

# Human Right to Housing Report Card 2023

Grading the United States Response to Housing and Homelessness



# Acknowledgements

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Photo by Sam Hozian

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# Executive Summary

Housing is a human right. Inspired in modern times as part of President Franklin Roosevelt's Second Bill of Rights and later developed by the international human rights community, the right to housing is now increasingly embraced by U.S. advocates who are fed up that "the rent is too damn high" and communities spend three times as much on policing and "housing" people in jail as it would to simply provide adequate housing in the first place. The human right to adequate housing is more than a slogan, it is a well fleshed-out framework of accountability for ensuring housing is more than just four walls and a roof over one's head, but a safe, stable place where one can live with dignity.

This report is part of the movement for the human right to housing in the United States (U.S.), holding the U.S. accountable to each of the seven internationally recognized elements of the right: legal security of tenure; accessibility; affordability; availability of services, materials and infrastructure; location; habitability; and cultural adequacy. Each component could include dozens of further examples, but we have selected a few to highlight to show the potential of using the framework as a tool for advocates working on various aspects of the right. We have assigned letter grades to each element, recognizing the relative status of the right and any progress (or lack thereof) over 2022, and taking into account events since our last report card in 2016, as compared to our government's obligation to ensure it to the maximum of available resources. The report card grades our federal government's response, but we share recommendations for the state and local level as well, where appropriate.

**For 2022, the report is not good.**

CATEGORY	2022
Legal Security of Tenure	C-
Accessibility	B-
Affordability	F
Availability of Services, Materials, and Infrastructure	D
Location	B-
Habitability	C-
Cultural Adequacy	B-



## Legal Security of Tenure



President Biden came into office on a platform promising housing security, but many helpful pandemic era programs expired in 2022 and were not renewed, or are running out of funding, and the federal eviction moratorium has been lifted. Furthermore, despite the federal government actively condemning the criminalization of homelessness, this practice continues to grow across the United States.

### Recommendations

1. Fully fund legal aid programs to ensure universal access to counsel for persons facing eviction and foreclosure.
2. Ensure federal agencies are not engaging in criminalization of homelessness.
3. Condition federal funding on elimination of criminal justice responses to homelessness and instead investment in trauma informed, culturally sensitive non-congregate temporary or permanent housing with supportive social services.
4. Take enforcement action against communities that use law enforcement to criminalize persons experiencing homelessness.
5. Require local law enforcement agencies to collect and share data on the housing status of persons ticketed and arrested, by law enforcement, in addition to race and gender.
6. Fully legalize people's ability to live in their cars.
7. Ensure people who have experienced housing insecurity and homelessness are included in all policy conversations about responses to those issues.

## Accessibility



Since 2016, the U.S. has made some positive policy decisions, such as HUD's stance on arrest records and returning the Public Charge rule to historical standards, as well as negative policy decisions like failing to address racial discrepancies in evictions, resulting in stagnancy in access to adequate housing. However, as of early 2023, the Biden Administration has set forth a progressive and reasonable plan to address housing discrimination amongst disadvantaged groups. If President Biden's plan comes to fruition, there is hope for more fair housing practices across the country.

### Recommendations

1. Use a human rights framework to regularly monitor housing availability and address inequalities and unaffordability of housing and incorporate references to our treaty obligations in relevant rulemaking, including the pending Affirmatively Furthering Fair Housing (AFFH) rule.
2. Maintain and conduct adequate public education regarding the revised final Public Charge rule so immigrant populations receive all benefits to which they are entitled.

3. Finalize the AFFH rule and create strong awareness, technical assistance, and enforcement programs to ensure it is implemented.
4. Support and connect residents with local independent organizations that monitor and take action against potential discrimination in housing.
5. Strengthen the Fair Housing Act to include additional protected classes against discrimination, including source of income, sexual orientation, housing status, immigration status, arrest or conviction history, and eviction history.<sup>1</sup>
6. Adopt all recommendations related to halting source of income discrimination in the Blueprint.
7. All FHA-insured properties should ban source of income discrimination in their properties.
8. HUD should issue guidance clarifying that Part 200 does not prohibit Youth Homelessness Demonstration Project or Runaway and Homeless Youth Act funds from being used for direct cash transfer programs for unhoused youth.
9. Prohibit housing providers from disclosing the immigration status of tenants to law enforcement or local authorities.

## Affordability



The U.S. is currently experiencing an affordable housing crisis with a shortage of 7 million affordable homes.<sup>2</sup> As of 2023, there is not a single state or county in the U.S. where a full-time worker making minimum wage can afford the rent of a two-bedroom apartment.<sup>3</sup> Social Security Income (SSI) and Social Security Disability Insurance (SSDI) payments for elderly or disabled Americans are often below the cost of rent.<sup>4</sup> The Biden Administration set forth progressive strategies in combatting the affordable housing crisis, but Congress has failed to fund them. In December of 2022, the United States Interagency Council on Homelessness (USICH) released “All In: The Federal Strategic Plan to Prevent and End Homelessness” (“All In”) outlining a national goal to reduce, and eventually eliminate, homelessness in the U.S.<sup>5</sup> While this plan is ambitious and a hopeful step in the right direction, until these strategies come to fruition, the U.S. remains in an unsustainable housing market.

## Recommendations

1. Permanently implement COVID-19 policies, like emergency rental assistance, and expand monthly child tax credits and renters tax credits, to ensure universal housing affordability outside of the annual appropriations process.
2. Update Title V federal regulations to explicitly allow use of all affordable housing financing tools, more time to bring affordable housing developments into use and an opportunity to cure if an existing Title V grantee is noncompliant.
3. Index SSI and SSDI payments to local housing costs and expand other welfare benefits to ensure that citizens are not sacrificing basic needs to meet high housing costs.
4. Create structures, funding, incentives, and technical assistance to make it easier to create community land trusts and housing cooperatives.
5. Raise the minimum wage and index it to inflation.

<sup>1</sup> See A National Homes Guarantee, Peoples Action (Sept. 5, 2019) [https://homesguarantee.com/wp-content/uploads/Homes-Guarantee\\_-\\_Briefing-Book.pdf](https://homesguarantee.com/wp-content/uploads/Homes-Guarantee_-_Briefing-Book.pdf).

<sup>2</sup> The Problem, NATIONAL LOW INCOME HOUSING COALITION, <https://nlihc.org/explore-issues/why-we-care/problem>.

<sup>3</sup> The Problem, NATIONAL LOW INCOME HOUSING COALITION, <https://nlihc.org/explore-issues/why-we-care/proble>

<sup>4</sup> Fred Clasen-Kelly, High rents outpace federal disability payments, leaving many homeless, NPR (Sept. 15, 2022), <https://www.npr.org/sections/health-shots/2022/09/15/1121848289/social-security-disability-inflation-poverty>.

<sup>5</sup> All In: The Federal Strategic Plan to Prevent and End Homelessness, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS (Dec. 2022), [https://www.usich.gov/All\\_In.pdf](https://www.usich.gov/All_In.pdf).

## Availability of Services, Materials, and Infrastructure



Existing infrastructure regarding access to water, sanitation, and other basic services critical to the right to housing is lacking in certain areas. Additionally, the criminalization of homelessness and lack of access to public toilets, sinks, showers, and mobile sanitation facilities for vehicle residents exacerbate homelessness and deprive individuals of essential water and sanitation.

### Recommendations

1. Fund a comprehensive nationwide study of inadequate and unaffordable wastewater treatment and fund innovation in affordable wastewater treatment technologies, employing renewable energy strategies.<sup>6</sup>
2. Provide grant incentives to communities to ensure adequate water and sanitation access for all, including unsheltered and vehicle residents.

## Location



The federal government has continued policies and practices that place industrial facilities in low-income communities. Additionally, local governments have failed to sufficiently address food insecurity in rural and urban areas, leading to health concerns. Thus, despite laws against racial segregation, governments at all levels in the U.S. perpetuate inadequate housing and services in segregated areas by enacting zoning laws that hinder affordable housing development.

### Recommendations

1. Provide tax incentives, or update zoning regulations to encourage large supermarkets, including coops, to open in underserved communities.<sup>7</sup>
2. Provide funds to improve public transportation systems to increase food access in areas where grocers are over 10 miles away.<sup>8</sup>
3. Clean up radioactive and toxic waste sites in areas inhabited by racial and ethnic minorities.<sup>9</sup>
4. Undertake thorough investigations into cases of pollution affecting minority communities and hold those responsible accountable by providing effective remedies for the victims.<sup>10</sup>

<sup>6</sup> EPA IN WEST VIRGINIA, HIGH TECH SYSTEMS HELP LOW-INCOME FAMILIES DEAL WITH SEWAGE PROBLEMS (2015). The federal government should learn from states that have tackled water and sanitation issues. EPA-funded septic systems have made a large impact in one of the poorest and most rural areas in West Virginia. The project involves “installing high-tech systems that use peat as a secondary treatment and ultraviolet light as the final disinfectant.”

<sup>7</sup> Comm. on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of the United States of America, ¶45, U.N. Doc. CERD/C/USA/Rev.#7/Add.#9 (Sep. 25, 2014) [hereinafter CERD Concluding Observations: USA].

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

## Habitability



The Build Back Better Program, as passed by the House, had earmarked \$65 billion to address the \$70 billion backlog in public housing maintenance issues. These funds would have gone a huge way to remedying the leaks, mold, faulty heating/cooking, and malfunctioning elevators that pose habitability violations for public housing residents. Unfortunately, the program did not pass, and millions of public housing residents continue to see ongoing violations of their right to habitable housing. Additionally, the power imbalance in the private market means many renters are forced to deal with violations of their right to habitable housing as well.

## Recommendations

1. Provide sufficient funding to the Section 9 public housing program to enable Public Housing Authorities to make all needed capital repairs as well as fund ongoing operations, administration, and maintenance.<sup>11</sup>
2. Repeal the Faircloth Amendment.<sup>12</sup>
3. Review the Public Housing Operating Fund to ensure that it provides an accurate reflection of Public Housing Authority's operating costs and funding needs.<sup>13</sup>
4. Ensure that local Public Housing Authorities encourage resident participation in all aspects of public housing management.<sup>14</sup>
5. Create penalties for venture capital companies that neglect maintenance of housing in their portfolio.
6. Fully fund a right to counsel for tenants at risk of eviction.

## Cultural Adequacy



In our analysis of cultural adequacy, we focused on two main components. The impact of gentrification on culturally adequate housing, and the lack of adequate housing for Indigenous Peoples due to centuries of massive land theft and systematic removal. Since 2016 however, the U.S. has taken important steps to involve Indigenous communities in the construction and distribution of federal aid programs. By providing Indigenous communities with funding opportunities and a simultaneous active role in decision making, the federal government has made a notable effort in providing culturally adequate supportive housing services. However, there is still a deficit in adequate housing to begin with, let alone housing that is culturally sensitive, particularly on Tribal lands. As such, although the funding and collaboration with Tribal governments is welcome, the housing services required are more significant than what is currently offered. Further, Indigenous groups should not have to assimilate to obtain housing services or shelter. Rather, the housing provided through government grant programs should be geared towards the specific needs of Indigenous communities, and more needs to be done to address the overcrowding and often unlivable housing conditions on Tribal lands.

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<sup>11</sup> JACKSON GANDOUR, WE DESERVE TO HAVE A PLACE TO LIVE (Sarah Saadoun et al. eds., 2022).

<sup>12</sup> Id.

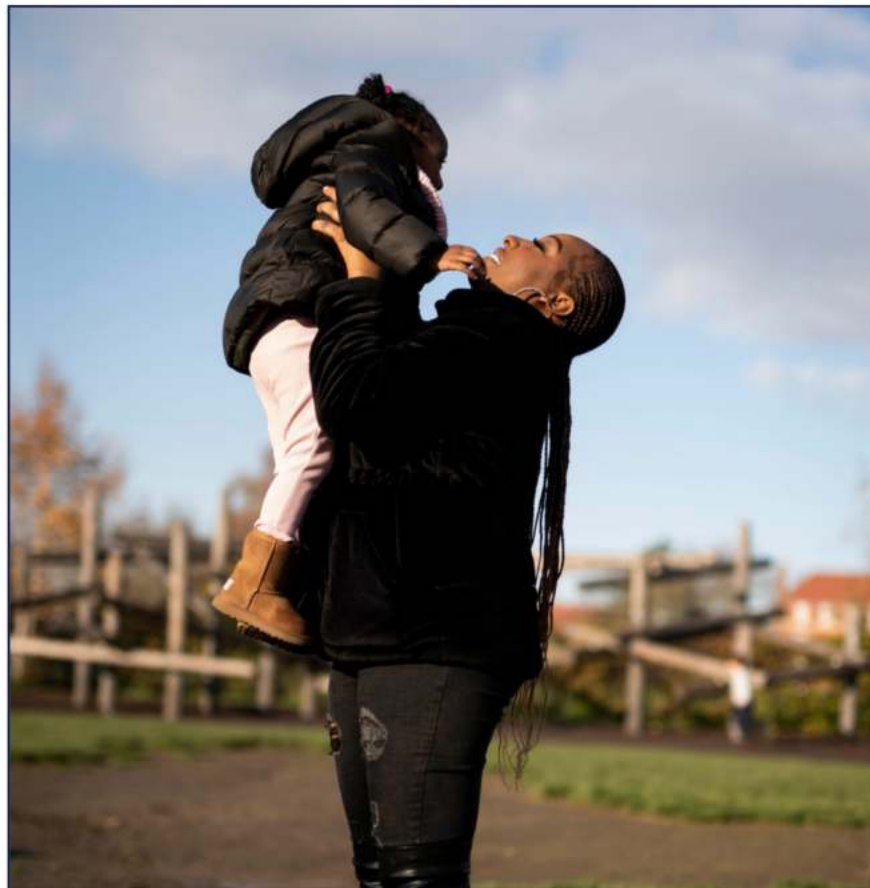
<sup>13</sup> Id.

<sup>14</sup> Id.



## Recommendations

1. Create tax incentives to maintain affordable housing and small businesses in low-income communities, to disincentivize the gentrification of affordable and culturally diverse communities.
2. The targeted Tribal funding opportunities are a step in the right direction, as the federal government is exhibiting initiative in developing housing that is adequate with the cultural needs of Indigenous communities in mind. As such, through the American Rescue Plan, the federal government should continue to invest funding into culturally sensitive housing for Indigenous communities.
3. The federal government should continue to collaborate with Tribal communities, partnering with Indigenous rights organizations to create culturally adequate housing services and should remove onerous administrative and regulatory barriers for funding. The federal government should work with Tribal governments to make more housing available on Tribal lands to address the problem of overcrowding.
4. NAHASDA funding should no longer be flat funded and should instead be evaluated on a yearly basis accounting for inflation and need.
5. Because of the lack of access to adequate housing on Tribal lands, native communities are often forced to turn to mainstream services. The federal government should make mainstream housing services more accessible to and respectful of Indigenous groups.



*Naomi, Aaron Chown/PA Wire/Centre for Homelessness Impact*

# Introduction

Housing is a human right. It is recognized around the globe, inspired by President Franklin Roosevelt's Second Bill of Rights, and developed by the international human rights community. While the U.S. has strayed far from its original commitments, U.S. advocates are increasingly returning to the concept of a right to housing precisely because our government is failing in this area on so many levels. It is important to recognize that the human right to housing is more than a slogan. It is a legal framework that can help us design people-centered housing policies, ensuring basic human dignity, and hold our government accountable. This report, informed by experts with policy and lived expertise, seeks to share this framework, apply it to federal housing policy, and provide rights-based recommendations, so that we can bring the human right to housing home.

The U.S. currently faces a severe shortage of adequate housing. The COVID-19 pandemic has exacerbated a housing crisis and exposed the inadequacy of the nation's current policies addressing homelessness. At the same time, the COVID-19 pandemic acted as a catalyst for the implementation of various housing programs, but many of these programs ended in 2022 and homelessness is on the rise.<sup>15</sup> While between 2007 to 2016, the number of individuals experiencing chronic homelessness had dropped by 35%, this trend was reversed between 2016 and 2020, and the number of individuals experiencing chronic homelessness surged by 43%.<sup>16</sup> Unsheltered homelessness has similarly increased by 30% and between 2015 and 2020.<sup>17</sup>

Moreover, cities—and even some states—are increasingly criminalizing homelessness by passing ordinances outlawing basic life-sustaining activities such as sleeping, eating, or sitting in public. Activities which people experiencing homelessness often have no choice but to do in public.<sup>18</sup> As such, city officials focus on shielding homelessness from the public view, rather than addressing the root cause of a lack of adequate housing.<sup>19</sup>

At the same time, President Biden has publicly recognized the human right to housing and committed to addressing the federal government's history of discrimination in housing practices.<sup>20</sup> Members of Congress are actively talking about housing as a human right and introducing legislation that would take steps to implement it.<sup>21</sup> And active movements in California, Connecticut, and Vermont seek to recognize the human right to housing at the state level.<sup>22</sup>

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<sup>15</sup> State of Homelessness: 2022 Edition, NATIONAL ALLIANCE TO END HOMELESSNESS, (2022) <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>

<sup>16</sup> The 2021 Annual Homeless Assessment Report (AHAR) to Congress, THE U.S DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD, (February 2022) [www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf](http://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf)

<sup>17</sup> Id.

