



THE CRIMINALIZATION OF HOMELESSNESS AND MENTAL HEALTH IN THE UNITED STATES

Submission to the Special Rapporteur on Extreme Poverty and Human Rights (Mr. Olivier De Schutter) and the Special Rapporteur on the Right to Adequate Housing (Mr. Balakrishnan Rajagopal)

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¹ Formerly the National Law Center on Homelessness and Poverty, the National Homelessness Law Center (“NHLC” or “the Law Center”) is the only national organization in the United States dedicated to using the power of the law to prevent and end homelessness. It works to expand access to affordable housing, meet the immediate and long-term needs of individuals who are homeless or at risk, and strengthen the social safety-net through policy advocacy, public education, strategic impact litigation, and legal training and support.

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I. Overview of Homelessness and Poverty in the United States

1. Over the past 15 years, many human rights monitors have taken note of the numerous rights violations imposed by the criminalization of homelessness and poverty, in the United States (“U.S.”), and around the globe.³ In particular, strong norms have emerged finding criminalization a violation of both the rights of freedom from racial discrimination and freedom from cruel, inhuman, or degrading treatment.⁴ In this report, we further highlight the expanded use of the civil involuntary treatment and commitment process against unhoused persons with mental health disabilities in the U.S., which emphasizes the need to continue deepening and broadening the rights analysis, raising particular concern in the area of the rights to liberty, to non-discrimination on the basis of disability, and as an aspect of accessibility in the right to adequate housing. Additionally, we recognize other concerning trends in the U.S., including the growth of well-funded efforts to push criminalization at the national and state level; the criminalizing activities of federal police agencies; and the use of criminalization against not only unhoused persons themselves, but also those who seek to provide them with food and other aid.
2. The U.S.’s homelessness epidemic has been on the rise since 2017, with a record high nationwide count of 127,768 individuals in 2022 who experienced chronic homelessness.⁵ Presently, the U.S.’ homeless count is estimated to exceed 580,000.⁶ This is despite the U.S. government’s passage of the McKinney-Vento Act over three decades ago, which signaled a federal legislative commitment to prevent and end homelessness.
3. Moreover, the start of the COVID-19 pandemic marked the first time that federal data collection revealed more unhoused persons who were unsheltered than sheltered.⁷ Temporary homeless shelters across the country have increasingly reported a lack of capacity, forcing many persons to live unsheltered in encampments and in public spaces. An estimated 51 percent (or 216,495 people) were reportedly living in unsheltered locations on a single night in 2022.⁸ Rent increased at “its fastest rate since 1986,” exacerbating a pre-existing unaffordability crisis that left approximately 7 million low-income renters without affordable

³ See *infra* Appendix A (cataloging many reports to and by human rights monitors on the criminalization of homelessness and poverty). See also Eric Tars, et. al., *Challenging Domestic Injustice Through International Human Rights Advocacy: Addressing Homelessness in The United States*, 42 CARDOZO L. REV. 913 (2021), Available at SSRN: <https://ssrn.com/abstract=3923059> (exploring how international human rights norms and procedures can be used as a powerful tool to address the criminalization of homelessness in the United States).

⁴ See, e.g. Hum. Rts. Comm., Concluding Observations of the Hum. Rts. Comm.: USA, ¶ 19, U.N. Doc. CCPR/C/USA/4 (March 26, 2014) [hereinafter HRC Concluding Observations: USA].

⁵ *State of Homelessness: 2023 Edition*, NAT’L ALL. END HOMELESSNESS (2023), <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>.

⁶ 582, 462 and Counting, N.Y. TIMES (Feb. 3, 2023), <https://archive.ph/O7mrl>.

⁷ See U.S. DEP’T HOUS. & URB. DEV., *The 2020 Annual Homeless Assessment Report (AHAR) to Congress, Part 1* (2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf> [hereinafter 2020 AHAR].

⁸ *Id.* at 24.

homes.⁹ Consequently, a worsening eviction crisis, contributed to by the expiration of state and local eviction moratoria, has caused a homelessness surge.¹⁰

4. Guidance from the Centers for Disease Control and Prevention (“CDC”)—stating homeless encampments should not undergo evictions 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. Some states like California housed thousands of unhoused persons in hotel rooms using funds from the Federal Emergency Management Agency.¹¹ 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.¹²
5. The disproportionate impact of homelessness on racial and ethnic minorities in the U.S. remains a serious problem. The United Nations (“U.N.”) Committee on the Elimination of Racial Discrimination (“CERD”) reiterated its concern regarding the “disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness,” specifically individuals of African descent, Hispanic/Latino(a)(o)(x) Americans, indigenous persons, and “women and lesbian, gay, bisexual, and transgender persons,” in its Concluding Observations of the 2022 U.S. CERD Review.¹³ 37.3 percent (or 217,366) of the homeless population and nearly 27 percent of unsheltered residents identify as African-American,¹⁴ despite only 13.6 percent of the overall population as Black.¹⁵ Additionally, American Indian, Alaska Native, Indigenous, Pacific Islander, and Native Hawaiian persons make less than 2 percent of the total population,¹⁶ but 5.2 percent of persons experiencing homelessness and 7.1 percent of unsheltered residents.¹⁷ Finally, Hispanic and Latin(a)(o)(x) persons make up 19.1

⁹ German Lopez, *Homeless in America*, N.Y. TIMES (Jul. 15, 2022), <https://archive.ph/BrnQA>.

¹⁰ See Dana Difilippo, *Homelessness Climbing, with eviction moratorium over and rents up*, N.J. MONITOR (Aug. 15, 2023, 6:46 AM), <https://newjerseymonitor.com/2023/08/15/homelessness-climbing-with-eviction-moratorium-over-and-rents-up/>; see also Tracy Miller, *How eviction moratoria could increase homelessness*, THE HILL (Sept. 30, 2021, 9:00 AM), <https://thehill.com/opinion/finance/574623-how-eviction-moratoria-could-increase-homelessness-in-the-long-run/>; see also David Brand, *NYC eviction rate continues to rise since ban was lifted, as homelessness surges*, GOTHAMIST (Jan. 18, 2023), <https://gothamist.com/news/nyc-eviction-rate-continues-to-rise-since-ban-was-lifted-as-homelessness-surges>.

¹¹ See CODY ZEGER, EVALUATING PROJECT ROOMKEY IN ALAMEDA COUNTY: LESSONS FROM A PANDEMIC RESPONSE TO HOMELESSNESS (2021), <https://homelessness.acgov.org/homelessness-assets/img/reports/Final%20PRK%20Report%20Summary.pdf>.

¹² See 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>.

¹³ Comm. Elim. Racial Discrim., Concluding observations on the combined tenth to twelfth reports of the United States of America, ¶¶ 39-40, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022) [hereinafter 2022 CERD Concluding Observations].

¹⁴ 2020 AHAR, *supra* note 7, at 12.

¹⁵ *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/RHI225222> (last visited Sep. 10, 2023) [hereinafter *Quick Facts*].

¹⁶ *Id.*

¹⁷ 2020 AHAR, *supra* note 7, at 12.

percent of the U.S. population¹⁸ and 24.1 percent of those (or 140,230) experiencing homelessness.¹⁹

6. Meanwhile, an estimated 37.9 million individuals nationwide live in poverty, with an official poverty rate of 11.5 percent in 2022.²⁰ Since the depletion of pandemic-related benefits, such as the expanded child tax credit, the U.S.’ poverty rate has “risen dramatically,” with a child poverty rate more than doubling.²¹ Additionally, the median household income declined 2.3 percent from 2021 to 2022, due largely to a 7.8 percent increase in inflation outpacing wage gains.²² As recently as September 2023, the U.S. Census Bureau described the state of inflation as the “largest annual increase in the cost-of-living adjustment since 1981.”²³
7. The foster care system penalizes poverty, removing children from their families under the theory of “prospective harm.”²⁴ Aging out of the foster care system without adequate support is a major driver of youth homelessness.²⁵ This has a disproportionate impact on marginalized communities, including Indigenous, Black, and Hispanic families.²⁶ Indigenous children, particularly, are four times more likely to be placed into foster care than their white counterparts.²⁷ Robert Latham, Associate, Director of the Children and Youth Clinic at the University of Miami School of Law, explained, “The more vulnerable you are in society, the more systems view you as a risk to your child. The system usually locates the source of harm or places the blame on the parent, rather than addressing social or structural issues.”²⁸ When children age out of the foster care system, they are at a significantly higher risk of experiencing homelessness due to a lack of support and resources. A report authored by the National Foster Youth Institute found that within 18 months of aging out of the system, one in five persons will experience homelessness.²⁹

¹⁸ *Quick Facts*, *supra* note 15.

¹⁹ 2020 AHAR, *supra* note 7, at 12.

²⁰ Press Release, U.S. Census Bureau, Income, Poverty and Health Insurance Coverage in the United States: 2022 (Sept. 12, 2023), <https://www.census.gov/newsroom/press-releases/2023/income-poverty-health-insurance-coverage.html>.

²¹ Jennifer Ludden, *Child poverty more than doubles – a year after hitting record low, Census data shows*, NPR (Sept. 12, 2023, 4:06 PM), <https://www.npr.org/2023/09/12/1198923453/child-poverty-child-tax-credi-pandemic-aid-census-data>.

²² *Id.*; *see also* U.S. Census Bureau, *supra* note 20.

²³ U.S. Census Bureau, *supra* note 20.

²⁴ Interview with Robert Latham, Associate Director of the Children and Youth Clinic, Uni. of Miami Sch. of Law, in Miami, Fl. (Mar. 30, 2023) [hereinafter Interview with Robert Latham]; *see* Hina Naveed & Aryeh Neier, *If I wasn't poor, I wouldn't be unfit*, HUM. RTS. WATCH (Nov. 17, 2022), <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>.

²⁵ *See* Lydia Beltran, *Aging out of Foster Care: Sadowski State and Local Housing Trust Funds Provide Some Safety*, FLA. HOUS. COAL., <https://www.flhousing.org/wp-content/uploads/2012/06/Aging-Out-Of-Foster-Care.pdf> [hereinafter *Aging out of Foster Care: Sadowski State and Local Housing*].

²⁶ *See* Amanda Aykanian, et.al., *Aging Out of Foster Care: Disparities by Race/Ethnicity and Disability*, SOC’Y FOR SOC. WORK & RSCH. (Jan. 16, 2022), <https://sswr.confex.com/sswr/2022/webprogram/Paper46888.html>.

²⁷ *Disproportionately in Child Welfare*, NAT’L INDIAN CHILD WELFARE ASS’N (Oct. 2021), https://www.nicwa.org/wp-content/uploads/2021/12/NICWA_11_2021-Disproportionality-Fact-Sheet.pdf.

²⁸ Interview with Robert Latham, *supra* note 24.

²⁹ *Housing and Homelessness*, NFYI (2015), <https://nfyi.org/issues/homelessness/> (detailing how aging out of the foster care system is often linked to the violation of the human right to adequate housing, as many young people who age out of foster care face significant challenges in accessing safe and stable housing); *see Aging out of Foster*

II. CRIMINALIZATION OF HOMELESSNESS AND POVERTY REMAINS PREVALENT IN THE UNITED STATES AND VIOLATES NUMEROUS GUIDING PRINCIPLES SET FORTH BY THE RAPORTEURS ON EXTREME POVERTY AND HUMAN RIGHTS AND ON THE RIGHT TO ADEQUATE HOUSING.

“Criminalization is not the act of an arrest. Criminalization is responding to a social ill with policing. And that very interaction at every single point is a traumatic event and . . . is one that escalates rather than de-escalates, further decompensat[es] rather than making a situation better.”

