ Comm. Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, *Concluding observations on the combined third and fifth periodic reports of the United States of America*, ¶ 26, U.N. DOC. CAT/C/USA/CO/3-5 (Dec. 19, 2014) (highlighting the disproportionate and increasing incidents of police brutality against people of color in the U.S.).

³⁹ City News Service, *City Attorney Declines to Charge Homeless Black Man Beaten By Cops in La Jolla*, NBC SAN DIEGO (June 11, 2021), <https://www.nbcsandiego.com/news/local/city-attorney-declines-to-charge-homeless-black-man-beaten-by-cops-in-la-jolla/2629215>.

⁴⁰ H.R. 1280, 117th Cong. §223 (2021).

⁴¹ ICERD, *supra* note 20 at art. 5(d)(i) (This article requires states “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law . . .” including with respect to “[t]he right to freedom of movement and residence within the border of the State.”).

⁴² *Fighting Illegal “Move Along” Orders*, PICTURE HOMELESS, <https://www.picturethehomeless.org/fighting-illegal-move-along-orders/> (last visited Nov. 4, 2021).

⁴³ *Id.*

⁴⁴ MADELINE BAILEY ET AL., *NO ACCESS TO JUSTICE: BREAKING THE CYCLE OF HOMELESSNESS AND JAIL 3* (2020), available at <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>.

⁴⁵ *Id.*

to pay.⁴⁶ Having a criminal record can then prevent people from passing background checks for housing and employment,⁴⁷ making it even harder to get off the street and out of poverty. The Special Rapporteur on extreme poverty highlighted this in his visit to the U.S., noting that “unpayable fines and the stigma of a criminal conviction . . . virtually prevents subsequent employment and access to most housing.”⁴⁸ In fact, the U.S. Interagency Council on Homelessness (“USICH”) recognizes that “criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁴⁹

15. This criminalization of homelessness is also expensive. For example, a study in Los Angeles found the city spent \$100 million each year on homelessness, but \$87 million of that went to law enforcement while only \$13 million went to housing or other services.⁵⁰ A study conducted by Creative Housing Solutions on behalf of the Central Florida Commission on Homelessness found that providing housing to half of Central Florida’s chronic homeless population would save taxpayers at least \$149,220,414.⁵¹
16. Homelessness negatively impacts the right to health⁵² by exacerbating health conditions and causing new ones. Chronic health issues such as asthma, diabetes, and mental health problems require constant specialized care and can worsen with homelessness.⁵³ Infections are also “difficult to heal when there is no place to rest and recuperate.”⁵⁴ Living on the street or in a shelter increases the risk that someone will contract communicable diseases, such as sexually transmitted diseases, hepatitis, and tuberculosis.⁵⁵ Moreover, efforts to treat illnesses are impeded by theft, loss of medications, and the exposure of medications to the elements.⁵⁶ About 33% of all emergency room visits are made by people experiencing chronic homelessness.⁵⁷ In fact, the average person experiencing homelessness spends \$18,500 per year on emergency room visits.⁵⁸ This is multiplied during the COVID-19 pandemic, where homeless persons are twice as likely to

⁴⁶ NLCHP HOUSING NOT HANDCUFFS, *supra* note 27, LCCR CITED IN PLAIN SIGHT, *supra* note 29.

⁴⁷ NLCHP RACIAL DISCRIMINATION, *supra* note 26.

⁴⁸ Hum. Rts. Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

⁴⁹ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7 (2012),

https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

⁵⁰ Gale Holland, *L.A. spends \$100 million a year on homelessness, city report finds*, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>.

⁵¹ CENT. FLA. COMM’N ON HOMELESSNESS, THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA 8 (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>.

⁵² ICERD, *supra* note 20 at art. 5(e)(iv) (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [including] [t]he right to public health, medical care, social security and social services. . .”).

⁵³ NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL, *What is the relationship between health, housing, and homelessness?*, available at: <https://nhchc.org/understanding-homelessness/faq>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *The Cost of Homelessness Facts*, GREEN DOORS, <https://greendoors.org/facts/cost.php> (last visited Nov. 17, 2021).