<sup>18</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014) [hereinafter NLCHP RACIAL DISCRIMINATION]; see also MIA., FLA., CODE 2020 § 37-3 ("It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places, or upon the private property of another without the consent of the owner thereof."); MIA., FLA., CODE 2020 § 37-4 (criminalizing living, sleeping, and cooking in vehicles parked on public property or private parking lots).

<sup>19</sup> Id.

<sup>20</sup> The White House, Memorandum on Redressing our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, (January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>

<sup>21</sup> See e.g., Housing is a Human Right Act, H.R. 6308, 116th Cong. (2020); <https://www.congress.gov/bill/118th/congress/house-bill/1708>.

<sup>22</sup> See e.g., Housing is a Human Right Act, H.R. 6308, 116th Cong. (2020); State of California Housing Agency Act, Assemb. B. 2506, Reg. Sess. (Cal. 2020); Jeremy B. White, California Will Consider 'Right to Housing' Legislation This Year, POLITICO (Jan. 6, 2020, 8:48 PM), <https://www.politico.com/states/california/story/2020/01/06/california-will-consider-right-to-shelter-legislation-this-year-9420607>; An Act Establishing a Right to Housing, 2021SB00194-R01-SB- CT Bill, Conn. General Assembly, Committee Bill No. 194, LCO No. 3558 (2021).

This report assesses U.S. compliance with the human right to adequate housing since our last report card in 2016, with a focus on the past year. The right to adequate housing was first recognized in 1948 by the Universal Declaration of Human Rights (UDHR),<sup>23</sup> the foundational document of the international human rights system, which the U.S. played a pivotal role in developing.<sup>24</sup> This right was then codified into treaty law by the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>25</sup> Article 11 of this treaty affirms a state's duty to respect, protect, and fulfill the right to adequate housing as a component of an adequate standard of living.<sup>26</sup> The U.S. signed ICESCR on January 3, 1976, but not yet ratified it. Thus, while it has no obligation to take affirmative steps to implement the treaty's provisions, it must not undermine the treaty's "object and the purpose."<sup>27</sup> Even under this bare minimum standard, the U.S. is failing to meet its obligations by criminalizing homelessness and undermining the rights to health and housing. Regardless of ratification, international human rights law provides useful guidance for housing policy and addressing homelessness.

Other human rights instruments relevant to the right to adequate housing are the International Covenant on Civil and Political Rights, (ICCPR) and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).<sup>28</sup> Unlike the ICESCR, the U.S. has ratified both the ICCPR and the ICERD, meaning that the U.S. government is bound to implement the treaty's provisions.

The right to adequate housing is not merely four walls and a roof. Rather, as the Special Rapporteur on Adequate Housing explains, it is "the right to live somewhere in security, peace, and dignity, and should be ensured to all persons, irrespective of income or access to economic resources."<sup>29</sup> The right to adequate housing is thus more than a right to shelter, though the definition of "adequacy" can be a useful tool in improving shelter conditions too. Housing must be "adequate," fulfilling the seven dimensions set out by the Committee on Economic Social and Cultural Rights (CESCR.), the human rights body responsible for overseeing the implementation of the ICESCR:

***Security of Tenure:*** *Guaranteeing legal protection against forced eviction, harassment, and other threats.*

***Accessibility:*** *Prioritizing disadvantaged groups and affording them full and sustainable access to adequate housing.*

***Affordability:*** *Keeping the financial costs of housing at such a level that the satisfaction of other basic needs is not threatened or compromised.*

***Availability of Services:*** *Facilitating essential services for health, security, comfort, and nutrition.*

***Habitability:*** *Providing inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind, or other threats to health and structural hazards.*

***Location:*** *Locating adequate housing to allow access to employment options, health-care services, schools, childcare centers, and other social facilities.*

***Cultural Adequacy:*** *Housing construction, building materials, and policies that enable the expression of cultural identity and diversity of housing.<sup>30</sup>*

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<sup>23</sup> Universal Declaration of Human Rights art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

<sup>24</sup> History of the Document, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/history/document/index.html> (last visited Apr. 22, 2021).

<sup>25</sup> International Covenant on Economic, Social, and Cultural Rights art. 11, adopted Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>26</sup> *Id.*

<sup>27</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 18(a). See also RESTATEMENT (FOURTH) OF THE FOREIGN REL. L. OF THE U.S. § 304 cmt. e (AM. L. INST. 2018) (requiring the government to "avoid actions which could render impossible the entry into force and implementation [of a treaty] or defeat its basic purpose and value").

<sup>28</sup> International Convention on Civil and Political Rights, ratified June 8, 1992, 1996, 999 U.N.T.S. 171 [hereinafter ICCPR], International Convention on the Elimination of All Forms of Racial Discrimination, ratified Oct. 21, 1994, 660 U.N.T.S. 1 [hereinafter ICERD].

<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 ¶ 3 Guideline No.6 (34) U.N. Doc. A/HRC/43/43 (2019) citing CESCR Gen. Co. No. 7 ¶

<sup>30</sup> Comm. On Econ., Soc., and Cultural Rts., General Comment No.4 The Right to Adequate Housing, ¶ 8 (a-g) U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No.4] ("Rather [the right to housing] should be seen as the right to live somewhere in security, peace, and dignity.").

This report is structured around the seven dimensions of the human right to adequate housing. For each dimension, the report grades U.S. performance and provides an analysis, as well as recommendations to address areas of concern. The analysis draws on international human rights law and includes an update on key developments since the previous report card from 2016.<sup>31</sup> Grades for each component were assigned based on the federal government's actions (laws passed, regulations issued, enforcement actions taken, resources provided) or inactions, and are current as of December 31, 2022. Starting with a "neutral" C grade, points were added or taken away based on these criteria, with a + or a – used to reflect nuance such as the significance of a law, the magnitude of harm, or the cost of inaction or inadequate action in the face of the ongoing housing crisis. We do not grade specific states or localities, but activity at the state or local level, and the federal government's response or lack thereof, impacts the overall grade.

In 2019, the U.N. Special Rapporteur on Adequate Housing developed Guidelines on the Implementation of the Right to Adequate Housing. The Guidelines provide with practical measures to implement the right to adequate housing and cover the following topics:

- Guarantee the right to housing as a fundamental human right linked to dignity and the right to life;
- Take immediate steps to ensure the progressive realization of the right to adequate housing in compliance with the standard of reasonableness;
- Ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions;
- Address discrimination and ensure equality;
- Ensure gender equality in housing and land;
- Ensure the right to adequate housing for migrants and internally displaced persons;
- Ensure the capacity and accountability of local and regional governments for the realization of the right to adequate housing;
- Ensure the regulation of business in a manner consistent with State obligations and address the financialization of housing;
- Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to adequate housing;
- Engage in international cooperation to ensure the realization of the right to adequate housing;
- Ensure effective monitoring and accountability mechanisms.<sup>32</sup>
- Implement comprehensive strategies for the realization of the right to housing;
- Eliminate homelessness in the shortest possible time and stop the criminalization of persons living in homelessness;
- Prohibit forced evictions and prevent evictions whenever possible;
- Upgrade informal settlements incorporating a human rights-based approach;

These guidelines inform and intersect with our application of the CESCR's seven elements of the right to adequate housing discussed below.

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<sup>31</sup> Grading the U.S. Response to Homelessness, NATIONAL HOMELESSNESS LAW CENTER (2016), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://homelesslaw.org/wp-content/uploads/2018/10/Right\\_to\\_Housing\\_Report\\_Card\\_2016-1.pdf](https://homelesslaw.org/wp-content/uploads/2018/10/Right_to_Housing_Report_Card_2016-1.pdf)

<sup>32</sup> Hum. Rts. Council, Guidelines for the Implementation of the Right to Adequate Housing ¶ 12-83 U.N Doc. A/HRC/43/43 (2020).

## II. Legal Security of Tenure



Based on our evaluation, the U.S receives a C- in providing legal security of tenure. President Biden came into office on a platform promising housing security, but helpful pandemic era programs expired in 2022 and were not renewed, or are running out of funding, and the eviction moratorium has been lifted. Furthermore, despite the federal government actively condemning the criminalization of homelessness, criminalization of homelessness continues to grow across the U.S., showing the steps being taken are insufficient.

According to CESCR, **security of tenure entails “legal protection against forced eviction, harassment and other threats” to residency.**<sup>33</sup> Thus, integral to security of tenure is protection against forced eviction and the elimination criminalization of homelessness.

### A. Renters Rights Against Forced Eviction

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

– Mathew Desmond, Author of *Evicted: Poverty and Profit in the American City*<sup>34</sup>

**“The practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”**

– Commission on Human Rights, Resolution 1933/77<sup>35</sup>

CESCR has called on states to “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”<sup>36</sup> It has outlined the following protections against forced eviction:

- (1) An opportunity for genuine consultation with those affected;
- (2) Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (3) Information on the proposed evictions and where applicable on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- (4) Especially where groups of people are involved, government officials or their representatives to be represented during an eviction;
- (5) All persons carrying out the eviction to be properly identified;
- (6) Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (7) Provision of legal remedies;
- (8) Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.<sup>37</sup>

<sup>33</sup> Comm. On Econ., Soc., and Cultural Rts. (“CESCR”), General Comment No. 4: The Right to Adequate Housing (Art.11(1) of the Covenant), ¶ 8(a), U.N Doc. CESCR/E/1992/23 (Dec. 13,1991) [hereinafter CESCR General Comment No.4].

<sup>34</sup> MATHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 254 (2017).

<sup>35</sup> Hum. Rts. Council, *Forced Evictions*, Fact Sheet No. 25/Rev. 1, (2014), <https://www.ohchr.org/EN/Issues/LandandHR/Pages/ForcedEvictions.aspx>

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

## Evictions

In the U.S., 1 in 6 renters are threatened with eviction every year.<sup>38</sup> Moreover, evictions contribute to a cycle of poverty that too often results in homelessness.<sup>39</sup> An eviction letter, included in credit reports, often disqualifies tenants from federal housing assistance, or future attempts at securing housing.<sup>40</sup> The harms of eviction fall disproportionately on minority communities. Racial disparities in household net worth and mortgage access cause Black families to be more likely to be renters than owners, placing them at a higher risk of forced eviction.

The UN Committee on the Elimination of Racial Discrimination (CERD) has recognized the “discriminatory mortgage-lending practices and the foreclosure crisis which disproportionately affected, and continues to affect, racial and ethnic minorities.”<sup>41</sup> In 2016, the typical net worth for a white American family was \$171,000, while for Black households, it was \$17,150.<sup>42</sup> Almost 75% of white families own their homes, while less than half of the Black households own their homes.<sup>43</sup> Additionally, Black and Hispanic households are more likely to be denied mortgages than white and Asian households.<sup>44</sup> Further, lower net worth means households of color have fewer financial assets, increasing “the amount of mortgage debt needed for a home purchase.”<sup>45</sup> One study discovered that “fewer than two-thirds of Black and Hispanic householders had mortgage rates below 5%, compared with 73% of white householders and 83% of Asian householders.”<sup>46</sup> In contrast, “23% of Black householders and 18% of Hispanic householders with mortgages were paying 6% or more on their home loans, compared with 13% of white householders and just 6% of Asian householders.”<sup>47</sup>

Black and Hispanic renters are twice as likely to be evicted as white renters.<sup>48</sup> In 2020, Black individuals accounted for 32.7% of all eviction filing defendants, despite only making up 19.9% of all adult renters in the counties addressed by the eviction study.<sup>49</sup> Further, data from the U.S. Census Bureau’s Household Pulse Survey found that approximately 4.2 million adults reported being at risk of eviction or foreclosure in the preceding months after the Eviction Moratorium was lifted.<sup>50</sup> These adults were significantly more likely to be Black, Indigenous, Latinx, or other people of color.<sup>51</sup> Oftentimes the share of Black renters in a community is a greater predictor of the rate of eviction filings than poverty itself.<sup>52</sup>

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<sup>38</sup> Eviction Lab, New Data Release Shows that 3.6 Million Eviction Cases were Filed in the United States in 2018 (July 11, 2022), <https://evictionlab.org/new-eviction-data-2022/>.

<sup>39</sup> Maria Roumiantseva and Liel Sterling, New Report Illustrates How Right to Counsel Prevents Evictions and their Discriminatory Impacts on Communities, AMERICAN CIVIL LIBERTIES UNION (ACLU) (May 22, 2022) <https://www.aclu.org/news/womens-rights/new-report-illustrates-how-right-to-counsel-prevents-evictions-and-their-discriminatory-impacts-on-communities>.

<sup>40</sup> American Civil Liberties Union and National Coalition for a Civil Right to Counsel, No Eviction Without Representation: Evictions’ Disproportionate Harms and the Promise of Right to Counsel, 1 (2022), <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>.

<sup>41</sup> CERD CO. SEVENTH TO NINTH, at ¶ 13.

<sup>42</sup> Kriston McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, Examining the Black-White wealth gap, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

<sup>43</sup> Homeownership rates show that Black Americans are currently the least likely group to own homes, (July 28, 2020), USA FACTS, <https://usafacts.org/articles/homeownership-rates-by-race/>.

<sup>44</sup> Drew Desilver and Kristen Bialik, Blacks and Hispanics face extra challenges in getting home loans, PEW RESEARCH CENTER (January 10, 2017), <https://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans/>.

<sup>45</sup> Michael Neal, Jung Hyun Choi, and John Walsh, Before the Pandemic, Homeowners of Color Faced Structural Barriers to the Benefits of Homeownership, URBAN INSTITUTE (August 2020), <https://www.urban.org/sites/default/files/publication/102781/before-the-pandemic-homeowners-of-color-faced-structural-barriers-to-the-benefits-of-homeownership.pdf>.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Sophia Weeden, Black and Hispanic Renters Face Greatest Threat of Eviction in Pandemic, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, (January 11, 2021), <https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat-eviction-pandemic>.

<sup>49</sup> American Civil Liberties Union and National Coalition for a Civil Right to Counsel, No Eviction Without Representation: Evictions’ Disproportionate Harms and the Promise of Right to Counsel, 4 (2022), <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>.

<sup>50</sup> Measuring Household Experiences during the Coronavirus Pandemic, UNITED STATES CENSUS BUREAU, (MARCH 01, 2023) <https://www.census.gov/data/experimental-data-products/household-pulse-survey.html>

<sup>51</sup> American Civil Liberties Union and National Coalition for a Civil Right to Counsel, No Eviction Without Representation: Evictions’ Disproportionate Harms and the Promise of Right to Counsel, 3 (2022), <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>.

<sup>52</sup> Brief of Amici Curiae at 8, Mitchell Matorin and Linda Smith, et al., v. Commonwealth of Massachusetts and its Executive Office of Housing and Economic Development, et al., No. 2084-cv-01344 (Super. Ct. Mass. Jul. 24, 2020)

Furthermore, the consequences of displacement are worse for Black families, who face discrimination in the rental market.<sup>53</sup> Not only are Black renters more likely to have an eviction letter on file, but they are made aware of and shown less than half of the apartments shown to equally qualified white renters.<sup>54</sup> As such, many Black families will not even get to see many of the available apartments, much less get the opportunity to rent them. In a study funded by the by the Boston Foundation, the Suffolk University Law School Housing Discrimination Testing Program found that Black market rate renters were able to visit only 48% of the apartments they sought compared to white market rate renters who were able to visit 80% of the same apartments.<sup>55</sup>

### COMPARATIVE EVICTION STATISTICS

- In Milwaukee, almost half the city's evictions took place in predominantly Black neighborhoods, and in a typical month, three out of every four people in Milwaukee eviction court were Black, despite only making up 38.79% of the population.<sup>56</sup>
- In Michigan, researchers found that in urban areas in Michigan, the percentage of Black people living in an area is a predictive factor in the number of eviction filings in the area.<sup>57</sup>
- In New York, in the areas with large Black populations, eviction cases were filed at a rate of 22.7 per 100 renters, while they were filed against only 1 of 100 renters in the areas with low black populations.<sup>58</sup>
- In Richmond, Virginia, a neighborhood's share of evictions increases with its Black population and decreases with its white population. The disparities are not explained by neighborhood differences in median income or poverty rates.<sup>59</sup>
- Among tenants at risk of eviction, Hispanic tenants in predominantly white neighborhoods were roughly twice as likely to be evicted as those in predominantly non-white neighborhoods. Hispanic tenants were also more likely to get evicted when they had a non-Hispanic landlord.<sup>60</sup>

### Pandemic Impacts and Responses

During the COVID-19 pandemic, housing security was a primary concern.<sup>61</sup> In 2021, The Special Rapporteur's Report on Adequate Housing noted the difficulty for those experiencing homelessness to protect themselves from the virus unless granted access to housing that ensures privacy and physical distancing.<sup>62</sup> Social distancing, handwashing, and isolation are virtually impossible for those living without housing and regular access to water and sanitation.<sup>63</sup> She noted, "Housing has become the frontline defense against the coronavirus. Home has rarely been more of a life-or-death situation."<sup>64</sup> The pandemic has disparately impacted Black, Indigenous, and other people of color.<sup>65</sup>

<sup>53</sup> Id. at 10.

<sup>54</sup> Id.

<sup>55</sup> Id. at 11.

<sup>56</sup> Id. at 4.

