



## **Criminalization of Homelessness and Mental Health in the United States**

### **Shadow Report to the United Nations Human Rights Committee For the United States' Review of the International Covenant on Civil and Political Rights**

Submitted on September 12, 2023, by:

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<sup>1</sup> 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. The United States’ (“U.S.”) homelessness epidemic has been on the rise since 2017, with a record high nationwide count of 127,768 individuals in 2022 who experienced chronic homelessness.<sup>3</sup> Presently, the U.S.’ homeless count is estimated to exceed 580,000.<sup>4</sup> This is despite the U.S. government’s passage of the McKinney-Vento Act over three decades ago, which signaled a federal legislative commitment to prevent and end homelessness.
2. Moreover, the start of the COVID-19 pandemic marked the first time that federal data collection revealed more unhoused persons who were unsheltered than sheltered.<sup>5</sup> Temporary homeless shelters across the country have increasingly reported a lack of capacity, forcing many persons to live unsheltered in encampments and in public spaces. An estimated 51 percent (or 216,495 people) were reportedly living in unsheltered locations on a single night in 2022.<sup>6</sup> Rent increased at “its fastest rate since 1986,” exacerbating a pre-existing unaffordability crisis that left approximately 7 million low-income renters without affordable homes.<sup>7</sup> Consequently, a worsening eviction crisis, contributed to by the expiration of state and local eviction moratoria, has caused a homelessness surge.<sup>8</sup>
3. Guidance from the Centers for Disease Control and Prevention (“CDC”)—stating homeless encampments should not undergo evictions unless non-congregate shelter (e.g. hotel rooms) can be provided, and instead sanitation and other services should be provided in place—led to a temporary reduction in encampment evictions. Some states like California housed thousands of unhoused persons in hotel rooms using funds from the Federal Emergency Management Agency.<sup>9</sup> 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.<sup>10</sup>
4. The disproportionate impact of homelessness on racial and ethnic minorities in the U.S. remains a serious problem. The United Nations (“U.N.”) Committee on the Elimination of

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<sup>3</sup> *State of Homelessness: 2023 Edition*, NAT’L ALL. END HOMELESSNESS (2023),

<https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>.

<sup>4</sup> 582, 462 and Counting, N.Y. TIMES (Feb. 3, 2023), <https://archive.ph/O7mrl>.

<sup>5</sup> See U.S. Dep’t Hous. & Urb. Dev., *The 2020 Annual Homeless Assessment Report (AHAR) to Congress, Part 1* (2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>. [hereinafter 2020 AHAR].

<sup>6</sup> *Id.* at 24.

<sup>7</sup> German Lopez, *Homeless in America*, N.Y. TIMES (Jul. 15, 2022), <https://archive.ph/BrnQA>.

<sup>8</sup> See Dana Difilippo, *Homelessness Climbing, with eviction moratorium over and rents up*, N.J. MONITOR (Aug. 15, 2023, 6:46 AM), <https://newjerseymonitor.com/2023/08/15/homelessness-climbing-with-eviction-moratorium-over-and-rents-up/>; see also Tracy Miller, *How eviction moratoria could increase homelessness*, THE HILL (Sep. 30, 2021, 9:00 AM), <https://thehill.com/opinion/finance/574623-how-eviction-moratoria-could-increase-homelessness-in-the-long-run/>; see also David Brand, *NYC eviction rate continues to rise since ban was lifted, as homelessness surges*, GOTHAMIST (Jan. 18, 2023), <https://gothamist.com/news/nyc-eviction-rate-continues-to-rise-since-ban-was-lifted-as-homelessness-surges>.

<sup>9</sup> See CODY ZEGER, EVALUATING PROJECT ROOMKEY IN ALAMEDA COUNTY: LESSONS FROM A PANDEMIC RESPONSE TO HOMELESSNESS (2021), <https://homelessness.acgov.org/homelessness-assets/img/reports/Final%20PRK%20Report%20Summary.pdf>.

<sup>10</sup> See Teresa Wiltz, *Against CDC Guidance, Some Cities Sweep Homeless Encampments*, PEW TRUSTS (Apr. 28, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/04/28/against-cdc-guidance-some-cities-sweep-homeless-encampments>.

Racial Discrimination (“CERD”) reiterated its concern regarding the “disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness,” specifically individuals of African descent, Hispanic/Latino(a)(o)(x) Americans, indigenous persons, and “women and lesbian, gay, bisexual, and transgender persons,” in its Concluding Observations of the 2022 U.S. CERD Review.<sup>11</sup> 37.3 percent (or 217,366) of the homeless population and nearly 27 percent of unsheltered residents identify as African-American,<sup>12</sup> despite only 13.6 percent of the overall population as Black.<sup>13</sup> Additionally, American Indian, Alaska Native, Indigenous, Pacific Islander, and Native Hawaiian persons make less than 2 percent of the total population,<sup>14</sup> but 5.2 percent of persons experiencing homelessness and 7.1 percent of unsheltered residents.<sup>15</sup> Finally, Hispanic and Latin(a)(o)(x) persons make up 19.1 percent of the U.S. population<sup>16</sup> and 24.1 percent of those (or 140,230) experiencing homelessness.<sup>17</sup>

5. Aging out of the foster care system without adequate support is a major driver of youth homelessness.<sup>18</sup> The foster care system penalizes poverty, removing children from their families under the theory of “prospective harm.”<sup>19</sup> This has a disproportionate impact on marginalized communities, including Indigenous, Black, and Hispanic families.<sup>20</sup> Indigenous children, particularly, are four times more likely to be placed into foster care than their white counterparts.<sup>21</sup> 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 in the parent, rather than addressing social or structural issues.”<sup>22</sup> 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

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<sup>11</sup> COMM. ELIM. RACIAL DISCRIM., Concluding observations on the combined tenth to twelfth reports of the United States of America, ¶¶ 39-40, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022) [hereinafter 2022 CERD Concluding Observations].

<sup>12</sup> 2020 AHAR, *supra* note 5, at 12.

<sup>13</sup> *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/RHI225222> (last visited Sep. 10, 2023) [hereinafter *Quick Facts*].

<sup>14</sup> *Id.*

<sup>15</sup> 2020 AHAR, *supra* note 5, at 12.

<sup>16</sup> *Quick Facts*, *supra* note 13.

<sup>17</sup> 2020 AHAR, *supra* note 5, at 12.

<sup>18</sup> See Lydia Beltran, *Aging out of Foster Care: Sadowski State and Local Housing Trust Funds Provide Some Safety*, FLORIDA 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*].

<sup>19</sup> 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]; Hina Naveed & Aryeh Neier, *If I wasn't poor, I wouldn't be unfit*, HUMAN RIGHTS WATCH, <https://www.hrw.org/report/2022/11/17/if-i-wasnt-poor-i-wouldnt-be-unfit/family-separation-crisis-us-child-welfare>.

<sup>20</sup> See Amanda Aykanian, et.al., *Aging Out of Foster Care: Disparities by Race/Ethnicity and Disability*, SOC'Y FOR SOC. WORK & RESEARCH (Jan. 16, 2022), <https://sswr.confex.com/sswr/2022/webprogram/Paper46888.html>.

<sup>21</sup> *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](https://www.nicwa.org/wp-content/uploads/2021/12/NICWA_11_2021-Disproportionality-Fact-Sheet.pdf).

<sup>22</sup> Interview with Robert Latham, *supra* note 19.

Youth Institute found that within 18 months of aging out of the system, one in five persons will experience homelessness.<sup>23</sup>

6. In its Fifth Periodic Report to the U.N. Human Rights Committee (“Committee”), detailing its obligations under the International Covenant on Civil and Political Rights (“ICCPR,” or “Covenant,” or “Convention”),<sup>24</sup> the U.S. government commented that access to housing, among other basic human needs, was not “inextricably related to or otherwise essential to the enjoyment of the right to life.”<sup>25</sup> Furthermore, in response to the Committee’s question on homelessness, the U.S. government added that any actions purported to address homelessness and poverty more generally fell outside the scope of State Parties’ obligations under the ICCPR and the inherent right to life.<sup>26</sup>
7. However, as this Committee has explained, the right to life requires states to affirmatively address “general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”<sup>27</sup> As such, states are not only obliged to protect citizens against violations of their right to life but must also “ensure access . . . to essential goods and services . . . and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective . . . social housing programmes.”<sup>28</sup> The U.N. Special Rapporteur on Adequate Housing further stated, “When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations.”<sup>29</sup> We thus explicitly oppose the position expressed by the U.S. government in its Fifth Periodic Report, as access to housing and the decriminalization of homelessness and poverty are in fact *essential* to the right to life and other fundamental protections enshrined in the ICCPR.<sup>30</sup>
8. Advocates have made excellent use of the Committee’s previous condemnation of the criminalization of homelessness in the U.S. as it raised “concern of discrimination and cruel,

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<sup>23</sup> *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 also Aging out of Foster Care: Sadowski State and Local Housing*, *supra* note 18 (stating that within a year of aging out of foster, up to 40 percent of youth will experience homelessness).