Council Member Tiffany Caban, New York City Council (District 22)³⁰

A. *The Past Few Years Have Brought a Widespread Growth of Laws, Policies, and Practices Criminalizing Homelessness and Poverty in the U.S.*

8. In recent years, there has been a dramatic growth in laws and policies across the U.S. that criminalize homelessness and poverty. These include, but are not limited to, camping and sleeping bans (some of which go so far as to prohibit unhoused persons to use a blanket in public places), laws restricting sitting and lying down in public, living in vehicles, vagrancy, loitering, and food scavenging, and laws prohibiting begging in public.³¹ Since 2006, laws that prohibit sleeping in public have increased by 50 percent, and living in vehicles by 213%.³² Out of 187 cities surveyed, 55 percent prohibit sitting or lying in public, 72 percent prohibit camping in public, and 60 percent prohibit public loitering, loafing, or vagrancy.³³ Oftentimes, unhoused persons face steep civil and court-imposed fines and fees for violating these laws, which further perpetuates cycles of poverty and leaves them without the means to afford necessities like food and transportation.³⁴
9. Despite expanded federal and grassroots efforts to end criminalization practices, the growth in criminalization is associated with a nationwide growth in unsheltered homelessness.³⁵ Cities have sought to make homelessness invisible by criminalizing the very activities unhoused

Care: Sadowski State and Local Housing, *supra* note 25 (stating that within a year of aging out of foster, up to 40 percent of youth will experience homelessness).

³⁰ Transcript of the Minutes of the New York City Council Hearing, Joint Committee on Mental Health, Disabilities, and Addiction, Committee on Hospitals, Committee on Public Safety, and Committee on Fire and Emergency Management p. 156, ll. 8-16 (Feb. 6, 2023) [hereinafter City Council Transcript].

³¹ See generally *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*, NAT’L L. CTR. HOMELESSNESS & POVERTY 1, 12-13 (Dec. 2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> (providing ample empirical data and analysis around criminalization policies and practices across different U.S. cities) [hereinafter *NLCHP Housing Not Handcuffs*].

³² *Id.* at 12, 14.

³³ *Id.* at 12.

³⁴ See *id.* at 15; see also LAWYERS’ COMM. CIVIL RTS., CITED FOR BEING IN PLAIN SIGHT 17 (2020), https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Infraction_report_4WEB-1.pdf [hereinafter LCCR CITED IN PLAIN SIGHT]; see also *Racial Discrimination in Housing and Homelessness in the United States*, NAT’L L. CTR. HOMELESSNESS & POVERTY 1, 3 (July 3, 2014), https://homelesslaw.org/wp-content/uploads/2018/10/CERD_Housing_Report_2014.pdf.

³⁵ See *NLCHP Housing Not Handcuffs*, *supra* note 31, at 38.

persons must engage in to stay alive. The policies of Miami-Dade County’s municipalities are a case in point. In 2017, the City of Miami Beach hired a special prosecutor for “nuisance” crimes, such as loitering, jaywalking, or consuming alcohol in public,³⁶ which have been overwhelmingly enforced against unhoused persons.³⁷ In 2020 with the onset of COVID, the City of Miami passed an ordinance criminalizing food sharing, or the feeding of unhoused persons in groups of twenty-five or more without a permit and at non-designated feeding locations (with only five inconvenient locations designated).³⁸ At a recent People’s Tribunal, community members and food providers testified to this law’s senseless cruelty.³⁹ By passing this ordinance, the City of Miami is “using hunger as a weapon against the poor.”⁴⁰ Then, in 2021, the City of Miami passed an anti-camping ordinance, which criminalizes any encampments on public property.⁴¹ In “sweeping” homeless encampments, law enforcement routinely destroys the few belongings that persons have.⁴² One woman had her mother’s ashes thrown out; others lost their medication and identity documents.⁴³ Additionally, a recent study found a 12 percent rise in hospital admissions after an encampment sweep.⁴⁴ Most recently, Miami Beach officials are seeking to pass legislation authorizing police to arrest persons for sleeping or lying in public if they do not move to a homeless shelter.⁴⁵ However, shelters only let persons stay temporarily and often do not allow them to bring their personal belongings. Moreover, there are currently no shelters in Miami Beach, which would require unhoused persons to choose between jail or exile.⁴⁶

³⁶ See Joey Flechas, *Tired of Nuisance Crimes Going Unpunished? Miami Beach Is About to Crack Down*, MIA. HERALD (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article192826269.html>.

³⁷ See Joey Flechas, *Tourists Are Rarely Jailed for Breaking Miami Beach Laws. Not So for the Homeless*, MIA. HERALD (Jan. 5, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article224019710.html> (noting that 2/3 of the defendants in cases brought by this prosecutor identified as unhoused).

³⁸ See MIA., FLA., CODE 2020 § 25-25; see also 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>.

³⁹ For a video recording of the People’s Tribunal on Violations of the Rights to Food and Housing in Miami, please visit <https://miami.app.box.com/s/81z3iimmkbvix5vmq31o7s0f1gm7400i>.

⁴⁰ Interview with David Peery, Exec. Dir., Mia. Coal. Advance Racial Equity (Feb. 25, 2022) (Peery continues by saying there is no difference between the food sharing ordinance and what the United Nations condemns as a war crime in cutting off the flow of food to people) [hereinafter Interview with David Peery].

⁴¹ See *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.

⁴² See Jeff Weinberger, *When It’s All You Own, It’s Not Trash. Miami, Stop Destroying Homeless People’s Possessions*, MIA. HERALD (Oct. 12, 2021), <https://www.miamiherald.com/opinion/op-ed/article254950322.html>.

⁴³ See *id.*

⁴⁴ Benjamin Linas & Joshua Barocas, *What our simulation models project will happen after Boston dismantles Mass. and Cass encampments*, BOS. GLOBE (Nov. 8, 2021), <https://www.bostonglobe.com/2021/11/08/opinion/what-our-simulation-models-show-will-probably-happen-after-boston-dismantles-mass-cass-encampments/>.

⁴⁵ See Aaron Leibowitz, *‘We Can’t Coexist Anymore’: Miami Beach Weighs Outdoor Sleeping Crackdown for Homeless*, MIA. HERALD (July 27, 2023, 1:44 PM), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article277428983.html>.

⁴⁶ See *id.*

10. The criminalization of homelessness has also proliferated in small towns across the country. Over the last year, for example, the Township Council of Norristown, Pennsylvania blocked new affordable housing projects, closed the county's only homeless shelter, and criminalized unhoused residents by passing an anti-camping ordinance. This Ordinance 22-02 prohibits individuals from being “on any Municipal park/parkland or Municipal recreation area or recreation facility except between sunrise and sunset,” except in limited circumstances.⁴⁷ The Council has deemed any violation of it as a criminal offense punishable with a maximum fine of \$300, or “imprisonment for not more than five days.”⁴⁸ As its purpose was to enable Norristown Police Department officers to “hold over [unhoused residents’] . . . head[s]” the threat of a criminal citation in demanding the residents’ relocation, it has since triggered extensive harassment of unhoused residents by local law enforcement.⁴⁹ Unhoused residents in Norristown who are displaced by homeless encampment sweeps do not receive an offer of local shelter bed space because no shelter bed space is available anywhere in Montgomery County, and there is no plan to add additional shelter beds. Moreover, Norristown police destroy or deprive unhoused residents of property that protects them from the elements, force unhoused residents to live in areas that are less well-lit and well-trafficked, and separate residents from community networks providing protection and assistance. These practices create dangerous and possibly fatal conditions for Norristown’s unhoused residents.
11. In recent years, the most concerning development has been the emergence of a well-funded, national push against evidence-based Housing First approaches for the criminalization of homelessness. Historically, criminalization was largely pushed by local actors in response to local unsheltered homelessness, but in 2019, then-President Trump began pushing criminalization and forced relocation to large-scale homeless encampments.⁵⁰ Building on this, the Cicero Institute, a right-wing organization founded by a tech billionaire, created template state-level legislation that would ban camping on public lands statewide and penalize communities that refuse to enforce the ban, divert funding from permanent housing solutions to temporary measures such as mass encampments, reduce due process protections to make it easier to involuntarily commit unhoused persons with mental health disabilities, and create police-led outreach teams to force unhoused persons into state-run encampments.⁵¹ Cicero is sending lobbyists to states to promote this template bill.⁵² So far, versions of this template have

⁴⁷ Norristown, Montgomery County, Pa., Ordinance 22-02, § 1 (Aug. 16, 2022) (amending § 225-2 of the Norristown Municipal Code, titled “Hours of operation”).

⁴⁸ Emily Rizzo, *Advocates say there’s ‘no place’ for unhoused people in Norristown, where it may soon be illegal to stay in parks past dusk*, WHYY (Aug. 9, 2022, 11:19 AM), <https://whyy.org/articles/norristown-pa-unhoused-people-dawn-to-dusk-park-ordinance/>.

⁴⁹ *Id.*

⁵⁰ See Jeff Stein, et al., *Trump pushing for major crackdown on homeless camps in California, with aides discussing moving residents to government-backed facilities*, N.Y. TIMES (Sep. 10, 2019, 9:13 PM), <https://www.washingtonpost.com/business/2019/09/10/trump-pushing-major-crackdown-homeless-camps-california-with-aides-discussing-moving-residents-government-backed-facilities/>.

⁵¹ See Reducing Street Homelessness Act of 2022, CICERO INST. (2022), <https://ciceroinstitute.org/wp-content/uploads/2021/11/Reducing-Street-Homelessness-Act-Model-Bill.090821.pdf> [hereinafter 2022 Cicero Bill].

⁵² See Christy McMurphy, *When it comes to addressing homelessness, Kansans know best*, KAN. REFLECTOR (Mar 7, 2023, 3:33 AM), <https://kansasreflector.com/2023/03/07/when-it-comes-to-addressing-homelessness-kansans-know-best/>.

been introduced in half a dozen states and passed in Missouri, Tennessee, and Texas.⁵³ Former President Trump is currently running for the Presidency on a platform that explicitly includes a national camping ban and forced relocation to mass government camps.⁵⁴

12. The other concerning development has been at the federal level. On the one hand, the federal government has taken several steps that are consistent with the Guidelines issued by then-Special Rapporteur on the right to adequate housing,⁵⁵ Leilani Farha, including the creation of funding incentives⁵⁶ to relocate unhoused persons, the issuance of helpful guidance,⁵⁷ and enforcement actions by the Department of Justice (“DOJ”).⁵⁸ On the other hand, federal agencies’ own police forces have been engaging in criminalization. In February 2023, U.S. Park Police (“USPP”) arrested two unhoused individuals and used the threat of arrest to sweep more than 70 others from McPherson Square in Washington, D.C., without ensuring that they had access to adequate alternative housing.⁵⁹ Then, in May 2023, federal police with the U.S. Forest Service and Bureau of Land Management led a violent undercover arrest operation against a family living in their recreational vehicle on park land, in the absence of adequate shelter elsewhere, resulting in one family member being shot multiple times and permanently paralyzed.⁶⁰ The fact that the federal government is taking overt steps to criminalize unhoused persons using its own police forces makes it significantly more difficult for them to ask state and local governments to prevent these practices altogether.

⁵³ See Clara Bates, *Missouri’s new law criminalizing homelessness is already causing ‘uncertainty and fear,’* NPR (Jan. 17, 2023, 9:17 AM), <https://www.kcur.org/news/2023-01-17/missouris-new-law-criminalizing-homelessness-is-already-causing-uncertainty-and-fear>; see also HOUSING NOT HANDCUFFS, *Emergent Threats: State Level Criminalization*, <https://housingnohandcuffs.org/emergent-threats-state-level-criminalization/>.

⁵⁴ Maura Zurick, *Trump Wants to Make Homelessness Illegal*, NEWSWEEK (Apr. 18, 2023, 10:15 PM), <https://www.newsweek.com/trump-wants-make-homelessness-illegal-1795202>.