<sup>57</sup> Id. at 8.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> FY 2021 Eviction Protection Grant Program, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, [https://www.hud.gov/program\\_offices/spm/gmomgmt/grantsinfo/fundingopps/fy21\\_evictiongrantprogram](https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps/fy21_evictiongrantprogram)

<sup>61</sup> Hum. Rts. Council, Report of the Special Rapporteur on the Right to Adequate Housing, Adequate housing as a component of the right to an adequate standard of living" ¶ 13, A/75/148 (2021)

<sup>62</sup> Id. Intro.

<sup>63</sup> Id.

<sup>64</sup> U.N. OHCHR Press Release, "Housing, the Front Line Defence Against the COVID-19 Outbreak," Says UN Expert, (Mar. 18, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>.

<sup>65</sup> See, e.g., PHILA. RENTERS REP., COVID-19'S IMPACT ON RACE AND HOUSING SECURITY ACROSS PHILADELPHIA (n.d.), available at <https://clsphila.org/wp-content/uploads/2021/02/20210222-Philadelphia-Renters-Report.pdf>.

As a result of lost wages, as of November 2021, 1 in 6 adult renters were behind on rent, the highest percentage (28%) of which are Black.<sup>66</sup> The federal eviction moratorium and pandemic aid programs under the CARES Act and American Rescue Plan undoubtedly saved lives and preserved housing stability for many, but these protections have expired, and Emergency Rental Assistance (ERA) funds are almost depleted.<sup>67</sup> Stripped from these protections, thousands of renters are evicted from their homes each week,<sup>68</sup> and renters now face increased rents due to inflation with minority communities suffering the most.<sup>69</sup> The lack of affordable housing will be addressed in more detail in the “Affordability” section of this report.

The pandemic’s role in intensifying the housing crisis ushered in a new wave of federal funding geared towards housing initiatives. In 2020, President Biden came into office on a platform that affirmed housing as a human right.<sup>70</sup> Since then, the Biden-Harris Administration has provided significant funding to help communities respond to homelessness, doubling the homeless services budget.<sup>71</sup>

Since the pandemic, the federal government has done more to create permanent housing solutions through its House America Initiative. House America is funded through the \$1.9 trillion American Rescue Plan Act, which includes \$5 billion in new funding specifically to reduce homelessness, more than \$21.5 billion to replenish the emergency rental assistance fund, and \$5 billion in emergency housing vouchers.<sup>72</sup> Through House America, the U.S Department of Housing and Urban Development (HUD) and the U.S Interagency Council on Homelessness (USICH) have pledged to work together to achieve long term solutions to homelessness.<sup>73</sup>

As of 2022, HUD has provided \$2.8 billion in funding to homeless services organizations across the United States for supportive services and housing programs for people experiencing homelessness. HUD’s Continuum of Care Program provides competitive funding for homeless services and housing programs. HUD also claims to seek out opportunities to fund organizations that use a housing first approach, actively advance racial equity, address racial disparities in homelessness and reduce unsheltered homelessness.<sup>74</sup>

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<sup>66</sup> Center on Budget and Policy Priorities, Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships (September 10, 2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing>

<sup>67</sup> Carl Romer, Andre M. Perry, and Kristen Broady, The coming eviction crisis will hit Black communities the hardest, BROOKINGS (Aug. 2, 2021), <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/>;

<sup>68</sup> Fact Sheet: White House Summit on Building Lasting Eviction Prevention Reform, (August 02, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction-prevention-reform>

<sup>69</sup> PHILA. RENTERS REP., COVID-19’S IMPACT ON RACE AND HOUSING SECURITY ACROSS PHILADELPHIA (n.d.), available at <https://clsphila.org/wp-content/uploads/2021/02/20210222-Philadelphia-Renters-Report.pdf>.

<sup>70</sup> Patrick Range McDonald, Housing as a Human Right, President Joe Biden Says Housing Is a Right, It’s a Game Changer, (January 20, 2021) <https://housinghumanrt.medium.com/president-joe-biden-says-housing-is-a-right-its-a-game-changer-367236b599aa> (“This funding will allow states and localities to help approximately 200,000 individuals and families obtain stable housing, while providing a down payment on the president-elect’s comprehensive approach to ending homelessness and making housing a right for all Americans”).

<sup>71</sup> Fact Sheet: One-Year Anniversary of HUD’s “House America” Initiative to Address Homelessness, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (September 20, 2022), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_22\\_175](https://www.hud.gov/press/press_releases_media_advisories/hud_no_22_175).

<sup>72</sup> Id.

<sup>73</sup> ALL IN: The Federal Strategic Plan to Prevent and End Homelessness, December 2022, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, p. 30 [chrome://extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usich.gov/All\\_In.pdf](https://www.usich.gov/All_In.pdf).

<sup>74</sup> Fact Sheet: One-Year Anniversary of HUD’s “House America” Initiative to Address Homelessness, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (September 20, 2022), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_22\\_175](https://www.hud.gov/press/press_releases_media_advisories/hud_no_22_175).



## Racial Wealth Gap

In a similar vein, through a statement issued by the White House in 2021, the President pledged to take action to narrow the racial wealth gap in housing through his Build Back Better Act.<sup>75</sup> The administration proposed several initiatives to address the wealth gap through homeownership:

- Launching an interagency effort to address inequity in home appraisals by conducting a rulemaking initiative to address inequity in home appraisals and to aggressively combat housing discrimination.
- Creating a \$10 billion Community Revitalization Fund to support community-led civic infrastructure projects that create shared amenities, spark local economic activity, and provide services in an attempt to build community wealth and strengthen social cohesion.
- Allocating \$15 billion for new grants and technical assistance to support the planning, removal, or retrofitting of existing transportation infrastructure to better connect communities.
- A neighborhood home tax credit to attract private investment in the development and rehabilitation of affordable homes for low- and moderate-income homebuyers and homeowners.
- Allocating \$5 billion for the Unlocking Possibilities Program, which awards flexible funding to jurisdictions that take steps to reduce barriers to producing affordable housing and expand housing choices for people with low or moderate incomes.
- Allocating \$31 billion in small business programs that will increase access to capital for small businesses and aid to socially and economically disadvantaged businesses.

Biden's initiative to narrow the racial wealth gap set forth above has yet to be put into action, but it illustrates an administration that is making strides towards addressing historical and systematic discrimination in housing.<sup>76</sup>



Photo by Coleen Cusack  
Tent Art by Marthatopia

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<sup>75</sup> FACT SHEET: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap, (June 01, 2021), <https://www.whitehouse.gov/briefing-room/statements/releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/>.

<sup>76</sup> Id. 77 Ann O'Connell, State Laws on Termination for Nonpayment of Rent, NOLO, (Jan. 13, 2021) <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

## Tenant Protections

Inadequate tenant protections fuel housing insecurity. A key issue is short notice requirements for an eviction. Most states require less than a week's notice to evict a tenant, making it difficult for tenants to find alternative housing,<sup>77</sup> to get a judicial hearing or file a defense. These policies are specifically harmful to renters of color and low-income renters, who have no legal recourse to contest an eviction based on discrimination of a federally protected identity, such as race and national origin, if they do not pay the delinquent rent, which is often a prohibitively high amount.

**“A lot of times someone might be being evicted for spurious reasons[...]. Oftentimes they are evicted because they lost a job or had a baby that was crying at night and got noise complaints. You know, I mean, it's all kinds of small and spurious reasons that people can get evicted and then it follows you forever, there's almost no way to get it off your record.”**

– David Plasterer, RESULTS Education Fund<sup>78</sup>

Further, renters in most jurisdictions can be evicted for no cause, giving landlords complete autonomy to displace residents.<sup>79</sup> As such, even if evicted for a minor infraction or based on the unlimited discretion of the landlord, the stigma surrounding eviction follows prospective tenants for life. To combat this, a growing number of states and municipalities have passed “just cause” eviction legislation, which defines specific legal causes for which a landlord can evict a tenant or refuse to renew a tenant's lease (i.e. substantial violations of a lease by a tenant,

such as failure to pay rent or destruction of property.)<sup>80</sup> As such, if a tenant receives an eviction notice without just cause, they may legally challenge the eviction in court.<sup>81</sup> Further, the legislation often includes provisions placing caps on rent increases and expanding notice provisions and the length of tenant notice periods.<sup>82</sup> These legal protections make the lease renewal process more predictable, protect renters from excessive rent increases, and promote long-term housing stability for housing insecure and marginalized renters by holding landlords accountable.<sup>83</sup>

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<sup>77</sup> Ann O'Connell, State Laws on Termination for Nonpayment of Rent, NOLO, (Jan. 13, 2021) <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html>.

<sup>78</sup> Interview with David Plasterer, Senior Associate for US Poverty Policy, Michael Santos, Senior Policy Associate, and Yolanda Gordan, Manager of Expansion and Advocacy, RESULTS Education Fund (Feb. 24, 2023).

<sup>79</sup> Jade Vasquez, Sarah Gallagher, Promoting Housing Through just Cause Eviction Legislation, NATIONAL LOW INCOME HOUSING COALITION, (May 18, 2022) <https://nlihc.org/resource/promoting-housing-stability-throughjust-cause-eviction-legislation>.

<sup>80</sup> Jade Vasquez, Sarah Gallagher, Promoting Housing Through just Cause Eviction Legislation, NATIONAL LOW INCOME HOUSING COALITION, (May 18, 2022) <https://nlihc.org/resource/promoting-housing-stability-throughjust-cause-eviction-legislation>.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Id.

## Right to Counsel in Eviction Proceedings

The lack of legal representation in eviction proceedings is a major obstacle in the protection of an individual's right to security of tenure and in enforcing any other housing rights that jurisdictions provide. In 2016, no court or legislature in the U.S. recognized a right to counsel in housing matters such as evictions, foreclosures, or housing discrimination.<sup>84</sup> As a result, nationwide only 3% of tenants on average have access to representation, compared to 81% of landlords.<sup>85</sup> However, thanks to the relentless efforts of advocates nationwide, as of 2022, three states and fifteen cities have established a right to counsel for tenants facing eviction.<sup>86</sup>

The displacement and disruption arising from the eviction process has been shown to cause job loss, poor performance in school for children, physical and mental health issues, increased city shelter and other emergency housing costs and increased administrative burden for courts.<sup>89</sup> Furthermore, the negative impacts on credit scores and eviction letter on file inhibits one's ability to re-rent, when people must move away from their support systems and community connections deteriorate.

**“[People facing eviction] are coming into [eviction] hearings with no idea what's going on, and then when they get back home their place is locked up and all their stuff is either thrown out or it's locked inside where they can't get to it.”**

– David Plasterer, RESULTS Education Fund<sup>87</sup>

**“You oftentimes can't find a lawyer to take your case in eviction court even when you are willing to pay. So, the amount of eviction lawyers out there is the number of lawyers out there willing to take on eviction cases.”**

– David Plasterer, RESULTS Education Fund<sup>87</sup>

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<sup>84</sup> Nat'l L. Ctr. on Homelessness & Poverty, Housing Report Card 2016, 15 (2016),

[https://homelesslaw.org/wpcontent/uploads/2018/10/Right\\_to\\_Housing\\_Report\\_Card\\_2016-1.pdf](https://homelesslaw.org/wpcontent/uploads/2018/10/Right_to_Housing_Report_Card_2016-1.pdf).

<sup>85</sup> National Coalition for a Civil Right to Counsel, Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention (2023), [http://civilrighttocounsel.org/uploaded\\_files/280/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_\\_NCCRC\\_.pdf](http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf).

<sup>86</sup> National Coalition for a Civil Right to Counsel, The Right to Counsel For Tenants Facing Eviction: Enacted Legislation (2023), [http://civilrighttocounsel.org/uploaded\\_files/283/RTC\\_Enacted\\_Legislation\\_in\\_Eviction\\_Proceedings\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf)

<sup>87</sup> Interview with David Plasterer, Michael Santos, and Yolanda Gordan, RESULTS Education Fund (Feb. 24, 2023).

<sup>88</sup> Id.

<sup>89</sup> Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants, STOUT RISIUS ROSS, 24-25 (Nov. 13, 2018), [https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-ImpactStudies/Philadelphia%20Evictions%20Report\\_11-13-18.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-ImpactStudies/Philadelphia%20Evictions%20Report_11-13-18.pdf).

The benefits of mandatory legal representation cannot be overstated. In Oklahoma, legal representation has increased the odds of unit retention by 75%.<sup>90</sup> When the American Progress Foundation's COVID-19 Eviction Legal Help Project provided legal representation to low-income tenants, 90% of cases resulted in positive outcomes, 70% of tenants remained in their home, and 20% of tenants were afforded more time to relocate.<sup>91</sup> In New York City, the right to counsel has meant that 84% of represented renters facing eviction have remained in their homes.<sup>92</sup> Since 2017, when the initiative was passed, eviction rates have decreased by 24%. Further, in Cleveland, the right to counsel program helped 93% of represented renters avoid an eviction judgment or an involuntary move, and 83% of the programs clients whose goal was to secure rental assistance were able to do so.<sup>93</sup>

Besides demonstrated success in unit retention and obtaining rental assistance, other benefits to the right to counsel include reductions in shelter and hospital costs, mental health issues, and juvenile delinquency. Moreover, realizing a right to counsel leads to improvements related to tenant living conditions, court efficiencies, educational outcomes, community stability, and the preservation of affordable housing stock.<sup>94</sup>

States and municipalities stand to see significant net savings from adopting the right to counsel by reducing the costs associated with eviction.<sup>95</sup> Stout, a financial advisory firm, has conducted several studies analyzing the financial side of providing the right to counsel across the United States.

### COMPARATIVE STATISTICS

- **MASSACHUSETTS:** Enacting a right to counsel in eviction proceedings would result in an overall estimated cost savings of \$36.73 million annually, providing a return of approximately \$2.40 for every dollar spent on full legal representation in eviction cases.<sup>96</sup>
- **DETROIT:** With an annual investment of approximately \$16.7 million in a right to counsel, Detroit may recognize economic benefits of at least \$58.8 million.<sup>97</sup>
- **PHILADELPHIA:** For every dollar Philadelphia spends on providing legal representation to low-income tenants, it receives a benefit of more than \$12.<sup>98</sup>
- **BALTIMORE:** An investment of \$5.7 million in providing a right to counsel for tenants facing eviction in Baltimore would yield \$35.6 million in benefits, or costs avoided to the city and state.<sup>99</sup>

<sup>90</sup> Tenant Right to Counsel, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, (2023), [http://civilrighttocounsel.org/highlighted\\_work/organizing\\_around\\_right\\_to\\_counsel](http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel)

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> American Civil Liberties Union and National Coalition for a Civil Right to Counsel, No Eviction Without Representation: Evictions' Disproportionate Harms and the Promise of Right to Counsel, 6 (2022), <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>.

<sup>94</sup> Stout n.77.

<sup>95</sup> Maria Roumiantseva and Liel Sterling, New Report Illustrates How Right to Counsel Prevents Evictions and their Discriminatory Impacts on Communities, AMERICAN CIVIL LIBERTIES UNION (ACLU) (May 22, 2022) <https://www.aclu.org/news/womens-rights/new-report-illustrates-how-right-to-counsel-prevents-evictions-and-theirdiscriminatory-impacts-on-communities>

<sup>96</sup> Id.

<sup>97</sup> Estimated Economic Impact of an Eviction Right to Counsel in Detroit, STOUT RISIUS ROSS, LLC <https://www.stout.com/en/experience/estimated-economic-impact-eviction-right-counsel-detroit>

<sup>98</sup> Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants, STOUT RISIUS ROSS 24-25, (Nov. 13, 2018), [://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-ImpactStudies/Philadelphia%20Evictions%20Report\\_11-13-18.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-ImpactStudies/Philadelphia%20Evictions%20Report_11-13-18.pdf)

<sup>99</sup> The Economic Impact of an Eviction Right to Counsel in Baltimore City, STOUT RISIUS ROSS 27-28 (May 8, 2020), <https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-reportfinal-5-8-2020.pdf>

In 2021, HUD created an Eviction Protection Grant Program to support legal service providers in providing legal assistance at no cost to low-income tenants at risk of or subject to eviction. Recognizing the dire need for representation in eviction proceedings, HUD makes this funding available to non-profit or governmental entities to provide services in areas with high rates of evictions or prospective evictions. In 2020, Congress allocated \$20 million to HUD for this initiative.<sup>100</sup> In each of 2021 and 2022, Congress appropriated additional \$20 million grants to add to the initial appropriation.<sup>101</sup>

The federal government has taken several other steps to promote the right to counsel. For instance, the White House Blueprint for a Renters Bill of Rights urges that states provide a right to counsel for tenants facing eviction,<sup>102</sup> and a joint press release from HUD, the Attorney General's Office, and HUD urged states to use emergency rental assistance funds to establish a right to counsel.<sup>103</sup>

Right to counsel programs are generally funded through the revenue of the city or state, and some states are temporarily using federal funding that came through during the pandemic.<sup>104</sup> In many jurisdictions, the funding for a right to counsel is there but it is not prioritized. For example, the state of Wisconsin has no right to counsel in eviction proceedings but has spent millions on maintaining ATV trails.<sup>105</sup>

#### WHAT THE RIGHT TO COUNSEL LOOKS LIKE ACROSS STATES

- **BOULDER:** To pay for the right to counsel, Boulder has enacted a tax per rented unit paid by the landlord.<sup>106</sup>
- **LOS ANGELES:** To pay for an anticipated right to counsel, Los Angeles just passed a ballot measure that grants funding from transfers of property worth more than 5 million dollars.<sup>107</sup>
- **MARYLAND:** Statewide right to counsel is paid for through the abandoned property fund.<sup>108</sup>

<sup>100</sup> FY 2021 Eviction Protection Grant Program, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, [https://www.hud.gov/program\\_offices/spm/gmomgmt/grantsinfo/fundingopps/fy21\\_evictiongrantprogram](https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps/fy21_evictiongrantprogram)

<sup>101</sup> HUD Office of Policy Development & Research, Eviction Protection Grant Program, <https://www.huduser.gov/portal/eviction-protection-grant.html>; National Low Income Housing Coalition, Final FY23 Spending Bill: Advocates and Key Congressional Champions Secure Increased Funding for HUD Programs (Dec. 20, 2022), [https://nlihc.org/resource/final-fy23-spending-bill-advocates-and-key-congressional-champions-secure-increased?ct=t%28cta\\_housed\\_122022%29](https://nlihc.org/resource/final-fy23-spending-bill-advocates-and-key-congressional-champions-secure-increased?ct=t%28cta_housed_122022%29)

<sup>102</sup> White House Domestic Policy Council and National Economic Council, The White House Blueprint for a Renters Bill of Rights (Jan 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

<sup>103</sup> U.S. Department of the Treasury, Secretary of the Treasury Yellen, Attorney General Garland and Secretary of the Department of Housing and Urban Development Fudge Sent Letter to Governors, Mayors and State Courts Urging Use of Emergency Rental Assistance Over Eviction (Aug. 27, 2021), <https://home.treasury.gov/news/pressreleases/jy0336>.

