



Racial Injustice in Homelessness and Housing in the United States

Submission to the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (Ms. Ashwini K.P.)

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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. INTRODUCTION

1. In the United States (“U.S.”), homelessness is deeply intertwined with racism. As such, the criminalization of homelessness is fundamentally a racial issue. Despite only constituting approximately 12% of the general population in the U.S., Black people account for 37% of unhoused persons, due to long-standing laws and policies adversely affecting Black communities.³ Rather than addressing the underlying need for housing, in part because of the disparately Black face of homelessness, policymakers in the U.S. increasingly take a law-enforcement approach, criminalizing the life-sustaining activities of unhoused persons such as sleeping, eating, or sitting.⁴ Black unhoused persons are approximately 10 times more likely to receive citations under these laws than white persons.⁵ In some communities, *more than half* the persons arrested,⁶ and *more than one-third* of use of force incidents are against those who are unhoused, despite these persons making up a tiny fraction of the population.⁷ Each one of these unnecessary tickets or arrests is an opportunity for police violence, resulting in numerous instances of police torture and murder of unhoused Black, Indigenous, and other persons of color.⁸
2. Over the past 15 years, many human rights monitors, including a previous Special Rapporteur on Racism,⁹ have taken note of the numerous rights violations imposed by the criminalization of homelessness and poverty in the U.S. and around the globe.¹⁰ In particular, strong norms have emerged finding criminalization a violation of both the rights of freedom from racial

³ Tanya de Sousa et al., *The 2022 Annual Homeless Assessment Report (AHAR) to Congress*, U.S. DEP’T HOUS. & URB. DEV. 2 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

⁴ NAT’L L. CTR. HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014) [hereinafter NLCHP RACIAL DISCRIMINATION]; *see also* MIA., FLA., CODE 2020 § 37-3 (“It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places, or upon the private property of another without the consent of the owner thereof.”); MIA., FLA., CODE 2020 § 37-4 (criminalizing living, sleeping, and cooking in vehicles parked on public property or private parking lots).

⁵ NLCHP RACIAL DISCRIMINATION, *supra* note 4. *See also* LAWYERS’ COMMITTEE FOR CIVIL RIGHTS, CITED FOR BEING IN PLAIN SIGHT 5-6 (2020), https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Infraction_report_4WEB-1.pdf [hereinafter LCCR CITED IN PLAIN SIGHT].

⁶ Molly Harbarger, *Booking homeless Portlanders into jail is endless, expensive cycle that arrests don’t curb, but housing does*, THE OREGONIAN (Oct. 25, 2020), <https://www.oregonlive.com/crime/2020/10/booking-homeless-portlanders-into-jail-is-endless-expensive-cycle-that-arrests-dont-curb-but-housing-does.html>.

⁷ Noah Baustin & Michael Barba, *San Francisco Police Used Force on Homeless People More than 1,300 Times in 5 Years*, S.F. STANDARD (Aug. 24, 2023), <https://sfstandard.com/2023/08/24/san-francisco-police-use-of-force-homeless-people/>.

⁸ *See, e.g.* Gregory Yee, *O.C. sheriff’s deputy who fatally shot unarmed, homeless Black man won’t be charged*, L.A. TIMES (Feb. 11, 2022), <https://www.latimes.com/california/story/2022-02-11/orange-county-sheriffs-deputy-no-charges-kurt-reinhold-fatal-shooting>; AP, *Indianapolis police officer accused of kicking homeless man in the face*, WDRB (Oct. 13, 2021), https://www.wdrb.com/news/indianapolis-police-officer-accused-of-kicking-homeless-man-in-the-face/article_e0a2bc3e-2c2b-11ec-8714-8787cda497e3.html.

⁹ 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) [hereinafter *Report of the Special Rapporteur on Contemporary Forms of Racism*].

¹⁰ *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).

discrimination and freedom from cruel, inhuman, or degrading treatment.¹¹ 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 essential aid.

3. The structural racism perpetuated against Black, Indigenous, and other persons of color (“BIPOC persons”) presented today by the criminalization of homelessness is rooted in intentionally racist policies. Across the American South, anti-loitering and anti-vagrancy laws were historically a key component of Jim Crow laws – this system enabled law enforcement to arrest formerly enslaved Black persons for the “crime” of not having employment or permanent housing, and pass them back into forced labor gangs through the 13th Amendment’s loophole of allowing forced labor as a punishment for criminal activity.¹² Today, given the lingering disparate impact of homelessness across the South and other major regions of the country, as well as racialized stereotypes of homelessness, criminalization of homelessness serves similar purposes in effect.
4. Homelessness is exacerbated by intersecting discrimination based on race, gender, and sexual orientation. In 2018 and 2019, Black women made up 30% of women who died experiencing homelessness in Los Angeles County, while Hispanic/Latina women made up 29%.¹³ Furthermore, of families experiencing homelessness, about 60% were single mothers with children and about 50% were Black single mothers.¹⁴ One in four LGBTQ-identifying Black men, ranging 18 to 25 years old, have experienced homelessness.¹⁵ 51% of Black transgender women, 59% of American Indian transgender women, 51% of multiracial transgender women, 49% of Middle Eastern transgender women, and 35% of Latina transgender women reported having experienced homelessness.¹⁶

“Black women hurt first and worst.”¹⁷

May Rodriguez, South Florida Community Development Coalition

¹¹ See, e.g. Hum. Rts. Comm., *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. DOC. CCPR/C/USA/CO/4 (Apr. 23, 2014) [hereinafter Hum. Rts. Comm. Concluding observations].

¹² See Black Code, FERRIS STATE UNIV.,

<https://www.ferris.edu/HTMLS/news/jimcrow/links/misclink/blackcode.htm>.

¹³ Sofia Herrera, PhD et al., *Black Women Dying Homeless in Los Angeles City and County*, HUB URB. INITIATIVES 2 (2020), <https://files.constantcontact.com/52d2438b001/766bb699-b2e2-4e24-a6cc-dadc5332431e.pdf>.