<sup>24</sup> “Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020,” U.N. Doc. CCPR/C/USA/5 (Nov. 11, 2021).

<sup>25</sup> U.N. Hum. Rts. Comm., List of issues prior to submission of the fifth periodic report of the United States of America, ¶ 9, U.N. Doc. CCPR/C/USA/QPR/5 (Apr. 18, 2019) [hereinafter ICCPR List of Issues].

<sup>26</sup> *See id.* ¶ 23 (stating that the Committee wrongly assumes “that local, state and federal law ‘criminalizes everyday activities associated with homelessness.’”).

<sup>27</sup> Hum. Rts. Comm., General Comment No. 36: Art. 6 (Right to Life), ¶ 26, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter General Comment No. 36].

<sup>28</sup> *Id.*

<sup>29</sup> Hum. Rts. Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Access to Justice for the Right to Housing*, ¶ 19, U.N. Doc. A/HRC/40/61 (Jan. 15, 2019).

<sup>30</sup> *See* International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

inhuman, or degrading treatment.”<sup>31</sup> In this report, we ask the Committee to extend its attention to four specific practices that have emerged since 2014. First is the growth of well-funded efforts to push criminalization at the national and state level. Second is the practice of federal police agencies to engage in criminalization of homelessness. Third is the use of criminalization against not only persons experiencing homelessness themselves, but also those who seek to provide them with food and other aid. Last, and what we address in greatest detail below, is the expanded use of the civil involuntary treatment and commitment process against unhoused persons with mental health disabilities. Our joint submission concludes with proposed questions to the U.S. government as well as our policy recommendations for the Committee’s urgent consideration in addressing these issues.

## **II. CRIMINALIZATION OF HOMELESSNESS REMAINS PREVALENT IN THE UNITED STATES AND VIOLATES NUMEROUS FUNDAMENTAL RIGHTS UNDER THE ICCPR**

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

Council Member Tiffany Caban, New York City Council (District 22)<sup>32</sup>

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

9. In recent years, there has been a dramatic growth in laws and policies across the U.S. that criminalize homelessness. 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.<sup>33</sup> Since 2006, laws that prohibit sleeping in public have increased by 50 percent.<sup>34</sup> Out of 187 cities surveyed, 55 percent prohibit sitting or lying in public, 72 percent prohibit camping in public, and 60 percent prohibit public loitering, loafing, or vagrancy.<sup>35</sup> Oftentimes, unhoused persons face steep civil

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<sup>31</sup> Hum. Rts. Comm., Concluding Observations of the Hum. Rts. Comm.: USA, ¶ 19, U.N. Doc. CCPR/C/USA/4 (March 26, 2014) [hereinafter HRC Concluding Observations: USA].

<sup>32</sup> Transcript of the Minutes of the New York City Council Hearing, Joint Committee on Mental Health, Disabilities, and Addiction, Committee on Hospitals, Committee on Public Safety, and Committee on Fire and Emergency Management p. 156, ll. 8-16 (Feb. 6, 2023) [hereinafter City Council Transcript].

<sup>33</sup> See generally *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*, NAT’L L. CTR. HOMELESSNESS & POVERTY 1, 12-13 (Dec. 2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> (providing ample empirical data and analysis around criminalization policies and practices across different U.S. cities) [hereinafter *NLCHP Housing Not Handcuffs*].

<sup>34</sup> *Id.* at 12.

<sup>35</sup> *Id.* at 12.

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.<sup>36</sup>

10. Despite expanded federal and grassroots efforts to end criminalization practices, the growth in criminalization is associated with a nationwide growth in unsheltered homelessness.<sup>37</sup> 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,<sup>38</sup> which have been overwhelmingly enforced against persons experiencing homelessness.<sup>39</sup> In 2020 with the onset of COVID, the City of Miami passed an ordinance criminalizing food sharing, or the feeding of persons experiencing homelessness in groups of twenty-five or more without a permit and at non-designated feeding locations (with only five inconvenient locations designated).<sup>40</sup> At a recent People’s Tribunal, community members and food providers testified to this law’s senseless cruelty.<sup>41</sup> By passing this ordinance, the City of Miami is “using hunger as a weapon against the poor.”<sup>42</sup> Then, in 2021, the City of Miami passed an anti-camping ordinance, which criminalizes any encampments on public property.<sup>43</sup> In “sweeping” homeless encampments, law enforcement routinely destroys the few belongings that persons have.<sup>44</sup> One woman had her mother’s ashes thrown out; others lost their medication and identity documents.<sup>45</sup> Additionally, a recent study found a 12 percent rise in hospital admissions after an encampment

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<sup>36</sup> See *id.* at 15; see also LAWYERS’ COMM. CIVIL RTS., CITED FOR BEING IN PLAIN SIGHT 17 (2020), [https://lccrsf.org/wp-content/uploads/2020/09/LCCR\\_CA\\_Infraction\\_report\\_4WEB-1.pdf](https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Infraction_report_4WEB-1.pdf) [hereinafter LCCR CITED IN PLAIN SIGHT]; see also *Racial Discrimination in Housing and Homelessness in the United States*, NAT’L L. CTR. HOMELESSNESS & POVERTY 1, 3 (July 3, 2014), [https://homelesslaw.org/wp-content/uploads/2018/10/CERD\\_Housing\\_Report\\_2014.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/CERD_Housing_Report_2014.pdf).

<sup>37</sup> See *NLCHP Housing Not Handcuffs*, *supra* note 33, at 38.

<sup>38</sup> 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>.

<sup>39</sup> 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 experiencing homelessness).

<sup>40</sup> 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>.

<sup>41</sup> 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>.

<sup>42</sup> 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].

<sup>43</sup> 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](https://www.miamitimesonline.com/news/local/commission-passes-anti-camping-ordinance/article_c5bc6238-3c2c-11ec-9085-4f36d2f85a84.html).

<sup>44</sup> 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>.

<sup>45</sup> See *id.*

sweep.<sup>46</sup> 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.<sup>47</sup> 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 persons experiencing homelessness to choose between jail or exile.<sup>48</sup>

11. The criminalization of homelessness has also proliferated in small towns across the country. Over the last year, for example, the Township Council of Norristown, Pennsylvania blocked new affordable housing projects, closed the county's only homeless shelter, and criminalized unhoused residents by passing an anti-camping ordinance. This Ordinance 22-02 prohibits individuals from being “on any Municipal Park/parkland or Municipal recreation area or recreation facility except between sunrise and sunset,” except in limited circumstances. The Council has deemed any violation of it as a criminal offense punishable with a maximum fine of \$300, or “imprisonment for not more than five days.”<sup>49</sup> As its purpose was to enable Norristown Police Department officers to “hold over [unhoused residents’] . . . head[s]” the threat of a criminal citation in demanding the residents’ relocation, it has since triggered extensive harassment of unhoused residents by local law enforcement.<sup>50</sup> Unhoused residents in Norristown who are displaced by homeless encampment sweeps do not receive an offer of local shelter bed space because no shelter bed space is available anywhere in Montgomery County, and there is no plan to add additional shelter beds. Moreover, Norristown police destroy or deprive unhoused residents of property that protects them from the elements, force unhoused residents to live in areas that are less well-lit and well-trafficked, and separate residents from community networks providing protection and assistance. These practices create dangerous and possibly fatal conditions for Norristown’s unhoused residents.
  