⁵⁵ See generally Hum. Rts. Council, *Guidelines for the Implementation of the Right to Adequate Housing: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019) [hereinafter 2019 *Guidelines for the Implementation of the Right to Adequate Housing*] (presented by Leilani Farha and “focusing on the key requirements of effective rights-based responses to emerging challenges”).

⁵⁶ See U.S. DEP’T HOUS. & URB. DEV., *Notice of Funding Availability for the 2016 Continuum of Care Program Competition 1*, 35 (2016), <https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf>.

⁵⁷ See generally U.S. INTERAGENCY COUNCIL HOMELESSNESS, *Resource Roundup for Addressing Encampments* (2022), <https://www.usich.gov/tools-for-action/resource-roundup-for-addressing-encampments> (assisting communities on how to implement the USICH’s 7 Principles for Addressing Encampments).

⁵⁸ See *Bell v. Boise*, 1:09-cv-540-REB, Statement of Interest of the United States (Aug. 6, 2015); see also U.S. DEP’T JUST. OFF. PUB. AFFAIRS, *Justice Department Files Brief to Address the Criminalization of Homelessness* (Aug. 6, 2015), <https://www.justice.gov/opa/pr/justice-department-files-brief-address-criminalization-homelessness>; see also *Scott v. Daytona Beach*, 6:22-cv-02192, Statement of Interest of the United States (Jan. 6, 2023); see also *Micah’s Way v. Santa Ana*, 8:23-cv-00183-DOC-KES, Statement of Interest in Opposition to Defendant’s Motion to Dismiss (May 9, 2023), <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-religious-land-use-case-involving-faith-based>.

⁵⁹ See Marissa J. Lang, *Two-thirds of McPherson Square homeless remain on street, D.C. says*, WASH. POST (Feb. 16, 2023, 8:02 PM), <https://www.washingtonpost.com/dc-md-va/2023/02/16/dc-mcpherson-square-homeless-hearing/>.

⁶⁰ See Robert Davis, *Police Video Shows Homeless Family Violently Arrested and Severely Injured for Living in Park*, INVISIBLE PEOPLE (Aug. 24, 2023), <https://invisiblepeople.tv/police-video-shows-homeless-family-violently-arrested-and-severely-injured-for-living-in-park/>.

B. The U.S.' Criminalization of Homelessness and Poverty Violates Numerous Guiding Principles Issued by the Rapporteurs on Extreme Poverty and Human Rights and Right to Adequate Housing.

13. Several human rights bodies, including U.N. Special Rapporteurs, the Human Rights Council, the Human Rights Committee, and various treaty bodies, have condemned the persistence of these criminalization policies. For example, the U.N. Human Rights Committee, in its Concluding Observations on the U.S.'s Fourth Periodic Report in March of 2014, expressed concerns around the "criminalization of [persons] living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc."⁶¹ Its review called for the U.S. to: (a) abolish those laws and policies that criminalize homelessness at the state and local levels; (b) ensure close cooperation between relevant stakeholders such as 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) provide local authorities implementing alternatives to criminalization with continued financial support and other incentives for decriminalization and the implementation of such solutions; and (d) withdrawing funding for local authorities criminalizing the homeless.⁶² Additionally, then-Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, issued a report in 2011 on the penalization of poverty analyzing the "laws, regulations and practices . . . that punish, segregate, control, and undermine the autonomy of persons living in poverty,"⁶³ and in 2017, then-Special Rapporteur Philip Alston recognized that abuse of police power "is a problem that largely affects the poor" and that poverty is a "key factor in determining who is actually selected for such treatment."⁶⁴ Regarding criminalization of homelessness, in particular, Mr. Alston commented on the "humiliating" nature of being unable to afford basic shelter, adequate food, and sanitation services, adding that "public funding [should] instead be directed to poverty alleviation for this group" of unhoused persons.⁶⁵ Moreover, the Special Rapporteur on Adequate Housing's Guidelines for the Implementation of the Right to Adequate Housing call on states in Guideline 5 to "stop the criminalization of homelessness."⁶⁶
14. The criminalization of homelessness and life-sustaining activities is a violation of the right to life.⁶⁷ The Human Rights Committee has explained that the inherent right to life requires states to affirmatively address "general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."⁶⁸ Accordingly, states are not only obliged to protect citizens against violations of their right to life but must also "ensure access . . . to essential goods and services . . . and other measures designed to promote

⁶¹ U.N. Hum. Rts. Comm., Concluding observations on the fourth periodic report of the United States of America, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

⁶² *Id.*

⁶³ Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights*, ¶ 1, U.N. Doc. A/66/265 (Aug. 4, 2011).

⁶⁴ Philip Alston, *Report of the Special Rapporteur on extreme poverty and human rights*, ¶ 10, U.N. Doc. A/72/502 (Oct. 4, 2017).

⁶⁵ *Id.* ¶ 30.

⁶⁶ 2019 *Guidelines for the Implementation of the Right to Adequate Housing*, *supra* note 55, ¶¶ 29-33.

⁶⁷ See International Covenant on Civil and Political Rights art. 6(1), *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] ("No one shall be arbitrarily deprived of his life").

⁶⁸ Hum. Rts. Comm., General Comment No. 36: Art. 6 (Right to Life), ¶ 26, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter General Comment No. 36].

and facilitate adequate general conditions, such as the bolstering of effective . . . social housing programmes.”⁶⁹ In her mandate as Special Rapporteur on Adequate Housing, Ms. Farha further stated, “When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations.”⁷⁰ Moreover, the sheer lack of *adequate* housing made available by the U.S. government and various state and local governments has left unhoused persons and the millions more who struggle with food insecurity and the threat of evictions without the capacity to “enjoy a life with dignity.”⁷¹

15. The current U.N. Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal, has recognized “sustainability as an [additional] element of the right to adequate housing” in the context of the climate crisis.⁷² Extreme weather and natural calamities due to global warming, combined with insufficient housing, have exposed thousands of unhoused persons to life-threatening environmental conditions. In Phoenix, Arizona, alone, at least 130 unhoused persons died from heat-related causes in 2021, a count that has nearly doubled in the city since 2019.⁷³ This year, wildfire smoke from Canada, affecting the air quality of all major regions of the U.S., impacted unhoused persons particularly severely. A 2022 research study jointly conducted by the Cleveland Clinic and Case Western Reserve School of Medicine found that over 60 percent of unhoused persons surveyed in Visalia, California often spent time near roadways where they were constantly exposed to particulate matter and other air pollutants.⁷⁴ The study concluded that unhoused persons “are uniquely vulnerable to the impact of worsening air quality, particularly outside of large urban centers, where access to indoor shelters may be limited.”⁷⁵ As such, the absence of access to housing, coupled with criminalization, has led to “unnatural or premature death[s]”⁷⁶ of many unhoused persons, violating their fundamental right to life.

16. Punishing life-sustaining activities, which people have no choice but to conduct in public, violates the right to freedom from cruel, inhuman, and degrading treatment.⁷⁷ The Human

⁶⁹ *Id.*

⁷⁰ Hum. Rts. Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Access to Justice for the Right to Housing*, ¶ 19, U.N. Doc. A/HRC/40/61 (Jan. 15, 2019).

⁷¹ General Comment No. 36, *supra* note 68, ¶ 3.

⁷² Balakrishnan Rajagopal, *Towards a just transformation: climate crisis and the right to housing – Report of the Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal*, 1, 1, U.N. Doc. A/HRC/52/28 (Dec. 23, 2022) [hereinafter *Towards a just transformation*].

⁷³ MARICOPA CNTY. DEP’T PUB. HEALTH, PRELIMINARY 2021 HEAT REP. (2022), <https://www.maricopa.gov/ArchiveCenter/ViewFile/Item/5404>.

⁷⁴ Maeve MacMurdo, et al., *Ambient Air Pollution Exposure among Individuals Experiencing Unsheltered Homelessness*, 130 ENV’T HEALTH PERSP. 1, 1 (Feb. 17, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8852257/pdf/ehp10414.pdf>.

⁷⁵ *Id.*

⁷⁶ General Comment No. 36, *supra* note 68, ¶ 3.

⁷⁷ See ICCPR, *supra* note 67, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16, *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT] (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”).

Rights Committee has noted that the criminalization of homelessness in the U.S. “raises concerns of discrimination and cruel, inhuman or degrading treatment.”⁷⁸ Similarly, U.S. courts have found that laws criminalizing homelessness violate the Eighth Amendment’s prohibition on “cruel and unusual punishment,” the U.S. Constitution’s analogue to the prohibition on cruel, inhuman, and degrading treatment. For example, in the 1992 civil rights class action lawsuit of *Pottinger v. City of Miami*, a federal district judge ruled that Miami’s practice of arresting persons for performing harmless activities such as sleeping, standing, and congregating in public places violated the Eighth Amendment and right to travel, while the ordinances authorizing these practices were unconstitutionally overbroad in violation of the due process clause of the Fourteenth Amendment.⁷⁹ In 2022, a federal court in Phoenix ruled that a camping and sleeping ban violated the Eighth Amendment and triggered irreparable harm on Phoenix’s 3,000+ houseless population in the absence of sufficient shelter space in the city.⁸⁰ It also recognized the reality that depriving unhoused persons of their property (“a tent, an article of clothing, or bedding . . .”) without due process “constitutes a chiefly economic injury . . . [as the City] may be taking everything the person owns.”⁸¹ Furthermore, in *Martin v. Boise*, the Ninth Circuit concluded that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”⁸² Then, in *Johnson v. City of Grants Pass*, the Ninth Circuit echoed this reasoning in prohibiting the imposition of civil fines for people sleeping outside or in their vehicles when they have no other option.⁸³

17. The government’s interference with life-sustaining activities, such as sleeping, eating, walking, and relieving oneself, directly violates the fundamental rights to liberty and security of the person⁸⁴ pursuant to the Guiding Principles issued by the Special Rapporteur on extreme

⁷⁸ HRC Concluding Observations: USA, *supra* note 4, ¶ 19.

⁷⁹ *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1584 (S.D. Fla. 1992) (“The City’s practice of arresting homeless individuals for the involuntary, harmless acts they are forced to perform in public is unconstitutional because such arrests are cruel and unusual in violation of the eighth amendment, reach innocent and inoffensive conduct in violation of the due process clause of the fourteenth amendment and burden the fundamental right to travel in violation of the equal protection clause”) [hereinafter *Pottinger v. Miami*].

⁸⁰ *See generally* Fund for Empowerment v. City of Phoenix, No. CV-22-02041-PHX-GMS, 2022 WL 18213522 1 (D. Ariz. Dec. 16, 2022) (challenging the City of Phoenix, Arizona’s policies policing homelessness and its treatment of unhoused individuals regarding the unreasonable seizure and destruction of their property during homeless encampment sweeps) [hereinafter *Fund for Empowerment*].

⁸¹ *Id.* at 8.

⁸² *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) [hereinafter *Martin v. Boise*].

⁸³ *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. Sept. 28, 2022), (“[T]he City of Grants Pass cannot, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City for them to go”).