¹⁴ *Single Mother Statistics*, SINGLE MOTHER GUIDE, <https://singlemotherguide.com/single-mother-statistics> (last accessed May 17, 2021).

¹⁵ Morton, M.H. et al., *Missed Opportunities: LGBTQ Youth Homelessness in America*, CHAPIN HALL UNIV. CHI. 7 (2018), <https://voicesofyouthcount.org/wp-content/uploads/2018/05/VoYC-LGBTQ-Brief-Chapin-Hall-2018.pdf>.

¹⁶ Adam Romero et al., *LGBT People and Housing Affordability, Discrimination, and Homelessness*, UCLA SCH. LAW. WILLIAMS INST. 15 (April 2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹⁷ Interview with Maybelyn Rodriguez Laureano, Executive Director of the South Florida Community Development Coalition (March 10, 2022).

5. The foster care system also contributes to racial disparities in homelessness. It penalizes poverty, removing children from their families under the theory of “prospective harm.”¹⁸ Aging out of the foster care system without adequate support is a major driver of youth homelessness.¹⁹ This has a disproportionate impact on Indigenous, Black, and Hispanic families.²⁰ Indigenous children, particularly, are four times more likely to be placed into foster care than their white counterparts.²¹ 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.”²² 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 young persons will experience homelessness.²³

II. THE CRIMINALIZATION OF HOMELESSNESS AND RACIAL INJUSTICE

6. Criminalization of homelessness both disproportionately impacts persons of color and further exacerbates racial disparities, violating the right to equality and non-discrimination.²⁴ As this Special Rapporteur has recognized, “the enforcement of minor law enforcement violations [like criminalization of homelessness] . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”²⁵ One study in Austin, TX shows that Black unhoused persons were approximately 10 times more likely than white people to receive a camping

¹⁸ 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>.

¹⁹ 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*].

²⁰ 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>.

²¹ *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.

²² Interview with Robert Latham, *supra* note 18.

²³ *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 Care: Sadowski State and Local Housing*, *supra* note 19 (stating that within a year of aging out of foster, up to 40 percent of youth will experience homelessness).

²⁴ International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(c), *ratified* Oct. 21, 1994, 660 U.N.T.S. 1 [hereinafter ICERD] (“Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”); ICERD, 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 International Covenant on Civil and Political Rights arts. 2, 26, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”).

²⁴ LCCR CITED IN PLAIN SIGHT, *supra* note 5, at 5-6.

²⁵ *Report of the Special Rapporteur on Contemporary Forms of Racism*, *supra* note 9, ¶ 64.

citation.²⁶ However comprehensive enforcement data does not exist because most jurisdictions, and the federal government, do not require collection and disaggregation of data by housing status.²⁷ Relatedly, 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.”²⁸

7. In its September 2022 review, the U.N. Committee on the Elimination of Racial Discrimination (“CERD”) expressed concern “at the increasing number of state and local laws that criminalize homelessness and at the disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness, in particular persons of African descent, indigenous peoples and persons of Hispanic/Latino origin, including women and lesbian, gay, bisexual and transgender persons.”²⁹ Consequently, 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,”³⁰ and “affirmatively further[] fair housing and protection against discriminatory effects.”³¹
8. Additionally, on its mission to the U.S. earlier this year, the U.N. Expert Mechanism on Law Enforcement and Racism expressed the following in its country report:

its “deep[] concern[] . . . that homelessness persecution and criminalization is ineffective in addressing the issue and deeply damaging to individuals and communities. Arrests, fines, and consequently criminal convictions result in incarceration, where persons may remain for prolonged periods because of inability to pay bail. This carries a vast array of social consequences, including losing their jobs, custody of their children, property and employment. Once released, a criminal record makes it even more difficult to find a new employment and housing, leading to more risks of homelessness, and more arrest and incarceration. . . . The Mechanism encourages the United States, and all relevant State and local authorities, to address the root causes of homelessness, including the confluence of various and intersecting layers of discrimination and systemic racism at the heart of the housing problem, including related to mental conditions and disabilities and drug abuse. In tackling this social issue, the US needs to consider underlying needs associated with decades of discriminatory policies resulting in segregation, poverty and inequality, including the lack of adequate education, healthcare, jobs and other

²⁶ NAT’L L. CTR. HOMELESSNESS & POVERTY, RACISM, HOMELESSNESS, AND THE CRIMINAL AND JUVENILE LEGAL SYSTEMS 1, 3 (2020).

²⁷ See, e.g. U.S. DEP’T. JUST., BUREAU JUST. STAT., 2020 ANNUAL SURVEY OF JAILS (2020), <https://bjs.ojp.gov/data-collection/annual-survey-jails-asj#surveys-0>.

²⁸ 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).

²⁹ Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, ¶ 39, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).

³⁰ *Id.* ¶ 40.

³¹ *Id.* ¶ 38.

economic opportunities faced by many marginalized communities, including of Africans and people of African Descent.”³²

9. 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.³³ Out of 187 cities surveyed in a national study on homelessness published in 2019, 72% have at least one law that prohibits camping or sleeping in public.³⁴ Additionally, since 2006, laws that prohibit sleeping in public have increased by 50%.³⁵ 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.³⁶
10. Cities have sought to make homelessness invisible by criminalizing the very activities unhoused 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,³⁷ which have been overwhelmingly enforced against unhoused persons.³⁸ 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).³⁹ At a recent People’s Tribunal, community members and food providers testified to this law’s senseless cruelty.⁴⁰ By passing this ordinance, the City of Miami is “using

³² Hum. Rts. Council, *Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement, Visit to the United States of America*, ¶ 121, 123, U.N. Doc. A/HRC/54/CRP.7 (Sept. 26, 2023).

³³ See generally NAT’L L. CTR. HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 1, 12-13 (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].

³⁴ *Id.*, at 12.

³⁵ *Id.*, at 12.

³⁶ See *id.*, at 15; see also LCCR CITED IN PLAIN SIGHT, *supra* note 5, at 17; 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.

³⁷ 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>.

³⁸ 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).

³⁹ 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>.