12. Since the U.S.’s 2014 review, the most concerning development has been the emergence of a well-funded, national push against evidence-based Housing First approaches for the criminalization of homelessness. Historically, criminalization was largely pushed by local actors in response to local unsheltered homelessness, but in 2019, then-President Trump began pushing criminalization and forced relocation to large-scale homeless encampments.<sup>51</sup> 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

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<sup>46</sup> Benjamin Linas & Joshua Barocas, *What our simulation models project will happen after Boston dismantles Mass. and Cass encampments*, BOSTON 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/>.

<sup>47</sup> See Aaron Leibowitz, *‘We Can’t Coexist Anymore’: Miami Beach Weighs Outdoor Sleeping Crackdown for Homeless*, MIA. HERALD (July 2023), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article277428983.html>.

<sup>48</sup> See *id.*

<sup>49</sup> NORRISTOWN, PA., Code § 225-5 (2004).

<sup>50</sup> Emily Rizzo, *Advocates say there’s ‘no place’ for unhoused people in Norristown, where it may soon be illegal to stay in parks past dusk*, WHY? (Aug. 9, 2022, 11:19 AM), <https://why.org/articles/norristown-pa-unhoused-people-dawn-to-dusk-park-ordinance/>.

<sup>51</sup> 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/>.

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.<sup>52</sup> So far, versions of this template have passed in Georgia, Missouri, Tennessee, and Texas.<sup>53</sup>

13. The other concerning development has been at the federal level. On the one hand, the federal government has taken several steps that are consistent with the Committee’s 2014 recommendations, including the creation of funding incentives,<sup>54</sup> issuance of helpful guidance,<sup>55</sup> and enforcement actions by the Department of Justice (“DOJ”) against communities engaging in criminalization.<sup>56</sup> On the other hand, federal agencies’ own police forces have been engaging in criminalization. In February 2023, U.S. Park Police (“USPP”) arrested two 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.<sup>57</sup> Then, in May 2023, federal police with the National Forest Service (“NFS”) and Bureau of Land Management (“BLM”) 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 being paralyzed from the chest down.<sup>58</sup> The fact that the federal government is taking overt steps to criminalize unhoused persons using its own police forces makes it significantly more difficult for them to ask state and local governments to prevent these practices altogether.

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<sup>52</sup> 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].

<sup>53</sup> 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>.

<sup>54</sup> 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>.

<sup>55</sup> 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).

<sup>56</sup> See *Bell v. Boise*, 1:09-cv-540-REB, Statement of Interest of the United States (Aug. 6, 2015); see also U.S. DEP’T JUST. OFF. PUB. AFFAIRS, *Justice Department Files Brief to Address the Criminalization of Homelessness* (Aug. 6, 2015), <https://www.justice.gov/opa/pr/justice-department-files-brief-address-criminalization-homelessness>; see also *Scott v. Daytona Beach*, 6:22-cv-02192, Statement of Interest of the United States (Jan. 6, 2023); see also *Micah’s Way v. Santa Ana*, 8:23-cv-00183-DOC-KES, Statement of Interest in Opposition to Defendant’s Motion to Dismiss (May 9, 2023), <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-religious-land-use-case-involving-faith-based>.

<sup>57</sup> 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/>.

<sup>58</sup> See Robert Davis, *Police Video Shows Homeless Family Violently Arrested and Severely Injured for Living in Park*, INVISIBLE PEOPLE (Aug. 24, 2023), <https://invisiblepeople.tv/police-video-shows-homeless-family-violently-arrested-and-severely-injured-for-living-in-park/>.



*B. The U.S.’ Criminalization of Homelessness Violates Numerous Fundamental Rights Under the ICCPR.*

14. While the ICCPR focuses on civil and political rights rather than the right to housing, the criminalization of homelessness violates numerous civil and political rights.
15. First, a government’s interference with life-sustaining activities, such as sleeping, eating, walking, and relieving oneself, directly violates the fundamental right to life pursuant to Article 6 of the ICCPR,<sup>59</sup> especially in the absence of shelter space and affordable housing to meet the needs of unhoused people.<sup>60</sup> Extreme weather and natural calamities due to global warming, combined with insufficient housing, have exposed thousands of unhoused persons to life-threatening environmental conditions. In Phoenix, Arizona, alone, at least 130 persons experiencing homelessness died from heat-related causes in 2021, a count that nearly doubled in the city since 2019.<sup>61</sup> This year, wildfire smoke from Canada, affecting the air quality of all major regions of the U.S., impacted unhoused persons particularly severely. A 2022 research study jointly conducted by the Cleveland Clinic and Case Western Reserve School of Medicine found that over 60 percent of unhoused persons surveyed in Visalia, California often spent time near roadways where they were constantly exposed to particulate matter and other air pollutants.<sup>62</sup> The study concluded that unhoused persons “are uniquely vulnerable to the impact of worsening air quality, particularly outside of large urban centers, where access to indoor shelters may be limited.”<sup>63</sup> As such, the absence of access to housing, coupled with criminalization, has led to “unnatural or premature death[s]”<sup>64</sup> of many unhoused persons, violating their fundamental right to life.
16. Furthermore, the sheer lack of *adequate* housing made available by the U.S. government and various state and local governments has left unhoused persons and the millions more who struggle with food insecurity and the threat of evictions without the capacity to “enjoy a life with dignity.”<sup>65</sup> Encampments are not an appropriate long-term solution to homelessness or the broader affordable housing crisis, though in recognition of the absence of adequate alternatives, federal courts are applying various constitutional amendments including the rights to be free from cruel and unusual punishment (akin to Article 7 of the ICCPR)<sup>66</sup>, right to not be deprived of liberty or property without due process of law, right to equal protection under law (akin to Articles 2 and 26 of the ICCPR)<sup>67</sup>, and rights to conduct “survival activities in

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<sup>59</sup> See ICCPR, *supra* note 30, art. 6.

<sup>60</sup> See Jerusalem Demsas, *The Obvious Answer to Homelessness*, THE ATLANTIC (Dec. 12, 2022), <https://www.theatlantic.com/magazine/archive/2023/01/homelessness-affordable-housing-crisis-democrats-causes/672224/>.

<sup>61</sup> MARICOPA CNTY. DEP’T PUB. HEALTH, PRELIMINARY 2021 HEAT REP. (2022), <https://www.maricopa.gov/ArchiveCenter/ViewFile/Item/5404>.

<sup>62</sup> Maeve MacMurdo, et al., *Ambient Air Pollution Exposure among Individuals Experiencing Unsheltered Homelessness*, 130 ENV’T HEALTH PERSP. 1, 1 (Feb. 17, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8852257/pdf/ehp10414.pdf>.

<sup>63</sup> *Id.*

<sup>64</sup> General Comment No. 36, *supra* note 27, ¶ 3.

<sup>65</sup> General Comment No. 36, *supra* note 27, ¶ 3.

<sup>66</sup> See ICCPR, *supra* note 30, art. 7.

<sup>67</sup> See ICCPR, *supra* note 30, arts. 2, 26.

public spaces.”<sup>68</sup> For example, in the 1992 civil rights class action lawsuit of *Pottinger v. City of Miami*, a federal district judge ruled that Miami’s practice of arresting persons for performing harmless activities such as sleeping, standing, and congregating in public places violated the Eighth Amendment and right to travel, while the ordinances authorizing these practices were unconstitutionally overbroad in violation of the due process clause of the Fourteenth Amendment.<sup>69</sup> There have been more recent iterations of this holding, including the 2022 decision rendered by a federal court in Phoenix regarding a camping and sleeping ban that affected a 3,000+ unsheltered population.<sup>70</sup> The court found an Eighth Amendment violation triggering irreparable harm on Phoenix residents experiencing homelessness in the absence of sufficient shelter space in the city.<sup>71</sup> It also recognized the reality that depriving a person experiencing homelessness of their property (“a tent, an article of clothing, or bedding . . .”) without due process “constitutes a chiefly economic injury . . . [as the City] may be taking everything the person owns.”<sup>72</sup> In *Martin v. Boise*, the Ninth Circuit concluded that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”<sup>73</sup> Then, in *Johnson v. City of Grants Pass*, the Ninth Circuit echoed this reasoning in prohibiting the imposition of civil fines for people sleeping outside or in their vehicles when they have no other option.<sup>74</sup> This Committee has, in fact, noted that the criminalization of homelessness in the U.S. “raises concerns of discrimination and cruel, inhuman or degrading treatment.”<sup>75</sup>

17. Many shelters do not accommodate persons with physical or mental health disabilities, meaning the existence of a shelter bed does not necessarily mean it is accessible to every unhoused individual.<sup>76</sup> Both congregate and non-congregate shelters are often run as semi-carceral institutions that limit when people can come and go, isolate them from their social supports by banning visitors and socializing between shelter residents, interfere with residents’ privacy (by depriving them of a key to their personal space and allowing shelter staff to enter

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<sup>68</sup> *Tent City, USA: The Growth of America’s Homeless Encampments and How Communities are Responding*, NAT’L L. CTR. HOMELESSNESS & POVERTY 12-13 (2017), [https://homelesslaw.org/wp-content/uploads/2018/10/Tent\\_City\\_USA\\_2017.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf).