<sup>104</sup> National Coalition for a Civil Right to Counsel, n.73. [http://civilrighttocounsel.org/highlighted\\_work/organizing\\_around\\_right\\_to\\_counsel](http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel)

<sup>105</sup> John Pollock, National Coalition for a Civil Right to Counsel, (March 8, 2023).

<sup>106</sup> City of Boulder: 2021 Eviction Prevention and Rental Assistance Services Annual Report, (February 15, 2022) [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://boulder.colorado.gov/media/7099/download?inline=](https://boulder.colorado.gov/media/7099/download?inline=&efaidnbmnnnibpcajpcglclefindmkaj)

<sup>107</sup> All About the Eviction Right to Counsel Efforts in Los Angeles, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, (February 14, 2023), [http://civilrighttocounsel.org/major\\_developments/1273](http://civilrighttocounsel.org/major_developments/1273).

<sup>108</sup> Maryland's "Right to Counsel" Protects Renters from Eviction, NATIONAL LOW INCOME HOUSING COALITION, (Sep. 30, 2021), <https://nlihc.org/resource/marylands-right-counsel-protects-renters-eviction>

## B. The Criminalization of Homelessness

CESCR clarified that the legal security of tenure applies to informal settlements as well. **People living in encampments have core rights not to be displaced without consultation and an adequate alternative.**<sup>109</sup>

Through HUD's Continuum of Care program, it funds approximately 7,000 homeless services projects annually, providing at least \$52 million for rapid re-housing and supportive services.<sup>110</sup> As an added caveat, HUD "requires" its Continuum of Care organizations to explain how their communities are fighting the criminalization of homelessness for these organizations to receive funding.<sup>111</sup>

Yet, in the U.S., 48 of the 50 states and the District of Columbia have at least one law that criminalizes homelessness or activities such as sleeping, sitting, or bathing in public.<sup>112</sup> A 2019 study revealed that 55% of cities surveyed prohibit sitting or lying in public; 72% prohibit camping in public; and 60% prohibit public loitering, loafing, or vagrancy. Since 2006, laws that prohibit sleeping in public have increased by 50%.<sup>113</sup>

Camping bans often result in "sweeps" of informal settlements. These "sweeps" lead to arrests and the destruction of a person's personal property, including identity documents, medicine and medical devices, and other crucial items.<sup>114</sup> Providing people a citation they cannot pay, and depriving people of crucial identification items perpetuates the cycle of homelessness.

**"I'm terrified of losing everything again. I don't know if you know that feeling, but it's terrible."**

– Rob Rhoads, an individual experiencing homelessness in Miami Dade County<sup>115</sup>

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<sup>109</sup> Comm. on Econ., Soc., and Cultural Rts. ("CESCR"), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), ¶ 8(a), U.N. Doc. CESCR/E/1992/23 (Dec. 13, 1991).

<sup>110</sup> HUD Public Affairs Press Release No 22-140, HUD Announces \$2.8 Billion to Help People Experiencing Homelessness, Funding Opportunity Reflects Biden-Harris Administration's Commitment to Equity and Evidence-based Solutions to Homelessness, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (August 1, 2022), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_22\\_140](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_22_140)

<sup>111</sup> Id.

<sup>112</sup> Nat'l L. Ctr. on Homelessness & Poverty, Housing Not Handcuffs 2021: State Law Supplement 7 (2021), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2021-FINAL.pdf>. <sup>113</sup> <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>

<sup>113</sup> <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>

<sup>114</sup> Allard K. Lowenstein, Forced into Breaking the Law: The Criminalization of Homelessness in Connecticut, INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL 17 (Nov. 2016), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://law.yale.edu/sites/default/files/documents/pdf/news/criminalization\\_of\\_homelessness\\_report\\_for\\_web\\_full\\_report.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://law.yale.edu/sites/default/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf)

<sup>115</sup> Joey Flechas, Tired of nuisance crimes going unpunished? Miami Beach is about to crack down, MIAMI HERALD (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miamibeach/article192826269.html>.

While historically, criminalization of homelessness has not had a coordinated lobbying force, at the forefront of a new wave of criminalization initiatives is the Cicero Institute, a “think-tank” headed by a venture capitalist holding stock in private prisons and financially benefiting from criminalization.<sup>116</sup>

The Cicero Institute has developed “template legislation” that requires communities to divert funding away from proven permanent housing programs and toward regulated encampments or emergency shelter, while simultaneously requiring jurisdictions to enforce anti-camping bans and promote involuntary psychiatric commitment of unhoused individuals experiencing addiction or mental illness. Influenced by Cicero, Missouri, Tennessee and Texas have all passed statewide camping ordinances.<sup>117</sup> In Tennessee, camping in public is a felony with up to six years imprisonment and life-long collateral consequences, including a permanent ban on voting.<sup>118</sup> In Missouri and Texas, if local jurisdictions do not enforce the camping ban, they are subject to the state withholding funds for local homelessness services.<sup>119</sup>

Cicero’s proposed legislation calls for federal funding to be allocated towards heavily policed government monitored camping facilities, outside of places where services, food, and public transportation can be easily accessed.<sup>120</sup> In addition to these government monitored camps, the proposed legislation also calls the allocation of federal funds to “outreach teams” whose primary focus is to go into communities and police people experiencing homelessness.<sup>121</sup> While the Cicero Institute supports assistance to individuals experiencing homelessness “through the provision of substance use, mental health treatment... as well as short-term shelter,”<sup>122</sup> the short-term shelter would only allow for stays of up to six months, inevitably forcing people back on the street, and then—under the statewide camping ban—into jail. Further, mental health and drug services as the only route to remediating homelessness is a common shortsighted approach that does not address the cycle of poverty that both causes and perpetuates homelessness.

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<sup>116</sup> Kayla Robbins, Private Prisons Are Behind the Push for Homeless Criminalization, INVISIBLE PEOPLE (October 10, 2022), <https://invisiblepeople.tv/private-prisons-for-homeless-criminalization/>.

<sup>117</sup> Rebecca Rivas, New Missouri law makes sleeping on state land a crime for people experiencing homelessness, MISSOURI INDEPENDENT (Jun. 29, 2022), <https://missouriindependent.com/2022/06/29/new-missouri-law-makes-sleeping-on-state-land-a-crime-for-people-experiencing-homelessness/>, MO HB 1606 (2002), Sec. 67.300 et seq. <https://house.mo.gov/billtracking/bills221/hlrbillspdf/3703H.08T.pdf>; Adam Edelman, Tennessee made homeless camps a felony. Colorado is trying something else, NBC NEWS (Jun. 12, 2022), <https://www.nbcnews.com/politics/politics-news/tennessee-made-homeless-camps-felony-colorado-trying-something-else-rcna32516>; Reese Oxner,

Texas likely to ban homeless encampments in unapproved public places after bill is sent to governor, TEXAS TRIBUNE (May 28, 2021), <https://www.texastribune.org/2021/05/28/camping-ban-bill-approved/>, TX HB 1925 (2021), <https://legiscan.com/TX/text/HB1925/id/2407654>.

<sup>118</sup> TN H.B.0978 (2022). TENN. ADVISORY COMM. TO THE U.S. COMM. ON CIVIL RIGHTS, THE RIGHT TO VOTE AND EX-FELON DISENFRANCHISEMENT IN TENNESSEE, 1 (2014), [https://www.usccr.gov/files/pubs/docs/TN\\_SAC\\_Ex-Felon-Report.pdf](https://www.usccr.gov/files/pubs/docs/TN_SAC_Ex-Felon-Report.pdf).

<sup>119</sup> TX H.B. 1925 (2021), which states “Sec. 364.002. POLICY ON CAMPING BANS. (a) A local entity may not adopt or enforce a policy under which the entity prohibits or discourages the enforcement of any public camping ban. Sec. 364.003. INJUNCTIVE RELIEF. (a) The attorney general may bring an action ... to enjoin a violation of Section 364.002 [and] may recover reasonable expenses... Sec. 364.004. DENIAL OF STATE GRANT FUNDS. (a) A local entity may not receive state grant funds, and state grant funds for the local entity shall be denied, for the state fiscal year following the year in which a final judicial determination in an action brought under Section 364.003 is made that the entity has intentionally violated Section 364.002.”

<sup>120</sup> Cicero Institute, Reducing Street Homelessness Act Model Bill Section 2(E) (2021), <https://ciceroinstitute.org/wp-content/uploads/2021/11/Reducing-Street-Homelessness-Act-Model-Bill.090821.pdf>.

<sup>121</sup> Id. Section 2(H).

<sup>122</sup> Judge Glock, Housing First is a Failure, CICERO INSTITUTE, (January 13, 2022), <https://ciceroinstitute.org/research/housing-first-is-a-failure/>.

Criminalizing homelessness not only violates the human right to adequate housing, but also violates inherent civil and political rights. By criminalizing basic activities necessary for survival, the U. S. violates the physical integrity of people experiencing homelessness, including the rights to security of person,<sup>123</sup> and freedom from cruel, inhuman, and degrading treatment (CIDT).<sup>124</sup> The Human Rights Committee explicitly noted that criminalizing eating, sleeping, and sitting in certain public areas “raises concerns of discrimination and cruel, inhuman or degrading treatment.”<sup>125</sup>

U.S. courts have likewise struck down criminalization ordinances for violating the constitutional rights of people experiencing homelessness premised on three primary legal theories. First, courts have recognized that the criminalization of homelessness violates the Eighth Amendment prohibition on cruel and unusual punishment, the domestic analogue of the international right to freedom from cruel, inhuman, and degrading treatment. In *Martin v. Boise*, the Ninth Circuit held that cities cannot enforce anti-camping ordinances if they do not have enough shelter beds available for their homeless population. In 2019, the Supreme Court denied certiorari for *Martin*, making the Ninth Circuit’s holding the law of the land in the Ninth Circuit and persuasive elsewhere.<sup>126</sup>

In denying certiorari, the Court left in place the Ninth Circuit’s ruling that punishing people for sleeping outside on public property in absence of an adequate housing alternatives is an 8th Amendment violation.<sup>127</sup>



*Kieran and his dog, Storm, Michael Leckie/ Centre for Homelessness Impact*

<sup>123</sup> UDHR, art. 3, G.A Res. 217 (III) A, U.N Doc. A/810 (Dec. 10, 1948); ICCPR, art. 8, ratified June 8, 1992, 1996, 999 U.N.T.S 171.

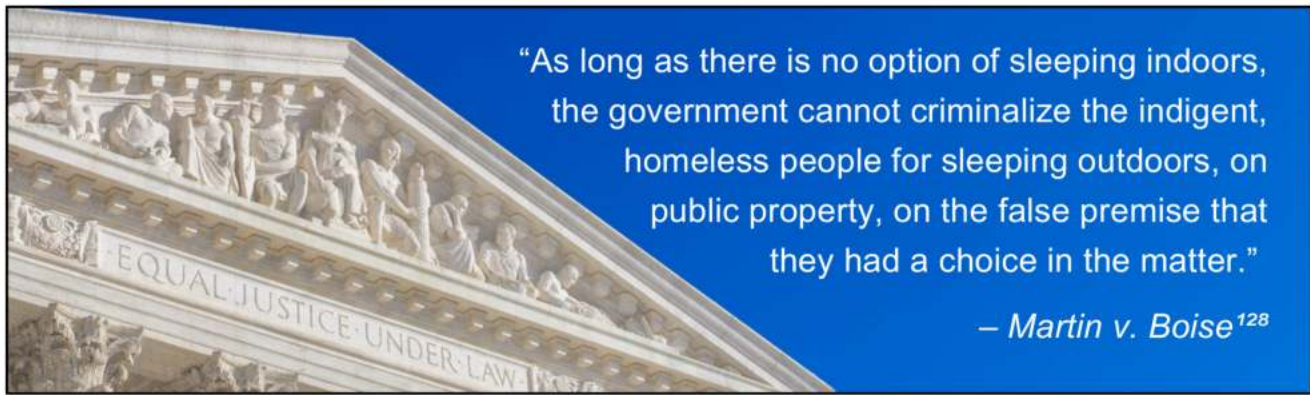
<sup>124</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified Oct. 21, 1994, 1465 U.N.T.S. 85, 113; UDHR, art. 5; ICCPR, art. 7, ratified June 8, 1992, 1996, 999 U.N.T.S. 171 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”).

<sup>125</sup> Hum. Rts. Comm., Concluding observations on the fourth report of the United States of America, ¶ 19, U.N. DOC. CCPR/C/USA/CO/4 (2014).

<sup>126</sup> Supreme Court Lets *Martin v. Boise* stand: Persons Cannot Be Punished for Sleeping in Absence of Adequate Alternatives, NATIONAL HOMELESSNESS LAW CENTER, (December 16th, 2019). <https://homelesslaw.org/supreme-court-martin-v-boise/>

<sup>127</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1049 (9th Cir. 2018); *Jones v. City of Los Angeles*, 444 F. 3d 1118, 1138 (9th Cir. 2006), vacated, 505 F.3d 1006 (2007).





The constitutionality of the criminalization of homelessness was once again challenged in the Ninth Circuit in *Johnson v. City of Grants Pass*.<sup>129</sup> On September 29, 2022 the court upheld a prohibition on imposing civil fines for the public exercise of basic, life sustaining activities, such as sleeping outside or in tents.<sup>130</sup> Echoing the ruling in *Boise*, the court affirmed that in the absence of adequate shelter beds, people experiencing homelessness can use tents, sleep in vehicles, or use other forms of protection from the elements without being subjected to civil or criminal punishment and without facing fines.<sup>131</sup>

Second, the Supreme Court has expressly contemplated anti-vagrancy and loitering ordinances and struck them down on Fifth and Fourteenth amendment due process grounds for vagueness. This is a well-established principle that dates back to a landmark case from 1972. In *Papachristou v. Jacksonville*, the Court held that a vagrancy ordinance was void for vagueness in that it “fail[ed] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute...and encourage[d] arbitrary and erratic arrests and convictions, [making] criminal activities that, by the modern standards, are normally innocent, and [placing] almost unfettered discretion in the hands of the police.”<sup>132</sup>

Lastly, lawsuits challenging criminalization ordinances are often successful on First Amendment grounds.<sup>133</sup> Essentially, people experiencing homelessness are entitled to stand in public and ask for donations, just as any political or religious organization is, pursuant to the First Amendment.<sup>134</sup> The First Amendment is fiercely safeguarded by courts, and thus when the government makes a law infringing on the right to speak in public, strict scrutiny applies.<sup>135</sup> As such, it is obvious that cities are attempting to ostracize and banish impoverished people, not merely prohibiting asking for assistance.

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

<sup>129</sup> *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. 2022)

<sup>130</sup> *Id.* at 810.

<sup>131</sup> *Id.* at 813.

<sup>132</sup> *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171, 92 S. Ct. 839, 848, 31 L. Ed. 2d 110 (1972); see also *City of Chicago v. Morales*, 177 Ill. 2d 440, 449, 687 N.E.2d 53, 60 (1997), *aff'd*, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999).

<sup>133</sup> Interview with Ray Taseff, Florida Justice Coalition (Mar.3, 2023).

<sup>134</sup> *Id.*

<sup>135</sup> Strict scrutiny first amendment.