⁸⁴ ICCPR, *supra* note 67, art. 9(1) (“Everyone has the right to liberty and security of person [and] [n]o one shall be subjected to arbitrary arrest or detention.”); International Convention on the Elimination of All Forms of Racial Discrimination art. 5(b), *adopted* Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD] (“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.”).

poverty and human rights.⁸⁵ Ordinances criminalizing homelessness subject people to arbitrary arrests and fines.⁸⁶

18. Unhoused persons are “frequently subject to restrictions on their freedom of movement and criminalized for using public space.”⁸⁷ Some cities implement “move along” orders, where unhoused persons are forced to leave the area just because they are present.⁸⁸ In New York City, police have ordered unhoused persons to move multiple times in one day, with at least one unhoused individual saying they were forced to move every 30 to 45 minutes.⁸⁹ In a survey of 400 unhoused persons in Denver, Colorado, 57 percent were approached by police for camping, and more than 80 percent were forced to relocate.⁹⁰ In a similar survey of 350 San Francisco residents, “70 percent . . . had been forced to move by a city official within the past year, with 20 percent being forced to move on a weekly basis.”⁹¹ Punishing persons for essential activities, such as camping, lying, sitting, or sleeping in public places, is one of the most extreme methods of restraining freedom of movement.
19. As the Guiding Principles of the Special Rapporteur on Extreme Poverty and Human Rights set forth, poverty reduction must rely on policy measures that center equality and non-discrimination.⁹² Criminalization of homelessness both disproportionately impacts persons of color and further exacerbates racial disparities, violating the right to equality and non-discrimination.⁹³ Laws targeting life-sustaining activities are predominantly enforced against unhoused persons and against Black, Indigenous, and other persons of color.⁹⁴ One study in Austin, Texas showed that Black unhoused persons were almost ten times more likely than white persons to receive a camping citation.⁹⁵ As the U.N. Special Rapporteur on contemporary

⁸⁵ See Hum. Rts. Council, *Final draft of the guiding principles on extreme poverty and human rights*, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Supúlveda Carmona, U.N. Doc. A/HRC/21/39 (July 18, 2012) [hereinafter *Final draft of guiding principles on extreme poverty and human rights*].

⁸⁶ NAT’L L. CTR. HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2018: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 42 (2018), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

⁸⁷ *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 85, ¶ 65.

⁸⁸ See ICERD, *supra* note 84, 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.”).

⁸⁹ *Complaint: NYPD Unlawfully Orders Homeless People to Leave Public Spaces*, N.Y.C.L.U. (May 26, 2016), <https://www.nyclu.org/en/press-releases/complaint-nypd-unlawfully-orders-homeless-people-leave-public-spaces>.

⁹⁰ Madeline Bailey et al., *No Access to Justice: Breaking the Cycle of Homelessness and Jail*, VERA INST. JUST. 1, 3 (2020), <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>.

⁹¹ *Id.*

⁹² See U.N. HUM. RTS. OFF. HIGH COMM’R, GUIDING PRINCIPLES ON EXTREME POVERTY AND HUMAN RIGHTS 1, 48-61 (Sept. 27, 2012),

https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf.

⁹³ See ICERD, *supra* note 84, art. 2(1)(c) (“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.”); *see also* ICCPR, *supra* note 67, arts. 2, 26 (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”).

⁹⁴ LCCR CITED IN PLAIN SIGHT, *supra* note 34, at 5-6.

⁹⁵ *Racism, Homelessness, and the Criminal and Juvenile Legal Systems*, NAT’L CTR. HOMELESSNESS & POVERTY 1, 3 (2020).

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.”⁹⁶ The U.N. Special Rapporteur on contemporary forms of slavery has also raised concerns about the disparate impact of criminalization on persons of color and called for states to “decriminalize conduct associated with homelessness.”⁹⁷ In its recent review, the CERD called upon the U.S. government to “abolish laws and policies that criminalize homelessness,” “redirect funding from criminal justice responses to adequate housing and shelter programs, in particular for persons belonging to racial and ethnic minorities most affected by homelessness,”⁹⁸ and “affirmatively further[] fair housing and protection against discriminatory effects.”⁹⁹

20. Furthermore, the disproportionately high incidence of unhoused youth who identify as LGBTQ or gender non-conforming point to how the criminalization of homelessness violates the rights to equality and non-discrimination.¹⁰⁰ Youth who identify as LGBTQ+ have been found to have a “120 percent higher risk of reporting homelessness compared to youth who identify as heterosexual and cisgender.”¹⁰¹ This statistic has been corroborated by the Human Rights Campaign, which has estimated “that LGBTQ youth comprise up to 40 percent of the total unaccompanied homeless youth population, despite [being] just [5] to 10 percent of the overall youth population.”¹⁰² While various factors explain why this demographic of the youth homeless population suffers higher rates of homelessness and is more vulnerable to those policies that criminalize homelessness, the coming out process and its associated fallouts are perhaps the most significant underlying factors.¹⁰³ Moreover, LGBTQ youth experience higher rates of detention and incarceration because of criminalization policies and practices.¹⁰⁴ A 2015 study regarding youth in juvenile detention facilities drew clear cross-system connections between an LGBTQ-identifying youth’s family rejection, child welfare involvement,

⁹⁶ 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).

⁹⁷ Hum. Rts. Council, *Report of the Special Rapporteur on Contemporary Forms of Slavery*, Tomoya Obokata, *Homelessness as a cause and consequence of contemporary slavery*, ¶ 65.x., U.N. Doc. A/HRC/54/30 (July 12, 2023).

⁹⁸ 2022 CERD Concluding Observations, *supra* note 13, ¶ 40.

⁹⁹ 2022 CERD Concluding Observations, *supra* note 13, ¶ 40.

¹⁰⁰ ICCPR, *supra* note 67, arts 2 and 26 (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”).

¹⁰¹ M.H. Morton, et al., *Missed Opportunities: Youth Homelessness in America. National Estimates.*, CHAPIN HALL UNIV. CHI. (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

¹⁰² Ariana Aboulafia, *The New John Lawrence: An analysis of the Criminalization of LGBTQ Homelessness*, 19 CONN. PUB. INT. L. J. 200, 205 (2019), <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2020/03/CPILJ-19.1-The-New-John-Lawrence-An-Analysis-of-the-Criminalization-of-LGBTQ-Homelessness-by-Ariana-H.-Aboulafia.pdf> (citing *New Report on Youth Homeless Affirms that LGBTQ Youth Disproportionately Experience Homelessness*, HUM. RTS. CAMPAIGN: BLOG (Nov. 15, 2017), <https://www.hrc.org/blog/new-report-on-youth-homeless-affirms-that-lgbtq-youth-disproportionately-ex>).

¹⁰³ *Homelessness in the LGBTQ Community in the United States*, UNIV. MIA. SCH. L. HUM. RTS. CLINIC, <https://miami.app.box.com/s/6ajyu7b7mt7g59ckoe0onho02jzokf8l> (June 4, 2021) (“The LGBTQ Homeless Youth Provider Survey identified being forced out by parents or running away due to sexual orientation, gender identity, or gendered expression, “family issues,” and abuse at home as the main reasons for homeless in over 75% of LGBTQ youth clients.”).

¹⁰⁴ *See id.*

homelessness, survival crimes, and juvenile justice system involvement.¹⁰⁵ And from a gender perspective of this surveyed group of youth respondents, as many as 40 percent identify as LGBTQ or gender non-conforming.¹⁰⁶

21. Many shelters do not accommodate persons with physical or mental health disabilities, meaning the existence of a shelter bed does not necessarily mean it is accessible to every unhoused individual.¹⁰⁷ Both congregate and non-congregate shelters are often run as semi-carceral institutions that limit when people can come and go, isolate them from their social supports by banning visitors and socializing between shelter residents, interfere with residents' privacy (by depriving them of a key to their personal space and allowing shelter staff to enter at any time), and impose an unpredictable and inconsistently enforced set of rules and behavioral requirements on residents that make them feel that their shelter could be terminated at any moment.¹⁰⁸ A recent story on San Diego noted:

“[A]n unsheltered woman who is a senior who or has a disability needs a bottom bunk. There were several days in the past month where there were no bottom bunks available for women. Shelters also usually can't accommodate people who can't bathe, eat or use the restroom on their own.”¹⁰⁹

III. FORCED REMOVAL POLICIES AND INVOLUNTARY COMMITMENT OF UNHOUSED PEOPLE WITH MENTAL HEALTH DISABILITIES CONSTITUTE ANOTHER FORM OF THE CRIMINALIZATION OF HOMELESSNESS AND POVERTY.

“These hospitals are really just prisons by another name—constantly overcrowded and overstimulating, not exactly the most healing setting for anyone, let alone someone experiencing a mental health crisis.”

Board Member & Community Advocate Arvind Sooknanan, Fountain House¹¹⁰

22. We appreciate both Rapporteurs' prior attention to the issue of criminalization of homelessness and poverty. In the remainder of our report, we wish to build on this record and draw to the

¹⁰⁵ See generally Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. GENDER, SOC. POL'Y & L. 243 (2016) (detailing a national study in which the prevalence of LGBTQ/GNCT youth is higher in both the juvenile justice and child welfare systems than the general population).

¹⁰⁶ *Id.* at 251.

¹⁰⁷ See Corey McDonald, *Why Aren't Homeless Shelters Accommodating People Who Have Disabilities*, SHELTERFORCE (July 19, 2023), <https://shelterforce.org/2023/07/19/why-arent-homeless-shelters-accommodating-people-who-have-disabilities/>.

¹⁰⁸ See *Pipe Dreams & Picket Fences: Direction from Denver's Homeless People on Housing Needs and Priorities in the Context of Today's Public Housing*, HOUSEKEYS ACTION NETWORK DENVER, 8 (2023), <https://wraphome.org/pipe-dreams-and-picket-fences/> noting the following percentages of respondents noting these as “dealbreakers” in accessing housing or shelter programs: curfew (49%), guests not being allowed (44%), staff room checks (40%), religious requirements (39%), and not being allowed roommates or partners (39%).

¹⁰⁹ Voice of San Diego, *Morning Report: How a Key Shelter Debate's Playing in San Diego* (Sept. 13, 2023), <https://voiceofsandiego.org/2023/09/13/morning-report-how-a-key-shelter-debates-playing-in-san-diego/>.

¹¹⁰ Arvind Sooknanan, *Forced Treatment for Mental Illness Is No Treatment at All*, SLATE (Dec. 16, 2022, 9:00 AM), <https://slate.com/technology/2022/12/new-york-eric-adams-forced-hospitalization.html>.

Rapporteurs’ attention the inhumane policies and practices of forced, involuntary commitment of unhoused people, including the increasing role of law enforcement in their implementation, as a proxy for the criminalization of homelessness and poverty. As courts are increasingly scrutinizing municipalities’ use of the criminal justice system to put unhoused persons in jail, cities and states are turning to the civil involuntary commitment system to effectively accomplish the same goal of getting persons off the streets temporarily, without addressing their underlying housing needs. In a concerning trend, they are using the very condition of a person’s homelessness as circumstantial evidence of dangerousness to themselves or others, presenting an eligibility criterium for involuntary commitment, even if the person has displayed no overtly dangerous propensities.

A. The Criminalization of Persons with Mental Health Disabilities Has a Longstanding History in the United States.

23. The U.S.’ longstanding criminalization of persons with mental health disabilities dates as far back as the 1700s, where many of them were imprisoned for being deemed “barbaric” and having “incurable” moral failings.¹¹¹ While the mid-19th century welcomed a national reform movement seeking to improve the conditions of incarcerated persons with mental health disabilities and spurring the establishment of public psychiatric hospitals,¹¹² it was closely followed by the eugenics movement that emboldened scientific pursuits to forcibly sterilize and selectively breed patients with mental health disabilities.¹¹³ Through the first half of the 20th century, more states began investing funds in their own state-run psychiatric facilities. In one example, the New York Lunacy Commission found in 1912 that one-third of New York’s budget “was spent locking up and caring for the mentally ill.”¹¹⁴ The state’s Office of Mental Hygiene was established in 1926,¹¹⁵ with its very name suggesting eugenicist undertones of “disinfecting” persons with mental and behavioral health disabilities.
24. In a federal effort to deinstitutionalize state hospitals, then-President John F. Kennedy signed the 1963 Community Mental Health Act (“CMHA”) with the aim to shift the treatment of persons with mental health disabilities from state psychiatric facilities to designated local, community-based clinics.¹¹⁶ Set against the backdrop of the national civil rights movement,

¹¹¹ *Covering Mental Health: 1840s-1890s*, PBS NEWSHOUR CLASSROOM, <https://www.journalisminaction.org/case/nellie-bly> (last visited Sept. 6, 2023).

