



Racial Injustice in Housing and Homelessness in the United States

Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD) For the United States Review

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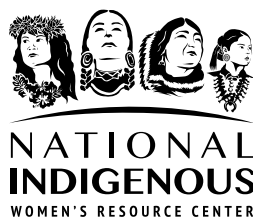
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I. INTRODUCTION

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

“Black women hurt first and worst.”

May Rodriguez, South Florida Community Development Coalition

4. In cities like Miami, Black and Hispanic youth aging out of the foster care system without adequate support is a major driver of youth homelessness.¹⁰ Children older than the age of twelve

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

³ *Id.* at ¶ 13.

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

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

⁶ *Id.*

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

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

⁹ *Id.*

¹⁰ Zoom Interview with David Peery, Exec. Dir., Miami Coalition to Advance Racial Equity (Feb. 25, 2022).

find it virtually impossible to be placed in a foster home or to be adopted.¹¹ When they turn eighteen, they are largely ineligible for foster care services.¹² Within a year of aging out, about 45% of them will be homeless.¹³ This has a disproportionate impact on Black and Hispanic youth compared to white youth.¹⁴

5. Black, Indigenous, and other LGBTQ people of color are disparately impacted by homelessness. One in four LGBTQ Black men from 18 to 25 years old have experienced homelessness.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 surveyed stated that they had experienced homelessness.¹⁶
6. Gender-based violence is both a cause and a consequence of homelessness, disproportionately impacting women and LGBTQ individuals of color.¹⁷ Unsheltered Black trans women are at extreme risk for both private violence and law-enforcement harassment living on the streets.¹⁸ In fact, 56% of unsheltered Black transgender people are attacked while homeless and 60% face legal issues, while 26% of unsheltered White transgender people are attacked and 38% face legal issues.¹⁹ According to a study of Native American women trafficked in Minnesota, 98% of the women surveyed were experiencing homelessness or had experienced it previously.²⁰

“For many DV survivors, homelessness is a manifestation of that abuse.”

Caroline LaPorte, National Indigenous Women’s Resource Center

7. The COVID-19 pandemic has disparately impacted Black, Indigenous, and other people of color.²¹ The federal eviction moratorium and pandemic aid programs under the CARES Act and American Rescue Plan undoubtedly saved lives and preserved housing stability for many, but these

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Dylan Waguespack & Brandy Ryan, *2019 State Index on Youth Homelessness*, TRUE COLORS UNITED & NAT’L L. CTR. ON HOMELESSNESS & POVERTY (2019),

https://drive.google.com/file/d/1VjGf9oFzjMJKn6_5TztjzxOtaSJOBU/view.

¹⁶ ADAM ROMERO, ET AL., UCLA SCH. L. WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS 15 (April 2020), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

¹⁷ *Facts on Homelessness, Housing & Violence Against Women*, NAT’L L. CTR. ON HOMELESSNESS & POVERTY, https://nlchp.org/wp-content/uploads/2018/10/DV_Fact_Sheet.pdf; *Unique Challenges of Women Experiencing Homelessness*, CAREER & RECOVERY RES., INC., <https://www.careerandrecovery.org/unique-challenges-of-women-experiencing-homelessness>.

¹⁸ *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us*, NAT’L ALL. TO END HOMELESSNESS (2020), <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>.

¹⁹ *Id.*

²⁰ MELISSA FARLEY ET AL., GARDEN OF TRUTH: THE PROSTITUTION AND TRAFFICKING OF NATIVE WOMEN IN MINNESOTA (2011).

²¹ *See, e.g.*, PHILA. RENTERS REP., COVID-19’S IMPACT ON RACE AND HOUSING SECURITY ACROSS PHILADELPHIA (n.d.), available at <https://clsphila.org/wp-content/uploads/2021/02/20210222-Philadelphia-Renters-Report.pdf>.

protections have expired, and minority communities will suffer the most.²² Guidance from the Centers for Disease Control and Prevention (CDC) stating homeless encampments should not be evicted unless non-congregate shelter (e.g. hotel rooms) can be provided, and instead sanitation and other services should be provided in place led to a temporary reduction in encampment evictions, and some states like California housed thousands of disparately minority homeless persons in hotel rooms using Federal Emergency Management Agency reimbursement.²³ However, as the pandemic has progressed, communities are returning to previous practices of criminalization and forced evictions of homeless encampments despite the lack of adequate alternatives.²⁴

II. THE CRIMINALIZATION OF HOMELESSNESS AND RACIAL INJUSTICE

8. Criminalization of homelessness both disproportionately impacts people of color and further exacerbates racial disparities, violating the right to equality and non-discrimination.²⁵ As the United Nations (UN) Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recognized, “the enforcement of minor law enforcement violations . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”²⁶
9. In its previous review, this Committee called for the U.S. to “(a) Abolish laws and policies making homelessness a crime; (b) Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; (c) Offer incentives to decriminalize homelessness, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness.”²⁷
10. The U.S. has taken some commendable steps to address the criminalization of homelessness in response to the Committee’s recommendations, but they have not yet stemmed the growth of criminalization. In the U.S.’s June 8, 2021 Report submitted to this Committee, the country notes

²² Carl Romer, Andre M. Perry, and Kristen Broady, *The coming eviction crisis will hit Black communities the hardest*, BROOKINGS (Aug. 2, 2021), <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest>.