⁴⁰ 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>.

hunger as a weapon against the poor.”⁴¹ Then, in 2021, the City of Miami passed an anti-camping ordinance, which criminalizes any encampments on public property.⁴² In “sweeping” homeless encampments, law enforcement routinely destroys the few belongings that persons have.⁴³ One woman had her mother’s ashes thrown out; others lost their medication and identity documents.⁴⁴ Additionally, a recent study found a 12 percent rise in hospital admissions after an encampment sweep.⁴⁵ 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.⁴⁶ 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.⁴⁷

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 supporting criminalization policies and forced relocation of unhoused persons to large-scale homeless encampments.⁴⁸ 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.⁴⁹ Cicero is sending lobbyists to states to promote this template bill.⁵⁰ So far, versions of this template have been introduced in half a dozen U.S. states and passed as legislation in Missouri, Tennessee, and

⁴¹ 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].

⁴² 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.

⁴³ 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>.

⁴⁴ See *id.*

⁴⁵ 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/>.

⁴⁶ 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>.

⁴⁷ See *id.*

⁴⁸ 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/>.

⁴⁹ 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].

⁵⁰ 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/>.

Texas.⁵¹ Tennessee’s statute, as one example, makes it a felony for any unhoused person to camp on municipal, state, or private land not designated for camping, and a misdemeanor to publicly camp under an overpass or along a state or interstate highway.⁵² It further creates lifelong collateral consequences on persons with criminal records, specifically causing certain ex-felons to be permanently disenfranchised from voting.⁵³ Meanwhile, Missouri and Texas’s laws both explicitly threaten local jurisdictions with legal consequences, including withholding of homelessness funding, if they do not enforce the camping ban.⁵⁴ So far in the 2023-24 legislative session, bills reflecting the Cicero Institute approach have been introduced in Arizona, California, Georgia, Hawaii, Kansas, Tennessee, and Washington.⁵⁵ 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.⁵⁶

12. The federal government has taken several steps that are consistent with the Guidelines issued by then-Special Rapporteur on the right to adequate housing,⁵⁷ Leilani Farha, including the creation of funding incentives⁵⁸ to relocate unhoused persons, the issuance of helpful guidance,⁵⁹ and enforcement actions by the Department of Justice (“DOJ”).⁶⁰ In December, the U.S. Interagency

⁵¹ 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/>.

⁵² TENN. CODE ANN. S.B. 1610 §§ 1-3 (2022) (expanding the Equal Access to Public Property Act of 2012, which generally makes it a Class E felony offense for an individual to camp on state-owned property knowing that the camping area is not specifically designated for use in that manner, so as to apply to all public property).

⁵³ TENN. CODE ANN. H.B. 0978 (2022); see TENN. ADVISORY COMM. TO U.S. COMM. ON CIV. RTS., *THE RIGHT TO VOTE AND EX-FELON DISENFRANCHISEMENT IN TENNESSEE*, 1 (2014), https://www.usccr.gov/files/pubs/docs/TN_SAC_Ex-Felon-Report.pdf.

⁵⁴ TEX. CODE ANN. H.B. 1925 (2021) (“Sec. 364.002. POLICY ON CAMPING BANS. (a) A local entity may not adopt or enforce a policy under which the entity prohibits or discourages the enforcement of any public camping ban. Sec. 364.003. INJUNCTIVE RELIEF. (a) The attorney general may bring an action ... to enjoin a violation of Section 364.002 [and] may recover reasonable expenses... Sec. 364.004. DENIAL OF STATE GRANT FUNDS. (a) A local entity may not receive state grant funds, and state grant funds for the local entity shall be denied, for the state fiscal year following the year in which a final judicial determination in an action brought under Section 364.003 is made that the entity has intentionally violated Section 364.002.”).

⁵⁵ See HOUSING NOT HANDCUFFS, *Emergent Threats: State Level Criminalization* (2023), <https://housingnohandcuffs.org/emergent-threats-state-level-criminalization/>.

⁵⁶ 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>.

⁵⁷ 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”).

⁵⁸ 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>.

⁵⁹ 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).

⁶⁰ 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>;

Council on Homelessness (“USICH”) issued a new “Federal Strategic Plan to Prevent and End Homelessness,” in which it acknowledges the link between anti-Black racism, homelessness, and criminalization, and outlines the need for non-law enforcement approaches to helping people exit out of encampments and into humane solutions to permanent housing:

Anti-Black racism continues to be ignored as a root cause of homelessness, and Black unhoused persons continue to be inadequately protected from housing discrimination, over-policing, criminalization of poverty, and other systemic forces that contribute to their overrepresentation in the total population of unhoused persons....Strategy 1: Ensure federal efforts to prevent and end homelessness promote equity and equitable outcomes.⁶¹

Unless encampment closures are conducted in a coordinated, humane, and solutions-oriented way that makes housing and support adequately available, these “out of sight, out of mind” policies can lead to ... increased interactions with the criminal justice system; and significant traumatization— all of which can set people back in their pathway to housing and disrupt the work of ending homelessness.⁶²

13. 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.⁶³ In Washington, D.C., 85% of unhoused persons are Black.⁶⁴ Two arrests were made during the closure and two-thirds of people in the Park remain on the street, more traumatized and less able to meet their own survival needs or connect to service than before.⁶⁵ 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.⁶⁶ The fact that the federal government is taking overt steps to criminalize unhoused persons using its own police forces makes

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>.

⁶¹ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 28 (2022), [All In.pdf \(usich.gov\)](#) (quoting a homeless rights advocate from Washington, District of Columbia) [hereinafter U.S. INTERAGENCY COUNCIL ON HOMELESSNESS].

⁶² *Id.*, at 20.

⁶³ *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/>.

⁶⁴ CMTY. PARTNERSHIP, *2022 Point-in-Time Count* (2022), <https://community-partnership.org/homelessness-in-dc/#pit-dashboard>.

⁶⁵ Marissa Lang, *Two-thirds of McPherson Square homeless remain on street, D.C. says*, WASH. POST, (Feb. 16, 2023), <https://www.washingtonpost.com/dc-md-va/2023/02/16/dc-mcpherson-square-homeless-hearing/>.