⁵⁸ *Id.*

be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die as the housed population.⁵⁹

17. Racial disparities in healthcare coverage exacerbate the risk of homelessness for people of color. Black people are twice as likely as white people to fall in the coverage gap of states that have not expanded Medicaid and are more likely to go without healthcare because of the cost, even though they experience higher rates of certain health conditions or diseases.⁶⁰ A lack of affordable health care and health insurance for people with chronic medical conditions can increase the risk of homelessness.⁶¹ Individuals can quickly exhaust savings to pay medical bills, and without a reliable support system, the loss of a home soon follows.⁶² Medical debt incurred during homelessness can also hinder returning to housing stability even after housing is regained.⁶³

III. HOUSING AND RACIAL INJUSTICE

18. Extreme racial disparities in housing in the U.S. violate the right to non-discrimination and equality⁶⁴ and the right to housing.⁶⁵ Current racial disparities in housing stem from a long history of official discrimination, exclusion, and segregation in housing policies. On top of other measures that limited the access of Black people to housing, the U.S. Federal Housing Administration introduced redlining in the 1930s refusing to insure mortgages in or near Black neighborhoods. These and other blatant and *de jure* policies continued until the passage of the Fair Housing Act in 1968. Since 1968, facially race neutral policies have managed to maintain that status quo. This is evident when looking at current segregation patterns which largely still reflect the historic FHA red-lining maps.⁶⁶ During the decades when the U.S. government was directly subsidizing the purchase of housing for white individuals and families to the exclusion of Black individuals and families, the real estate market generated tremendous wealth for White people that was passed down generationally. Current racial disparities in household net worth can be directly correlated to these and other U.S. government policies. The U.S. government has an obligation to reverse the

⁵⁹ DENNIS CULHANE, ET. AL., ESTIMATED EMERGENCY AND OBSERVATIONAL/QUARANTINE CAPACITY NEED FOR THE US HOMELESS POPULATION RELATED TO COVID-19 EXPOSURE BY COUNTY; PROJECTED HOSPITALIZATIONS, INTENSIVE CARE UNITS AND MORTALITY (2020), available at https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf.

⁶⁰ NAT'L HEALTH CARE FOR HOMELESS COUNCIL, HEALTH, HOMELESSNESS, AND RACIAL DISPARITIES 2 (2019).

⁶¹ UNIV. MIA. SCH. L. HUM. RTS. CLINIC ET AL., HOUSING AND HOMELESSNESS IN MIAMI-DADE COUNTY, FLORIDA 7 (2020).

⁶² Florida Council on Homelessness, *Annual Report*, 17 (2018), accessible at: myflfamilies.com/service-programs/homelessness/docs/Council%20on%20Homelessness%20Annual%20Report%202018.pdf.

⁶³ See Lori Yearwood, The Bill for My Homelessness Was \$54,000, N.Y. TIMES (Dec. 29, 2021), <https://www.nytimes.com/2021/12/29/opinion/debt-homelessness.html>.

⁶⁴ ICERD, *supra* note 20 at art. 2.

⁶⁵ ICERD, *supra* note 20 at art. 5(d)(iii), (Article 5(d)(i) requires states “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law . . .” including with respect to “[t]he right to housing.”). See also COMM. ON ELIMINATION RACIAL DISCRIMINATION, GENERAL RECOMMENDATION NO. 34 ADOPTED BY THE COMMITTEE: RACIAL DISCRIMINATION AGAINST PEOPLE OF AFRICAN DESCENT ¶ 50 (Oct. 3, 2011) [hereinafter CERD GR NO. 34] (urging countries to “[t]ake steps to remove all obstacles that prevent the enjoyment of economic, social and cultural rights by people of African descent especially in the areas of education, housing, employment and health.”).

⁶⁶ Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America*, NPR (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

negative impact of these policies and progressively level the playing field in housing, however current interpretations of fair housing laws hinder widespread adoption of race-conscious measures to remedy past discrimination.