²³ CODY ZEGER, *EVALUATING PROJECT ROOMKEY IN ALAMEDA COUNTY: LESSONS FROM A PANDEMIC RESPONSE TO HOMELESSNESS* (2021), available at <https://homelessness.acgov.org/homelessness-assets/img/reports/Final%20PRK%20Report%20Summary.pdf>.

²⁴ Teresa Wiltz, *Against CDC Guidance, Some Cities Sweep Homeless Encampments*, PEW TRUSTS (Apr. 28, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/04/28/against-cdc-guidance-some-cities-sweep-homeless-encampments>.

²⁵ 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.”).

²⁶ 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).

²⁷ CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶¶ 12(a)-(c).

that the U.S. Interagency Council on Homelessness (USICH) has released guidance to state and local governments, re-entry service providers, and corrective agencies on ways to remove the barriers that people experiencing homelessness with criminal records face to accessing housing and other services available to them.²⁸ Additionally, the U.S. notes that the Department of Housing and Urban Development (HUD) requires Continuum of Care organizations to explain how their communities are fighting the criminalization of homelessness in order for these organizations to receive funding to assist with homelessness.²⁹ The Department of Justice (DOJ) for the first time included concerns regarding evictions of homeless encampments in their civil rights investigation of the city of Phoenix, AZ’s police department.³⁰

11. Despite these measures, cities across the country continue to focus on hiding homelessness from public view rather than addressing it by criminalizing life-sustaining activities in public such as sleeping, eating, or sitting.³¹ Out of 187 cities surveyed, 72% have at least one law that prohibits camping or sleeping in public.³² Additionally, since 2006, laws that prohibit sleeping in public have increased by 50%, including 18% just since the Committee’s last review.³³ These laws are enforced predominantly against people experiencing homelessness, and predominantly against Black, Indigenous, and other people of color.³⁴ 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.³⁵
12. A concerning new trend is the criminalization of homelessness at the state level. 48 out of 51 states and the District of Columbia have some form of law criminalizing homelessness statewide.³⁶ In the past year, Missouri, Tennessee, and Texas have all passed statewide anti-camping ordinances, influenced by template legislation promoted by a so-called “think-tank” known as the Cicero

²⁸ U.S., COMBINED TENTH TO TWELFTH REPORTS SUBMITTED BY THE UNITED STATES OF AMERICA UNDER ARTICLE 9 OF THE CONVENTION, DUE IN 2017 ¶ 47, U.N. Doc. CERD/C/USA/10-12 (2021).

²⁹ *Id.* at ¶ 46.

³⁰ U.S. DEPT. OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, JUSTICE DEPARTMENT ANNOUNCES INVESTIGATION OF THE CITY OF PHOENIX AND THE PHOENIX POLICE DEPARTMENT (Aug. 5, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department>.

³¹ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014) [hereinafter NLCHP RACIAL DISCRIMINATION]; *see also* MIA., FLA., CODE 2020 § 37-3 (“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).

³² NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 12 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [hereinafter NLCHP HOUSING NOT HANDCUFFS].

³³ *Id.*

³⁴ NLCHP RACIAL DISCRIMINATION, *supra* note 31. *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].

³⁵ *See, e.g.* U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, 2020 ANNUAL SURVEY OF JAILS (2020), <https://bjs.ojp.gov/data-collection/annual-survey-jails-asj#surveys-0>.

³⁶ NAT’L HOMELESSNESS L. CTR., HOUSING NOT HANDCUFFS 2021: STATE LAW SUPPLEMENT 7 (2021), <https://homelesslaw.org/wp-content/uploads/2022/02/2021-HNH-State-Crim-Supplement.pdf> [hereinafter NHLC HNH STATE SUPPLEMENT].

Institute.³⁷ Tennessee’s statute makes it a felony, with up to a year imprisonment and life-long collateral consequences, including a permanent ban on voting.³⁸ 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.³⁹

13. Also concerning is a proposal in California to create a new court system to more easily place unhoused persons with mental health disabilities into involuntary commitments.⁴⁰ A report on Reparations in California 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.⁴¹ Because of the overrepresentation of BIPOC individuals among the homeless population and the overdiagnosis for mental health disabilities, this court system will result in the disparate removal of autonomy and liberty for racial minorities in California.⁴²
14. The limited financial incentives from HUD have not been sufficient to stem the tide of anti-homeless ordinances and enforcement. For instance, in 2017, Miami Beach hired a special prosecutor for “nuisance” crimes, such as loitering, jaywalking, or consuming alcohol in public, which have been predominately enforced against people experiencing homelessness.⁴³ In 2020, the City of Miami passed an ordinance criminalizing food sharing, or the feeding of people