¹¹² See Alisa Roth, *The Truth About Deinstitutionalization*, ATLANTIC (May 25, 2021), <https://www.theatlantic.com/health/archive/2021/05/truth-about-deinstitutionalization/618986/> (“In 1841, a former schoolteacher named Dorothea Dix visited a Massachusetts jail to teach a Bible class. She was appalled to find it filled with people with mental illness, living in horrific conditions; traveling around the country, she found similar conditions in other jails. Residents were kept in ‘cages, closets, cellars, stalls, pens!’ she later wrote in a letter to the Massachusetts legislature.”).

¹¹³ See *The 19th Century Asylum*, HEARING VOICES, <https://librarycompany.org/hearingvoices-online/section1.html> (last visited Sept. 6, 2023) (“The theory of degeneracy and the eugenics movement it precipitated led to the forced sterilization of countless mentally ill patients to prevent the inheritance of insanity.”).

¹¹⁴ Elliott Young, *Locking up the mentally ill has a long history*, WASH. POST (Jan. 3, 2023, 6:00 AM), <https://www.washingtonpost.com/made-by-history/2023/01/03/history-mental-illness-incarceration/>.

¹¹⁵ *Id.*

¹¹⁶ See Vic DiGravio, *The Last Bill JFK Signed – And The Mental Health Work Still Undone*, WBUR (Oct. 23, 2013), <https://www.wbur.org/news/2013/10/23/community-mental-health-kennedy> (“... President Kennedy called

his hope was to “liberate the population of confined mentally ill patients through advancements in psychopharmacology and supportive housing.”¹¹⁷ The legislation funded three years of federal grant payments totaling \$150 million to the states for the initial staffing and construction of 1,500 community clinics and/or mental health centers.¹¹⁸ Unfortunately, these well-intended community-based resources “rarely materialized” as initial federal funding was not followed by longer-term commitments,¹¹⁹ municipalities utilized zoning measures to prevent the placement of facilities in neighborhoods.¹²⁰ Thus, persons exiting the larger state facilities often ended up on the streets, and by the 1980s and 90s, federal, state, and local administrations invoked “broken windows” policies that criminalized the poor and unhoused and forced those persons with mental disabilities to become “enmeshed in the criminal legal system.”¹²¹

25. Since CMHA went into effect, federal courts have issued rulings regarding the legal standards authorizing involuntary commitments. For example, in the 1972 decision of *Lessard v. Schmidt*, the court sided with the state of Wisconsin’s statutory definition of “mental illness”—it held that a person may be institutionalized should “the potential for doing harm be ‘great enough to justify such a massive curtailment of liberty.’”¹²² While this was a fairly strict standard, the U.S. Supreme Court in the 1975 case of *O’Connor v. Donaldson* recognized “involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, [to be] a deprivation of liberty which the State cannot accomplish without due process of law.”¹²³

for society to embrace a new vision for people with mental health disorders and developmental disabilities, one in which the ‘cold mercy of custodial care would be replaced by the open warmth of community.’”)

¹¹⁷ Blake Erickson, *Deinstitutionalization Through Optimism: The Community Mental Health Act of 1963*, AM. J. PSYCHIATRY RESIDENTS’ J. 6, 6 (June 11, 2021), <https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp-rj.2021.160404>.

¹¹⁸ See *id.* at 7.

¹¹⁹ See Michelle R. Smith, *50 years later, Kennedy’s vision for mental health not realized*, SEATTLE TIMES (Oct. 20, 2013, 8:28 PM), <https://www.seattletimes.com/nation-world/50-years-later-kennedyrsquos-vision-for-mental-health-not-realized/>.

¹²⁰ See generally Deborah A. Schmedemann, *Zoning for the Mentally Ill: A Legislative Mandate*, 16 HARV. J. LEGIS. 853 (1979) (discussing how local governmental authorities across the United States “reacted defensively” to exclude persons with mental health disabilities from their neighborhoods with the use of exclusionary zoning policies).

¹²¹ Young, *supra* note 114; see *Broken Windows Policing*, GEO. MASON U. CTR. EVIDENCE-BASED CRIME POL’Y (last visited on Sept. 5, 2023), <https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/> (detailing broken windows policing and its origins).

¹²² *Lessard v. Schmidt*, 349 F. Supp. 1078, 1093 (E.D. Wis. 1972).

¹²³ *O’Connor v. Donaldson*, 422 U.S. 563, 580 (1975).

B. *The U.S.’ Criminalization of Mental Health Disproportionately Impacts Persons Experiencing Homelessness and Poverty in Violation of Numerous Guiding Principles Issued by the Rapporteurs on Extreme Poverty and Human Rights and Right to Adequate Housing.*

“The mental health system is largely broken across the country. We’ve tried to paper over it by funding law enforcement.”

John Snook, Executive Director, Treatment Advocacy Center¹²⁴

26. The criminalization of mental health disproportionately impacts the unhoused and impoverished population in the U.S. According to estimates from the U.S. Department of Housing and Urban Development (“HUD”), about 20 percent of the nation’s unsheltered population suffers from a “severe mental [health disability].”¹²⁵ This figure has been corroborated by the U.S.’ Substance Abuse and Mental Health Services Administration (“SAMHSA”), which has also contrasted it with the 5.6 percent of the general population found to have a serious mental health disability.¹²⁶
27. Mental distress is both a consequence and cause of homelessness. Even though the number of in-patients across state asylum facilities has dropped from nearly 600,000 in the 1950s to nearly 45,000 at present, close to 30 percent of those who were discharged are rendered either homeless or without a known address within six months of their discharge.¹²⁷ Income inequality has been found to have a significant association with common mental health conditions, with those persons living in “socially underprivileged and poor city areas [suffering] more often from . . . depression, anxiety and psychosis than persons living in high-income neighborhoods.”¹²⁸ Moreover, mental health issues are prone to worsen with homelessness, “especially if there is no solution [for housing] in sight.”¹²⁹
28. The U.S., with its inadequate social safety net and lack of community-based mental health resources, has come to rely on the criminal legal system to respond to mental health disabilities. Nearly one-third of persons found to experience severe mental distress first connect with a

¹²⁴ Fola Akinnibi, *NYC Pilot Tries Mental Health Responders in Place of Police*, BLOOMBERG CITYLAB (Nov. 13, 2020, 7:13 AM), https://www.bloomberg.com/news/articles/2020-11-13/nyc-pilot-sends-health-workers-in-place-of-police?utm_source=Daily+Links+for+Social+Sharing&utm_campaign=77012d5c76-EMAIL_CAMPAIGN_2020_11_24_06_53&utm_medium=email&utm_term=0_2727fb3873-77012d5c76-50183436.

¹²⁵ David Oshinsky, *It’s Time to Bring Back Asylums*, WALL ST. J. (July 21, 2023, 10:56 AM), <https://www.wsj.com/articles/its-time-to-bring-back-the-asylum-ec01fb2>.

¹²⁶ *Guide Overview: Expanding Access to and Use of Behavioral Health Services for People Experiencing Homelessness* (SAMHSA Publication No. PEP22-06-02-003, 2023), <https://store.samhsa.gov/sites/default/files/pep22-06-02-007.pdf>.

¹²⁷ Oshinsky, *supra* note 125.

¹²⁸ Derin Marbin et al., *Perspectives in poverty and mental health*, 10 FRONTIERS PUB. HEALTH 1, 2 (2022), <https://doi.org/10.3389/fpubh.2022.975482>.

¹²⁹ *Fact Sheet: Homelessness & Health: What’s the Connection*, NAT’L HEALTH CARE FOR HOMELESS COUNCIL 1, 1 (2019), <https://nhhc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.

mental health treatment resource through law enforcement intervention.¹³⁰ Multiple research studies have found that most interactions that police officers have with persons with mental disabilities “do not involve major crimes or violence . . . nor do they often meet the legal criteria of ‘emergency apprehension,’” emphasizing the inherent discrimination towards unhoused persons with mental health disabilities and the current failure of the U.S. to “ensure that persons living in poverty are equal before and under the law and are entitled, without discrimination, to the equal protection and benefit of the law.”¹³¹

29. Police thus serve on the frontlines of psychiatric care without any expertise and with harmful and sometimes fatal consequences. According to a Treatment Advocacy Center (“TAC”) study, persons with untreated mental disabilities are 16 times more likely to be killed during a police encounter than other individuals.¹³² Moreover, at least a quarter and perhaps as many as half of all fatal police shootings involve persons with serious mental health disabilities.¹³³ In fact, the U.N. Office of the High Commissioner for Human Rights (“OHCHR”) has identified “the intervention of law enforcement officials as first responders in mental health crises” as one of “three key contexts” that “underlie over 85 percent of police-related fatalities.”¹³⁴
30. Persons with mental health disabilities are significantly overrepresented in the criminal justice system.¹³⁵ At Rikers Island, one of the most notorious jail complexes in the country that is paradoxically touted as “one of [its] largest psychiatric care providers,” half of its population (about 2,780 people) suffer from a mental health diagnosis on an average day.¹³⁶ With institutional facilities serving as proxies for criminalization under the guise of corrections facilities, persons with mental health disabilities are also less likely to make bail, a reality forcing most of them to languish in jail at a rate “nearly twice as long as [persons] without mental [health disabilities].”¹³⁷ And given the nexus between the incidence of a mental health

¹³⁰ Tamar Ezer & Denise Tomasini-Joshi, *First Responders with a Rights-Based Approach to Mental Health Crises*, HEALTH & HUM. RTS. J. (Oct. 10, 2021), https://www.hhrjournal.org/2021/10/first-responders-with-a-rights-based-approach-to-mental-health-crises/#_edn3.

¹³¹ Jennifer D. Wood et al., *The “Gray Zone” of Police Work During Mental Health Encounters: Findings from an Observational Study in Chicago*, 20 POLICE Q 1, 3 (2017); see *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 85, ¶ 19.

¹³² TREATMENT ADVOC. CTR., OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS 12 (2015), <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

¹³³ See *id.* at 3 (“Severe mental illness is an identifiable factor in at least 25% and as many as 50% of all fatal law enforcement encounters, but its role has been rendered virtually invisible by the failure of the government to track or report its presence.”).

¹³⁴ Rep. of the U.N. High Comm’r Hum. Rts. on Its Forty-Seventh Session, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, ¶ 30, U.N. Doc. A/HRC/47/53 (June 1, 2021).

¹³⁵ See Megan J. Wolff, *Fact Sheet: Incarceration and Mental Health*, WEILL CORNELL MED. PSYCHIATRY (2017), <https://psychiatry.weill.cornell.edu/research-institutes/dewitt-wallace-institute-psychiatry/issues-mental-health-policy/fact-sheet-0> (noting that the “rate of mental disorders in the incarcerated population is 3 to 12 times higher than that of the general community”).

¹³⁶ Annie McDonough, *Mental health care on Rikers: New York’s largest psychiatric provider*, CITY & STATE (Sept. 30, 2022), <https://www.cityandstateny.com/policy/2022/09/mental-health-care-rikers-new-yorks-largest-psychiatric-provider/377870/>.