**“A politician can stand in the same corner, in the same location and ask for your vote. But if you’re poor, you can’t ask people for a donation.”**

– Ray Taseff, Florida Justice Coalition<sup>136</sup>

As such, when panhandling charges are challenged on First Amendment grounds, city governments with anti-panhandling ordinances in place consistently lose.<sup>137</sup> However, despite these consistent losses, these ordinances continue to be passed and enforced.<sup>138</sup> As such, even if it is flat out unconstitutional, pushing people experiencing homelessness out of public view to increase tourism takes priority.<sup>139</sup>

**“Many of these cities look at this as a cost of business because they feel that it is their responsibility to fuel the economy with this luxurious great look, increasing the tourism that creates jobs and opportunities.”**

– Ray Taseff, Florida Justice Coalition<sup>140</sup>

As mentioned above, the criminalization of homelessness gives too much discretion to law enforcement, making them the front-line responders to homelessness. This all too often results in violations of physical integrity that have a disparate impact by race,<sup>141</sup> like the La Jolla, California police officers who tackled and beat Jesse Evans, a homeless Black man who needed to urinate in the absence of adequate public toilets.<sup>142</sup> However, while viral video incidents like this draw attention, because most jurisdictions do not require law enforcement to collect use-of-force data disaggregated by housing status, the full extent of the problem is not known. The George Floyd Justice in Policing Act would have, for the first time, required the collection of housing status data among others in use of force incidents, but has so far failed to pass through Congress.<sup>143</sup>

Criminalizing life-sustaining activities also violates the right to freedom of movement of people experiencing homelessness.<sup>144</sup> Some cities implement “move along” orders, where people experiencing homelessness are forced to leave the area just because they are present.<sup>145</sup>

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<sup>136</sup> Interview with Ray Taseff, Florida Justice Coalition (Mar. 3, 2023).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Interview with Ray Taseff, Florida Justice Coalition (Mar. 3, 2023).

<sup>141</sup> Comm. Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, Concluding observations on the combined third and fifth periodic reports of the United States of America, ¶ 26, U.N. DOC. CAT/C/USA/CO/3-5 (Dec. 19, 2014) (highlighting the disproportionate and increasing incidents of police brutality against people of color in the U.S.).

<sup>142</sup> City News Service, City Attorney Declines to Charge Homeless Black Man Beaten By Cops in La Jolla, NBC SAN DIEGO (June 11, 2021), <https://www.nbcsandiego.com/news/local/city-attorney-declines-to-charge-homelessblack-man-beaten-by-cops-in-la-jolla/2629215>.

<sup>143</sup> H.R. 1280, 117th Cong. §223 (2021).

<sup>144</sup> UDHR, *supra*, note 23 art. 13, ICCPR *supra* note 28 at art., 12; ICERD, art. 5(d)(i).

<sup>145</sup> Fighting Illegal “Move Along” Orders, PICTURE HOMELESS, <https://www.picturethehomeless.org/fightingillegal-move-along-orders/> (Dec. 11, 2022).

In New York City, reports have shown that individuals experiencing homelessness have been ordered to move multiple times in one day, some stating that they are forced to move every thirty to forty-five minutes.<sup>146</sup> In a survey of 400 people experiencing homelessness in Denver, Colorado, 57% were approached by police for camping and more than 80% were forced to relocate.<sup>147</sup> In a similar survey of 350 people in San Francisco, California, 70% were forced to move in the last year and 20% were forced to move on a weekly basis.<sup>148</sup> Constantly displaced, finding stable housing, a job, and a community becomes prohibitively difficult for people experiencing homelessness.

**“When the police would force me to get up, I would say okay, so where are we going? Can we have somewhere to go? They never discussed where we could go except for maybe threatening to put us in jail...but there were no shelters to go.”**

– Jason Walker, speaking on experiencing homelessness in Miami<sup>149</sup>

The criminalization of homelessness both disproportionately impacts people of color and further exacerbates racial disparities, violating the right to equality and non-discrimination.<sup>150</sup> As the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recognized, “the enforcement of minor law enforcement violations . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”<sup>151</sup> Homelessness falls disproportionately on Black communities, and they are more likely to be subject to police intervention and harassment.<sup>152</sup> Despite only making up 13% of the general population, almost 40% of people experiencing homelessness are Black.<sup>153</sup>

Prohibiting people experiencing homelessness from engaging in life-sustaining activities additionally violates the right to life.<sup>155</sup> Criminalizing these basic activities negates the very existence of those experiencing homelessness.

One study in Austin, TX showed that Black people experiencing homelessness were almost 10 times more likely than white people to receive a camping citation.<sup>154</sup>



Prohibiting people experiencing homelessness from engaging in life-sustaining activities additionally violates the right to life.<sup>155</sup> Criminalizing these basic activities negates the very existence of those experiencing homelessness.

<sup>146</sup> *Id.*

<sup>147</sup> MADELINE BAILEY ET AL., NO ACCESS TO JUSTICE: BREAKING THE CYCLE OF HOMELESSNESS AND JAIL 3 (2020), available at <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>.

<sup>148</sup> *Id.*

<sup>149</sup> Interview with Jason Walker, Paul Namphy, and Jolette Joseph, Florida Family Action Network (February 24, 2023).

<sup>150</sup> UDHR, *supra* note 23 art 7; ICCPR, *supra* note 28 arts. 4(1) and 26; International Convention on the Elimination of All Forms of Racial Discrimination art. 2(1)(c), ratified Oct. 21, 1994, 660 U.N.T.S. 1 (“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.”).

<sup>151</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>152</sup> Racial Inequalities in Homelessness, by the Numbers, National Alliance to End Homelessness, (June 1, 2020), <https://endhomelessness.org/resource/racial-inequalities-homelessness-numbers/>.

<sup>153</sup> *Id.*

<sup>154</sup> Nat’l L. Ctr. On Homelessness & Poverty, Racism, Homelessness, and the Criminal And Juvenile Legal Systems 1, 3 (2020).

<sup>155</sup> UDHR, *supra* note 23, art. 3 (stating that “[t]he right to life, liberty, and security of person” while Article 6 of the ICCPR states that “[n]o one shall be arbitrarily deprived of his life”) ICCPR, *supra* note 3, art. 6(1).

The Human Rights Committee, charged with monitoring implementation of the ICCPR, clarified that in realizing the right to life, countries must address “general conditions in society that...prevent individuals from enjoying their right to life with dignity.”<sup>156</sup> Thus, states must “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 programs.”<sup>157</sup> Criminalizing sleeping, standing, or relieving oneself in public when there is no other choice directly contravenes this right to life with dignity.

Not only is the criminalization of homelessness a violation of basic human rights, but it perpetuates a cycle of poverty. The fines and fees associated with criminal justice responses to homelessness make it more difficult to pay for essential items like food and medical care and can lead to incarceration if fines are not paid.<sup>158</sup> A criminal record prevents people from passing background checks for housing and employment,<sup>159</sup> making breaking free from the cycle of homelessness virtually impossible.

**“Oftentimes, even when you get stuff expunged off your record, including criminal stuff, the arrests don’t leave your record. So, people get denied housing or get denied a job for having a felony even if the charges were dropped.”**

– David Plasterer, RESULTS Education Fund<sup>160</sup>

Furthermore, because of their unhoused status, people experiencing homelessness do not have a reliable communication system for mailing purposes. Thus, when they get a ticket and are given a court date, they may not be aware of date changes and fail to appear in court, resulting in their arrest. This counterproductive cycle is constantly repeated, as those experiencing homelessness continue to be issued citations and fees that they cannot pay and remain unaware of court dates. The UN Special Rapporteur on extreme poverty highlighted this in his visit to the U. S., noting that “unpayable fines and the stigma of a criminal conviction . . . virtually prevents subsequent employment and access to most housing.”<sup>161</sup> In fact, the U.S. Interagency Council on Homelessness (“USICH”) recognizes that “criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”<sup>162</sup>

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<sup>156</sup> Hum. Rts. Comm, CCPR General Comment No. 36: Art. 6 (Right to Life), ¶ 26, U.N. DOC. CCPR/C/GC/36 (2019).

<sup>157</sup> *Id.*

<sup>158</sup> NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 12 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOTHANDCUFFS-2019-FINAL.pdf> [hereinafter NLCHP HOUSING NOT HANDCUFFS].

<sup>159</sup> NAT’L L. CTR. ON HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014) [hereinafter NLCHP RACIAL DISCRIMINATION].

<sup>160</sup> Interview with David Plasterer, Michael Santos, and Yolanda Gordan, Florida Family Action Network (Feb. 24, 2023).

<sup>161</sup> Hum. Rts. Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

<sup>162</sup> U.S. Interagency Council on Homelessness, Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness 7 (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions/>

## Vehicle residency

Across the U.S., displaced and unhoused people are turning toward vehicles as their primary shelter due to housing loss, personal emergencies, natural disasters, and changing economic conditions.<sup>163</sup> Some are displaced into vehicles and park near their familiar communities, work, and systems of care; some live in vehicles as affordable housing while working in contract or remote labor, receiving too much income to receive social services but too little to afford housing. Criminalization of vehicle residency in public spaces is increasing following moratoriums and shelter-in-place orders during the COVID-19 pandemic. Recent examples of ordinances that specifically target vehicle residents who have no option but to inhabit public parking include the cities of San Diego and Santa Cruz's 'Oversized Vehicle Ordinance' and Denver's 'Junk Vehicle Ordinance.'<sup>164</sup>

The federal definition of homelessness includes people living in vehicles, however, the federal government has not dedicated any resources to funding services to vehicle residents, such as parking locations. While some cities have invested in parking programs, most allow only overnight parking and many lack adequate amenities, like access to running water, toilets, and shade. A diversity of short- and long-term parking programs are needed to meet the scale and variety of needs among a growing vehicle resident population who have no option but to inhabit public spaces. The siting and funding of parking programs have common challenges that can be overcome, particularly through local, regional, state and national governmental support. In 2022, the National Vehicle Residency Collective convened the first-ever national summit to support vehicle residents and the service providers who serve them.<sup>165</sup>

## Mega-events and criminalization

Large public events in cities and increased tourism in an area is often seen to correlate with an increase in arbitrary arrests, displacement, and detentions of those experiencing homelessness.

### STREET SWEEPS IN MIAMI

Before cities host large events there is often an uptick in arrests of people experiencing homelessness. For example, before a travel convention in Miami, the city went out and arrested several hundred people and got them off the street so that the people coming for the convention would think that Miami was a favorable destination to travel to.<sup>166</sup> In the past, when Miami hosted the Superbowl, the same pattern of arrests occurred.<sup>167</sup>

**"It is inhumane to literally take people off the streets who are not committing a crime but are merely asking for help and incarcerate them as a means of social control or to 'clean up the streets.'"**

– Ray Taseff, Florida Justice Coalition<sup>168</sup>

**"It's very expensive to be poor."**

– David Peery, Miami Coalition to Advance Racial Equity<sup>169</sup>

<sup>163</sup> Graham Pruss, Karen Cheng Cityscape: A Journal of Policy Development and Research, Vol. 22, 2020 Cityscape 87 U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

<sup>164</sup> Id.

<sup>165</sup> WHY ARE WE HERE? (2023), available at <https://vehicleresidency.org/>.

<sup>166</sup> Interview with Ray Taseff, Florida Justice Coalition (Mar. 3, 2023).

<sup>167</sup> Id.

<sup>168</sup> Id.

<sup>169</sup> Interview with David Peery, Miami Coalition to Advance Racial Equality (Feb. 25, 2022).

This criminalization of homelessness is also expensive. It costs three times more to enforce anti-homeless laws than to find housing for people who do not have it.<sup>170</sup> Criminalization only fills jails up with people who are more likely to be victims of violent crime than perpetrators<sup>171</sup>

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

– David Peery, Miami Coalition to Advance Racial Equity<sup>172</sup>

Several departments of the federal government have exhibited a promising push towards ending the criminalization of homelessness in the U.S. However, the limited financial incentives provided have not been sufficient to stem the growth of criminalization ordinances. President Biden has ordered police to find alternatives to arrest and incarceration of people experiencing homelessness.<sup>173</sup> Biden also voiced his opposition of an ordinance criminalizing homelessness in Nevada.<sup>174</sup> In 2021, the Department of Justice (DOJ) filed a brief to address the criminalization of homelessness, including concerns regarding evictions of homeless encampments during their civil rights investigation of the city of Phoenix, AZ’s police department.<sup>175</sup> In 2023, the DOJ filed a statement of interest brief, supporting the overturning of Daytona Beach, Florida’s panhandling law.<sup>176</sup>

USICH has likewise condemned the practice of criminalization of homelessness as “useless and expensive.”<sup>177</sup> Instead, USICH has embraced the housing first model and seeks coordination with federal agencies against the criminalization of homelessness, attempting to engage states and municipalities in its efforts.<sup>178</sup> USICH issued the following guidelines to reduce criminal justice responses to homelessness by reducing its criminalization and facilitating the placement of formally incarcerated people to permanent housing solutions, suggesting the following measures:

- (1) strengthening partnerships between law enforcement and homelessness services systems,
- (2) continuing efforts to combat the criminalization of homelessness,
- (3) increasing access to jail diversion and alternatives to incarceration,
- (4) expanding evidence-based housing and service solutions like supportive housing for people caught in a cycle of homelessness and incarceration,
- (5) and reducing barriers to housing, employment, and services for people with criminal histories.<sup>179</sup>

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<sup>170</sup> U.S. Interagency Council on Homelessness, Collaborate, Don’t Criminalize: How Communities can Effectively and Humanely Address Homelessness (2022) <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>

<sup>171</sup> See generally International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 212.

<sup>172</sup> Interview with David Peery, Miami Coalition to Advance Racial Equality (Feb. 25, 2022).

<sup>173</sup> U.S. Interagency Council on Homelessness, Collaborate, Don’t Criminalize: How Communities can Effectively and Humanely Address Homelessness (2022) <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>

<sup>174</sup> Betsy Reed, Las Vegas Bans Homeless People from Sleeping on the Street, THE GUARDIAN, (Nov. 7, 2019) <https://www.theguardian.com/us-news/2019/nov/07/las-vegas-homeless-sleeping-street-ban>

<sup>175</sup> United States Department of Justice, 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>.

<sup>176</sup> Statement of Interest of the United States, Scott v. Daytona Beach, Case 6:22-cv-02192-WWB-DAB (Jan. 6, 2023).

<sup>177</sup> Collaborate, Don’t Criminalize: How Communities can Effectively and Humanely Address Homelessness, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (2022) <https://www.usich.gov/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address-homelessness>.

<sup>178</sup> Id.

<sup>179</sup> Seven Principles for Addressing Encampments, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, p. 2 (June 2022), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usich.gov/resources/uploads/asset\\_library/Principles\\_for\\_Addressing\\_Encampments\\_1.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usich.gov/resources/uploads/asset_library/Principles_for_Addressing_Encampments_1.pdf)

In collaboration with HUD, the DOJ, Veteran Affairs (VA), and Center for Disease Control and Prevention (CDC), USICH released seven principles for addressing the criminalization of encampments:

- 1) A cross-agency, multi-sector response;
- 2) Engage encampment residents to develop solutions;
- 3) Conduct comprehensive and coordinated outreach;
- 4) Address basic needs and provide storage;
- 5) Ensure access to shelter or housing options;
- 6) Develop pathways to permanent housing and support, and;
- 7) Create a plan for what will happen to encampment sites after closure.<sup>180</sup>

However, despite this guidance, the federal government has yet to issue clear protocols for even federal law enforcement agencies to ensure this guidance is followed in practice by the agencies it controls, and federal police continue to criminalize homelessness, in addition to state and local agencies. Moreover, despite the influx of housing vouchers and money siphoned to cities and states, no clear guidance on how to implement a housing first approach has been provided by the federal government to states and municipalities. Reacting to increased homelessness and housing insecurity, states and municipalities continue to enforce predatory eviction laws and laws criminalizing homelessness with little interference.

### **C. Human Rights Law Developments**

In June 2022, the U.S. was reviewed by the UN Committee on the Elimination of Racial Discrimination (CERD), which monitors compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the U.S. ratified in 1994.<sup>181</sup> CERD called on the U. S. to “abolish laws and policies that criminalize homelessness; implement strong financial and legal incentives to decriminalize homelessness, including by conditioning or withdrawing funding from state and local authorities that criminalize homelessness and encourage them to redirecting 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>182</sup>

During the U.S. Universal Periodic Review by the UN Human Rights Council in 2021, the U.S. received the following recommendations relating to the criminalization of poverty:

- Ratify the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (Many States);
- Continue to reduce the role of policing as a response to societal problems largely related to poverty, while investing in direct solutions to those problems that do not involve criminalization (Malta);
- End the criminalization of poverty, which disproportionately affects African Americans (Cuba);
- Introduce reforms to reverse the high rates of poverty and inequality, and recognize economic, social and cultural rights internally (Cuba);
- Further enhance activities that will cater for reducing homelessness faced by vulnerable groups across the country (Ethiopia).<sup>183</sup>

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<sup>180</sup> Reduce Criminal Justice Involvement, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, (Oct. 16, 2019), <https://www.usich.gov/solutions/criminal-justice/> 1

<sup>181</sup> ICERD, 660 U.N.T.S. 195, 212.

<sup>182</sup> Comm. on the Elimination of Racial Discrimination, Title of Concluding Observations, ¶ 40, U.N. Doc. CERD/C/USA/CO/10-12 (08. 30, 2022) [hereinafter CERD Concluding Observations: USA].