³⁷ Rebecca Rivas, *New Missouri law makes sleeping on state land a crime for people experiencing homelessness*, MISSOURI INDEPENDENT (Jun. 29, 2022), <https://missouriindependent.com/2022/06/29/new-missouri-law-makes-sleeping-on-state-land-a-crime-for-people-experiencing-homelessness/>; MO HB 1606 (2002), Sec. 67.300 et seq. <https://house.mo.gov/billtracking/bills221/hlr/bills/pdf/3703H.08T.pdf>; Adam Edelman, *Tennessee made homeless camps a felony. Colorado is trying something else*, NBC NEWS (Jun. 12, 2022), <https://www.nbcnews.com/politics/politics-news/tennessee-made-homeless-camps-felony-colorado-trying-something-else-rcna32516>; Reese Oxner, *Texas likely to ban homeless encampments in unapproved public places after bill is sent to governor*, TEXAS TRIBUNE (May 28, 2021), <https://www.texastribune.org/2021/05/28/camping-ban-bill-approved/>; TX HB 1925 (2021), <https://legiscan.com/TX/text/HB1925/id/2407654>.

³⁸ TN H.B.0978 (2022). TENN. ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, 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.

³⁹ TX H.B. 1925 (2021), which states “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.” See also,

⁴⁰ 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>.

⁴¹ State of California’s Department of Justice – Office of the Attorney General, *California Task Force to Study and Develop Reparation Proposals for African Americans: Interim Report* (AB 3121), dated June 2022 ([2022 - AB3121 Full Interim Report \(ca.gov\)](https://www.ca.gov/2022/06/27/interim-report)), Chapter 12: *Mental and Physical Harm and Neglect* at 422-423, fn. 408; Chapter 11: *An Unjust Legal System* at pp. 390-391; 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*, World Journal of Psychiatry 2014: 4:4, 133-140.

⁴² See Kate Cimini, *Black people disproportionately homeless in California*, Cal Matters, October 5, 2019 (updated February 27, 2021) (<https://calmatters.org/california-divide/2019/10/black-people-disproportionately-homeless-in-california/>).

⁴³ UNIV. MIA. SCH. L. HUM. RTS. CLINIC ET AL., A RACIAL JUSTICE RESPONSE TO HOMELESSNESS 1 (2021).

experiencing homelessness in groups of twenty-five or more without a permit and at non-designated feeding locations (with only five inconvenient locations designated).⁴⁴ By passing this ordinance, the City of Miami is “using hunger as a weapon against the poor.”⁴⁵ Further, in 2021, Miami passed an anti-camping ordinance, which criminalizes any encampment on public property.⁴⁶ Stronger incentives, such as those proposed in the Housing is a Human Right Act and Ending Homelessness Act have not yet passed Congress.⁴⁷

15. In criminalizing activities people must engage in to survive, the U.S. violates the physical integrity of people experiencing homelessness, including the rights to security of person,⁴⁸ and freedom from cruel, inhuman, and degrading treatment (CIDT).⁴⁹ 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.”⁵⁰ 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,⁵¹ 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.⁵² 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

⁴⁴ MIA., FLA., CODE 2020 § 25-25; Maya Lora, *Miami passes ordinance requiring permits to feed large groups of homeless people*, SUN SENTINEL (Jun. 26, 2020), <https://www.sun-sentinel.com/local/miami-dade/fl-ne-miami-homeless-permits-20200626-qptfs42vsfdr5kr64zpfsgdl4m-story.html>.

⁴⁵ Zoom Interview with David Peery, Exec. Dir., Miami Coalition to 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.).

⁴⁶ *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.

⁴⁷ H.R. 3772, 117th Cong. § 103, 201, 305 (2021), providing, for example “... any grant made using amounts made available by this Act ... matching funding shall not be required for such grant if such recipient demonstrates ...the recipient has created and implemented a formal plan to cease to penalize homelessness”; H.R. 4496, 117th Cong. § 6 (2021), providing “The formula shall provide priority to ... (ii) collaborative applicants for which the local governments have adopted policies that decriminalize homelessness.”

⁴⁸ ICERD, *supra* note 25 at art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. . .”).

⁴⁹ 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.”).

⁵⁰ Hum. Rts. Comm., *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. DOC. CCPR/C/USA/CO/4 (2014)

⁵¹ 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.).