⁶⁶ *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/>.

it significantly more difficult for them to ask state and local governments to prevent these practices altogether.

14. In criminalizing activities necessary for survival, the U.S. violates the physical integrity of unhoused persons, including the rights to security of person,⁶⁷ and freedom from cruel, inhuman, and degrading treatment (“CIDT”).⁶⁸ The Human Rights Committee explicitly linked the prohibition against CIDT to the criminalization of homelessness in the U.S., noting that criminalizing eating, sleeping, and sitting in certain areas “raises concerns of discrimination and cruel, inhuman or degrading treatment.”⁶⁹ 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.⁷⁰ Criminalization further places law enforcement as front-line responders to homelessness, all too often resulting in violations of physical integrity that have a disparate impact by race,⁷¹ like the La Jolla, California police officers who tackled and beat Jesse Evans, a homeless Black man who needed to urinate in the absence of adequate public toilets.⁷² However, while viral video incidents like this draw attention, because most jurisdictions do not require law enforcement to collect use-of-force data disaggregated by housing status, the full extent of the problem is not known. The George Floyd Justice in Policing Act would, for the first time, require the collection of housing status data among others in use of force incidents, but it is stalled in the U.S. Senate.⁷³

⁶⁷ ICERD, *supra* note 24, art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. . .”).

⁶⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified* Oct. 21, 1994, 1465 U.N.T.S. 85, 113; International Convention on Civil and Political Rights, art. 7, *ratified* June 8, 1992, 1996, 999 U.N.T.S. 171 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”).

⁶⁹ Hum. Rts. Comm. Concluding observations, *supra* note 11.

⁷⁰ See *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*]; see also *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*]; see also *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (“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”) [hereinafter *Martin v. Boise*]; see also *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”).

⁷¹ Comm. Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, *Concluding observations on the combined third and fifth periodic reports of the United States of America*, ¶ 26, U.N. DOC. CAT/C/USA/CO/3-5 (Dec. 19, 2014) (highlighting the disproportionate and increasing incidents of police brutality against people of color in the U.S.).

⁷² City News Service, *City Attorney Declines to Charge Homeless Black Man Beaten By Cops in La Jolla*, NBC SAN DIEGO (June 11, 2021), <https://www.nbcsandiego.com/news/local/city-attorney-declines-to-charge-homeless-black-man-beaten-by-cops-in-la-jolla/2629215>.

⁷³ H.R. 1280, 117th Cong. § 223 (2021).

15. Moreover, criminalizing life-sustaining activities violates the right to freedom of movement of unhoused persons.⁷⁴ Some cities implement “move along” orders, where unhoused persons are forced to leave the area just because they are present.⁷⁵ In New York City, people have been ordered to move multiple times in one day, with some stating that they are forced to move every thirty to forty-five minutes.⁷⁶ In a survey of 400 unhoused persons in Denver, Colorado, 57% were approached by police for camping and more than 80% were forced to relocate.⁷⁷ In a similar survey of 350 people in San Francisco, California, 70% were forced to move in the last year and 20% were forced to move on a weekly basis.⁷⁸ Further, punishing people for essential activities, such as camping, lying, sitting, or sleeping in public places, is one of the most extreme forms of restraining freedom of movement.
16. Criminalization perpetuates homelessness by trapping people in a cycle of poverty. The many fines and fees associated with the criminal justice system make it harder for unhoused persons to pay for food or medication and can lead to their incarceration if they are unable to pay.⁷⁹ Having a criminal record can then prevent people from passing background checks for housing and employment,⁸⁰ making it even harder to get off the street and out of poverty. The U.N. Special Rapporteur on extreme poverty and human rights highlighted this in his visit to the U.S., noting that “unpayable fines and the stigma of a criminal conviction . . . virtually prevents subsequent employment and access to most housing.”⁸¹ In fact, USICH recognizes that “criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁸²

“It’s very expensive to be poor.”⁸³

David Peery, Miami Coalition to Advance Racial Equity

17. The criminalization of homelessness is also expensive. For example, a study in Los Angeles found the city spent \$100 million each year on homelessness, but \$87 million of that went to law enforcement while only \$13 million went to housing or other services.⁸⁴ A study conducted by Creative Housing Solutions on behalf of the Central Florida Commission on Homelessness found that providing housing to half of Central Florida’s chronic homeless population would save

⁷⁴ ICERD, *supra* note 24, 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.”).

⁷⁵ *Fighting Illegal “Move Along” Orders*, PICTURE HOMELESS, <https://www.picturethehomeless.org/fighting-illegal-move-along-orders/> (last visited Nov. 4, 2021).

⁷⁶ *Id.*

⁷⁷ MADELINE BAILEY ET AL., *NO ACCESS TO JUSTICE: BREAKING THE CYCLE OF HOMELESSNESS AND JAIL 3* (2020), available at <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>.

⁷⁸ *Id.*

⁷⁹ NLCHP HOUSING NOT HANDCUFFS, *supra* note 33; *see* LCCR CITED IN PLAIN SIGHT, *supra* note 5.

⁸⁰ NLCHP RACIAL DISCRIMINATION, *supra* note 4.

⁸¹ Hum. Rts. Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

⁸² U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 61, at 7.

⁸³ Interview with David Peery, *supra* note 41.