<sup>69</sup> *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*].

<sup>70</sup> *See generally* Fund for Empowerment v. City of Phoenix, No. CV-22-02041-PHX-GMS, 2022 WL 18213522 1 (D. Ariz. Dec. 16, 2022) (challenging the City of Phoenix, Arizona’s policies policing homelessness and its treatment of unhoused individuals regarding the unreasonable seizure and destruction of their property during homeless encampment sweeps) [hereinafter *Fund for Empowerment*].

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 8.

<sup>73</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) [hereinafter *Martin v. Boise*].

<sup>74</sup> *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”).

<sup>75</sup> HRC Concluding Observations: USA, *supra* note 31, at ¶ 19.

<sup>76</sup> *See* Corey McDonald, Why Aren’t Homeless Shelters Accommodating People Who Have Disabilities, SHELTERFORCE (July 19, 2023), <https://shelterforce.org/2023/07/19/why-arent-homeless-shelters-accommodating-people-who-have-disabilities/>.

at any time), and impose an unpredictable and inconsistently enforced set of rules and behavioral requirements on residents that make them feel that their shelter could be terminated at any moment.<sup>77</sup>

18. Criminalization of homelessness both disproportionately impacts persons of color and further exacerbates racial disparities, violating the right to equality and non-discrimination under Articles 2 and 26 of the ICCPR.<sup>78</sup> Laws targeting life-sustaining activities are predominantly enforced against unhoused persons and against Black, Indigenous, and other persons of color.<sup>79</sup> One study in Austin, Texas showed that Black unhoused persons were almost 10 times more likely than white people to receive a camping citation.<sup>80</sup> As the U.N. 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.”<sup>81</sup> 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.”<sup>82</sup> In its recent review, the CERD called upon the U.S. government to “abolish laws and policies that criminalize homelessness,” “redirect funding from criminal justice responses to adequate housing and shelter programs, in particular for persons belonging to racial and ethnic minorities most affected by homelessness,”<sup>83</sup> and “affirmatively further[] fair housing and protection against discriminatory effects.”<sup>84</sup>
19. Furthermore, the disproportionately high incidence of unhoused youth who identify as LGBTQ or gender non-conforming point to how the criminalization of homelessness violates the rights to equality and non-discrimination under Articles 2 and 26 of the ICCPR on the basis of gender and sexual orientation. Youth who identify as LGBTQ+ have been found to have a “120 percent higher risk of reporting homelessness compared to youth who identify as heterosexual

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<sup>77</sup> See *Pipe Dreams & Picket Fences: Direction from Denver’s Houseless People on Housing Needs and Priorities in the Context of Today’s Public Housing*, HOUSEKEYS ACTION NETWORK DENVER, 8 (2023),

<https://wraphome.org/pipe-dreams-and-picket-fences/> noting the following percentages of respondents noting these as “dealbreakers” in accessing housing or shelter programs: curfew (49%), guests not being allowed (44%), staff room checks (40%), religious requirements (39%), and not being allowed roommates or partners (39%).

<sup>78</sup> See Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(c), *ratified* Oct. 21, 1994, 660 U.N.T.S. 1 (“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.”) [hereinafter ICERD]; see also ICCPR, *supra* note 30, arts. 2, 26.

<sup>79</sup> LCCR CITED IN PLAIN SIGHT, *supra* note 36, at 5-6.

<sup>80</sup> *Racism, Homelessness, and the Criminal and Juvenile Legal Systems*, NAT’L CTR. HOMELESSNESS & POVERTY 1, 3 (2020).

<sup>81</sup> 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).

<sup>82</sup> 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).

<sup>83</sup> Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, ¶ 40, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).

<sup>84</sup> *Id.*

and cisgender.”<sup>85</sup> This statistic has been corroborated by the Human Rights Campaign, which has noted estimates “that LGBTQ youth comprise up to 40 percent of the total unaccompanied homeless youth population, despite [being] just [5] to 10 percent of the overall youth population.”<sup>86</sup> While various factors explain why this demographic of the youth homeless population suffers higher rates of homelessness and is more vulnerable to those policies that criminalize homelessness, the coming out process and its associated fallouts are perhaps the most significant underlying factors.<sup>87</sup> Moreover, LGBTQ youth experience higher rates of detention and incarceration because of criminalization policies and practices.<sup>88</sup> A 2015 study regarding youth in juvenile detention facilities drew clear cross-system connections between an LGBTQ-identifying youth’s family rejection to child welfare involvement to homelessness to survival crimes to juvenile justice system involvement.<sup>89</sup> And from a gender perspective of this surveyed group of youth respondents, as many as 40 percent identify as LGBTQ or gender non-conforming.<sup>90</sup>

20. Moreover, criminalizing life-sustaining activities violates the right to freedom of movement of persons experiencing homelessness, pursuant to Article 12 of the ICCPR.<sup>91</sup> Some cities implement “move along” orders, where persons experiencing homelessness are forced to leave the area just because they are present.<sup>92</sup> In New York City, police have ordered unhoused persons to move multiple times in one day, with at least one unhoused individual saying they were forced to move every thirty to forty-five minutes.<sup>93</sup> In a survey of 400 persons experiencing homelessness in Denver, Colorado, 57 percent were approached by police for

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<sup>85</sup> M.H. Morton, et al., *Missed Opportunities: Youth Homelessness in America. National Estimates.*, CHAPIN HALL UNIV. CHI. (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf>.

<sup>86</sup> Ariana Aboulafia, *The New John Lawrence: An analysis of the Criminalization of LGBTQ Homelessness*, 19 CONN. PUB. INT. L. J. 200, 205 (2019), <https://cpilj.law.uconn.edu/wp-content/uploads/sites/2515/2020/03/CPILJ-19.1-The-New-John-Lawrence-An-Analysis-of-the-Criminalization-of-LGBTQ-Homelessness-by-Ariana-H.-Aboulafia.pdf> (citing *New Report on Youth Homeless Affirms that LGBTQ Youth Disproportionately Experience Homelessness*, HUM. RTS. CAMPAIGN: BLOG (Nov. 15, 2017), <https://www.hrc.org/blog/new-report-onyouth-homeless-affirms-that-lgbtq-youth-disproportionately-ex>).

<sup>87</sup> *Homelessness in the LGBTQ Community in the United States*, UNIV. MIA. SCH. L. HUM. RTS. CLINIC, <https://miami.app.box.com/s/6ajyu7b7mt7g59ckoe0onho02jzokf8l> (June 4, 2021) (“The LGBTQ Homeless Youth Provider Survey identified being forced out by parents or running away due to sexual orientation, gender identity, or gendered expression, “family issues,” and abuse at home as the main reasons for homeless in over 75% of LGBTQ youth clients.”).

<sup>88</sup> *See id.*

<sup>89</sup> *See generally* Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. GENDER, SOC. POL’Y & L. 243 (2016) (detailing a national study in which the prevalence of LGBTQ/GNCT youth is higher in both the juvenile justice and child welfare systems than the general population).

<sup>90</sup> *Id.* at 251.

<sup>91</sup> ICCPR, *supra* note 30, art. 12.

<sup>92</sup> *See* ICERD, *supra* note 78, 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.”).