⁵² 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>.

time, require the collection of housing status data among others in use of force incidents, but it is stalled in the U.S. Senate.⁵³

16. Moreover, criminalizing life-sustaining activities violates the right to freedom of movement of people experiencing homelessness.⁵⁴ Some cities implement “move along” orders, where people experiencing homelessness are forced to leave the area just because they are present.⁵⁵ 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.⁵⁶ In a survey of 400 people experiencing homelessness in Denver, Colorado, 57% were approached by police for camping and more than 80% were forced to relocate.⁵⁷ 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.⁵⁸ 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.
17. Criminalization perpetuates homelessness by trapping people in a cycle of poverty. The many fines and fees associated with the criminal justice system make it harder for people experiencing homelessness to pay for food or medication and can lead to their incarceration if they are unable to pay.⁵⁹ Having a criminal record can then prevent people from passing background checks for housing and employment,⁶⁰ making it even harder to get off the street and out of poverty. The UN Special Rapporteur on extreme poverty highlighted this in his visit to the U.S., noting that “unpayable fines and the stigma of a criminal conviction . . . virtually prevents subsequent employment and access to most housing.”⁶¹ In fact, the U.S. Interagency Council on Homelessness (“USICH”) recognizes that “criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁶²

“It’s very expensive to be poor.”

David Peery, Miami Coalition to Advance Racial Equity

18. This criminalization of homelessness is also expensive. For example, a study in Los Angeles found the city spent \$100 million each year on homelessness, but \$87 million of that went to law

⁵³ H.R. 1280, 117th Cong. §223 (2021).

⁵⁴ ICERD, *supra* note 25 at art. 5(d)(i) (This article requires states “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law . . .” including with respect to “[t]he right to freedom of movement and residence within the border of the State.”).

⁵⁵ *Fighting Illegal “Move Along” Orders*, PICTURE HOMELESS, <https://www.picturethehomeless.org/fighting-illegal-move-along-orders/> (last visited Nov. 4, 2021).

⁵⁶ *Id.*

⁵⁷ 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>.

⁵⁸ *Id.*

⁵⁹ NLCHP HOUSING NOT HANDCUFFS, *supra* note 32, LCCR CITED IN PLAIN SIGHT, *supra* note 34.

⁶⁰ NLCHP RACIAL DISCRIMINATION, *supra* note 31.

⁶¹ 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).

⁶² U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7* (2012), https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

enforcement while only \$13 million went to housing or other services.⁶³ A study conducted by Creative Housing Solutions on behalf of the Central Florida Commission on Homelessness found that providing housing to half of Central Florida’s chronic homeless population would save taxpayers at least \$149,220,414.⁶⁴ 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.⁶⁵

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

David Peery, Miami Coalition to Advance Racial Equity

19. Homelessness negatively impacts the right to health⁶⁶ by exacerbating health conditions and causing new ones. Chronic health issues such as asthma, diabetes, and mental health problems require constant specialized care and can worsen with homelessness.⁶⁷ Infections are also “difficult to heal when there is no place to rest and recuperate.”⁶⁸ Living on the street or in a shelter increases the risk that someone will contract communicable diseases, such as sexually transmitted diseases, hepatitis, and tuberculosis.⁶⁹ Moreover, efforts to treat illnesses are impeded by theft, loss of medications, and the exposure of medications to the elements.⁷⁰ Sweeps of homeless encampments further traumatize and endanger the health of unhoused persons by destroying their property and medications and disrupting connection to health care providers.⁷¹ About 33% of all emergency room visits are made by people experiencing chronic homelessness.⁷² In fact, the average person experiencing homelessness spends \$18,500 per year on emergency room visits.⁷³ The health of people experiencing homelessness is further impacted by climate change with increasing heat waves and air pollution.⁷⁴
20. The COVID-19 pandemic has multiplied the risk of illness and death for unhoused people. As the UN Special Rapporteur on adequate housing remarked, “Housing has become the frontline defense

⁶³ 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>.

⁶⁴ 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>.

⁶⁵ Zoom Interview with David Peery, *supra* note 10.

⁶⁶ ICERD, *supra* note 25 at art. 5(e)(iv) (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [including] [t]he right to public health, medical care, social security and social services. . .”).

⁶⁷ NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL, *What is the relationship between health, housing, and homelessness?*, available at: <https://nhchc.org/understanding-homelessness/faq>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Zoom Interview with David Peery, *supra* note 10.

⁷² *The Cost of Homelessness Facts*, GREEN DOORS, <https://greendoors.org/facts/cost.php> (last visited Nov. 17, 2021).

⁷³ *Id.*

⁷⁴ Brodie Ramin & Tomislav Svoboda, *Health of the Homeless and Climate Change*, 86 J. URB. HEALTH: BULL. N.Y. ACAD. MED. 654, 655-656 (2009), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704276/pdf/11524_2009_Article_9354.pdf.

against the coronavirus. Home has rarely been more of a life or death situation.”⁷⁵ People experiencing homelessness have been twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die as the housed population.⁷⁶ Additionally, due to the increased stress caused by the pandemic, drug use and overdoses among the unhoused population has been on the rise.⁷⁷ Furthermore, the shelter system in crowded cities has been an unsafe place for people experiencing homelessness due to the possible COVID-19 outbreaks that can expose everyone in a shelter to the virus.⁷⁸