⁸⁴ Gale Holland, *L.A. spends \$100 million a year on homelessness, city report finds*, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>.

taxpayers at least \$149,220,414.⁸⁵ In Miami, the city spends \$70,000 per month on community policing, which targets homeless encampments in street sweeps, rather than providing an avenue to permanent supportive housing.⁸⁶

“Criminalization is an expensive way to make homelessness worse.”⁸⁷

David Peery, Miami Coalition to Advance Racial Equity

III. THE CRIMINALIZATION OF MENTAL HEALTH AND RACIAL INJUSTICE

18. Racial injustices in the U.S. are causes of the mental health epidemic, often exacerbating the traumas and discriminatory treatment of persons with mental health disabilities. Access to mental health services disproportionately affects persons of color compared to their white counterparts.⁸⁸ More generally, racial disparities in health care coverage exacerbate the risk of homelessness for persons of color. Black people are twice as likely as white people to fall in the coverage gap of states that have not expanded Medicaid and are more likely to go without healthcare because of the unaffordable cost, even though they experience higher rates of certain health conditions or diseases.⁸⁹ Consequently, the lack of access to health insurance, in turn, affects access to mental health treatment, leaving a significant number of persons of color likely to be uninsured.
19. Research demonstrates that BIPOC-identifying and immigrant racial minorities are more likely to be diagnosed, and misdiagnosed, with psychotic disorders than white Americans because of clinicians’ prejudice and misinterpretation of patient behaviors.⁹⁰ In California, for example, rates of serious mental illness vary considerably by racial and ethnic groups, with American Indian and Alaska Native and Black Californians experiencing the highest rates of diagnosis for serious mental illness.⁹¹ The civil legal system can play a role in ameliorating discriminatory effects in health care, housing and government services but has historically been used to subjugate Black people.⁹²
20. 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.⁹³ While the mid-19th century welcomed a national reform movement seeking to improve the conditions of incarcerated persons with mental health disabilities and

⁸⁵ CENT. FLA. COMM’N ON HOMELESSNESS, *THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA* 8 (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>.

⁸⁶ Interview with David Peery, *supra* note 41.

⁸⁷ Interview with David Peery, *supra* note 41.

⁸⁸ NAT’L ALLIANCE ON MENTAL ILLNESS, *Mental Health Inequities: Racism and Racial Discrimination* (2023), <https://www.nami.org/Advocacy/Policy-Priorities/Supporting-Community-Inclusion-and-Non-Discrimination/Mental-Health-Inequities-Racism-and-Racial-Discrimination>

⁸⁹ NAT’L HEALTH CARE HOMELESS COUNCIL, *HEALTH, HOMELESSNESS, AND RACIAL DISPARITIES 2* (2019).

⁹⁰ 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).

⁹¹ CALI. HEALTH CARE FOUNDATION, *Health Disparities by Race and Ethnicity in California: Pattern of Inequity* 33 (2021), <https://www.chcf.org/wp-content/uploads/2021/10/DisparitiesAlmanacRaceEthnicity2021.pdf>.

⁹² STATE CALI.’S DEP’T JUST. – OFF. ATT’Y GEN., *California Task Force to Study and Develop Reparation Proposals for African Americans: Interim Report* (AB 3121) 390-391 (2022), [2022 - AB3121 Full Interim Report \(ca.gov\)](https://www.ca.gov/2022-AB3121-Full-Interim-Report).

⁹³ *Covering Mental Health: 1840s-1890s*, PBS NEWSHOUR CLASSROOM, <https://www.journalisminaction.org/case/nellie-bly> (last visited Sept. 6, 2023).

spurring the establishment of public psychiatric hospitals,⁹⁴ it was closely followed by the eugenics movement that emboldened scientific pursuits to forcibly sterilize and selectively breed patients with mental health disabilities.⁹⁵ 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.”⁹⁶ The state’s Office of Mental Hygiene was established in 1926,⁹⁷ with its very name suggesting eugenicist undertones of “disinfecting” persons with mental and behavioral health disabilities.

21. 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.⁹⁸ Set against the backdrop of the national civil rights movement, his hope was to “liberate the population of confined mentally ill patients through advancements in psychopharmacology and supportive housing.”⁹⁹ 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.¹⁰⁰ Unfortunately, these well-intended community-based resources “rarely materialized” as initial federal funding was not followed by longer-term commitments,¹⁰¹ municipalities utilized zoning measures to prevent the placement of facilities in neighborhoods.¹⁰² 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

⁹⁴ 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.”).

⁹⁵ 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.”).

⁹⁶ 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/>.

⁹⁷ *Id.*

⁹⁸ 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 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.’”).

⁹⁹ 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>.

¹⁰⁰ See *id.* at 7.

¹⁰¹ 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-kennedys-vision-for-mental-health-not-realized/>.

¹⁰² 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).

the poor and unhoused and forced those persons with mental disabilities to become “enmeshed in the criminal legal system.”¹⁰³

22. 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.”¹⁰⁴ 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.”¹⁰⁵
23. 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% of the nation’s unsheltered population suffers from a “severe mental [health disability].”¹⁰⁶ 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% of the general population found to have a serious mental health disability.
24. 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% of those who were discharged are rendered either homeless or without a known address within six months of their discharge.¹⁰⁷ 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.”¹⁰⁸ Moreover, mental health issues are prone to worsen with homelessness, “especially if there is no solution [for housing] in sight.”¹⁰⁹
25. 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 mental health treatment resource through law enforcement intervention.¹¹⁰ Multiple research studies have

¹⁰³ Young, *supra* note 96; 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).

¹⁰⁴ *Lessard v. Schmidt*, 349 F. Supp. 1078, 1093 (E.D. Wis. 1972).

¹⁰⁵ *O’Connor v. Donaldson*, 422 U.S. 563, 580 (1975).

¹⁰⁶ 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>.

¹⁰⁷ *Id.*

¹⁰⁸ 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>.

¹⁰⁹ *Fact Sheet: Homelessness & Health: What’s the Connection*, NAT’L HEALTH CARE FOR HOMELESS COUNCIL 1, 1 (2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.

¹¹⁰ 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.

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.”¹¹¹

26. 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 study, persons with untreated mental disabilities are 16 times more likely to be killed during a police encounter than other individuals.¹¹² Moreover, at least a quarter and perhaps as many as half of all fatal police shootings involve persons with serious mental health disabilities.¹¹³ 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.”¹¹⁴
27. Persons with mental health disabilities are significantly overrepresented in the criminal justice system.¹¹⁵ 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.¹¹⁶ 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 pre-trial detention at a rate “nearly twice as long as [persons] without mental [health disabilities].”¹¹⁷ And given the nexus between the incidence of a mental health disability as a systemic consequence of homelessness, it should not come as a surprise that many unsheltered

¹¹¹ 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 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, ¶ 19 (July 18, 2012) [hereinafter *Final draft of guiding principles on extreme poverty and human rights*].