<sup>93</sup> *Complaint: NYPD Unlawfully Orders Homeless People to Leave Public Spaces*, N.Y.C.L.U. (May 26, 2016), <https://www.nyclu.org/en/press-releases/complaint-nypd-unlawfully-orders-homeless-people-leave-public-spaces>.

camping, and more than 80 percent were forced to relocate.<sup>94</sup> In a similar survey of 350 San Francisco residents, “70 percent . . . had been forced to move by a city official within the past year, with 20 percent being forced to move on a weekly basis.”<sup>95</sup> Punishing persons for essential activities, such as camping, lying, sitting, or sleeping in public places, is one of the most extreme methods of restraining freedom of movement.

21. As such, in its Concluding Observations on the U.S.’s Fourth Periodic Report in March of 2014, the Committee expressed concerns around the persistence of “criminalization of [persons] living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc.”<sup>96</sup> Its review called for the U.S. to: (a) abolish those laws and policies that criminalize homelessness at the state and local levels; (b) ensure close cooperation between relevant stakeholders such as social, health, law enforcement, and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; (c) provide local authorities implementing alternatives to criminalization with continued financial support and other incentives for decriminalization and the implementation of such solutions; and (d) withdrawing funding for local authorities criminalizing the homeless.<sup>97</sup>

### **III. FORCED REMOVAL POLICIES AND THE CRIMINALIZATION OF PERSONS WITH MENTAL HEALTH DISABILITIES CONSTITUTE ANOTHER FORM OF THE CRIMINALIZATION OF HOMELESSNESS.**

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

Board Member & Community Advocate Arvind Sooknanan, Fountain House<sup>98</sup>

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

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<sup>94</sup> Madeline Bailey et al., *No Access to Justice: Breaking the Cycle of Homelessness and Jail*, VERA INST. JUST. 1, 3 (2020), <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>.

<sup>95</sup> *Id.*

<sup>96</sup> U.N. Hum. Rts. Comm., Concluding observations on the fourth periodic report of the United States of America, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).

<sup>97</sup> *Id.*

<sup>98</sup> Arvind Sooknanan, *Forced Treatment for Mental Illness Is No Treatment at All*, SLATE (Dec. 16, 2022, 9:00 AM), <https://slate.com/technology/2022/12/new-york-eric-adams-forced-hospitalization.html>.

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

23. The U.S.’ longstanding criminalization of persons with mental health disabilities dates as far back as the 1700s, where many of them were imprisoned for being deemed “barbaric” and having “incurable” moral failings.<sup>99</sup> While the mid-19<sup>th</sup> century welcomed a national reform movement seeking to improve the conditions of incarcerated persons with mental health disabilities and spurring the establishment of public psychiatric hospitals,<sup>100</sup> it was closely followed by the eugenics movement that emboldened scientific pursuits to forcibly sterilize and selectively breed patients with mental health disabilities.<sup>101</sup> Through the first half of the 20<sup>th</sup> 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.”<sup>102</sup> The state’s Office of Mental Hygiene was established in 1926,<sup>103</sup> with its very name suggesting eugenicist undertones of “disinfecting” persons with mental and behavioral health disabilities.
24. In a federal effort to deinstitutionalize state hospitals, then-President John F. Kennedy signed the 1963 Community Mental Health Act (“CMHA”) with the aim to shift the treatment of persons with mental health disabilities from state psychiatric facilities to designated local, community-based clinics.<sup>104</sup> 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.”<sup>105</sup> 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.<sup>106</sup> Unfortunately, these intended community-based resources “rarely materialized” as initial federal funding was not

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<sup>99</sup> *Covering Mental Health: 1840s-1890s*, PBS NEWSHOUR CLASSROOM, <https://www.journalismaction.org/case/nellie-bly> (last visited Sept. 6, 2023).

<sup>100</sup> See Alisa Roth, *The Truth About Deinstitutionalization*, THE 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.”).

<sup>101</sup> See *The 19<sup>th</sup> 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.”).

<sup>102</sup> 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/>.

<sup>103</sup> *Id.*

<sup>104</sup> 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.’”).

<sup>105</sup> 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>.

<sup>106</sup> See *id.* at 7.

followed by longer-term commitments,<sup>107</sup> municipalities utilized zoning measures to prevent the placement of facilities in neighborhoods.<sup>108</sup> Thus, persons exiting the larger state facilities often ended up on the streets, and by the 1980s and 90s, federal, state, and local administrations invoked “broken windows” policies that criminalized the poor and unhoused and forced those persons with mental disabilities to become “enmeshed in the criminal legal system.”<sup>109</sup>

25. Since CMHA went into effect, federal courts have issued rulings regarding the legal standards authorizing involuntary commitments. For example, in the 1972 decision of *Lessard v. Schmidt*, the court sided with the state of Wisconsin’s statutory definition of “mental illness”—it held that a person may be institutionalized should “the potential for doing harm be ‘great enough to justify such a massive curtailment of liberty.’”<sup>110</sup> While this was a fairly strict standard, the U.S. Supreme Court in the 1975 case of *O’Connor v. Donaldson*.<sup>111</sup>

*B. The U.S.’ Criminalization of Mental Health Disproportionately Impacts Persons Experiencing Homelessness in Violation of Numerous Fundamental Rights under the ICCPR.*

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

John Snook, Executive Director, Treatment Advocacy Center<sup>112</sup>

26. The criminalization of mental health disproportionately impacts the unhoused population in the U.S. According to estimates from the U.S. Department of Housing and Urban Development (“HUD”), about 20 percent of the nation’s unsheltered population suffers from a “severe mental [health disability].”<sup>113</sup> This figure has been corroborated by the U.S.’ Substance Abuse and Mental Health Services Administration (“SAMHSA”), which has also contrasted it with the 5.6 percent of the general population found to have a serious mental health disability.<sup>114</sup>

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<sup>107</sup> 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-quos-vision-for-mental-health-not-realized/>.

<sup>108</sup> 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).

<sup>109</sup> Young, *supra* note 102; see also *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).

<sup>110</sup> *Lessard v. Schmidt*, 349 F. Supp. 1078, 1093 (E.D. Wis. 1972).

<sup>111</sup> *O’Connor v. Donaldson*, 422 U.S. 563, 580 (1975).

<sup>112</sup> Fola Akinnibi, *NYC Pilot Tries Mental Health Responders in Place of Police*, BLOOMBERG CITYLAB (Nov. 13, 2020, 7:13 AM), [https://www.bloomberg.com/news/articles/2020-11-13/nyc-pilot-sends-health-workers-in-place-of-police?utm\\_source=Daily+Links+for+Social+Sharing&utm\\_campaign=77012d5c76-EMAIL\\_CAMPAIGN\\_2020\\_11\\_24\\_06\\_53&utm\\_medium=email&utm\\_term=0\\_2727fb3873-77012d5c76-50183436](https://www.bloomberg.com/news/articles/2020-11-13/nyc-pilot-sends-health-workers-in-place-of-police?utm_source=Daily+Links+for+Social+Sharing&utm_campaign=77012d5c76-EMAIL_CAMPAIGN_2020_11_24_06_53&utm_medium=email&utm_term=0_2727fb3873-77012d5c76-50183436).

<sup>113</sup> 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>.

<sup>114</sup> *Guide Overview: Expanding Access to and Use of Behavioral Health Services for People Experiencing Homelessness* (SAMHSA Publication No. PEP22-06-02-003, 2023), <https://store.samhsa.gov/sites/default/files/pep22-06-02-007.pdf>.

27. Mental distress is both a consequence and cause of homelessness. Even though the number of in-patients across state asylum facilities has dropped from nearly 600,000 in the 1950s to nearly 45,000 at present, close to 30 percent of those who were discharged are rendered either homeless or without a known address within six months of their discharge.<sup>115</sup> 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.”<sup>116</sup> Moreover, mental health issues are prone to worsen with homelessness, “especially if there is no solution [for housing] in sight.”<sup>117</sup>
28. The U.S., with its inadequate social safety net and lack of community-based mental health resources, has come to rely on the criminal legal system to respond to mental health disabilities. Nearly one-third of persons found to experience severe mental distress first connect with a mental health treatment resource through law enforcement intervention.<sup>118</sup> Multiple research studies have found that most interactions that police officers have with persons with mental disabilities “do not involve major crimes or violence . . . nor do they often meet the legal criteria of ‘emergency apprehension.’”<sup>119</sup>
29. Police thus serve on the frontlines of psychiatric care without any expertise and with harmful and sometimes fatal consequences. According to a Treatment Advocacy Center (“TAC”) study, persons with untreated mental disabilities are 16 times more likely to be killed during a police encounter than other individuals.<sup>120</sup> Moreover, at least a quarter and perhaps as many as half of all fatal police shootings involve persons with serious mental health disabilities.<sup>121</sup> 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.”<sup>122</sup>

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<sup>115</sup> Oshinsky, *supra* note 113.