¹³⁷ *Opinion Editorial: Treatment, Not Jail, for the Mentally Ill*, N.Y. TIMES (Jan. 31, 2013), <https://www.nytimes.com/2013/02/01/opinion/treatment-not-jail-for-the-mentally-ill-in-new-york-city.html#:~:text=Mentally%20ill%20inmates%20also%20stay,willing%20to%20get%20them%20out.>

disability as a systemic consequence of homelessness, it should not come as a surprise that many unsheltered persons with mental disabilities lack the financial support of community members to help bail them out of jail facilities.

31. Today, every state has in place laws requiring some form of civil court hearing before a person can be involuntarily committed that requires the government to show that they are an imminent threat to themselves or others.¹³⁸ However, a concerning trend is emerging of states reducing this protection specifically to make it easier to involuntarily commit unhoused persons with mental health disabilities through the “grave disability” or “need-for-treatment” standards. These lowering standards directly violate the Guiding Principle of agency and autonomy previously issued by Ms. Sepúlveda Carmona.¹³⁹ Under this Guiding Principle, all policies relevant to poverty “must be based on the recognition of those persons’ right to make their own decisions and respect their capacity to fulfil their own potential.”¹⁴⁰ However, under the emerging “grave disability” standard, the “danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety” is included as a reason for involuntary commitment.¹⁴¹ “Need-for-treatment laws render involuntary commitment available to an individual who suffers from a mental health disability, even if the individual manages to meet basic survival needs and exhibits no violent or suicidal tendencies.”¹⁴²
32. The Cicero Institute template legislation referenced in paragraph 11 includes a portion that would allow any person to seek a petition for a 72-hour psychiatric hold if the court finds “(a) [p]oses a serious threat to himself or others; (b) Is incapable of caring for himself; or (c) [h]as a mental state that will deteriorate to a dangerous level without medical intervention.” After those 72 hours, the person would be discharged, possibly with an outpatient treatment plan (but not housing), and the penalty for non-compliance with that plan is up to one month in jail or a \$5,000 fine.¹⁴³
33. Not explicitly based on the Cicero template, but adopting a similarly concerning approach is the recently enacted California Community Assistance, Recovery and Empowerment (“CARE”) Court—to more easily place unhoused persons with mental health disabilities into involuntary commitments.¹⁴⁴ The CARE Act specifically authorizes law enforcement to

¹³⁸ See Samantha M. Caspar & Artem M. Joukov, *Worse than Punishment: How the Involuntary Commitment of Persons with Mental Illness Violates the United States Constitution*, 47 HASTINGS CONST. L.Q. 499, 508 (2020) (Available at: https://repository.uchastings.edu/hastings_constitutional_law_quarterly/vol47/iss4/3) (citing Brian Stettin et al., *Mental Health Commitment Laws: A Survey of the States*, TREATMENT ADVOC. CTR. (2014), <https://www.treatmentadvocacycenter.org/mental-health-commitment-laws>).

¹³⁹ See *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 85, ¶ 36.

¹⁴⁰ *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 85, ¶ 36.

¹⁴¹ Caspar & Joukov, *supra* note 138, at 508; see e.g. ALASKA STAT. § 47.30.915(9)(A) (2019); see also UTAH CODE ANN. § 62A-15-602(17) (Utah also has a standard similar to the “grave disability” standard and provides that an individual may be involuntarily committed if he or she is in “substantial danger,” which is defined, in part, as the individual is at serious risk of “serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter.”).

¹⁴² Caspar & Joukov, *supra* note 138, at 508.

¹⁴³ Reducing Street Homelessness Act of 2022, CICERO INST. (2022), <https://ciceroinstitute.org/wp-content/uploads/2021/11/Reducing-Street-Homelessness-Act-Model-Bill.090821.pdf>.

¹⁴⁴ See Jay Caspian King, *California’s Fight Against Homelessness Has Turned Desperate and Dangerous*, N.Y. TIMES (June 27, 2022), <https://www.nytimes.com/2022/06/27/opinion/california-homeless-mental-illness.html>.

initiate the commitment process, requiring only a showing that a person is “likely to result in “grave disability or serious harm” absent a CARE plan, and can be done in absentia, without even providing an individual to make a case for themselves.¹⁴⁵ Rather than requiring proof of an imminent threat, this vague, prospective “likely to” standard invites arbitrary speculation by courts, based on biased considerations of poverty. After this showing, individuals are subject to numerous court hearings and medical examinations, non-compliance with which could set up a person for a more permanent conservatorship.¹⁴⁶ Noncompliance with the CARE process can ultimately result in conservatorships which can include locked placements and forcible psychotropic medication for an extended—and potentially unlimited—duration. This means that once an individual is targeted for CARE Act intervention (based on vague inconsistent criteria and a very low eligibility threshold), potential missteps carry the inherent risk of a dramatic loss of their liberty, in violation of the right to liberty and security of person under the Guiding Principles issued by Ms. Sepúlveda Carmona.¹⁴⁷ A report on Reparations in California also details the pervasive effects of racial discrimination in the health care system over centuries, including the weaponizing of a mental health diagnosis to force sterilization and treatment of Black Californians, meaning this process will likely have racially disparate impacts.¹⁴⁸ Troublingly, while the CARE Act provides much for the loss of liberty of individuals, it does nothing to provide the one thing that unhoused persons with mental health disabilities need most: supportive housing where any humane treatment plans would be more likely to be successful than court-sanctioned involuntary commitments. Without provisions for supportive housing for unhoused persons with mental health disabilities in the CARE Act, the right to the highest attainable standard of mental health outlined by the Special Rapporteur on extreme poverty and human rights cannot be actualized.¹⁴⁹

C. New York City’s Forced Removal Policy of Unhoused Persons is Disguised as a Mental Health Directive but Instead Criminalizes Persons Experiencing Homelessness and Poverty with Mental Health Disabilities.

34. Shortly after New York City Police Department (“NYPD”) officers murdered 66-year-old Eleanor Bumpers—a Black woman who was experiencing a mental health crisis amid an eviction—in 1984, the City instituted policy changes around how to handle so-called “emotionally disturbed people.”¹⁵⁰ In one reform measure, NYPD officers were ordered “to isolate and contain suspects in mental distress and to establish a ‘zone of safety’ around them.”¹⁵¹ Mayor Ed Koch of New York City authorized the practice of involuntary commitments of persons with mental disabilities in 1987, contributing to a renewed era of

¹⁴⁵ S.B. 1338, ch. 319, §§ 5972, 5977, subdiv. (a), 2021-2022 Leg., (Cal. 2022).

¹⁴⁶ *See id.* §§ 5979(a)(2)-(3).

¹⁴⁷ *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 85, ¶¶ 65-66.

¹⁴⁸ *See* CAL. DEP’T JUST. – OFF. ATT’Y GEN., *California Task Force to Study and Develop Reparation Proposals for African Americans: Interim Report* (A.B. 3121) (June 2022), <https://oag.ca.gov/ab3121/report> (citing *Chapter 12: Mental and Physical Harm and Neglect* at 422-23, fn. 408; *Chapter 11: An Unjust Legal System* at 390-91; *Chapter 12: Mental and Physical Harm and Neglect* at 406-436); *see also* Robert C. Schwartz, Ph.D. et al., *Racial disparities in psychotic disorder diagnosis: A review of empirical literature*, 4 *WORLD J. PSYCHIATRY* 133-140 (2014).

¹⁴⁹ *See Final draft of guiding principles on extreme poverty and human rights*, *supra* note 85, ¶¶ 81-82.

¹⁵⁰ *See* Alan Feuer, *Fatal Police Shooting in Bronx Echoes One from 32 Years Ago*, *N.Y. TIMES* (Oct. 19, 2016), <https://www.nytimes.com/2016/10/20/nyregion/fatal-police-shooting-in-bronx-echoes-one-from-32-years-ago.html>.

¹⁵¹ *Id.*

institutionalization that disproportionately and purposefully targeted unhoused persons with mental health disabilities.¹⁵²

35. The legacies of this and related government-sanctioned practices hold especially true in the city today as the current mayoral administration’s issuance of various criminalization agendas has escalated police violence against unhoused persons. In an alleged attempt to curb New York City’s homelessness crisis, which has reached record-high levels since the 1930s’ Great Depression,¹⁵³ Mayor Eric Adams promulgated a directive interpreting and expanding Article 9 of the state’s Mental Hygiene Law as it concerns the standard for involuntary removal. This November 2022 Mental Health Involuntary Removals directive (“the Directive”) explicitly authorizes a police officer “to take into custody, for the purpose of a psychiatric evaluation, an individual who appears to be mentally ill and is conducting themselves in a manner likely to result in serious harm to self or others.”¹⁵⁴ Concerningly, as its provisions apply to persons with mental health disabilities, including those who have not committed an overtly dangerous act, it has enabled the forced removal and hospitalization of those who may not in fact pose a risk of harm to themselves or others.
36. Since taking effect, the Directive has been challenged at the federal trial court level by civil rights lawyers for violations of the U.S. Constitution, and federal, state, and local laws.¹⁵⁵ These violations include disability discrimination against unhoused persons with disabilities under the Americans with Disabilities Act and New York City Human Rights Law, and the use of excessive force, unlawful seizure, and warrantless entry under the Fourth and Fourteenth amendments to the U.S. Constitution.¹⁵⁶ The 93-page Amended Complaint describes multiple individuals with actual or perceived mental health disabilities who endured forced detention and physical and/or emotional injury while being involuntarily transported to a hospital against their will, and despite presenting no risk of harm to themselves or anyone else.
37. One individual plaintiff of the active lawsuit—a 41-year-old unhoused Black man by the name of Oritseweyimi Omoanukhe Ayu (“Mr. Ayu”), diagnosed with bi-polar and schizoaffective disorders—has been involuntarily detained and hospitalized by NYPD officers on numerous occasions.¹⁵⁷ On one occasion in March 2022 when Mr. Ayu expressed frustration with the long wait time for his psychiatry appointment (his conduct limited to banging on the clinic’s door) approximately seven NYPD officers arrived on scene. Despite him verbalizing to them

¹⁵² See Oshinsky, *supra* note 125.

¹⁵³ See *Basic Facts About Homelessness: New York City*, COAL. FOR HOMELESS (Aug. 2023), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/#:~:text=The%20Basic%20Facts%3A-.In%20recent%20years%2C%20homelessness%20in%20New%20York%20City%20has%20reached.City's%20main%20municipal%20shelter%20system>.

¹⁵⁴ *Mental Health Involuntary Removals*, N.Y.C. 1, 1 (Nov. 28, 2022), <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Mental-Health-Involuntary-Removals.pdf> [hereinafter *Removals Directive*].

¹⁵⁵ See generally Second Amended Class Action Complaint, *Greene v. City of New York*, No. 21-cv-05762 (S.D.N.Y. Apr. 20, 2023), ECF No. 155 (detailing a class action suit on behalf of six individuals and four similarly situated organizations against the New York City Police Department and Mayor Eric Adams regarding the City’s involuntary removal policy) [hereinafter *Greene v. City of New York*].

¹⁵⁶ See *id.* ¶¶ 396-501.

¹⁵⁷ *Id.* ¶¶ 245-279.

his intent to voluntarily leave the clinic site and exhibiting no violent tendencies, the officers deemed him to be an “emotionally disturbed person” and proceeded with threats of arrest and forced detention if he failed to go to the hospital.¹⁵⁸ Fearful of both possibilities, Mr. Ayu relented and was transported to a hospital, where he received no treatment and was explicitly told by a hospital employee to “tell [the NYPD] not to bring [him] back.”¹⁵⁹ He was also not charged with any crime.