21. A lack of affordable health care and health insurance for people with chronic medical conditions can increase the risk of homelessness.⁷⁹ Individuals can quickly exhaust savings to pay medical bills, and without a reliable support system, the loss of a home soon follows.⁸⁰ Medical debt incurred during homelessness can also hinder returning to housing stability even after housing is regained.⁸¹
22. Racial disparities in health care coverage exacerbate the risk of homelessness for people of color. Black people are twice as likely as white people to fall in the coverage gap of states that have not expanded Medicaid and are more likely to go without health care because of the cost, even though they experience higher rates of certain health conditions or diseases.⁸² This racial inequality in health care has been exacerbated by the COVID-19 pandemic.⁸³

III. HOUSING AND RACIAL INJUSTICE

**“Gentrification leads to displacement, which leads to homelessness,
which leads to criminalization.”**

Rob Robinson, Partners for Dignity and Rights

⁷⁵ U.N. OHCHR Press Release, “*Housing, the Front Line Defence Against the COVID-19 Outbreak*,” Says UN Expert, (Mar. 18, 2020),

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>.

⁷⁶ DENNIS CULHANE, ET. AL., ESTIMATED EMERGENCY AND OBSERVATIONAL/QUARANTINE CAPACITY NEED FOR THE US HOMELESS POPULATION RELATED TO COVID-19 EXPOSURE BY COUNTY; PROJECTED HOSPITALIZATIONS, INTENSIVE CARE UNITS AND MORTALITY (2020), available at https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf.

⁷⁷ Zoom Interview with David Peery, Exec. Dir., Miami Coalition to Advance Racial Equity (Feb. 25, 2022). See generally *COVID-19 & Substance Use*, NAT’L INST. ON DRUG ABUSE, <https://nida.nih.gov/drug-topics/comorbidity/covid-19-substance-use> (last visited Mar. 28, 2022) (discussing the general increase in substance use and overdoses during the pandemic).

⁷⁸ See Andy Newman, *Virus surges in New York City’s homeless shelters.*, N.Y. TIMES (Dec. 23, 2021), <https://www.nytimes.com/2021/12/23/nyregion/homeless-shelters-covid-cases.html>.

⁷⁹ UNIV. MIA. SCH. L. HUM. RTS. CLINIC ET AL., HOUSING AND HOMELESSNESS IN MIAMI-DADE COUNTY, FLORIDA 7 (2020).

⁸⁰ Florida Council on Homelessness, *Annual Report*, 17 (2018), accessible at: myflfamilies.com/service-programs/homelessness/docs/Council%20on%20Homelessness%20Annual%20Report%202018.pdf.

⁸¹ See Lori Yearwood, *The Bill for My Homelessness Was \$54,000*, N.Y. TIMES (Dec. 29, 2021), <https://www.nytimes.com/2021/12/29/opinion/debt-homelessness.html>.

⁸² NAT’L HEALTH CARE FOR HOMELESS COUNCIL, HEALTH, HOMELESSNESS, AND RACIAL DISPARITIES 2 (2019).

⁸³ Nicollette Levi, *A Human Rights Framework to Address Racial Inequalities Undermining Health in the U.S.*, 75 U. MIA. L. REV. CAVEAT 180, 181 (2020).

23. Extreme racial disparities in housing in the U.S. violate the right to non-discrimination and equality⁸⁴ and the right to housing.⁸⁵ In its prior review, this Committee 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.”⁸⁶
24. Since the last CERD review, the U.S. has begun to take steps toward addressing racial injustice in access to housing. HUD has submitted rules for affirmatively furthering fair housing and combatting disparate impact under the Fair Housing Act (FHA) to the Office of Management and Budget for review.⁸⁷ Additionally, the Department of Justice has been enforcing the Fair Housing Act by bringing cases alleging unlawful discrimination in mortgage lending and discrimination based on race, color, and national origin.⁸⁸ However, systemic inequalities, discriminatory tax policies, inadequate tenant protections, barriers to housing for those previously incarcerated, the financialization of housing leading to community displacement, and discriminatory zoning, have yet to be addressed.
25. Current racial disparities in housing stem from a long history of official discrimination, exclusion, and segregation in housing policies. On top of other measures that limited the access of Black people to housing, the U.S. Federal Housing Administration introduced redlining in the 1930s refusing to insure mortgages in or near Black neighborhoods. These and other blatant and *de jure* policies continued until the passage of the Fair Housing Act in 1968. Since 1968, facially race neutral policies have managed to maintain that status quo. This is evident when looking at current segregation patterns which largely still reflect the historic FHA red-lining maps.⁸⁹ During the decades when the U.S. government was directly subsidizing the purchase of housing for white individuals and families to the exclusion of Black individuals and families, the real estate market generated tremendous wealth for white people that was passed down generationally. Current racial disparities in household net worth can be directly correlated to these and other U.S. government policies.

⁸⁴ ICERD, *supra* note 25 at art. 2.