<sup>116</sup> 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>.

<sup>117</sup> *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>.

<sup>118</sup> 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](https://www.hhrjournal.org/2021/10/first-responders-with-a-rights-based-approach-to-mental-health-crises/#_edn3).

<sup>119</sup> 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).

<sup>120</sup> 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>.

<sup>121</sup> *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.”).

<sup>122</sup> 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).



30. Persons with mental health disabilities are significantly overrepresented in the criminal justice system.<sup>123</sup> 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) have a mental health diagnosis on an average day.<sup>124</sup> With institutional facilities serving as proxies for criminalization under the guise of corrections facilities, persons with mental health disabilities are also less likely to make bail, a reality forcing most of them to languish in jail at a rate “nearly twice as long as [persons] without mental [health disabilities].”<sup>125</sup> 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 persons with mental disabilities lack the financial support of community members to help bail them out of jail facilities.
31. Today, every state has in place laws requiring some form of civil court hearing before a person can be involuntarily committed that requires the government to show that they are an imminent threat to themselves or others.<sup>126</sup> 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. Under the “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.<sup>127</sup> “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.”<sup>128</sup>
32. The Cicero Institute template legislation referenced in paragraph 12 includes a portion that would allow any person to seek a petition for a 72-hour psychiatric hold if the court finds “(a) Poses a serious threat to himself or others; (b) Is incapable of caring for himself; or (c) Has 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

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<sup>123</sup> 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”).

<sup>124</sup> 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/>.

<sup>125</sup> *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.>

<sup>126</sup> See Samantha M. Caspar and Artem M. Joukov, *Worse than Punishment: How the Involuntary Commitment of Persons with Mental Illness Violates the United States Constitution*, 47 HASTINGS CONST. L.Q. 499, 508 (2020) (Available at: [https://repository.uchastings.edu/hastings\\_constitutional\\_law\\_quarterly/vol47/iss4/3](https://repository.uchastings.edu/hastings_constitutional_law_quarterly/vol47/iss4/3)) (citing Brian Stettin et al., *Mental Health Commitment Laws: A Survey of the States*, TREATMENT ADVOC. CTR. (2014), <https://www.treatmentadvocacycenter.org/mental-health-commitment-laws>).

<sup>127</sup> *Id.*; e.g. ALASKA STAT. § 47.30.915(9)(A) (2019). 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.” UTAH CODE ANN. § 62A-15-602(17).

<sup>128</sup> *Id.*

(but not housing), and the penalty for non-compliance with that plan is up to one month in jail or a \$5,000 fine.<sup>129</sup>

33. Not explicitly based on the Cicero template, but adopting a similarly concerning approach is the recently enacted California Community Assistance, Recovery and Empowerment (“CARE”) Court—to more easily place unhoused persons with mental health disabilities into involuntary commitments.<sup>130</sup> 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 or serious harm” absent a CARE plan, and can be done in absentia, without even providing an individual to make a case for themselves.<sup>131</sup> 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.<sup>132</sup> 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. 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.<sup>133</sup> 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.

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

34. Shortly after New York City Police Department (“NYPD”) officers murdered 66-year-old Eleanor Bumpers—a Black woman who was experiencing a mental health crisis amid an eviction—in 1984, the City instituted policy changes around how to handle so-called “emotionally disturbed people.”<sup>134</sup> In one reform measure, NYPD officers were ordered “to isolate and contain suspects in mental distress and to establish a ‘zone of safety’ around

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<sup>129</sup> 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>.

<sup>130</sup> 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>.

<sup>131</sup> S.B. 1338, ch. 319, §§ 5972, 5977, subdiv. (a), 2021-2022 Leg., (Cal. 2022).

<sup>132</sup> See *id.* §§ 5979(a)(2)-(3).

<sup>133</sup> 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).

<sup>134</sup> See Alan Feuer, *Fatal Police Shooting in Bronx Echoes One from 32 Years Ago*, N.Y. TIMES (Oct. 19, 2016), <https://www.nytimes.com/2016/10/20/nyregion/fatal-police-shooting-in-bronx-echoes-one-from-32-years-ago.html>.

them.”<sup>135</sup> Mayor Ed Koch of New York City authorized the practice of involuntary commitments of the mentally distressed in 1987, contributing to a renewed era of institutionalization that disproportionately and purposefully targeted unhoused persons with mental health disabilities.<sup>136</sup>

35. The legacies of this and related government-sanctioned practices hold especially true in the city today as the current mayoral administration’s issuance of various criminalization agendas have escalated police violence against unhoused persons. In an alleged attempt to curb New York City’s homelessness crisis, which has reached record-high levels since the 1930s’ Great Depression,<sup>137</sup> 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.”<sup>138</sup> Concerningly, as its provisions apply to persons with mental health disabilities, including those who have not committed an overtly dangerous act, it has enabled the forced removal and hospitalization of those who may not in fact pose a risk of harm to themselves or others.
36. Since taking effect, the Directive has been challenged at the federal trial court level by civil rights lawyers for violations of the U.S. Constitution, and federal, state, and local laws.<sup>139</sup> These violations include disability discrimination against unhoused persons with disabilities under the Americans with Disabilities Act and New York City Human Rights Law, and the use of excessive force, unlawful seizure, and warrantless entry under the Fourth and Fourteenth amendments to the U.S. Constitution.<sup>140</sup> The 93-page Amended Complaint describes individuals with actual or perceived mental health disabilities who endured forced detention and physical and/or emotional injury while being involuntarily transported to a hospital against their will, and despite presenting no risk of harm to themselves or anyone else.
37. One individual plaintiff of the active lawsuit—a 41-year-old unhoused Black man by the name of Oritseweyimi Omoanukhe Ayu (“Mr. Ayu”), diagnosed with bi-polar and schizoaffective disorders—has been involuntarily detained and hospitalized by NYPD officers on multiple

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<sup>135</sup> *Id.*

<sup>136</sup> See Oshinsky, *supra* note 113.

<sup>137</sup> See *Basic Facts About Homelessness: New York City*, COAL. FOR HOMELESS (Aug. 2023), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/#:~:text=The%20Basic%20Facts%3A-.In%20recent%20years%2C%20homelessness%20in%20New%20York%20City%20has%20reached.City's%20main%20municipal%20shelter%20system.>

<sup>138</sup> *Mental Health Involuntary Removals*, N.Y.C. 1, 1 (Nov. 28, 2022), <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Mental-Health-Involuntary-Removals.pdf> [hereinafter *Removals Directive*].

<sup>139</sup> See generally Second Amended Class Action Complaint, *Greene v. City of New York*, No. 21-cv-05762 (S.D.N.Y. Apr. 20, 2023), ECF No. 155 (detailing a class action suit on behalf of six individuals and four similarly situated organizations against the New York City Police Department and Mayor Eric Adams regarding the City’s involuntary removal policy) [hereinafter *Greene v. City of New York*]

<sup>140</sup> See *id.* ¶¶ 396-501.

occasions.<sup>141</sup> On one occasion in March 2022 when Mr. Ayu expressed frustration with the long wait time for his psychiatry appointment (his conduct limited to banging on the clinic’s door) approximately seven NYPD officers arrived on scene. Despite him verbalizing to them his intent to voluntarily leave the clinic site and exhibiting no violent tendencies, the officers deemed him to be an “emotionally disturbed person” and proceeded with threats of arrest and forced detention if he failed to go to the hospital. Fearful of both possibilities, Mr. Ayu relented and was transported to a hospital, where he received no treatment and was explicitly told by a hospital employee to “tell [the NYPD] not to bring [him] back.”<sup>142</sup> He was also not charged with any crime.