38. In a more recent account, which took place in February 2023, 39-year-old Neil Amitabh (“Mr. Amitabh”), an unhoused New Yorker of West Indian descent was physically harmed by an NYPD officer who slammed him into the wall of a subway station upon his initial refusal to leave the station.¹⁶⁰ Despite the absence of a mental health diagnosis, Mr. Amitabh was handcuffed by multiple officers who perceived him to be a person with mental health disabilities and was forced to “stand in a corner of the station . . . facing the wall” before he was involuntarily transported to a psychiatric ward by ambulance.¹⁶¹ While no officer informed him as to why he was being hospitalized, he was discharged from the hospital within twenty-four hours without having received any mental health treatment or medical treatment for his injured hip.¹⁶² Furthermore, upon his return to the subway station, Mr. Amitabh found his personal belongings, including his wallet with identification cards, phone, clothing, and a pair of headphones, to have been removed.¹⁶³ Since this and other related incidents that date as far back as 2020, Mr. Amitabh remains extremely fearful about future police encounters. Moreover, as his account in the lawsuit complaint details, he also “has had negative and scary experiences in shelters, and it is out of fear that he at times sleeps in public spaces where he feels safer.”¹⁶⁴
39. The criminalization of mental health in New York City has had disparate impacts based on race. Over 3.38 million New York City residents reportedly suffer from at least one serious mental health disability.¹⁶⁵ However, despite having seven times fewer incidences of serious mental health disabilities than non-Black residents, Black New Yorkers experience a higher hospitalization rate.¹⁶⁶ In addition to this racial disparity, the city’s highest poverty neighborhoods have over twice as many psychiatric hospitalizations per capita in comparison to its lowest poverty neighborhoods,¹⁶⁷ evidencing the ways that the Directive criminalizes mental health and homelessness by perpetuating pre-existing racial and socio-economic biases against low-income, historically marginalized persons of color. In doing so, it has reverted to

¹⁵⁸ *Id.* ¶ 252.

¹⁵⁹ *Id.* ¶ 256.

¹⁶⁰ *Id.* ¶¶ 280-315.

¹⁶¹ *Id.* ¶ 289.

¹⁶² *Id.* ¶¶ 292-294.

¹⁶³ *Id.* ¶ 295.

¹⁶⁴ *Id.* ¶ 315.

¹⁶⁵ City Council Transcript, *supra* note 30, p. 19, ll. 21-23 (Feb. 6, 2023) (“That is over 3.38 million New Yorkers that might be suffering from schizophrenia, severe depression, bipolar disorder.”).

¹⁶⁶ City Council Transcript, *supra* note 30, at p. 21, ll. 23-25; *see also* City Council Transcript, *supra* note 30, at p. 22, ll. 1-4.

¹⁶⁷ City Council Transcript, *supra* note 30, at p. 13, ll. 24-25; *see also* City Council Transcript, *supra* note 30, at p. 14, ll. 2-3.

historic broken windows policing and practices where unhoused persons were conceived of as signs of “disorder” and subjects of criminalization.¹⁶⁸

“Unnecessary institutionalization is discrimination.”

Attorney Elena Landriscina, Special Litigation Unit of the Legal Aid Society¹⁶⁹

40. It appears that the City, most notably the NYPD, has not been adequately tracking arrest reports or data around voluntary and involuntary transport of unhoused persons with mental health disabilities pursuant to this directive. Nor has it reported the number of New Yorkers who have been hospitalized under the directive’s “basic living needs” standard.¹⁷⁰ However, there is ample data around the numbers of mental health crises calls made to the NYPD over the past several years. In 2022 alone, over 176,311 mental health calls were made to the NYPD, though approximately 1 percent (or just over 1,700) of these calls resulted in the arrest of an individual presumed to have a mental health disability.¹⁷¹ Since 2015, at least nineteen (19) individuals—sixteen (16) of them identifying as Black or other persons of color—have been killed by the NYPD while experiencing a mental health crisis.¹⁷² Countless more than undergone mistreatment by police officers, serious injuries, arrests, imprisonments, and forced hospitalizations. In fact, since 2017 alone, the New York City Civilian Complaint Review Board (“CCRB”) has reported nearly 2,700 allegations of police misconduct against individuals who they involuntarily hospitalized.¹⁷³
41. In one tragic example, two NYPD officers murdered 32-year-old African American, Kawaski Trawick (“Mr. Trawick”), on April 14, 2019, at the supportive housing facility where Mr. Trawick was receiving “care for his [mental] health.”¹⁷⁴ While neither officer attempted to administer aid to him in his living quarters, they “tased him and shot him within 112 seconds . . . [leaving] him to die.”¹⁷⁵ A subsequent CCRB investigation confirmed police abuse charges against both officers, with Public Advocate Jumaane Williams stating that the case had amplified “the city’s need to replace cops with medical professionals on [emergency] 911 calls dealing with mentally ill people.”¹⁷⁶

¹⁶⁸ See generally Tony Sparks, *Reproducing Disorder*, 45 SOC. JUST. 51 (2018) (examining the impact of policing tactics on the lives of unhoused persons with mental disabilities, illustrating how such tactics “reproduce the disorderly bodies they aim to remove”).

¹⁶⁹ City Council Transcript, *supra* note 30, at p. 202, l. 10.

¹⁷⁰ The Office of Mental Health (“OMH”) has interpreted sections 9.41 and 9.58 of the Mental Hygiene Law, amended by the Mental Health Involuntary Removals directive, to “authorize the removal of a person who appears to be mentally ill and displays an inability to meet basic living needs, even when no recent dangerous at has been observed.” See *Removals Directive*, *supra* note 154, at 1.

¹⁷¹ City Council Transcript, *supra* note 30, at p. 70, ll. 11-13.

¹⁷² *Greene v. City of New York*, *supra* note 155, ¶ 83.

¹⁷³ City Council Transcript, *supra* note 30, at p. 130, ll. 2-6.

¹⁷⁴ City Council Transcript, *supra* note 30, at p. 182, ll. 8-9.

¹⁷⁵ City Council Transcript, *supra* note 30, at p. 182, ll. 13-16.

¹⁷⁶ *Bronx Cops in Kawaski Trawick Killing Guilty of Misconduct*, CCRB Finds, THE CITY (June 10, 2021, 6:38 PM), <https://www.thecity.nyc/2021/6/10/22528600/bronx-cops-in-kawaski-trawick-killing-guilty-of-misconduct-ccrb>.

“From [my son’s] story, it’s clear New York City Health Care System and the NYPD does not see Black people as humans.”

Ellen Trawick, Mother of Kawaski Trawick¹⁷⁷

42. Relatedly and just as devastatingly, 26-year-old African American Eudes Pierre (“Mr. Pierre”), an Uber Eats driver months away from being a college graduate, was shot ten (10) times and killed by NYPD officers during an apparent mental health episode in December 2021.¹⁷⁸ In responding to a mental health crisis call “of a man [allegedly] armed with a gun and a knife,” police followed Mr. Pierre “into a nearby subway station, where [they] unsuccessfully tried to tase him.”¹⁷⁹ After one officer “eventually fired seven rounds at Pierre when he exited the station,” killing him in the process, Mr. Pierre was found not to have been in possession of a gun. Following an investigation by the New York State Attorney General, the shooting was considered justified as Mr. Pierre was brandishing a knife in a manner “enough for the officers to feel like their lives were in danger.”¹⁸⁰ This was despite his death being deemed a “suicide by cop” after a suicide note was recovered at his family’s home and multiple 9-1-1 calls were traced from his own cell phone.¹⁸¹ It was also despite a petition of over 16,000 signatories calling for New York City’s adoption of the “Eudes Pierre Law,” to require mental health professionals to be dispatched to all emergency mental health crisis calls as first responders.¹⁸²
43. Private attacks on unhoused persons with mental health disabilities are encouraged by the criminalization and violent treatment at the hands of law enforcement. On May 1, 2023, Jordan Neely, an unhoused Black man struggling with mental health, was strangled to death on publicly viral video in a New York City subway car by a former Marine soldier, David Penny.¹⁸³ Right wing media has praised Penny as a “Good Samaritan” and encouraged others to take similar vigilante actions.¹⁸⁴
44. Rather than investing in safe, stable housing with support services for unhoused persons with mental health disabilities, the City funneled over \$11 billion dollars toward NYPD spending in its Fiscal Year 2023 budget.¹⁸⁵ As the third-highest funded agency in the City and the highest

¹⁷⁷ City Council Transcript, *supra* note 30, at p. 182, ll. 17-19.

¹⁷⁸ Graham Rayman & Leonard Greene, *Attorney General clears NYPD cops in death of Brooklyn man Eudes Pierre, who charged them with knife*, N.Y. DAILY NEWS (Mar. 31, 2023, 11:21 PM), <https://www.nydailynews.com/2023/03/31/ny-attorney-general-clears-nypd-cops-in-death-of-brooklyn-man-eudes-pierre-who-charged-them-with-knife/>.

¹⁷⁹ Kirstyn Brendlen & Ben Brachfeld, *Family of Eudes Pierre files suit against cops, city for wrongful death as Eastern Parkway co-named in his honor*, BROOKLYN PAPER (Oct. 20, 2022), <https://www.brooklynpaper.com/family-eudes-pierre-file-suit-co-name/>.

¹⁸⁰ Rayman & Greene, *supra* note 178.

¹⁸¹ Brendlen & Brachfeld, *supra* note 179.

¹⁸² See Rayman & Greene, *supra* note 178; see also Herbert Dubique, *The Eudes Pierre Law ‘A Cry for Help’*, CHANGE (Dec. 24, 2021), <https://www.change.org/p/nyc-council-member-the-eudes-pierre-law>.

¹⁸³ See Claire Thornton, *Who was Jordan Neely, the New York subway victim? A ‘young man in real crisis,’ advocates say*, U.S.A TODAY (May 7, 2023, 10:43 AM), <https://www.usatoday.com/story/news/nation/2023/05/07/who-was-jordan-neely/70190944007/>.

¹⁸⁴ See Bailee Hill, *Indictment of Marine veteran Daniel Penny ‘defies logic,’ says local NY official: ‘Something rotten’*, FOX NEWS (June 15, 2023, 10:05 AM), <https://www.foxnews.com/media/indictment-marine-veteran-daniel-penny-defies-logic-ny-official-something-rotten>.

¹⁸⁵ See Press Release, NYCLU Statement on the FY23 NYC Budget (June 14, 2022), <https://www.nyclu.org/en/press-releases/nyclu-statement-fy23-nyc-budget>.

police budget in the nation, the NYPD’s budget currently comprises 5.3 percent (or \$5.44 billion) of the City’s total 2024 Fiscal budget.¹⁸⁶ This has made criminalization policies like the Directive a significantly larger budgetary priority than critical mental health support, public education, and community solutions to housing.

“Criminalization is an expensive way to make homelessness worse.”

David Peery, Miami Coalition to Advance Racial Equity¹⁸⁷

D. The U.S.’ Criminalization of Mental Health Violates Numerous Fundamental Rights.

45. The criminalization of mental health and pervasiveness of civil, court-mandated commitment laws and policies in the U.S. directly violate numerous civil and political rights. Like other criminalization of homelessness efforts, these laws and policies violate the inherent right to life,¹⁸⁸ and the right to be free from torture or cruel, inhuman, or degrading treatment.¹⁸⁹ Additionally, they violate the right to liberty and security of persons.¹⁹⁰ In interpreting this provision, the Human Rights Committee has previously noted involuntary hospitalization and involuntary transports to be forms of deprivation of liberty, further recognizing that such deprivation “is without free consent.”¹⁹¹ The Human Rights Committee has further emphasized “the harm inherent in any deprivation of liberty and also the particular harms that may result in situations of involuntary hospitalization.”¹⁹² It has urged states to “make available adequate community-based or alternative social-care services for persons with psychosocial disabilities, in order to provide less restrictive alternatives to confinement.”¹⁹³
46. Additionally, the monitoring committee of the U.N. Convention on the Rights of Persons with Disabilities (“CRPD Committee”) has condemned the involuntary detention and treatment of persons with disabilities as contrary to Article 14 of the CRPD.¹⁹⁴ In its 2014 interpretative guidance of said Article, the CRPD Committee stated that persons with disabilities’

¹⁸⁶ Owen Kotowski, *Report on the Fiscal 2024 Preliminary Plan and the Fiscal 2023 Mayor’s Management Report for the New York Police Department 1*, 1 (N.Y.C. Council Fin. Div., Briefing Paper, 2023), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2023/03/NYPD-1.pdf>.