⁸⁵ ICERD, *supra* note 25 at art. 5(d)(iii), (Article 5(d)(i) requires states “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law . . .” including with respect to “[t]he right to housing.”). *See also* COMM. ON ELIMINATION RACIAL DISCRIMINATION, GENERAL RECOMMENDATION NO. 34 ADOPTED BY THE COMMITTEE: RACIAL DISCRIMINATION AGAINST PEOPLE OF AFRICAN DESCENT ¶ 50 (Oct. 3, 2011) [hereinafter CERD GR NO. 34] (urging countries to “[t]ake steps to remove all obstacles that prevent the enjoyment of economic, social and cultural rights by people of African descent especially in the areas of education, housing, employment and health.”).

⁸⁶ CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶ 13.

⁸⁷ COMBINED TENTH TO TWELFTH REPORTS SUBMITTED BY THE UNITED STATES OF AMERICA UNDER ARTICLE 9 OF THE CONVENTION, *supra* note 28 at ¶ 50.

⁸⁸ *Id.* at ¶ 52-53.

⁸⁹ Terry Gross, *A ‘Forgotten History’ of How the U.S. Government Segregated America*, NPR (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

26. Racial disparities in household net worth and mortgage access cause Black families to be more likely to be renters than owners, placing them at a higher risk of housing instability and homelessness. This Committee has recognized “discriminatory mortgage-lending practices and the foreclosure crisis which disproportionately affected, and continues to affect, racial and ethnic minorities.”⁹⁰ In 2016, the typical net worth for a white American family was \$171,000, while for Black households, it was \$17,150.⁹¹ Almost 75% of white families own their homes, while less than half of the Black households own their homes.⁹² Additionally, Black and Hispanic households are more likely to be denied mortgages than white and Asian households.⁹³ In addition, lower net worth means households of color have fewer financial assets, increasing “the amount of mortgage debt needed for a home purchase.”⁹⁴ One study discovered that “fewer than two-thirds of Black and Hispanic householders had mortgage rates below 5%, compared with 73% of white householders and 83% of Asian householders.”⁹⁵ In contrast, “23% of Black householders and 18% of Hispanic householders with mortgages were paying 6% or more on their home loans, compared with 13% of white householders and just 6% of Asian householders.”⁹⁶
27. 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 in housing. However, current interpretations of fair housing laws hinder widespread adoption of race-conscious measures to remedy past discrimination.⁹⁷ International human rights law requires addressing disparate impact, not just discriminatory intent.⁹⁸ 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.”⁹⁹ This Committee has likewise called for

⁹⁰ CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶ 13.

⁹¹ Kriston McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, *Examining the Black-White wealth gap*, Brookings (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

⁹² USA Facts, *Homeownership rates show that Black Americans are currently the least likely group to own homes*, (July 28, 2020), <https://usafacts.org/articles/homeownership-rates-by-race/>.

⁹³ Drew Desilver and Kristen Bialik, *Blacks and Hispanics face extra challenges in getting home loans*, Pew Research Center (January 10, 2017), <https://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans/>.

⁹⁴ Michael Neal, Jung Hyun Choi, and John Walsh, *Before the Pandemic, Homeowners of Color Faced Structural Barriers to the Benefits of Homeownership* (August 2020), Urban Institute, <https://www.urban.org/sites/default/files/publication/102781/before-the-pandemic-homeowners-of-color-faced-structural-barriers-to-the-benefits-of-homeownership.pdf>.

⁹⁵ Desilver and Bialik, *supra* note 93.

⁹⁶ *Id.*

⁹⁷ 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/>.

⁹⁸ 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).

⁹⁹ *Id.* at ¶ 10.

States to adopt “special measures” “designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.”¹⁰⁰

28. Local tax assessment policies have disparate impacts on neighborhoods and homeowners of color.¹⁰¹ Across the U.S., in cities such as Chicago, Philadelphia, and New Orleans, local governments are more likely to impose higher property taxes on Black households and give financial breaks to wealthy and white homeowners,¹⁰² leading to higher rates of tax delinquency and foreclosure for households of color.¹⁰³ A nationwide study found, after analyzing data covering 118 million homes across the U.S., “holding jurisdictions and property tax rates fixed, Black and Hispanic residents nonetheless face a 10-13% higher tax burden for the same bundle of public services.”¹⁰⁴
29. Black and Hispanic renters are twice as likely to be evicted as white renters.¹⁰⁵ As renters, they are more likely to be “cost-burdened,” which means that they spend 30% or more of their income on housing.¹⁰⁶ In 2019, 30% of all households were cost-burdened, and 46% of all renters were cost-burdened, compared to 21% of all homeowners.¹⁰⁷ 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.¹⁰⁸

“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*

30. 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.¹⁰⁹ Renters in most jurisdictions can be evicted for no cause, giving landlords complete

¹⁰⁰ 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>.

¹⁰¹ Neal, Choi, and Walsh, *supra* note 94.