<sup>183</sup> Hum. Rts. Council, Report of the Working Group on the Universal Periodic Review, United States of America, ¶ 26.255-26.323, U.N. Doc. A/HRC/46/15 (2020)

# Recommendations

At the federal level, the U.S. should:	At the state & local level, the U.S. should:
Fully fund legal aid programs to ensure universal access to counsel for persons facing eviction and foreclosure.	Require adequate legal representation to tenants facing eviction. <sup>184</sup>
Condition federal funding on elimination of criminal justice responses to homelessness and instead investment in trauma informed, culturally-sensitive non-congregate temporary or permanent housing with supportive social services.	Increase the eviction notice requirement period to at least 60 days to allow renters facing evictions to find emergency housing or prevent their eviction.
Require local law enforcement agencies to collect and share data on the housing status of persons ticketed and arrested, by law enforcement, in addition to race and gender.	Pass just-cause eviction protections, and ensure there is no rent deposit due to dispute an eviction. <sup>185</sup>
Fully legalize people living in their cars.	Ensure people in homeless encampments and persons living in vehicles are not displaced without being offered alternative housing or parking that meets their needs
Take enforcement action against communities that use law enforcement to criminalize persons experiencing homelessness.	Engage with residents of encampments to improve conditions and keep their communities intact.
Ensure people who have experienced housing insecurity and homelessness are included in all policy conversations about responses to those issues.	Implement a Housing First approach which allows people to access housing without additional barriers and regardless of mental health or substance abuse issues

<sup>184</sup> E.g., Kriston Capps, New York Guarantees a Lawyer to Every Resident Facing Eviction, THE CITY LAB, (Aug. 14, 2017) <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

<sup>185</sup> Tristia Bauman and Michael Santos, PROTECT TENANTS, PREVENT HOMELESSNESS, National Law Center on Homelessness & Poverty, <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>; Tristia Bauman and Michael Santos, PROTECT TENANTS, PREVENT HOMELESSNESS, National Law Center on Homelessness & Poverty, <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.



**“[D]iscrimination, exclusion, and inequality are at the heart of almost all violations of the right to housing.”**

-Special Rapporteur on the Right to Adequate Housing<sup>186</sup>

The U.S. has earned a B- grade for housing accessibility. Since 2016, the U.S. has made some positive policy decisions, such as the HUD’s stance on arrest records and returning the Public Charge Rule to historical standards, as well as negative policy decisions like failing to address racial discrepancies in evictions, resulting in stagnancy in access to adequate housing. However, as of early 2023, the Biden Administration has set forth a progressive and reasonable plan to address housing discrimination amongst disadvantaged groups. If President Biden’s plan comes to fruition, there is hope for more fair housing practices across the country.

According to CESCR, **accessibility requires prioritizing disadvantaged groups and taking their “special housing needs” into account.**<sup>187</sup>

#### A. Racial Discrimination

Current racial disparities in housing stem from a long history of official discrimination, exclusion, and segregation in housing policies. Beginning in 1933 the U.S Federal Housing Administration engaged in redlining by refusing to insure mortgages in or near Black neighborhoods.<sup>188</sup> During the decades when the U.S. government was directly subsidizing the purchase of housing for white individuals and families to the exclusion of Black individuals and families, the real estate market generated tremendous wealth for white people that was passed down by generation. Current racial disparities in household net worth can be directly correlated to these and other U.S. government policies.



Photo by Joe Orellana

<sup>186</sup> 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, *supra* note 29, ¶ 43.

<sup>187</sup> CESCR General Comment No. 4, *supra* note 33, ¶ 8(e).

<sup>188</sup> Terry Gross, A “Forgotten History” Of How The U.S. Government Segregated America, NAT’L PUBLIC RADIO, (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>

Discriminatory practices continue, impeding access to housing based on race. In a study conducted by Bloomberg, people with Black and Latino sounding names were less likely to get a response from landlords than those with “white sounding names.”<sup>189</sup> Additionally, as discussed above, Black and Hispanic renters are twice as likely to be evicted as white renters.<sup>190</sup>

Homelessness is closely linked to racial discrimination. Black Americans make up 40% of the homeless population, even though only 13% of the overall population is Black.<sup>191</sup> Additionally, American Indian, Alaska Native, Pacific Islander, and Native Hawaiian people make up 1% of the total population but 5% of people experiencing homelessness and 7% of unsheltered residents.<sup>192</sup> Hispanic and Latino people make up 16% of the U.S. population and 23% of people experiencing homelessness.<sup>193</sup>



Photo by Sam Hozian

Indigenous Peoples in the U.S. have faced centuries of discriminatory housing practices against them, resulting in the systematic displacement and theft of Indigenous lands. Due to this forced relocation, Indigenous Peoples continue to face generational poverty and housing insecurity.<sup>194</sup> Although only accounting for only 2 percent of the general population, it is estimated that around 22 percent of Indigenous Peoples are living in poverty.<sup>195</sup> Indigenous Peoples are reported to account for 3.3 percent of people experiencing homelessness, disproportionate to their general population.<sup>196</sup> In 2019, the UN Special Rapporteur on the Right to Adequate Housing acknowledged discriminatory housing practices in a report focused on Indigenous People and housing.<sup>197</sup> The report brings attention to the “adverse treatment” Indigenous people receive when seeking to rent a home.<sup>198</sup> The federal government has recently taken some positive steps to increase consultation with Indigenous Peoples on housing and development issues (see Sec. VIII. Cultural Adequacy, B. Housing in Indigenous Communities below), but these have as yet failed to have significant impact.

<sup>189</sup> Kelsey Butler, Landlords Are Less Likely to Reply to Applicants with Black and Latino Names, BLOOMBERG, (November 29, 2021), <https://www.bloomberg.com/news/articles/2021-11-29/landlords-are-less-likely-to-reply-to-black-latino-names?fbclid=IwAR2XMf7bA4PHoxDdBBUBg8SmzBGECa0FwDlvgmK144TgM5zeLEgpxhbwUM0&leadSource=uverify%20wall>.

<sup>190</sup> Sophia Weeden, Black and Hispanic Renters Face Greatest Threat of Eviction in Pandemic, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, (January 11, 2021), <https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat-eviction-pandemic>.

<sup>191</sup> U.S. Dep’t of Hous. & Urb. Dev., The 2019 Annual Homeless Assessment Report (AHAR) to Congress 1, (Jan. 2020), <https://www.huduser.gov/portal/sites/default/files/pdf/2019-AHAR-Part-1.pdf>. <sup>192</sup> U.S. Dep’t of Hous. & Urb. Dev., The 2020 Annual Homeless Assessment Report (AHAR) to Congress 1, (Jan. 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>.

<sup>193</sup> *Id.*

<sup>194</sup> Danyelle Solomon, Et Al, Systemic Inequality: Displacement, Exclusion, and Segregation, AMERICAN PROGRESS, (Aug. 7, 2019), <https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/>.

<sup>195</sup> *Id.*

<sup>196</sup> The 2020 Annual Homeless Assessment Report (AHAR) to Congress 1, *supra* note 192.

<sup>197</sup> 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, *supra* note 29, ¶ 11.

<sup>198</sup> *Id.*

Intersecting discrimination based on race and gender exacerbates homelessness and disparities in access to housing. In 2018 and 2019, Black women made up 30% of women who died experiencing homelessness in Los Angeles County and Hispanic/Latina women made up 29%.<sup>199</sup> Further, of families experiencing homelessness, about 60% were single mothers with children and about 50% of them were Black single mothers.<sup>200</sup> Overall, single women with children make up about 21% of the country's total homeless population.<sup>201</sup>

**“Black women hurt first and worst.”**

– May Rodriguez, South Florida Community Development Coalition<sup>202</sup>

Black, Indigenous, and other LGBTQ people of color are disparately impacted by homelessness. One in four LGBTQ Black men from 18 to 25 years old have experienced homelessness.<sup>203</sup> 51% of Black transgender women, 59% of American Indian transgender women, 51% of multiracial transgender women, 49% of Middle Eastern transgender women, and 35% of Latina transgender women surveyed stated that they had experienced homelessness.<sup>204</sup>

The Fair Housing Act protects individuals regardless of their immigration status, making this discrimination illegal.<sup>205</sup> Former President Donald Trump proposed a policy to evict undocumented immigrants from federally subsidized housing, a plan which many landlords opposed.<sup>206</sup> Lawsuits have arisen on the legality of landlords reporting undocumented persons to U.S. Immigration and Customs Enforcement (ICE). Local courts, however, have upheld protections against discrimination in these cases. In 2019, a New York City judge recommended a landlord to pay \$17,000 in fines for threatening to report a tenant to ICE, a violation of New York City human rights law.<sup>207</sup>

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<sup>199</sup> Sofia Herrera, PhD, et al., Hub for Urban Initiatives, Black Women Dying Homeless in Los Angeles City and County 2, (July 2020), <https://files.constantcontact.com/52d2438b001/766bb699-b2e2-4e24-a6ccdad5332431e.pdf>.

<sup>200</sup> Single Mother Statistics, SINGLE MOTHER GUIDE, (May 17, 2021), <https://singlemotherguide.com/single-mother-statistics>.

<sup>201</sup> Id.

<sup>202</sup> Interview with May Rodriguez, South Florida Community Development Coalition (Mar. 10, 2022).

<sup>203</sup> DYLAN WAGUESPACK & BRANDY RYAN, 2019 STATE INDEX ON YOUTH HOMELESSNESS, TRUE COLORS UNITED & NAT'L L. CTR. ON HOMELESSNESS & POVERTY (2019), [https://drive.google.com/file/d/1VjGf9oFzjMJKn6\\_5TztjzOtaSJOblPU/view](https://drive.google.com/file/d/1VjGf9oFzjMJKn6_5TztjzOtaSJOblPU/view).

<sup>204</sup> Adam Romero, et al., UCLA Sch. L. Williams Inst., Lgbt People And Housing Affordability, Discrimination, And Homelessness 15, (April 2020), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

<sup>205</sup> Fair Housing Laws Protect Immigrants, Refugees, and People of All Religious Faiths, NAT'L FAIR HOUS. ALLIANCE, [https://nationalfairhousing.org/wp-content/uploads/2021/11/2017-02-01\\_Fact\\_Sheet-Fair\\_Housing\\_Laws\\_protect\\_immigrants.pdf](https://nationalfairhousing.org/wp-content/uploads/2021/11/2017-02-01_Fact_Sheet-Fair_Housing_Laws_protect_immigrants.pdf).

<sup>206</sup> Lola Fadulu & Zolan Kanno-Youngs, Landlords Oppose Trump Plan to Evict Undocumented Immigrants, NEW YORK TIMES (June 17, 2019), <https://www.nytimes.com/2019/06/17/us/politics/public-housing-immigrants.html>.

<sup>207</sup> Christina Goldbaum, Threat to Report Tenant to ICE May Cost Landlord \$17,000, NEW YORK TIMES (Sept. 23, 2019), <https://www.nytimes.com/2019/09/23/nyregion/immigrants-tenants-rights.html>

Historically, receipt of housing and other non-cash benefits have not hindered immigrants from seeking naturalization status, but in 2018, the Trump Administration proposed changes to the so-called “Public Charge Rule,” finalizing in 2020, which reversed this exclusion.<sup>208</sup> The Biden Administration reversed this in March 2021, and issued a new final rule in September 2022.<sup>209</sup> However, confusion remains in immigrant communities as many seeking naturalization forego benefits to which they are entitled because of fear of jeopardizing their citizenship applications,<sup>210</sup> and worse, in May 2023, subsequent to the time period covered by this Report Card, the Senate has passed a resolution disapproving of the final rule, threatening the rule and further leading to confusion for prospective beneficiaries.<sup>211</sup>

Public housing authorities around the U.S. regularly impede access to housing for individuals with arrest records,<sup>212</sup> and barriers to housing for those previously incarcerated have a disparate impact by race.<sup>213</sup> Because Black Americans account for 27 percent of all arrests, they are particularly vulnerable to housing insecurity due to arrest records.<sup>214</sup> Although criminal records are not specifically addressed in the Fair Housing Act (FHA), the U.S. Department of Housing and Urban Development (HUD) has determined that discriminatory practices based on criminal records may violate the FHA.<sup>215</sup> In March of 2022, President Biden announced that April would be Second Chance Month, urging States, organizations, and communities to help previously incarcerated people reenter society and obtain adequate housing.<sup>216</sup> Further, President Biden’s housing plan sets forth a goal which guarantees all formerly incarcerated people have housing once released, working to eliminate the discriminatory barriers against incarcerated peoples.<sup>217</sup>



Photo by Coleen Cusack  
Tent Art by Marthatopia

<sup>208</sup> Fed. Reg. CIS No. 2499–10; DHS Docket No. USCIS–2010–0012, October 10, 2018. See also, CONG. RESEARCH SERV., R43220, PUBLIC CHARGE GROUNDS OF INADMISSIBILITY AND DEPORTABILITY: LEGAL OVERVIEW (2017).

<sup>209</sup> 87 FR 55472 (Sep. 9, 2022).

<sup>210</sup> See Jonathan Beier and Essey Workie, The Public Charge Rule is Far from the Last Word, MIGRATION POLICY INSTITUTE, (Sept. 2022), <https://www.migrationpolicy.org/news/public-charge-final-rule-far-last-word>; Hamutal Bernstein, Dulce Gonzalez, Michael Karpman, Stephen Zuckerman, Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019, URBAN INSTITUTE (May 18, 2020), <https://www.urban.org/research/publication/amid-confusion-over-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-2019>.

<sup>211</sup> S.J. Res. 18, 118th Cong. (2023).

<sup>212</sup> Marie Claire Tran-Leung, Shriver Ctr., When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing, (Feb. 2015), available at <https://www.povertylaw.org/wp-content/uploads/2019/09/WDMD-final.pdf>.

<sup>213</sup> *Id.*

<sup>214</sup> U.S. Dep. Of Hous. & Urb. Dev., Memorandum for: Office of Fair Housing & Equal Opportunity, (June 10, 2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>.

<sup>215</sup> *Id.*

<sup>216</sup> U.S. White House, A Proclamation on Second Chance Month, 2022, (Mar. 31, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/31/a-proclamation-on-second-chance-month-2022/>.

<sup>217</sup> The Biden Plan for Investing in Our Communities Through Housing, <https://joebiden.com/housing/>.

**“If you have 2 or 3 of these crimes, you can’t access public housing.”**

Rob Robinson, Partners for Dignity and Rights<sup>218</sup>

While the FHA prohibits segregation and discrimination based on race, unfair housing practices are still rampant. Although the Trump Administration suspended the Obama Administration’s Affirmatively Furthering Fair Housing (AFFH) Rule, President Biden and HUD seek to reimplement this rule.<sup>219</sup> This rule requires “communities receiving certain federal funding to proactively examine housing patterns and identify and address policies that have a discriminatory effect.”<sup>220</sup> The reimplementing of this policy is promising in addressing these systematic injustices pertaining to housing and race as it incentivizes communities to analyze their current housing policies and ensure they are not discriminatory in nature. The Justice Department continues to litigate cases in partnership with HUD; however, this is not enough to combat housing discrimination, and affirmative measures are needed to address racial inequalities.

## **B. Source of Income**

“Source of income discrimination” refers to the practice of refusing to rent to a housing applicant because of that person’s lawful form of income. Most commonly, this form of discrimination is levied against households using Housing Choice Vouchers (HCVs, also known as Section 8 vouchers) and other forms of government-funded housing assistance (discrimination is also reported against recipients of social security disability benefits, retirement benefits and other forms of lawful income). Source of income (SOI) discrimination can serve as a pretext for a prohibited form of discrimination and disproportionately affects renters of color, women, and persons with disabilities.<sup>221</sup>

To address these challenges, state and local legislators began prohibiting SOI discrimination through state and local fair housing laws beginning in the 1970s, steadily spreading across the country, and increasing exponentially beginning in the mid-2000s. Today, SOI laws protecting families with vouchers cover 16 states and over 100 local municipalities, protecting roughly half of all U.S. families with vouchers.<sup>222</sup> Despite this progress, many of these laws are under-enforced and, in some states, local legislative successes have prompted a reactionary counter-trend of state laws (in Indiana, Texas and Iowa), preempting local municipalities from passing or enforcing SOI protections.<sup>223</sup>

Lack of SOI protection can lead to dire outcomes. Voucher holders who are lucky enough to find landlords to accept their vouchers in non-SOI protected areas are more likely to live in impoverished and racially segregated neighborhoods than non-voucher renters.

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<sup>218</sup> Interview with Robert Robinson, Senior Advisor, Partners for Dignity and Rights, (Mar. 9, 2023).

<sup>219</sup> The Biden Plan for Investing in Our Communities Through Housing, *supra* note 213.

<sup>220</sup> *Id.*

<sup>221</sup> J. Rosie Tighe, et. al, Source of Income Discrimination and Fair Housing Policy, 32(1) JOURNAL OF PLANNING LITERATURE 3 (2016).

<sup>222</sup> Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, POVERTY AND RACE RESEARCH ACTION COUNCIL (May 2023), <https://www.prrac.org/appendixb/>.