¹⁸⁷ Interview with David Peery, *supra* note 140.

¹⁸⁸ ICCPR, *supra* note 67, art. 6.

¹⁸⁹ ICCPR, *supra* note 67, art. 7.

¹⁹⁰ ICCPR, *supra* note 67, art. 9.

¹⁹¹ See U.N. Hum. Rts. Comm., General Comment No. 35, ICCPR Art. 9 (Liberty and security of person), ¶ 6, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter General Comment No. 35].

¹⁹² *Id.*; see also Hum. Rts. Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 34, U.N. Doc. A/HRC/ 44/48 (2020) (emphasizing the need to address “the broader human rights and social harms produced by medicalization, such as social exclusion, forced treatment, loss of custody and children and loss of autonomy”) [hereinafter *Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*].

¹⁹³ General Comment No. 35, *supra* note 191.

¹⁹⁴ See Convention on the Rights of Persons with Disabilities, *adopted* Dec. 12, 2006, U.N. Doc. A/RES/61/106 (entered into force May 3, 2008).

involuntary detention “based on presumptions of risk or dangerousness tied to disability labels is contrary to the right to liberty.”¹⁹⁵

47. The U.N. Special Rapporteur on the Rights of Persons with Disabilities has noted:

The relationship between poverty, homelessness and disability is well recognized. Persons with intellectual or psychosocial disabilities are overrepresented among the homeless population. When the State fails to secure income and housing assistance to this population, it is likely they will end up involuntarily committed or institutionalized. Furthermore, homeless persons with disabilities are continuously exposed to the risk of being deprived of their liberty, as survival behaviours (e.g. begging, sleeping in public spaces, sitting down on sidewalks, loitering) are treated as criminal activity under laws that criminalize homelessness.¹⁹⁶

The Rapporteur concludes:

Deprivation of liberty on the basis of impairment is not a “necessary evil” but a consequence of the failure of States to ensure their human rights obligations towards persons with disabilities...States [should] [c]onduct a comprehensive legislative review process to abolish all laws and regulations that allow for deprivation of liberty on the basis of impairment or in combination with other factors; end all forms of coercive practices, including in mental health settings, and guarantee respect for a person’s informed consent at all times;... [and] refrain from allocating funding to services infringing the right to liberty and security of persons with disabilities and progressively increase funds allocated to fund research and technical assistance towards ending all disability-specific forms of deprivation of liberty, and to ensure access of persons with disabilities to community-based services and social protection programmes.¹⁹⁷

48. In 1991, the U.N. Human Rights Council released a resolution stating that “the treatment of every patient shall be directed towards preserving and enhancing personal autonomy.”¹⁹⁸ Further, in 2018, the U.N. High Commissioner for Human Rights “deplored institutionalization as an inadequate response at all levels for children and adults with disabilities and called for the elimination of practices such as forced treatment, including forced medication, forced electroconvulsive treatment, forced institutionalization and segregation.”¹⁹⁹

¹⁹⁵ U.N. High Comm’r Hum. Rts., *Statement on article 14 of the Convention on the Rights of Persons with Disabilities* (2014), <https://www.ohchr.org/en/2014/10/statement-article-14-convention-rights-persons-disabilities#:~:text=The%20involuntary%20detention%20of%20persons.to%20the%20right%20to%20liberty.>

¹⁹⁶ Hum. Rts. Council, *Report of the Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas, Deprivation of liberty of persons with disabilities*, ¶ 33., U.N. Doc. A/HRC/40/54 (Jan. 11, 2019).

¹⁹⁷ *Id.* ¶¶ 86-87.

¹⁹⁸ Hum. Rts. Council, Res. 46/119, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, U.N. Doc. A/HRC/RES/46/119 (1991).

¹⁹⁹ Rep. U.N. High Comm’r Hum. Rts., 39th Sess, Sept. 10-28, 2018, U.N. Doc. A/HRC/39/36 (July 24, 2018).

IV. CONCLUSION

49. We urge the Rapporteurs to issue the strongest and most comprehensive condemnation of the criminalization of homelessness possible. This should make clear states' obligations to:
- a. Ensure their own federal policing agencies do not engage in criminalization of homelessness;
 - b. Ensure state and local policing agencies do not engage in criminalization of homelessness;
 - c. Ensure private actors are not penalized for providing food and aid to unhoused persons;
 - d. Ensure civil involuntary commitment systems are not used to restrain the liberty of unhoused persons with mental health disabilities outside the criminal legal system;
 - e. Redirect funding from law enforcement to compassionate crisis response teams with mental health, harm reduction, and other psychosocial service expertise; trauma-informed, non-congregate shelters with supportive services as temporary residences; and community-based housing, including permanent supportive housing, utilizing a Housing First approach.

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APPENDIX A

Please see a compilation of additional resources addressing the criminalization of poverty and homelessness. The materials are presented in reverse chronological order with column 1 focused on civil society reports and column 2 focused on United Nations materials.

<u>Civil Society Reports</u>	<u>United Nations Materials</u>
<p>1. NAT'L HOMELESSNESS L. CTR. & UNIV. MIA. SCH. L. HUM. RTS. CLINIC, <i>Shadow Report to the Committee For the U.S. Review of the International Covenant on Civil and Political Rights</i>, (Sep. 2023), https://miami.app.box.com/s/ts2gz8qy14gqh674619avty2jdu4z3w7.</p> <p>2. NAT'L HOMELESSNESS L. CTR. & UNIV. MIA. SCH. L. HUM. RTS. CLINIC, <i>Slavery as a Cause and Consequence of Homelessness in the United States</i>, (Sep. 2023), https://homelesslaw.org/wp-content/uploads/2023/04/UN-Slavery-Homelessness-Report-3-31-2023.pdf.</p> <p>3. NAT'L HOMELESSNESS L. CTR. & UNIV. MIA. SCH. L. HUM. RTS. CLINIC, <i>Report to the U.N. Expert Mechanism on Racial Justice and Law Enforcement in the U.S.</i> (Feb. 2023), https://miami.app.box.com/s/aq5p440f4rgtxje36hyzwnukc07fuqt2.</p> <p>4. UNIV. MIA. SCH. L. HUM. RTS. CLINIC & NAT'L HOMELESSNESS L. CTR., <i>Shadow Report to the Committee on the Elimination of Racial Discrimination For the U.S. Review</i> (Jul. 2022), https://miami.app.box.com/s/x2obqtgy84o5qkfipyxcts03nzgd4g0l.</p> <p>5. NAT'L HOMELESSNESS L. CTR., <i>LITIGATION MANUAL SUPPLEMENT: Criminalization of Homelessness Case Summaries 2022</i> (Mar. 2022), https://homelesslaw.org/wp-content/uploads/2022/03/HNH_Supplement to Litigation Manual.pdf.</p> <p>6. NAT'L HOMELESSNESS L. CTR., <i>Housing Not Handcuffs: 2021 State Law Supplement</i> (Dec. 2021), https://homelesslaw.org/wp-content/uploads/2022/02/2021-HNH-State-Crim-Supplement.pdf.</p>	<p>1. U.N. Secretary-General, <i>Inclusive policies and programmes to address homelessness</i>, U.N. Doc. A/78/236 (Jul. 24, 2023).</p> <p>2. Tomoya Obokata (Special Rapporteur on Contemporary Forms of Slavery), <i>Homelessness as a cause and consequence of contemporary slavery</i>, ¶ 65.x., U.N. Doc. A/HRC/54/30 (Jul. 12, 2023).</p> <p>3. Comm. on the Elimination of Racial Discrimination, <i>Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America</i>, ¶¶ 39-40, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).</p> <p>4. Hum. Rts. Council Res. 43/14 U.N. Doc. A/HRC/RES/43/14 (Jul. 6, 2020).</p> <p>5. Leilani Farha (Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context), <i>Guidelines for the Implementation of the Right to Adequate Housing</i>, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).</p> <p>6. Hum. Rts. Council, <i>Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Access to Justice for the Right to Housing</i>, ¶ 19, U.N. Doc. A/HRC/40/61 (Jan. 15, 2019).</p> <p>7. Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), <i>Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America</i>, ¶¶ 44-46, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).</p> <p>8. Outcome document of the United Nations Conference on Human Settlements (Habitat III), <i>Quito Declaration on Sustainable Cities and Human Settlements for All</i>, Quito, October 17-</p>

7. Eric Tars, et al., *Challenging Domestic Injustice Through International Human Rights Advocacy: Addressing Homelessness in the United States*, 42 CARDOZO L. REV. 913 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3923059.
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9. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY & UNIV. MIA. SCH. L. HUM. RTS. CLINIC, *Report to the U.N. Special Rapporteur on the Right to Adequate Housing in the U.S. during COVID-19* (Jun. 2020), <https://miami.app.box.com/s/unsmj4mphbv2go2g8qayc01lu1lulazy>.
10. UNIV. MIA. SCH. L. HUM. RTS. CLINIC, *Challenging Racial Injustice in the Criminalization of Homelessness in the United States: A Human Rights Approach*, 75 U. MIA. L. REV. CAVEAT 116 (2020), https://lawreview.law.miami.edu/challenging-racial-injustice-criminalization-homelessness-united-states-human-rights-approach/#_ftn3.
11. UNIV. MIA. SCH. L. HUM. RTS. CLINIC, ET AL., *Submission to the U.N. for the Third Universal Periodic Review of the U.S., Housing and Homelessness in Miami-Dade County, Florida* (Oct. 2019), <https://miami.app.box.com/s/g0vzmxzmtmkrd1kxrfcf9nclty59tv1q>.
12. PETTY OFFENSES SYMPOSIUM: CHALLENGING CRIMINALIZATION OF POVERTY, MARGINALIZATION, AND GENDER NON-CONFORMITY, UNIV. OF MIA. HUM. RTS. CLINIC (Sep. 21, 2019), <https://miami.app.box.com/s/q891w54b661c6bismf190x23835kamsq>.
13. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2019), 20, 2016, ¶ 31, 33, 108 (2016) <https://www2.habitat3.org/bitcache/97ced11dcecef85d41f74043195e5472836f6291?vid=588897&disposition=inline&op=view>.
9. Hum. Rts. Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association on His Follow-Up Mission to the United States of America*, ¶ 86(k), U.N. Doc. A/HRC/35/28/Add.2 (June 12, 2017).
10. *Statement by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of His Visit to the United States of America*, FORMER UN SPECIAL RAPporteur (July 27, 2016), [http://freeassembly.net/news/usa-statement\[https://perma.cc/DD5Q-56NK\]](http://freeassembly.net/news/usa-statement[https://perma.cc/DD5Q-56NK]).
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13. *Universal Periodic Review—United States of America*, U.N. HUM. RTS. COUNCIL (May 11, 2015), <https://www.ohchr.org/EN/HRBodies/UPR/Pages/USindex.aspx> [<https://perma.cc/L54Y-FR48>].
14. Hum. Rts. Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: United States of America*, ¶ 105, U.N. Doc. A/HRC/WG.6/22/USA/1 (Feb. 13, 2015).
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14. Eric S. Tars, *Criminalization of Homelessness*, 6 NAT'L LOW INCOME HOUS. COAL. 34 (2019), https://nlihc.org/sites/default/files/AG-2019/06-08_Criminalization-ofHomelessness.pdf.
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