¹⁰² Teresa Wiltz, *Black Homeowners Pay More Than ‘Fair Share’ in Property Taxes*, Pew Charitable Trusts, June 25, 2020, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/25/black-homeowners-pay-more-than-fair-share-in-property-taxes>.

¹⁰³ Neal, Choi, and Walsh, *supra* note 94.

¹⁰⁴ Carlos Avenancio-León and Troup Howard, *The Assessment Gap: Racial Inequalities in Property Taxation*, Washington Center for Equitable Growth (June 10, 2020), <https://equitablegrowth.org/working-papers/the-assessment-gap-racial-inequalities-in-property-taxation/>.

¹⁰⁵ Jackelyn Hwang and Robert J. Sampson, *Divergent Pathways of Gentrification: Racial Inequality and the Social Order of Renewal in Chicago Neighborhoods*, *American Sociological Review* 79, no. 4 (August 2014), <https://doi.org/10.1177/0003122414535774>.

¹⁰⁶ Habitat for Humanity, *2020 State of the Nation’s Housing report*, <https://www.habitat.org/costofhome/2020-state-nations-housing-report-lack-affordable-housing>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *State Laws on Termination for Nonpayment of Rent*, NOLO, <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

autonomy to displace residents.¹¹⁰ In states such as Florida, New Jersey, and Rhode Island,¹¹¹ renters facing evictions must pay all past due rent within five days to get a judicial hearing.¹¹² These policies are specifically harmful to renters of color and low-income renters, who have no legal recourse to contest an eviction based on discrimination of a federally protected identity, such as race and national origin, if they do not pay delinquent rent. Another barrier to challenging evictions is the lack of legal representation for tenants in eviction cases. In a study conducted in New York City, 90% of landlords appeared to eviction hearings with counsel, while only 10% of tenants had access to counsel.¹¹³ However, when tenants were given access to a court navigator, not even necessarily an attorney, there were no evictions across 150 cases.¹¹⁴ In 2014, housing advocates in New York pushed for the right to counsel in eviction hearings and won.¹¹⁵ Since then, eviction rates have decreased by 24%.¹¹⁶

31. 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.¹¹⁷ While a federal eviction moratorium was enacted at the beginning of the pandemic, it expired, and a subsequent extension was ruled unconstitutional.¹¹⁸ Thousands of renters have been evicted from their homes each week.¹¹⁹
32. 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

¹¹⁰ NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 22 (2018), available at <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.

¹¹¹ *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).

¹¹² *The Tenant’s Handbook*, Bay Area Legal Services, <https://bals.org/help/resources/tenants-handbook#nonpayments>.

¹¹³ E.g., Kriston Capps, *New York Guarantees a Lawyer to Every Resident Facing Eviction*, THE CITY LAB, (Aug. 14, 2017) <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

¹¹⁴ 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.

¹¹⁵ E.g., Kriston Capps, *supra* note 113.

¹¹⁶ *Id.*

¹¹⁷ 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>.

¹¹⁸ *Federal Eviction Moratorium*, National Low Income Housing Coalition, <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>.

¹¹⁹ Hwang and Sampson, *supra* note 105.

on African Americans.”¹²⁰ Public housing authorities around the U.S. regularly impede access to housing for individuals with arrest records.¹²¹

33. The financialization of housing has led to the displacement of communities of color from their long-term neighborhoods and social networks. Since the onset of COVID-19, housing prices across the U.S. have skyrocketed, with some cities experiencing average price hikes of up to 40%.¹²² Rental prices increased 14% in December 2021, the largest rise in over two years.¹²³ As the Special Rapporteur on Adequate Housing, has identified, the financialization of housing, in which housing is treated as a commodity and a means for wealth accumulation, undermines the right to adequate housing: “Capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity”¹²⁴ Residents are displaced in favor of new luxury buildings that turn quick profits, but because the units are so unaffordable they are left empty at no consequence to the developers because to them “housing is as valuable whether it is vacant or occupied, lived in or devoid of life.”¹²⁵ The Special Rapporteur on Adequate Housing has noted that “racial displacement from urban centres and segregation in evidence in large cities in the [U.S.] have led to more severe impacts of financialization and the mortgage crisis being experienced by African-American households.”¹²⁶

“Land as a commodity does not work for the masses.”

Rob Robinson, Partners for Dignity and Rights

34. 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.¹²⁷ 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.¹²⁸

¹²⁰ MATHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 254 (2017).

¹²¹ MARIE CLAIRE TRAN-LEUNG, SHRIVER CTR., *WHEN DISCRETION MEANS DENIAL: A NATIONAL PERSPECTIVE ON CRIMINAL RECORDS BARRIERS TO FEDERALLY SUBSIDIZED HOUSING* (Feb. 2015), available at <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>.

¹²² Michael Sainato, *Renters across US face sharp increases – averaging up to 40% in some cities*, *The Guardian*, (February 16, 2022), <https://www.theguardian.com/us-news/2022/feb/16/renters-rent-increases-us-lease>.