¹¹² 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>.

¹¹³ 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.”).

¹¹⁴ 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).

¹¹⁵ 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”).

¹¹⁶ 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/>.

¹¹⁷ *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.>

persons with mental disabilities lack the financial support of community members to help bail them out of these jail (or pre-trial detention) facilities.

28. 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.¹¹⁸ 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 Principles of agency and autonomy previously issued by the Special Rapporteur on extreme poverty and human rights.¹¹⁹ 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.”¹²⁰ 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.¹²¹ “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.”¹²²
29. The Cicero Institute template legislation previously referenced in paragraphs 11 and 12, 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.¹²³
30. 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.¹²⁴ The CARE Act specifically authorizes law enforcement to initiate the commitment process, requiring only a showing that a person is “likely to result in “grave disability

¹¹⁸ 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_quaterly/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>).

¹¹⁹ See *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 111, ¶ 36.

¹²⁰ *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 111, ¶ 36.

¹²¹ Caspar & Joukov, *supra* note 118, 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.”).

¹²² Caspar & Joukov, *supra* note 118, at 508.

¹²³ 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>.

¹²⁴ 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>.

or serious harm” absent a CARE plan, and can be done *in absentia*, without even providing an individual to make a case for themselves.¹²⁵ 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.¹²⁶ 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.¹²⁷ 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.¹²⁸ 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.

31. The criminalization of mental health in New York City also demonstrates disparate impacts based on race. Over 3.38 million New York City residents reportedly suffer from at least one serious mental health disability.¹⁴⁸ However, despite having seven times fewer incidences of serious mental health disabilities than non-Black residents, Black New Yorkers experience a higher hospitalization rate.¹⁴⁹ In an alleged attempt to curb New York City’s homelessness crisis, which has reached record-high levels since the 1930s’ Great Depression,¹³⁷ 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.”¹³⁸ 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.
32. 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,¹⁵⁰ 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 historic broken windows policing and practices where unhoused persons were conceived of as signs of “disorder” and subjects of criminalization.¹⁵¹

¹²⁵ S.B. 1338, ch. 319, §§ 5972, 5977, subdiv. (a), 2021-2022 Leg., (Cal. 2022).

¹²⁶ See *id.* §§ 5979(a)(2)-(3).

¹²⁷ *Final draft of guiding principles on extreme poverty and human rights*, *supra* note 111, ¶¶ 65-66.

¹²⁸ 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).

33. The use of mental health directives like New York City’s as a means of detaining individuals with limited due process and the pervasiveness of other 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,¹²⁹ and the right to be free from torture or cruel, inhuman, or degrading treatment.¹³⁰ Additionally, they violate the right to liberty and security of persons.¹³¹ 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.”¹³² 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.”¹³³ 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.”¹³⁴
34. 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.¹³⁵ In its 2014 interpretative guidance of said Article, the CRPD Committee stated that persons with disabilities’ involuntary detention “based on presumptions of risk or dangerousness tied to disability labels is contrary to the right to liberty.”¹³⁶
35. 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.

¹²⁹ ICCPR, *supra* note 24, art. 6.

¹³⁰ ICCPR, *supra* note 24, art. 7.

¹³¹ ICCPR, *supra* note 24, art. 9.

¹³² 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].

¹³³ *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*].

¹³⁴ General Comment No. 35, *supra* note 132.

¹³⁵ 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).

¹³⁶ 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.>

begging, sleeping in public spaces, sitting down on sidewalks, loitering) are treated as criminal activity under laws that criminalize homelessness.¹³⁷

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.¹³⁸

36. 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.”¹³⁹ 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.”¹⁴⁰

IV. HOUSING AND RACIAL INJUSTICE

37. Extreme racial disparities in housing in the U.S. violate the right to non-discrimination and equality¹⁴² and the right to housing.¹⁴³ In its prior review, the CERD has called on the U.S. to (a) ensure “the availability of affordable and adequate housing for all, including by effectively implementing the Affirmatively Furthering Fair Housing requirement . . . across all agencies administering housing programmes; (b) Strengthening the implementation of legislation to combat discrimination in housing. . . ; (c) Undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering and red-lining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices.”¹⁴⁴
38. The U.S. government has an obligation to reverse the negative impact of discriminatory policies and take affirmative measures to progressively level the playing field and eliminate racial inequality

¹³⁷ 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).

¹³⁸ *Id.* ¶¶ 86-87.

¹³⁹ 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).

¹⁴⁰ Rep. U.N. High Comm’r Hum. Rts., 39th Sess, Sept. 10-28, 2018, U.N. Doc. A/HRC/39/36 (July 24, 2018).

in housing. However, current interpretations of fair housing laws hinder widespread adoption of race-conscious measures to remedy past discrimination.¹⁴¹ International human rights law requires addressing disparate impact, not just discriminatory intent.¹⁴² As the Human Rights Committee (HRC), which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), explained, “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.”¹⁴³ The CERD has likewise called for States to adopt “special measures” “designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.”¹⁴⁴

39. Black and Hispanic renters are twice as likely to be evicted as white renters.¹⁴⁵ As renters, they are more likely to be “cost-burdened,” which means that they spend 30% or more of their income on housing.¹⁴⁶ In 2019, 30% of all households were cost-burdened, and 46% of all renters were cost-burdened, compared to 21% of all homeowners.¹⁴⁷ These inequalities persist across racial lines, as Black renters had the highest share of cost burdens (53.7%), followed closely by Hispanic renters (51.9%) compared to, 41.9% of white renters were cost burdened last year, along with 42.2% of Asian renters.¹⁴⁸

“Eviction is the result of inevitability, rather than irresponsibility for most poor families, who spend more than half of their income on housing costs.”

Mathew Desmond, Author of *Evicted: Poverty and Profit in the American City*

40. Racial minorities are further vulnerable to housing insecurity due to inadequate tenant protections. Another major issue facing tenants are short notice requirements for an eviction. Most states require less than a week notice to evict a tenant, making it difficult for tenants to find alternative housing.¹⁴⁹ Renters in most jurisdictions can be evicted for no cause, giving landlords complete autonomy to

¹⁴¹ Brad Blower, et.al., *Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal*, National Community Reinvestment Coalition (September 16, 2021), <https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>.