19. Moreover, this Committee has recognized “discriminatory mortgage-lending practices and the foreclosure crisis which disproportionately affected, and continues to affect, racial and ethnic minorities.”⁶⁷ Racial disparities in household net worth and mortgage access cause Black families to be more likely to be renters than owners, placing them at a higher risk of housing instability and homelessness. In 2016, the typical net worth for a white American family was \$171,000, while for Black households, it was \$17,150.⁶⁸ Almost 75% of white families own their homes, while less than half of the Black households own their homes.⁶⁹ Additionally, Black and Hispanic households are more likely to be denied mortgages than white and Asian households.⁷⁰ In addition, lower net worth means households of color have fewer financial assets, increasing “the amount of mortgage debt needed for a home purchase.”⁷¹ One study discovered that “fewer than two-thirds of Black and Hispanic householders had mortgage rates below 5%, compared with 73% of white householders and 83% of Asian householders.”⁷² In contrast, “23% of Black householders and 18% of Hispanic householders with mortgages were paying 6% or more on their home loans, compared with 13% of white householders and just 6% of Asian householders.”⁷³
20. Local tax assessment policies have disparate impacts on neighborhoods and homeowners of color.⁷⁴ Across the U.S., in cities such as Chicago, Philadelphia, and New Orleans, local governments are more likely to impose higher property taxes on Black households and give financial breaks to wealthy and white homeowners,⁷⁵ leading to higher rates of tax delinquency and foreclosure for households of color.⁷⁶ A nationwide study found, after analyzing data covering 118 million homes across the U.S., “holding jurisdictions and property tax rates fixed, Black and

⁶⁷ CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶ 13.

⁶⁸ Kriston McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, *Examining the Black-White wealth gap*, Brookings (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

⁶⁹ USA Facts, *Homeownership rates show that Black Americans are currently the least likely group to own homes*, (July 28, 2020), <https://usafacts.org/articles/homeownership-rates-by-race/>.

⁷⁰ Drew Desilver and Kristen Bialik, *Blacks and Hispanics face extra challenges in getting home loans*, Pew Research Center (January 10, 2017), <https://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans/>.

⁷¹ Michael Neal, Jung Hyun Choi, and John Walsh, *Before the Pandemic, Homeowners of Color Faced Structural Barriers to the Benefits of Homeownership* (August 2020), Urban Institute, <https://www.urban.org/sites/default/files/publication/102781/before-the-pandemic-homeowners-of-color-faced-structural-barriers-to-the-benefits-of-homeownership.pdf>.

⁷² Desilver and Bialik, *supra* note 70.

⁷³ *Id.*

⁷⁴ Neal, Choi, and Walsh, *supra* note 71.

⁷⁵ Teresa Wiltz, *Black Homeowners Pay More Than ‘Fair Share’ in Property Taxes*, Pew Charitable Trusts, June 25, 2020, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/25/black-homeowners-pay-more-than-fair-share-in-property-taxes>.

⁷⁶ Neal, Choi, and Walsh, *supra* note 71.

Hispanic residents nonetheless face a 10-13% higher tax burden for the same bundle of public services.”⁷⁷

21. Racial minorities are further vulnerable to housing insecurity due to inadequate tenant protections. Black and Hispanic renters are twice as likely to be evicted as white renters.⁷⁸ A major issue facing tenants are short notice requirements for an eviction. Most states require less than a week notice to evict a tenant, making it difficult for tenants to find alternative housing.⁷⁹ Renters in most jurisdictions can be evicted for no cause, giving landlords complete autonomy to displace residents.⁸⁰ In states such as Florida, New Jersey, and Rhode Island,⁸¹ renters facing evictions must pay all past due rent within five days to get a judicial hearing.⁸² These policies are specifically harmful to renters of color and low-income renters, who have no legal recourse to contest an eviction based on discrimination of a federally protected identity, such as race and national origin, if they do not pay delinquent rent. Another barrier to challenging evictions is the lack of legal representation for tenants in eviction cases. In a study conducted in New York City, 90% of landlords appeared to eviction hearings with counsel, while only 10% of tenants had access to counsel.⁸³ However, when tenants were given access to a court navigator, not even necessarily an attorney, there were no evictions across 150 cases.⁸⁴ In 2014, housing advocates in New York pushed for the right to counsel in eviction hearings and won.⁸⁵ Since then, eviction rates have decreased by 24%.⁸⁶
22. With the onset of the COVID-19 pandemic, housing inequality has only gotten worse. The importance of housing cannot be overstated during this pandemic, as recognized by the Special Rapporteur on adequate housing, “Housing has become the frontline defense against the coronavirus. Home has rarely been more of a life-or-death situation.”⁸⁷ As a result of lost wages, as of November 2021, 1 in 6 adult renters are behind on rent, the highest percentage (28%) of

⁷⁷ Carlos Avenancio-León and Troup Howard, *The Assessment Gap: Racial Inequalities in Property Taxation*, Washington Center for Equitable Growth (June 10, 2020), <https://equitablegrowth.org/working-papers/the-assessment-gap-racial-inequalities-in-property-taxation/>.