<sup>223</sup> Tighe, et. al, *supra* note 217

This segregation restrains positive health outcomes for low-income women, educational progress for children, and employment achievements that come from relocation to lower poverty and less racially segregated communities. For families unable to use their vouchers, SOI discrimination contributes to food insecurity, domestic violence, child separations and – most significantly – homelessness. As the recently released Blueprint for A Renter’s Bill of Rights (hereinafter “Blueprint”) states “[l]aws that ban discrimination based on source of income can both increase a household’s ability to find housing with the Housing Choice Voucher and broaden the neighborhoods they can access.”<sup>224</sup>

### C. Mental Health

**“Homelessness is a housing issue. Research shows that mental health conditions don’t cause homelessness. It’s a lack of housing that’s affordable.”**

– Sharon Rapport, Corporation for Supportive Housing<sup>225</sup>

The FHA prohibits housing discrimination based on mental health, intellectual, or other developmental disabilities.<sup>226</sup> This includes discrimination based on previous institutionalized housing, changing terms or conditions due to disability, asking about a disability, etc.<sup>227</sup> Although this discrimination is barred for rental companies, landlords, banks, and other housing institutions, people with disabilities are frequently disfavored when seeking housing. A study released by the U.S. Department of Housing and Urban Development (HUD) found that those with physical and mental disabilities were more likely to be told that rental units were unavailable than able bodied people.<sup>228</sup> In 2017, a study on mental illness-based discrimination in housing found that people with mental illness and intellectual disabilities were “less likely to receive a response about their inquiry.”<sup>229</sup> The UN Special Rapporteur on the Right to Adequate Housing in her report on disabilities and discrimination in housing, discusses how “well-paid, full-time workers without a disability are considered to be ‘qualified’ for affordable rental housing, while persons with disabilities with lower incomes are denied access.”<sup>230</sup>

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<sup>224</sup> The White House Blueprint for a Renters Bill of Rights, WHITE HOUSE DOMESTIC POLICY COUNCIL AND NAT’L ECONOMIC COUNCIL (Jan. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

<sup>225</sup> Interview with Sharon Rapport, California State Policy Director, CORPORATION FOR SUPPORTIVE HOUSING, (Mar. 27, 2023).

<sup>226</sup> U.S. Dep. Of Hous. & Urb. Dev., Fair Housing for Individuals with Mental Health, Intellectual, or Developmental Disabilities: A Guide for Housing Providers, <https://www.hud.gov/sites/dfiles/FHEO/images/MD%20Fact%20Sheet%20-%20HP.pdf>.

<sup>227</sup> Id.

<sup>228</sup> Study Finds the People with Mental Disabilities Experience Rental Housing Discrimination, NAT’L LOW INCOME HOUSING COALITION, (September 11, 2017), <https://nlihc.org/resource/study-finds-people-mental-disabilities-experience-rental-housing-discrimination>.

<sup>229</sup> JOY HAMMEL., RENTAL HOUSING DISCRIMINATION ON THE BASIS OF MENTAL DISABILITIES: RESULTS OF PILOT TESTING (2010), <https://books.google.com/books?hl=en&lr=&id=r12-czp2lxcC&oi=fnd&pg=PR5&dq=housing+discrimination+disabilities&ots=29jk811Y7&sig=Eusn4kkizLRjRblqYM3vzEwcVGM#v=onepage&q=housing%20discrimination%20disabilities&f=false>.

<sup>230</sup> the Special Rapporteur on the right to adequate housing, *supra* note 29, ¶ 13.

In the same report, the UN Special Rapporteur notes how 43 percent of adults experiencing homelessness in U.S. shelters have a disability and those with intellectual disabilities are even more vulnerable.<sup>231</sup> People who have been hospitalized in inpatient mental health facilities often have difficulties finding affordable, stable housing once discharged.<sup>232</sup> Preliminary studies have also found that individuals with mental illness may be confronted with negative stereotypes from housing providers when searching for rental housing.<sup>233</sup> In addition to housing discrimination, mental health facilities in the U.S. are broadly inaccessible leaving millions of Americans to be left untreated every year.<sup>234</sup> Of the 15 percent of Americans with a substance use disorder, only 8 percent will receive treatment.<sup>235</sup> People with untreated mental illness make up around 30 percent of people experiencing homelessness.<sup>236</sup> Housing instability can exacerbate stressors, worsening mental illness, resulting in a cycle of mental illness and homelessness.<sup>237</sup>

President Biden's plan for housing does seek to "expand access to supportive housing and services for individuals with disabilities" and "increase resources for mental health services and substance use disorder treatment."<sup>238</sup> The Biden Administration plans to increase support to the Substance Abuse and Mental Health Services Administration's (SAMHSA) Projects for Assistance in Transition from Homelessness (PATH) which "funds services for people with serious mental illness experiencing homelessness."<sup>239</sup> President Biden's acknowledgement of mental health and its impacts on housing is promising and may expand accessibility to housing for those in need.

#### D. Youth

Millions of youth experience homelessness each year in America. Unlike adult populations who may be eligible for other case welfare benefits, youth are excluded from many of these programs. Current regulations outline the administrative requirements, cost principles, and audit requirements for Federal awards under the Youth Homelessness Demonstration Project and Runaway and Homeless Youth Act.<sup>240</sup>



*Faith, Lucy Ray/PA Wire/Centre for Homelessness Impact*

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<sup>231</sup> *Id.*

<sup>232</sup> Finding Stable Housing, NAT'L ALLIANCE ON MENTAL ILLNESS, <https://www.nami.org/YourJourney/Individuals-with-Mental-Illness/Finding-Stable-Housing>.

<sup>233</sup> Joy Hammel, RENTAL HOUSING DISCRIMINATION ON THE BASIS OF MENTAL DISABILITIES: RESULTS OF PILOT TESTING (2010), <https://books.google.com/books?hl=en&lr=&id=r12-czp2lxcC&oi=fnd&pg=PR5&dq=housing+discrimination+disabilities&ots=29jk8I1Y7&sig=Eusn4kkizLR0RbqYM3vzEwcVGM#v=onepage&q=housing%20discrimination%20disabilities&f=false>.

<sup>234</sup> Mental Health America, The State of Mental Health in America, (2023), <https://mhanational.org/issues/state-mental-health-america>.

<sup>235</sup> *Id.*

<sup>236</sup> Treatment Advocacy Center, Serious Mental Illness and Homelessness, (Sept. 2016), <https://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3629-serious-mental-illness-and-homelessness>.

<sup>237</sup> U.S. Dept. of Hous. & Urb. Dev., Promoting Mental Health Through Housing Stability, (May 31, 2022), <https://www.huduser.gov/portal/pdredge/pdredge-trending-053122.html>.

<sup>238</sup> The Biden Plan for Investing in Our Communities Through Housing, *supra* note 213.

<sup>239</sup> Substance Abuse and Mental Health Services Admin., Projects for Assistance in Transition from Homelessness (PATH), <https://www.samhsa.gov/homelessness-programs-resources/grant-programs-services/path>.

<sup>240</sup> Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. §200 (2013).

Specifically, Part 200, subpart E describes allowable direct costs and indirect costs, as well as costs that require prior written approval from the funding agency. Nothing in Part 200 specifically prohibits direct cash transfers to youth as an allowable cost.<sup>241</sup> But some grantees have been told that Part 200 prohibits direct cash transfer programs using HUD funding, without being told specifically where the regulations prohibit it. Innovative direct cash transfer programs have been successful elsewhere and should be explicitly named as an allowable direct cost; preventing their enactment leads to more youth experiencing homelessness.<sup>242</sup>

### E. Human Rights Law Developments

In August of 2022, the Committee on the Elimination of Racial Discrimination (CERD) provided the United States specifically with recommendations about racial discrimination in housing. • “[S]trengthen the implementation of legislation to combat discrimination in housing, such as the Fair Housing Act;” • “[A]ffirmatively further[] fair housing and protection against discriminatory effects;” and • “[U]ndertake prompt, independent and thorough investigations into cases of discriminatory mortgage-lending and ‘redlining’ practices by private actors, hold those responsible to account and provide effective remedies to those affected.”<sup>243</sup>



*Amez, Hyatt and sons Hussain and Mohammed*  
credited to Liam McBurney/PA/ Centre for Homelessness

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<sup>241</sup> In fact, “participant support costs” (§ 200.456), which are defined as “direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects” (§ 200.1), as specifically allowed with prior approval.

<sup>242</sup> Abby Boshart, Direct Cash Transfers Can Deliver Housing Assistance More Efficiently and Equitably, HOUSING MATTERS (May 25, 2022), <https://housingmatters.urban.org/articles/direct-cash-transfers-can-deliver-housing-assistance-more-efficiently-and-equitably>.

<sup>243</sup> CERD Concluding Observations: USA, supra note 182, ¶ 38.



# Recommendations

At the federal level, the U.S. should:	At the state & local level, the U.S. should:
<p>Use a human rights framework to regularly monitor housing availability and address inequalities and unaffordability of housing and incorporate references to our treaty obligations in relevant rulemaking, including the pending AFFH rule.</p>	<p>Take advantage of mechanisms, such as the AFFH provisions of the Fair Housing Act, to adopt race-conscious measures to remedy historically based and continuing discrimination.</p>
<p>Maintain and conduct adequate public education regarding the revised final Public Charge rule so immigrant populations receive all benefits to which they are entitled.</p>	<p>Limit background checks for ex-offenders and enable renters to be able to seal or expunge eviction records, increasing housing accessibility.<sup>245</sup></p>
<p>Finalize the AFFH rule and create strong awareness, technical assistance, and enforcement programs to ensure it is implemented.</p>	<p>Provide housing subsidies to individuals with disabilities so they can afford units that are appropriately accessible and increase access to social housing overall.</p>
<p>Strengthen the Fair Housing Act to include additional protected classes against discrimination, including source of income, sexual orientation, and eviction history.<sup>244</sup></p>	
<p>Adopt all recommendations related to halting source of income discrimination in the Blueprint.</p>	
<p>All FHA insured properties should ban source of income discrimination in their properties.</p>	
<p>HUD should issue guidance clarifying that Part 200 does not prohibit Youth Homelessness Demonstration Project or Runaway and Homeless Youth Act funds from being used for direct cash transfer programs for unhoused youth.</p>	

244 See A National Homes Guarantee, Peoples Action (Sept. 5, 2019) [https://homesguarantee.com/wp-content/uploads/Homes-Guarantee\\_-\\_Briefing-Book.pdf](https://homesguarantee.com/wp-content/uploads/Homes-Guarantee_-_Briefing-Book.pdf).

<sup>245</sup> Teresa Wiltz, Black Homeowners Pay More Than 'Fair Share' in Property Taxes, PEW CHARITABLE TRUSTS (June 25, 2020), <https://www.pewtrusts.org/en/research-andanalysis/blogs/stateline/2020/06/25/black-homeowners-pay-more-than-fair-share-in-property-taxes>.

## IV. Affordability



**The Right to Housing entails “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities- all at a reasonable cost.”<sup>246</sup>**

- UN Committee on Economic, Social and Cultural Rights

Hannah Smaglis, *Diminishing Housing Affordability*

The U.S. is currently experiencing an affordable housing crisis with a shortage of 7 million affordable homes.<sup>247</sup> As of 2023, there is not a single state or county in the U.S. where a full-time worker making minimum wage can afford the rent of a two-bedroom apartment.<sup>248</sup> Social Security income (SSI) and Social Security Disability Insurance (SSDI) payments for elderly or disabled Americans are often below the cost of rent.<sup>249</sup> The Biden Administration set forth progressive strategies in combatting the affordable housing crisis, but Congress has failed to fund them.

<sup>244</sup> See A National Homes Guarantee, Peoples Action (Sept. 5, 2019) [https://homesguarantee.com/wp-content/uploads/Homes-Guarantee\\_-\\_Briefing-Book.pdf](https://homesguarantee.com/wp-content/uploads/Homes-Guarantee_-_Briefing-Book.pdf).

<sup>245</sup> Teresa Wiltz, Black Homeowners Pay More Than 'Fair Share' in Property Taxes, PEW CHARITABLE TRUSTS (June 25, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/25/black-homeowners-pay-more-than-fair-share-in-property-taxes>.

<sup>246</sup> CESCR General Comment No. 4, supra note 33, ¶ 7 (quoting the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000).

<sup>247</sup> The Problem, NATIONAL LOW INCOME HOUSING COALITION, <https://nlihc.org/explore-issues/why-we-care/problem>.

<sup>248</sup> Id.

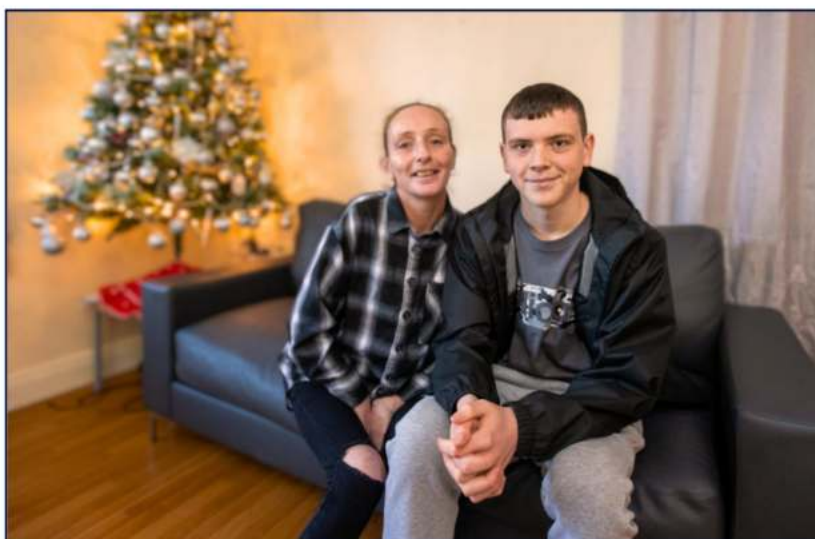
<sup>249</sup> Fred Clasen-Kelly, High rents outpace federal disability payments, leaving many homeless, NAT'L PUBLIC RADIO (NPR) (Sept. 15, 2022), <https://www.npr.org/sections/health-shots/2022/09/15/1121848289/social-security-disability-inflation-poverty>.

In December of 2022, the United States Interagency Council on Homelessness (USICH) released “All In: The Federal Strategic Plan to Prevent and End Homelessness” (“All In”) outlining a national goal to reduce, and eventually eliminate, homelessness in the U.S.<sup>250</sup> While this plan is ambitious and a hopeful step in the right direction, until these strategies come to fruition, the U.S. remains in an unsustainable housing market

According to CESCR, **affordability requires that “[p]ersonal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”**<sup>251</sup> States should provide housing subsidies, protect against unreasonable rents, and provide financial assistance so that housing remains affordable.<sup>252</sup>

### A. Increasing Costs

HUD considers housing to be affordable if all housing costs, rent or mortgage, utilities, and other expenses, remains under 30% of an individual’s or family’s monthly income.<sup>253</sup> In addition, the UN Habitat also considers housing costs exceeding 30% as unaffordable and thus unsustainable.<sup>254</sup> From 2017 to 2021, over 19 million renters spent over 30% of their monthly income on housing and related expenses.<sup>255</sup> As of 2022, “70% of the lowest-wage households routinely spend more than half of their income on rent” resulting in an increased risk of homelessness.<sup>256</sup>



Since the onset of COVID-19, housing prices across the U.S. have skyrocketed, with some cities experiencing average price hikes of up to 40%.<sup>257</sup> From March 2021 to March 2022, prices of homes increased 20.6% while rent increased 12%, increasing the number of households with unaffordable rent or mortgage payments.<sup>258</sup> In June 2022, buying a home in the U.S. was the least affordable it has been since June 1989.<sup>259</sup>

Sharon and Billy, Centre for Homelessness Impact/ Liam McBurney/PA

<sup>250</sup> All In: The Federal Strategic Plan to Prevent and End Homelessness, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS (Dec. 2022), [https://www.usich.gov/All\\_In.pdf](https://www.usich.gov/All_In.pdf).

<sup>251</sup> Comm. on Econ., Soc., and Cultural Rts., General Comment No. 4: The Right to Adequate Housing (Article 11(1) of the Covenant), ¶ 8(c), U.N. Doc. CESCR/E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4].

<sup>252</sup> Id.

<sup>253</sup> Defining Housing Affordability, PD&R EDGE (Aug. 14, 2017), <https://www.huduser.gov/portal/pdredge/pdr/edge-featd-article-081417.html>.

<sup>254</sup> Addressing the Housing Affordability Challenge: A Shared Responsibility, URBANET (Oct. 31, 2020), <https://www.urbanet.info/addressing-the-housing-affordability-challenge-shared-responsibility/>.

<sup>255</sup> More Than 19 Million Renters Burdened by Housing Costs, U.S. CENSUS BUREAU (Dec. 8, 2022), <https://www.census.gov/newsroom/press-releases/2022/renters-burdened-by-housing-costs.html>.

<sup>256</sup> All In: The Federal Strategic Plan to Prevent and End Homelessness, *supra* note 250.

<sup>257</sup> Michael Sainato, Renters across US face sharp increases – averaging up to 40% in some cities, THE GUARDIAN, (February 16, 2022), <https://www.theguardian.com/us-news/2022/feb/16/renters-rent-increases-us-lease>.

<sup>258</sup> 2022 State of the Nation’s Housing Report, HABITAT FOR HUMANITY (2022), <https://www.habitat.org/costofhome/2022-state-nations-housing-report-lack-affordable-housing>.