38. In a more recent account, which took place in February 2023, 39-year-old Neil Amitabh (“Mr. Amitabh”), a New Yorker of West Indian descent experiencing homelessness was physically harmed by an NYPD officer who slammed him into the wall of a subway station upon his initial refusal to leave the station.<sup>143</sup> Despite the absence of a mental health diagnosis, Mr. Amitabh was handcuffed by multiple officers who perceived him to be a person with mental health disabilities and was forced to “stand in a corner of the station . . . facing the wall” before he was involuntarily transported to a psychiatric ward by ambulance.<sup>144</sup> While no officer informed him as to why he was being hospitalized, he was discharged from the hospital within twenty-four hours without having received any mental health treatment or medical treatment for his injured hip.<sup>145</sup> Furthermore, upon his return to the subway station, Mr. Amitabh found his personal belongings, including his wallet with identification cards, phone, clothing, and a pair of headphones, to have been removed.<sup>146</sup> Since this and other related incidents that date as far back as 2020, Mr. Amitabh remains extremely fearful about future police encounters. Moreover, as his account in the lawsuit complaint details, he also “has had negative and scary experiences in shelters, and it is out of fear that he at times sleeps in public spaces where he feels safer.”<sup>147</sup>

39. The criminalization of mental health in New York City has had disparate impacts based on race. Over 3.38 million New York City residents reportedly suffer from at least one serious mental health disability.<sup>148</sup> However, despite having seven times fewer incidences of serious mental health disabilities than non-Black residents, Black New Yorkers experience a higher hospitalization rate.<sup>149</sup> 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,<sup>150</sup> evidencing the ways that the Directive criminalizes mental health and homelessness by perpetuating pre-existing racial and socio-economic biases

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<sup>141</sup> *Id.* ¶¶ 245-279.

<sup>142</sup> *Id.* ¶ 256.

<sup>143</sup> *Id.* ¶¶ 280-315.

<sup>144</sup> *Id.* ¶ 289.

<sup>145</sup> *Id.* ¶¶ 292-294.

<sup>146</sup> *Id.* ¶ 295.

<sup>147</sup> *Id.* ¶ 315.

<sup>148</sup> City Council Transcript, *supra* note 32, p. 19, ll. 21-23 (Feb. 6, 2023) (“That is over 3.38 million New Yorkers that might be suffering from schizophrenia, severe depression, bipolar disorder.”).

<sup>149</sup> City Council Transcript, *supra* note 32, at p. 21, ll. 23-25; *see also* City Council Transcript, *supra* note 32, at p. 22, ll. 1-4.

<sup>150</sup> City Council Transcript, *supra* note 32, at p. 13, ll. 24-25; *see also* City Council Transcript, *supra* note 32, at p. 14, ll. 2-3.

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.<sup>151</sup>

**“Unnecessary institutionalization is discrimination.”**

Attorney Elena Landriscina, Special Litigation Unit of the Legal Aid Society<sup>152</sup>

40. It appears that the City, most notably the NYPD, has not been adequately tracking arrest reports or data around voluntary and involuntary transport of unhoused persons with mental health disabilities pursuant to this directive. Nor has it reported the number of New Yorkers who have been hospitalized under the directive’s “basic living needs” standard.<sup>153</sup> However, there is ample data around the numbers of mental health crises calls made to the NYPD over the past several years. In 2022 alone, over 176,311 mental health calls were made to the NYPD, though approximately 1 percent (or just over 1,700) of these calls resulted in the arrest of an individual presumed to have a mental health disability.<sup>154</sup> Since 2015, at least nineteen (19) individuals—sixteen (16) of them identifying as Black or other persons of color—have been killed by the NYPD while experiencing a mental health crisis.<sup>155</sup> Countless more than undergone mistreatment by police officers, serious injuries, arrests, imprisonments, and forced hospitalizations. In fact, since 2017 alone, the New York City Civilian Complaint Review Board (“CCRB”) has reported nearly 2,700 allegations of police misconduct against individuals who they involuntarily hospitalized.<sup>156</sup>
41. In one tragic example, two NYPD officers murdered 32-year-old African American, Kawaski Trawick (“Mr. Trawick”), on April 14, 2019, at the supportive housing facility where Mr. Trawick was receiving “care for his [mental] health.”<sup>157</sup> While neither officer attempted to administer aid to him in his living quarters, they “tased him and shot him within 112 seconds . . . [leaving] him to die.”<sup>158</sup> A subsequent CCRB investigation confirmed police abuse charges against both officers, with Public Advocate Jumaane Williams stating that the case had amplified “the city’s need to replace cops with medical professionals on [emergency] 911 calls dealing with mentally ill people.”<sup>159</sup>

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<sup>151</sup> See generally Tony Sparks, *Reproducing Disorder*, 45 SOC. JUST. 51 (2018) (examining the impact of policing tactics on the lives of unhoused persons with mental disabilities, illustrating how such tactics “reproduce the disorderly bodies they aim to remove”).

<sup>152</sup> City Council Transcript, *supra* note 32, at p. 202, l. 10.

<sup>153</sup> The Office of Mental Health (“OMH”) has interpreted sections 9.41 and 9.58 of the Mental Hygiene Law, amended by the Mental Health Involuntary Removals directive, to “authorize the removal of a person who appears to be mentally ill and displays an inability to meet basic living needs, even when no recent dangerous at has been observed.” See *Removals Directive*, *supra* note 138, at 1.

<sup>154</sup> City Council Transcript, *supra* note 32, at p. 70, ll. 11-13.

<sup>155</sup> *Greene v. City of New York*, *supra* note 139, ¶ 83.

<sup>156</sup> City Council Transcript, *supra* note 32, at p. 130, ll. 2-6.

<sup>157</sup> City Council Transcript, *supra* note 32, at p. 182, ll. 8-9.

<sup>158</sup> City Council Transcript, *supra* note 32, at p. 182, ll. 13-16.

<sup>159</sup> *Bronx Cops in Kawaski Trawick Killing Guilty of Misconduct, CCRB Finds*, THE CITY (June 10, 2021, 6:38 PM), <https://www.thecity.nyc/2021/6/10/22528600/bronx-cops-in-kawaski-trawick-killing-guilty-of-misconduct-ccrb>.

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

Ellen Trawick, Mother of Kawaski Trawick<sup>160</sup>

42. Relatedly and just as devastatingly, 26-year-old African American Eudes Pierre (“Mr. Pierre”), an Uber Eats driver months away from being a college graduate, was shot ten (10) times and killed by NYPD officers during an apparent mental health episode in December 2021.<sup>161</sup> In responding to a mental health crisis call “of a man [allegedly] armed with a gun and a knife,” police followed Mr. Pierre “into a nearby subway station, where [they] unsuccessfully tried to tase him.”<sup>162</sup> After one officer “eventually fired seven rounds at Pierre when he exited the station,” killing him in the process, Mr. Pierre was found not to have been in possession of a gun. Following an investigation by the New York State Attorney General, the shooting was considered justified as Mr. Pierre was brandishing a knife in a manner “enough for the officers to feel like their lives were in danger.”<sup>163</sup> This was despite his death being deemed a “suicide by cop” after a suicide note was recovered at his family’s home and multiple 9-1-1 calls were traced from his own cell phone.<sup>164</sup> It was also despite a petition of over 16,000 signatories calling for New York City’s adoption of the “Eudes Pierre Law,” to require mental health professionals to be dispatched to all emergency mental health crisis calls as first responders.<sup>165</sup>
43. Private attacks on unhoused persons with mental health disabilities are encouraged by the criminalization and violent treatment at the hands of law enforcement. On May 1, 2023, Jordan Neely, an unhoused Black man struggling with mental health, was strangled to death on publicly viral video in a New York City subway car by a former Marine soldier, David Penny.<sup>166</sup> Right wing media has praised Penny as a “Good Samaritan” and encouraged others to take similar vigilante actions.<sup>167</sup>
44. Rather than investing in safe, stable housing with support services for unhoused persons with mental health disabilities, the City funneled over \$11 billion dollars toward NYPD spending in its Fiscal Year 2023 budget.<sup>168</sup> As the third-highest funded agency in the City and the highest

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<sup>160</sup> City Council Transcript, *supra* note 32, at p. 182, ll. 17-19.