⁷⁸ Jackelyn Hwang and Robert J. Sampson, *Divergent Pathways of Gentrification: Racial Inequality and the Social Order of Renewal in Chicago Neighborhoods*, *American Sociological Review* 79, no. 4 (August 2014), <https://doi.org/10.1177/0003122414535774>.

⁷⁹ *State Laws on Termination for Nonpayment of Rent*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

⁸⁰ NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 22 (2018), available at <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

⁸¹ *State Laws on Termination for Nonpayment of Rent*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html> (last visited on Jan. 13, 2021).

⁸² *The Tenant’s Handbook*, Bay Area Legal Services, <https://bals.org/help/resources/tenants-handbook#nonpayments>.

⁸³ E.g., Kriston Capps, *New York Guarantees a Lawyer to Every Resident Facing Eviction*, THE CITY LAB, (Aug. 14, 2017) <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

⁸⁴ American Bar Foundation, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects* (2016) http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf.

⁸⁵ E.g., Kriston Capps, *supra* note 83.

⁸⁶ *Id.*

⁸⁷ U.N. OHCHR Press Release, “*Housing, the Front Line Defence Against the COVID-19 Outbreak*,” *Says UN Expert*, (Mar. 18, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>.

which are Black.⁸⁸ While a federal eviction moratorium was enacted at the beginning of the pandemic, it expired and a subsequent extension was ruled unconstitutional.⁸⁹ Thousands of renters have been evicted from their homes each week.⁹⁰

23. The financialization of housing has led to the displacement of communities of color from their long-term neighborhoods and social networks. As the Special Rapporteur on Adequate Housing has identified, the financialization of housing, in which housing is treated as a commodity and a means for wealth accumulation, undermines the right to adequate housing: “Capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity”⁹¹ Residents are displaced in favor of new luxury buildings that turn quick profits, but because the units are so unaffordable they are left empty at no consequence to the developers because to them “housing is as valuable whether it is vacant or occupied, lived in or devoid of life.”⁹² The Special Rapporteur on Adequate Housing has noted that “racial displacement from urban centres and segregation in evidence in large cities in the [U.S.] have led to more severe impacts of financialization and the mortgage crisis being experienced by African-American households.”⁹³
24. Zoning policies support the financialization of housing that are displacing communities of color. Across the U.S, around 75% of the residential land is zoned for single family homes,⁹⁴ and racial covenants pushed Black families to urban centers for the last century, where they have been able to find more affordable housing. But, along with other factors, single-family zoning makes development in suburban areas more costly, causing developers to look to lower-income areas where communities of color reside to develop real estate, increasing rent costs and pushing residents out of those neighborhoods as well.⁹⁵ In addition, cities like Miami have amended zoning laws to encourage development and streamline approvals, eliminating the need for public hearings and community participation.⁹⁶
25. In its previous review, this Committee called for the U.S.to (a) ensure “the availability of affordable and adequate housing for all, including by effectively implementing the Affirmatively Furthering Fair Housing requirement . . . across all agencies administering housing programmes;

⁸⁸ Center on Budget and Policy Priorities, *Tracking the COVID-19 Economy's Effects on Food, Housing, and Employment Hardships* (September 10, 2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and-employment-hardships>.

⁸⁹ *Federal Eviction Moratorium*, National Low Income Housing Coalition, <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>.

⁹⁰ Hwang and Sampson, *supra* note 78.

⁹¹ Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context*, ¶ 1,8, U.N. Doc. A/HRC/34/51 (2017).

⁹² *Id.* at ¶ 30, 31.

⁹³ *Id.* at ¶ 35, citing Jacob Rugh and Douglas Massey, “Racial segregation and the American foreclosure crisis”, *American Sociological Review*, vol. 75, No. 5 (October 2010).

⁹⁴ Erin Baldassari and Molly Solomon, *The Racist History of Single-Family Zoning*, KQED (October 5, 2020), <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>.

⁹⁵ John Mangin, *The New Exclusionary Zoning*, 91-93 (2018), 25 *Stanford Law Review* 91.

⁹⁶ University of Miami School of Law Human Rights Clinic, 2020, *Housing and Homelessness in Miami-Dade County, Florida*, <https://miami.app.box.com/s/o9sxu2g4f21qchswr7y7bikvkaj47m>. Accessed 9 Dec. 2021 (citing Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019)).