¹⁴² Hum. Rts. Comm., *General Comment No. 18: Non-Discrimination*, ¶¶ 6, 8, 10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Nov. 10, 1989) [hereinafter HRC GC No. 18]; UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation no. 14, Definition of Racial Discrimination* (Forty-second session, 1993), U.N. Doc. A/48/18 at 114 (1994).

¹⁴³ *Id.*, ¶ 10.

¹⁴⁴ UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation no. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination*, ¶ 11, 24 September 2009, CERD/C/GC/32, available at: <https://www.refworld.org/docid/4adc30382.html>.

¹⁴⁵ Jackelyn Hwang & Robert J. Sampson, *Divergent Pathways of Gentrification: Racial Inequality and the Social Order of Renewal in Chicago Neighborhoods*, 79 AM. SOCIO. REV. 726 (2014), <https://doi.org/10.1177/0003122414535774>.

¹⁴⁶ Habitat for Humanity, *2020 State of the Nation’s Housing report*, <https://www.habitat.org/costofhome/2020-state-nations-housing-report-lack-affordable-housing>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *State Laws on Termination for Nonpayment of Rent*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

displace residents.¹⁵⁰ In states such as Florida, New Jersey, and Rhode Island,¹⁵¹ renters facing evictions must pay all past due rent within five days to get a judicial hearing.¹⁵² These policies are specifically harmful to renters of color and low-income renters, who have no legal recourse to contest an eviction based on discrimination of a federally protected identity, such as race and national origin, if they do not pay delinquent rent. Another barrier to challenging evictions is the lack of legal representation for tenants in eviction cases. In a study conducted in New York City, 90% of landlords appeared proceed with eviction hearings with counsel, while only 10% of eligible tenants had access to counsel.¹⁵³ However, when tenants were given access to a court navigator, not even necessarily an attorney, there were no evictions across 150 cases.¹⁵⁴ In 2014, housing advocates in New York pushed for the right to counsel in eviction hearings and successfully ensured that citywide legislation was enacted.¹⁵⁵ Since then, eviction rates have decreased by 24%.¹⁵⁶

41. With the onset of the COVID-19 pandemic, housing inequality has only gotten worse. The importance of housing cannot be overstated during this pandemic, as recognized by the Special Rapporteur on adequate housing. As a result of lost wages, as of November 2021, 1 in 6 adult renters are behind on rent, the highest percentage (28%) of which are Black.¹⁵⁷ While a federal eviction moratorium was enacted at the beginning of the pandemic, it expired, and a subsequent extension was ruled unconstitutional.¹⁵⁸ Thousands of renters have been evicted from their homes each week.¹⁵⁹
42. Barriers to housing for those previously incarcerated further have a disparate impact by race. As Mathew Desmond set out in his seminal book *Evicted*, “[b]ecause [B]lack men were disproportionately incarcerated and [B]lack women disproportionately evicted, uniformly denying housing to applicants with recent criminal or eviction records still had an incommensurate impact

¹⁵⁰ NAT’L L. CTR. HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 22 (2018), available at <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

¹⁵¹ *State Laws on Termination for Nonpayment of Rent*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html> (last visited on Jan. 13, 2021).

¹⁵² *The Tenant’s Handbook*, BAY AREA LEGAL SERV., <https://bals.org/help/resources/tenants-handbook#nonpayments>.

¹⁵³ E.g., Kriston Capps, *New York Guarantees a Lawyer to Every Resident Facing Eviction*, CITY LAB, (Aug. 14, 2017) <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

¹⁵⁴ American Bar Foundation, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects* (2016) http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf.

¹⁵⁵ See e.g., Capps, *supra* note 153.

¹⁵⁶ Capps, *supra* note 153.

¹⁵⁷ Center on Budget and Policy Priorities, *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships* (September 10, 2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and>.

¹⁵⁸ *Federal Eviction Moratorium*, NAT’L LOW INCOME HOUSING COAL., <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>.

¹⁵⁹ Hwang & Sampson, *supra* note 145.

on African Americans.”¹⁶⁰ Public housing authorities around the U.S. regularly impede access to housing for individuals with arrest records.¹⁶¹

43. Zoning policies are displacing communities of color. Across the U.S, around 75% of the residential land is zoned for single family homes,¹⁶² and racial covenants pushed Black families to urban centers for the last century, where they have been able to find more affordable housing. But, along with other factors, single-family zoning makes development in suburban areas more costly, causing developers to look to lower-income areas where communities of color reside to develop real estate, increasing rent costs and pushing residents out of those neighborhoods as well.¹⁶³

“Marginalized communities always have to choose between opportunity and community.”¹⁶⁴

Daniela Tagtachian, Doctoral Student at the Graduate Center, City University of New York

44. Displacement has further been exacerbated by climate change. In Miami, climate change leading to rising sea level has caused more affluent populations to move inland to previously low-income neighborhoods, displacing their inhabitants.¹⁶⁵ Native American communities have been particularly impacted by climate change due to their displacement onto often marginal lands and a deep cultural relationship with the natural environment.¹⁶⁶
45. Cities like Miami have amended zoning laws to encourage development and streamline approvals, eliminating the need for public hearings and community ¹⁶⁷ Miami’s recent zoning law, called Miami21, to represent “bringing Miami to the 21st century,” switched from traditional (Euclidian) to form-based zoning. Traditional zoning regulates areas depending on the activities and regulations associated with that activity, while form-based zoning allows mixed-use zoning and increased density with diversity of activities.¹⁶⁸ Miami21 eliminated the need for public hearings for new

¹⁶⁰ MATHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 254 (2017).

¹⁶¹ Marie Claire Tran-Leung, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, SHRIVER CTR. (Feb. 2015), <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>.

¹⁶² Erin Baldassari and Molly Solomon, *The Racist History of Single-Family Zoning*, KQED (October 5, 2020), <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>.