<sup>161</sup> Graham Rayman & Leonard Greene, *Attorney General clears NYPD cops in death of Brooklyn man Eudes Pierre, who charged them with knife*, N.Y. DAILY NEWS (Mar. 31, 2023, 11:21 PM), <https://www.nydailynews.com/2023/03/31/ny-attorney-general-clears-nypd-cops-in-death-of-brooklyn-man-eudes-pierre-who-charged-them-with-knife/>.

<sup>162</sup> Kirstyn Brendlen & Ben Brachfeld, *Family of Eudes Pierre files suit against cops, city for wrongful death as Eastern Parkway co-named in his honor*, BROOKLYN PAPER (Oct. 20, 2022), <https://www.brooklynpaper.com/family-eudes-pierre-file-suit-co-name/>.

<sup>163</sup> Rayman & Greene, *supra* note 161.

<sup>164</sup> Brendlen & Brachfeld, *supra* note 162.

<sup>165</sup> See Rayman & Greene, *supra* note 161; see also Herbert Dubique, *The Eudes Pierre Law ‘A Cry for Help’*, CHANGE (Dec. 24, 2021), <https://www.change.org/p/nyc-council-member-the-eudes-pierre-law>.

<sup>166</sup> See Claire Thornton, *Who was Jordan Neely, the New York subway victim? A ‘young man in real crisis,’ advocates say*, U.S.A TODAY (May 7, 2023, 10:43 AM), <https://www.usatoday.com/story/news/nation/2023/05/07/who-was-jordan-neely/70190944007/>.

<sup>167</sup> See Bailee Hill, *Indictment of Marine veteran Daniel Penny ‘defies logic,’ says local NY official: ‘Something rotten’*, FOX NEWS (June 15, 2023, 10:05 AM), <https://www.foxnews.com/media/indictment-marine-veteran-daniel-penny-defies-logic-ny-official-something-rotten>.

<sup>168</sup> See Press Release, NYCLU Statement on the FY23 NYC Budget (June 14, 2022), <https://www.nyclu.org/en/press-releases/nyclu-statement-fy23-nyc-budget>.

police budget in the nation, the NYPD’s budget currently comprises 5.3 percent (or \$5.44 billion) of the City’s total 2024 Fiscal budget.<sup>169</sup> This has made criminalization policies like the Directive a significantly larger budgetary priority than critical mental health support, public education, and community solutions to housing.

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

David Peery, Miami Coalition to Advance Racial Equity<sup>170</sup>

*C. The U.S.’ Criminalization of Mental Health Violates Numerous Fundamental Rights Under the ICCPR.*

45. The criminalization of mental health and pervasiveness of civil, court-mandated commitment laws and policies in the U.S. directly violate numerous provisions of the ICCPR. Like other criminalization of homelessness efforts, these laws and policies violate the inherent right to life under Article 6 and the right to be free from torture or cruel, inhuman, or degrading treatment under Article 7. Additionally, they violate the right to liberty and security of persons under Article 9. In its interpretation of Article 9, this 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.”<sup>171</sup> This 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.”<sup>172</sup> 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.”<sup>173</sup>
46. Additionally, the monitoring committee of the U.N. Convention on the Rights of Persons with Disabilities (“CRPD Committee”) has condemned the involuntary detention and treatment of persons with disabilities as contrary to Article 14 of the CRPD.<sup>174</sup> 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.”<sup>175</sup>

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<sup>169</sup> Owen Kotowski, *Report on the Fiscal 2024 Preliminary Plan and the Fiscal 2023 Mayor’s Management Report for the New York Police Department 1*, 1 (N.Y.C. Council Fin. Div., Briefing Paper, 2023), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2023/03/NYPD-1.pdf>.

<sup>170</sup> Interview with David Peery, *supra* note 42.

<sup>171</sup> 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].

<sup>172</sup> *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*].

<sup>173</sup> General Comment No. 35, *supra* note 171.

<sup>174</sup> 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).

<sup>175</sup> U.N. High Comm’r for 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.>

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

The relationship between poverty, homelessness and disability is well recognized. Persons with intellectual or psychosocial disabilities are overrepresented among the homeless population. When the State fails to secure income and housing assistance to this population, it is likely they will end up involuntarily committed or institutionalized. Furthermore, homeless persons with disabilities are continuously exposed to the risk of being deprived of their liberty, as survival behaviours (e.g. begging, sleeping in public spaces, sitting down on sidewalks, loitering) are treated as criminal activity under laws that criminalize homelessness.<sup>176</sup>

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.<sup>177</sup>

48. In 1991, the U.N. Human Rights Council released a resolution stating that “the treatment of every patient shall be directed towards preserving and enhancing personal autonomy.”<sup>178</sup> 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.”<sup>179</sup>

49. Article 10 of the ICCPR, requiring “[a]ll persons deprived of their liberty” to “be treated with humanity and with respect for the inherent dignity of the human person,” may be read as a corollary to Article 9 and also applies to involuntary civil commitment, rising to the level of torture or cruel, inhuman, or degrading treatment in violation of Article 7.<sup>180</sup> Furthermore, as this Committee commented nearly three decades ago, Article 10’s application “must be applied

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<sup>176</sup> 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).

<sup>177</sup> *Id.* ¶¶ 86-87.

<sup>178</sup> 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).

<sup>179</sup> Rep. of the U.N. High Comm’r for Hum. Rts., 39<sup>th</sup> Sess, Sept. 10-28, 2018, U.N. Doc. A/HRC/39/36 (July 24, 2018).

<sup>180</sup> See ICCPR, *supra* note 30, at Arts. 7 and 9.



without distinction of any kind, such as race, colour, sex, language . . . or other status.”<sup>181</sup> Accordingly, no individual on the basis of their disability and status of poverty should be subject to the type of coercive, involuntary treatment authorized under U.S. laws and policies.

50. The criminalization of mental health with the involvement of courts and law enforcement personnel further violates Article 17 of the ICCPR. Involuntarily committing poor persons with mental health disabilities without any due consideration toward their housing and other basic human needs amounts to an “arbitrary or unlawful interference with [their] privacy [and/or] home.”<sup>182</sup> As police officers have limited expertise and training in mental health—spending “on average 71 hours on firearms training compared to 21 hours on de-escalation”—their explicit purpose is to “address criminality, not to provide care.”<sup>183</sup>

#### **IV. PROPOSED QUESTIONS**

51. What steps is the U.S. 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?
52. What steps is the U.S. taking to ensure its own federal agency police forces do not engage in the criminalization of homelessness?
53. What steps is the U.S. taking to ensure private actors are not penalized for providing food and aid to unhoused persons?
54. 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?

#### **V. PROPOSED CONCLUDING OBSERVATIONS**

55. Noting the continued constructive steps by several federal agencies to combat the criminalization of homelessness, including funding incentives, legal filings, and enforcement actions, the Committee reiterates its concerns and recommendations from paragraph 19 of its 2014 Concluding Observations on the State Party. Of particular concern are reports of federal police agencies themselves engaging in criminalization, template legislation being introduced at the state level to ban camping and force unhoused persons into relocation camps, mutual aid care providers being targeted for assisting unhoused persons, and the deliberate lowering of due process standards to increase use of the civil commitment system for unhoused persons with mental health disabilities to restrict their liberty and autonomy in the absence of adequate housing. (arts. 2, 7, 9, 10, 17, and 26).

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<sup>181</sup> U.N. Hum. Rts. Comm., General Comment 21, ICCPR Art. 10, ¶ 4, U.N. Doc. HRI/GEN/1/Rev.1 (1994) [hereinafter General Comment No. 21].

<sup>182</sup> ICCPR, *supra* note 30, at Art. 17.

<sup>183</sup> Ezer & Tomasini-Joshi, *supra* note 118.

The State Party should take immediate steps to: (a) ensure that federal law enforcement are not used in responding to homelessness; (b) stop state legislation authorizing forced relocation camps for unhoused persons under threat of arrest; (c) ensure service providers are not targeted for assisting unhoused persons with meeting their basic needs; (d) abolish criminalization of homelessness including the use of carceral civil involuntary commitment systems; and (e) redirect funding to compassionate crisis response teams with mental health, harm reduction, and other psychosocial service expertise; trauma-informed, non-congregate shelters with supportive services as temporary residences; and community-based housing, including permanent supportive housing, utilizing a Housing First approach.

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