¹²³ *Id.*

¹²⁴ Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context*, ¶ 1,8, U.N. Doc. A/HRC/34/51 (2017).

¹²⁵ *Id.* at ¶ 30, 31.

¹²⁶ *Id.* at ¶ 35, citing Jacob Rugh and Douglas Massey, “Racial segregation and the American foreclosure crisis”, *American Sociological Review*, vol. 75, No. 5 (October 2010).

¹²⁷ S. FLA. HOUS. STUD. CONSORTIUM, *THE DYNAMICS OF HOUSING AFFORDABILITY IN MDC* at ii.

¹²⁸ 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/bwm32h1lgz5cceqvxd4ucfwreacay7mfd>; 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).

35. Zoning policies support the financialization of housing that are displacing communities of color. Across the U.S, around 75% of the residential land is zoned for single family homes,¹²⁹ 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.¹³⁰

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

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

Cities like Miami have amended zoning laws to encourage development and streamline approvals, eliminating the need for public hearings and community participation.¹³¹ Miami’s new 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.¹³² Miami21 eliminated the need for public hearings for new developments to make development easier.¹³³ Additionally, Miami21 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.¹³⁴ 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.¹³⁵

IV. PROPOSED QUESTIONS

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

¹²⁹ 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>.

¹³⁰ John Mangin, *The New Exclusionary Zoning*, 91-93 (2018), 25 *Stanford Law Review* 91.

¹³¹ University of Miami School of Law Human Rights Clinic, 2020, *Housing and Homelessness in Miami-Dade County, Florida*, <https://miami.app.box.com/s/o9sxu2g4f21qchswrfu7ybikvkaj47m>. Accessed 9 Dec. 2021 (citing Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019)).

¹³² Miami21, *Types of Zoning Codes*, 2010, <http://www.miami21.org/TypesofZoningCodes.asp>.

¹³³ University of Miami School of Law Human Rights Clinic, *supra* note 131.

¹³⁴ *Id.*

¹³⁵ Local Housing Solutions, *Engaging the community in the development of a local housing strategy*, <https://localhousingsolutions.org/plan/engaging-the-community-in-the-development-of-a-local-housing-strategy/>.

V. RECOMMENDATIONS

1. The U.S. should implement strong financial and legal incentives for local authorities to decriminalize homelessness and life-sustaining activities in public and redirect funding from criminal justice responses to crisis response teams with mental health, harm reduction, and other psychosocial service expertise, trauma-informed shelters with supportive services, and Housing-First programs. Trauma-informed, non-congregate shelters should serve as *temporary* residences and an entryway to rehousing as the ultimate goal. The U.S. should take a Housing-First approach that prioritizes providing people experiencing homelessness with permanent housing before addressing other quality of life issues.
2. The U.S. should take strong enforcement action against communities that use law enforcement to criminalize and violate the rights and dignity of persons experiencing homelessness. The U.S. should require local law enforcement agencies to collect, disaggregate, and share data on housing status of persons stopped, ticketed, arrested, jailed, convicted, and used force against by law enforcement, in addition to race and gender.
3. All levels of government should recognize the human right to adequate housing, including protection against forced eviction and the availability of housing that is affordable, habitable, accessible, well-located, and culturally adequate.
4. The U.S. should encourage communities to take advantage of mechanisms, such as the Affirmatively Furthering Fair Housing provisions of the Fair Housing Act, to adopt race-conscious measures to remedy historically-based and continuing discrimination in their communities.
5. States should cap property taxes for lower-income homeowners,¹³⁶ increase transparency in tax assessment by bringing in external auditors, improve the appeals process, and base assessments on smaller, geographically precise areas to reduce racial disparities.¹³⁷
6. States should increase the eviction notice requirement period to at least 60 days to allow renters facing evictions to find emergency housing or prevent their eviction, pass just-cause eviction protections, and ensure there is no rent deposit due to dispute an eviction. States should further provide legal representation or court navigators to assist those facing eviction.¹³⁸ The federal and state governments should extend the eviction moratorium for low-income renters affected by COVID-19.
7. States and municipalities should limit background checks for ex-offenders and should enable renters to be able to seal or expunge eviction records, increasing housing accessibility.¹³⁹

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ E.g., Kriston Capps, *supra* note 113.

¹³⁹ Wiltz, *supra* note 102.

8. Municipalities should adopt policies to promote affordable housing best suited to community needs, including social housing, community land trusts rent control, renters' tax credits, and/or subsidized housing. Municipalities should incentivize private development of affordable housing through polices such as simplified building codes, the Low-Income Housing Tax Credit, or inclusionary zoning, requiring a certain percentage of units in new developments be affordable.¹⁴⁰ Municipalities should 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.

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¹⁴⁰ Daniela A. Tagtachian et al., Building by Right: Social Equity Implications of Transitioning to Form-Based Code, 28 J. AFFORDABLE HOUSING & CMTY. DEV. L. 71, 84–85 (2019).