¹⁶³ John Mangin, *The New Exclusionary Zoning*, 91-93 (2018), 25 *Stanford Law Review* 91.

¹⁶⁴ Interview with Daniela Tagtachian, Doctoral Student at the Graduate Center, City University of New York (Nov. 5, 2021).

¹⁶⁵ S. FLA. HOUS. STUD. CONSORTIUM, *THE DYNAMICS OF HOUSING AFFORDABILITY IN MDC* at ii.

¹⁶⁶ University of Miami School of Law Human Rights Clinic, *Respecting the Integrity of Indigenous Peoples; A Human Rights Framework to Address Gender and Environmental Violence* 18 (2021), available at <https://miami.app.box.com/s/bwm32h1lgz5cceqvxd4ucfwrecay7mfd>; Hum. Rts. Council, *Report of the Special Rapporteur on Rights of Indigenous Peoples, Report on the Rights of Indigenous Women and Girls*, ¶ 22, U.N. Doc. A/HRC/30/41 (2015).

¹⁶⁷ University of Miami School of Law Human Rights Clinic, 2020, *Housing and Homelessness in Miami-Dade County, Florida*, <https://miami.app.box.com/s/o9sxu2g4f21qchswrifu7ybikvkaj47m>. Accessed 9 Dec. 2021 (citing Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019)).

¹⁶⁸ Miami21, *Types of Zoning Codes*, 2010, <http://www.miami21.org/TypesofZoningCodes.asp>.

developments to make development easier.¹⁶⁹ Additionally, Miami created Special Area Plans that allow parcels that are nine acres or larger in size to forgo normal zoning laws and provide developments free rein to dramatically change the character of neighborhoods.¹⁷⁰ Community involvement is important to regulate development and make sure affordable housing is accessible and cannot be disregarded. Community involvement can be made more accessible through using more non-technical language with translations, providing childcare, and holding meetings during more accessible times of day, like after working hours.¹⁷¹

V. RECOMMENDATIONS

46. On the mission to the U.S., the UN Special Rapporteur on Racism should:

1. Meet with unhoused homeless persons and visit encampments in coordination with local advocates to hear directly from them about the criminalization of homelessness and its racial impacts. The report authors can refer you to excellent contacts to host visits in Washington, DC, New York City, NY, and Miami, FL, and many other cities, including Austin, TX, Kansas City, MO, Los Angeles, CA, Nashville, TN, and Phoenix, AZ;
2. Meet with federal government representatives with the U.S. Interagency Council on Homelessness, Department of Housing & Urban Development, Department of Interior, and National Park Service and ask why they did not follow their own Federal Plan to End Homelessness and advance racial equity by ensuring federal agencies do not participate in forced evictions of homeless encampments unless each resident is transitioned to adequate housing, and what steps they will take to implement their Plan and ensure no agency does so. Ask also what steps the U.S. is taking to prevent the spread of statewide laws criminalizing homelessness and redirecting funding from permanent housing solutions to state-run relocation camps and similar measures? And what steps is the U.S. taking to stop the use of civil involuntary commitment proceedings, policy directives, and other state and local laws that restrain the liberty of unhoused persons with mental health disabilities that will have a disparate impact on Black, Indigenous, and other People of Color?;
3. Meet with state and local government representatives and law enforcement and ask about the intersecting racial and housing status demographics of their jail, prison, and involuntarily committed populations and what steps they are taking, if any, to decrease the racially disparate impact of law enforcement involvement in addressing homelessness.

47. Following the mission, the U.N. Special Rapporteur on Racism should recommend that the U.S.:

1. Require local law enforcement agencies to **collect, disaggregate, and share data on housing status** of persons stopped, ticketed, arrested, jailed, convicted, and used force against by law enforcement, along with intersections with race.

¹⁶⁹ University of Miami School of Law Human Rights Clinic, *supra* note 167.

¹⁷⁰ University of Miami School of Law Human Rights Clinic, *supra* note 167.

¹⁷¹ *Engaging the community in the development of a local housing strategy*, LOCAL HOUS. SOL., <https://localhousingsolutions.org/plan/engaging-the-community-in-the-development-of-a-local-housing-strategy/>.

2. Implement strong **financial and legal incentives for local authorities to decriminalize homelessness and life-sustaining activities** in public, as well as the provision of food and aid to unhoused persons, and **redirect funding from criminal justice responses** to Housing First approaches, crisis response teams with mental health, harm reduction, and other psychosocial service expertise, and non-congregate, trauma-informed shelters with supportive services. Trauma-informed, non-congregate shelters should serve as *temporary* residences and an entryway to rehousing as the ultimate goal.
3. Take **strong enforcement action** against communities that use law enforcement to criminalize homelessness and violate the rights and dignity of persons experiencing homelessness, including addressing the racially disparate impacts.
4. Implement policies with all federal law enforcement agencies to ensure their **agencies do not participate in encampment evictions unless adequate housing is first provided** to all encampment residents, in line with the Federal Strategic Plan to End Homelessness.
5. Abolish carceral civil involuntary commitment systems and ensure adequate mental health care is available and accessible to all;
6. **Recognize and implement the human right to adequate housing** to prevent Black persons from being subjected unnecessary police encounters, tickets, fines, fees, arrests, incarceration, and abuse.
7. Increase the eviction notice requirement period to at least 60 days to allow renters facing evictions to find emergency housing or prevent their eviction, pass just-cause eviction protections, ensure there is no rent deposit due to dispute an eviction, and provide legal representation or court navigators to assist those facing eviction.
8. Limit background checks for ex-offenders and enable renters to seal or expunge eviction records, increasing housing accessibility.
9. Promote the equitable and democratic development of neighborhoods and require public hearings in neighborhoods with new developments that are accessible with regards to both timing and language. Developers should prepare both environmental and community impact assessments and mitigation plans for displacing vulnerable populations.

Please direct any inquiries to Siya Hegde, shegde@homelesslaw.org, +1-202-638-2535, Ext. 105.

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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/eq5p440f4rgtxje36hyzwnukc07fuqt2.</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/x2obqtgy84o5qkfipyxcts03nzd4g0l.</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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