(b) Strengthening the implementation of legislation to combat discrimination in housing,. . . ; (c) Undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering and red-lining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices.”⁹⁷

26. Since the last CERD review, the U.S. has begun to take steps toward eliminating racial injustice in access to housing. HUD has submitted rules for affirmatively furthering fair housing and combatting disparate impact under the Fair Housing Act (FHA) to the Office of Management and Budget for review.⁹⁸ Additionally, the Department of Justice has been enforcing the Fair Housing Act by bringing cases alleging unlawful discrimination in mortgage lending and discrimination based on race, color, and national origin.⁹⁹ However, the issue of financialization of housing, discriminatory zoning, and inadequate tenant protections through the course of the COVID-19 pandemic have yet to be addressed.

IV. PROPOSED QUESTIONS

1. Given that criminalization of homelessness and its disparate impact on communities of color has continued to increase, despite the steps the federal government has taken to date, what additional steps does the U.S. plan to take to abolish laws criminalizing homelessness?
2. What steps does the U.S. plan to take to increase access to the human right to housing for all? What mechanisms can the U.S. use to help remedy past racial discrimination? How will the U.S. strengthen tenant protections and avoid displacement of communities of color?

V. RECOMMENDATIONS

1. The U.S. should implement strong financial and legal incentives for local authorities to decriminalize homelessness and life-sustaining activities in public and redirect funding from criminal justice responses to crisis response teams with mental health, harm reduction, and other psychosocial service expertise, trauma-informed shelters with supportive services, and Housing-First programs. Trauma-informed shelters should serve as *temporary* residences and an entryway to rehousing as the ultimate goal. The U.S. should take a Housing-First approach that prioritizes providing people experiencing homelessness with permanent housing before addressing other quality of life issues.
2. The U.S. should take strong enforcement action against communities that use law enforcement to criminalize and violate the rights and dignity of persons experiencing homelessness. The U.S. should require local law enforcement agencies to collect, disaggregate, and share data on housing status of persons stopped, ticketed, arrested, jailed, convicted, and used force against by law enforcement, in addition to race and gender.

⁹⁷ CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶ 13.

⁹⁸ COMBINED TENTH TO TWELFTH REPORTS SUBMITTED BY THE UNITED STATES OF AMERICA UNDER ARTICLE 9 OF THE CONVENTION, *supra* note 23 at ¶ 50.

⁹⁹ *Id.* at ¶ 52-53.

3. All levels of government should recognize the human right to adequate housing, including protection against forced eviction and the availability of housing that is affordable, habitable, accessible, well-located, and culturally adequate.
4. The U.S. should encourage communities to take advantage of mechanisms, such as the Affirmatively Furthering Fair Housing provisions of the Fair Housing Act, to adopt race-conscious measures to remedy historically-based and continuing discrimination in their communities.
5. States and municipalities should limit background checks for ex-offenders and should enable renters to be able to seal or expunge eviction records, increasing housing accessibility.¹⁰⁰
6. States should cap property taxes for lower-income homeowners¹⁰¹ increase transparency in tax assessment by bringing in external auditors, improve the appeals process, and base assessments on smaller, geographically precise areas to reduce racial disparities.¹⁰²
7. States should increase the eviction notice requirement period to at least 60 days to allow renters facing evictions to find emergency housing or prevent their eviction, pass just-cause eviction protections, and ensure there is no rent deposit due to dispute an eviction. States should further provide legal representation or court navigators to assist those facing eviction.¹⁰³ The federal and state governments should extend the eviction moratorium for low-income renters affected by COVID-19.
8. Municipalities should adopt policies to promote affordable housing best suited to community needs, including social housing, community land trusts rent control, renters' tax credits, and/or subsidized housing. Municipalities should incentivize private development of affordable housing through polices such as simplified building codes, the Low-Income Housing Tax Credit, or inclusionary zoning, requiring a certain percentage of units in new developments be affordable.¹⁰⁴ Municipalities should promote the equitable and democratic development of neighborhoods and require public hearings in neighborhoods with new developments. Developers should prepare both environmental and community impact assessments and mitigation plans for displacing vulnerable populations.

¹⁰⁰ Wiltz, *supra* note 75.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ E.g., Kriston Capps, *supra* note 83.

¹⁰⁴ Daniela A. Tagtachian et al., Building by Right: Social Equity Implications of Transitioning to Form-Based Code, 28 J. AFFORDABLE HOUSING & CMTY. DEV. L. 71, 84–85 (2019).