<sup>259</sup> Derek Saul, It Was Less Affordable To Buy A Home In June Than It’s Been In 33 Years, FORBES, (August 12, 2022), <https://www.forbes.com/sites/dereksaul/2022/08/12/it-was-less-affordable-to-buy-a-home-in-june-than-its-been-in-33-years/?sh=72dced2b717b>.

## Low Wages and Affordable Housing

A study done by the Economic Roundtable discussed the intersection of low wages and the lack of affordable housing focusing on fast food workers in California.

- There are over 10,000 people experiencing homelessness who work in fast food in California, equating to about 1 out of 17 individuals experiencing homelessness.
- On average, fast-food employees are only offered part time work with lower wages in comparison to other industries.
- Most fast-food companies do not offer healthcare to its employees, resulting in about 33% of fast-food workers receiving Medicaid.
- Around 43% of fast-food workers in Los Angeles live in overcrowded homes which negatively impact their sleep, stress, and mental health.
- The report recommends allowing employees to unionize and implementing better wages and benefits so that employees can afford to adequate housing and health care.<sup>260</sup>

For those unable to work, federal supplemental income programs for elderly and disabled persons have failed to keep pace with the cost of rent. Supplement Security Income (SSI) payments are capped at \$841 per month, and are decreased if a person earns more than \$85 per month, and can be suspended if a recipient gains more than \$2000 in savings.<sup>261</sup> Social Security Disability Insurance (SSDI), which is harder to obtain and based on salary history, are capped at \$3,627, but the average payment is \$1,358 per month.<sup>262</sup> Both are far less than the national median rent of \$1,967 per month,<sup>263</sup> and neither are indexed to the actual cost of housing (or living) in the community where the recipient lives.

The financialization of housing, in which housing is treated as a commodity and a means of wealth accumulation, has led to the displacement of communities of color from their long-term neighborhoods and social networks. As the Special Rapporteur on Adequate Housing explained, "Capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity"<sup>264</sup> Residents are displaced in favor of new luxury buildings that turn quick profits, but because the units are so unaffordable they are left empty at no consequence to the developers because to them "housing is as valuable whether it is vacant or occupied, lived in or devoid of life."<sup>265</sup> The Special Rapporteur noted that "racial displacement from urban centers and segregation in evidence in large cities in the [U.S.] have led to more severe impacts of financialization and the mortgage crisis being experienced by African-American households."<sup>266</sup>

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<sup>260</sup> Daniel Flaming & Patrick Burns, *Hungry Cooks: Poverty Wages and Homelessness in the Fast Food Industry*, ECONOMIC ROUNDTABLE (May 1, 2023), <https://economicrt.org/publication/hungry-cooks/>.

<sup>261</sup> Fred Clasen-Kelly, *High rents outpace federal disability payments, leaving many homeless*, supra note 249.

<sup>262</sup> Jackie Jakab, *How Are SSDI Payments Calculated?*, Atticus.com (Mar. 13, 2023), <https://www.atticus.com/advice/getting-started/how-are-ssdi-payments-calculated>.

<sup>263</sup> Jon Leckie, *Rent Report*, Rent.com (May 2023), <https://www.rent.com/research/average-rent-price-report/>.

<sup>264</sup> 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, supra note 29, ¶ 1.8.

<sup>265</sup> 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, supra note 29, ¶ 30, 31.

<sup>266</sup> 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, supra note 29, ¶ 35, citing Jacob Rugh and Douglas Massey, "Racial segregation and the American foreclosure crisis", *American Sociological Review*, vol. 75, No. 5 (October 2010).

**“We need to change our fundamental relationship with land. The commodification of land is a big problem.”**

– Robert Robinson, Partners for Dignity and Rights<sup>267</sup>

## **B. Affordable Housing Programs**

On the federal level, the largest affordable housing program is the Housing Choice Voucher Program, formerly and commonly known as Section 8 Housing. This program, stemming from HUD, assists low-income individuals and families, those with disabilities, and the elderly find and pay for affordable housing. While federally funded, this program is administered through state public housing agencies.<sup>268</sup> USICH’s “All In” plan seeks to increase funding to these voucher programs.<sup>269</sup> However, at present funding levels, federal subsidies only reach one in four Americans who need them.<sup>270</sup>

The Build Back Better framework would have ensured that middle-class families pay no more than 7% of their income on childcare and helped states expand access to high-quality, affordable childcare to about 20 million children per year – covering 9 out of 10 families across the country with young children.<sup>271</sup> Congress’ failure to pass Build Back Better has prevented progress in combating the housing crisis in the U.S.

Title V Program of the McKinney-Vento Homeless Assistance Act (Title V) grants local governments, state agencies, and private non-profit groups free access to land and real property no longer needed by the federal government.<sup>272</sup> Title V thus allows the federal government to reduce its costly surplus property inventory, and related operations and maintenance costs, while providing valuable real property assets to housing and homeless service providers who can put those unused property to productive use. More than 2 million Americans each year receive assistance in Title V properties, which have provided access to more than 500 buildings and nearly 900 acres of land since the program was created in 1987.<sup>273</sup>

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<sup>265</sup> 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, *supra* note 29, ¶¶ 30, 31. <sup>266</sup> 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, *supra* note 29, ¶¶ 35, citing Jacob Rugh and Douglas Massey, “Racial segregation and the American foreclosure crisis”, *American Sociological Review*, vol. 75, No. 5 (October 2010).

<sup>267</sup> Interview with Robert Robinson, Senior Advisor, Partners for Dignity and Rights, (Feb. 9, 2023).

<sup>268</sup> Find Affordable Rental Housing, <https://www.usa.gov/finding-home>.

<sup>269</sup> All In: The Federal Strategic Plan to Prevent and End Homelessness, *supra* note 250.

<sup>270</sup> The Problem, *supra* note 247.

<sup>271</sup> The Build Back Better Framework, THE WHITE HOUSE, <https://www.whitehouse.gov/build-back-better/>.

<sup>272</sup> 42 U.S.C. § 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless available at <https://www.gpo.gov/fdsys/granule/USCODE-1999-title42/USCODE-1999-title42-chap119-subchapV/sec11411>.

<sup>273</sup> Public Property/Public Need: A toolkit for using vacant federal property to end homelessness, NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, 7 (2017), <https://homelesslaw.org/wp-content/uploads/2018/10/Public-Property-Public-Need-1.pdf>.

However, in recent years, the approval rate of applications for Title V properties has been abysmally low – at or below 30%.<sup>274</sup> Outdated federal regulations issued in 1991 still govern the program and restrictive interpretation has prevented approval of strong applications. The most problematic areas of the regulations are in financing affordable housing, where the federal government has failed to allow transfer of site control or other flexibility typically permitted in other programs so that applicants can utilize Low-Income Housing Tax Credit and other traditional financing tools.<sup>275</sup> Three-year time restrictions to bring property into use and the lack of opportunity to cure for noncompliance have also slowed the use of the program significantly. Since January 2020, approximately 65 properties have been made available for reuse under Title V, only 10 applications were submitted, and only 3 were approved.<sup>276</sup>

In response to COVID-19, the federal government imposed several programs to ease the financial burden on those affected by the pandemic. One of which was the Emergency Rental Assistance (ERA) Program which provided funding for those struggling to pay rent and utilities.<sup>277</sup> These funds, amounting to around \$46 billion, were distributed directly to state and local governments to assist their residents.<sup>278</sup> Despite challenges in implementation, the ERA Program helped more than 5 million households during the pandemic, though it is as yet unclear how many ultimately faced eviction.<sup>279</sup> Unfortunately, the majority of state and local governments have since paused or closed their ERA programs as of 2022.<sup>280</sup>

Some state and local governments also implemented their own programs to lift financial stress from vulnerable renters. Programs that assist individuals and families include Washington D.C.'s Emergency Rental Assistance program which provides funding for residents including money for security deposits on new apartments and overdue rent payments for those facing eviction.<sup>281</sup> During the COVID-19 pandemic, D.C. also implemented a STAY DC program, which provides rental and utility assistance.<sup>282</sup> Similarly in Vermont by using federal relief funds from the American Rescue Plan the Vermont Housing Finance Agency has plans to issue grants for up to \$30,000 for homeowners, to assist in mortgage payments, payment of property taxes and utilities, and to prevent home foreclosures.<sup>283</sup>

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<sup>274</sup> In one year alone (2015), the Government Accountability Office identified 7,000 excess or underutilized real property assets reported by 23 federal agencies. Vacant Federal Properties: Hearing Before the H. Subcomm. on Transp. and Pub. Assets, 114th Cong. 1 (2016) (statement of Dave E. Wise, Director of Physical Infrastructure, Gov't Accountability Office). Although not all of these 7,000 would be suitable for the homeless services programs, assuredly thousands would be.

<sup>275</sup> See Comment submitted to U.S. Dept. of Housing & Urban Dev., from National Homelessness Law Center, re: Use of Federal Real Property to Assist the Homeless: Revisions to Regulations (Agency Docket No. FR 6119-P-014, 3090-AK46; RIN Nos. 0991-AC14, 2506-AC49; Docket ID No.: HUD-2023-0021-0001), of May 19, 2023, at 5-9, [https://homelesslaw.org/wp-content/uploads/2023/05/NHLC\\_Public-Comment\\_Title-V\\_RIN-0991-AC14-RIN-2506-AC49.pdf](https://homelesslaw.org/wp-content/uploads/2023/05/NHLC_Public-Comment_Title-V_RIN-0991-AC14-RIN-2506-AC49.pdf).

<sup>276</sup> General Services Administration Logs submitted monthly to National Homelessness Law Center, Jan. 2020 – March 2023.

<sup>277</sup> Emergency Rental Assistance Program, UNITED STATES DEPT. OF TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>.

<sup>278</sup> *Id.*

<sup>279</sup> Pandemic Relief: The Emergency Rental Assistance Program, CONGRESSIONAL RESEARCH SERVICE, <https://crsreports.congress.gov/product/pdf/R/R46688>.

<sup>280</sup> Emergency Rental Assistance, NAT'L COUNCIL OF STATE HOUS. AGENCIES, <https://www.ncsha.org/emergency-housing-assistance/>.

<sup>281</sup> Emergency Rental Assistance Program, DEPT. OF HUMAN SERVICES, <https://dhs.dc.gov/service/emergency-rental-assistance-program>.

<sup>282</sup> Colleen Grablick, D.C. to Receive an Additional \$17.7 Million in Federal Rent Assistance Funds, NATIONAL PUBLIC RADIO (Jan. 10, 2022) <https://www.npr.org/local/305/2022/01/10/1071808453/d-c-to-receive-an-additional-17-7-million-in-federal-rent-assistance-funds>. (This program provided \$155 million in housing assistances to 23,000 residence and received additional funding to continue providing assistance in January 2022.)

<sup>283</sup> Housing Assistance Program, STATE OF VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT <https://accd.vermont.gov/covid-19/housing-assistance-programs>.

In 2021, the American Rescue Plan temporarily increased the Child Tax Credit (CTC) from \$2,000 to \$3,600 for children ages 6 and under.<sup>284</sup> The American Rescue Plan also expanded the age requirements, allowing for 17-year-olds to qualify and receive up to \$3,000 per year.<sup>285</sup> These expansions helped lower poverty rates by 40-50% across the country, with equitable benefits accruing to Black, Indigenous, and Latinx households.<sup>286</sup> However, in 2022, the CTC limit decreased back to \$2,000 for children 6 and under.<sup>287</sup> There is currently a substantial gap for people with mortgages as renters are provided with far more options than homeowners. In February of 2023, the Biden Administration announced their plan to reduce the annual mortgage insurance from .85% to .55%, saving homeowners up to \$800 annually.<sup>288</sup> This is a hopeful step as homeowner programs are building, however, \$800 annually may not be enough for lower-income families.

## RENTER'S TAX CREDIT

**"[The tax system] was built and designed not to include people living in poverty."**

– Michael Santos, Results<sup>289</sup>

- A renter's tax credit is a tax credit that would go directly to tenants, instead of landlords, to aid in housing costs. The tax credit would function in accordance with HUD's guidelines of housing affordability. Essentially, if a renter is paying more than 30% of their income in housing costs, anything over 30% would be subsidized through the tax credit. There are a few states beginning to implement a renter's tax credit, however the amount offered is embarrassingly low. Further, many of the existing tax credits and rental assistance programs do not include individuals living paycheck to paycheck. People that do not qualify for federal housing subsidies are often still not making enough to live comfortably. The renter's tax credit would benefit this population as they often go ignored when discussing financial assistance with housing.<sup>290</sup>
- Rental subsidies, including voucher and tax credits, eventually end up in the pockets of private landlords who often seek to make a profit. Methods of taking housing out of the private market, such as community land trusts and rental cooperatives can help ensure housing is used for its primary purpose—housing residents, not making other profits—and remains permanently affordable.<sup>291</sup>

<sup>284</sup> Child Tax Credit, U.S. DEPT. OF TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/child-tax-credit>.

<sup>285</sup> Id.

<sup>286</sup> Bradley L. Hardy, Sophie M. Collyer, and Christopher T. Wimer, The Antipoverty Effects of the Expanded Child Tax Credit across States: Where Were the Historic Reductions Felt? THE HAMILTON PROJECT (Mar. 2023), [https://www.brookings.edu/wp-content/uploads/2023/02/20230301\\_ES\\_THP\\_CTCbyState.pdf](https://www.brookings.edu/wp-content/uploads/2023/02/20230301_ES_THP_CTCbyState.pdf).

<sup>287</sup> Guide to Filing Your Taxes in 2023, CONSUMER FINANCIAL PROTECTION BUREAU, <https://www.consumerfinance.gov/consumer-tools/guide-to-filing-your-taxes/>.

<sup>288</sup> Fact Sheet: Biden-Harris Administration Announces Action to Save Homebuyers and Homeowners \$800 Per Year, THE WHITE HOUSE (Feb. 22, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/22/fact-sheet-biden-harris-administration-announces-action-to-save-homebuyers-and-homeowners-800-per-year/>.

<sup>289</sup> Interview with Michael Santos, Associate Dir. of U.S. Poverty Policy, Results.org (Feb. 24, 2023).

<sup>290</sup> Id.

<sup>291</sup> See e.g., NATIONAL LEAGUE OF CITIES, Community Land Trusts: A Guide for Local Government (2021), [https://www.nlc.org/wp-content/uploads/2021/08/Community-Land-Trusts\\_A-Guide-for-Local-Governments\\_Report-1.pdf](https://www.nlc.org/wp-content/uploads/2021/08/Community-Land-Trusts_A-Guide-for-Local-Governments_Report-1.pdf); CO-OPERATIVE HOUSING INTERNATIONAL, Benefits of Cooperative Housing, <https://www.housinginternational.coop/housing-co-operative/benefits-of-cooperative-housing/>.

# Recommendations

At the federal level, the U.S. should:	At the state & local level, the U.S. should:
<p>Permanently implement COVID-19 policies, like emergency rental assistance, and expand monthly child tax credits and renters tax credits, to ensure universal housing affordability outside of the annual appropriations process.</p>	<p>Incentivize the private development of affordable housing, such as through simplified building codes, inclusionary zoning, community land trusts, housing cooperatives, and/or the Low-Income Housing Tax Credits.</p>
<p>Update Title V federal regulations to explicitly allow use of all affordable housing financing tools, more time to bring affordable housing developments into use and an opportunity to cure if an existing Title V grantee is noncompliant.</p>	<p>Use public funds to purchase abandoned properties and transform them into social housing, which also increases available jobs.</p>
<p>Index SSI and SSDI payments to local housing costs and expand other welfare benefits to ensure that citizens are not sacrificing basic needs to meet high housing costs.</p>	<p>Raise the minimum wage and index it to inflation.</p>
<p>Create structures, incentives, and technical assistance to make it easier to create community land trusts and housing cooperatives.</p>	
<p>Raise the minimum wage and index it to inflation.</p>	



## V. Availability of Services, Materials, and Infrastructure



The U.S. government has earned a D grade for the availability of services. Existing infrastructure regarding access to water, sanitation, and other basic services critical to the right to housing is lacking in certain areas. Additionally, the criminalization of homelessness and lack of access to public toilets, sinks, showers, and mobile sanitation facilities for vehicle residents exacerbate homelessness and deprive individuals of essential water and sanitation.

According to CESCR, adequate housing “must contain certain facilities essential for health, security, comfort and nutrition.”<sup>292</sup> This encompasses “sustainable access to natural and common resources, safe drinking water, energy for cooking, heating, and lighting, sanitation and washing facilities, means of food, refuse disposal, site drainage and emergency services.”<sup>293</sup>

### A. Lack of Access to Water and Sanitation in Alabama’s “Black Belt”

Alabama’s Black Belt, named for its rich, black soil suffers from poor water and sanitation conditions.<sup>294</sup> This region is 25-30 miles wide and stretches approximately 300 miles across central Alabama and northeastern Mississippi.<sup>295</sup> The Black Belt experiences high poverty rates, low-income jobs, low homeownership rates, and lack of economic development.<sup>296</sup> In 1877, after Reconstruction ended, the plantation system fell apart, forever changing the economy of the South.<sup>297</sup> For instance, former masters failed to give freedmen their own plots of land, leaving most African Americans to remain dependent on the slave system, and thus, becoming sharecroppers.<sup>298</sup> Moreover, most freedmen were uneducated, further weakening their ability to compete with whites on equal terms.<sup>299</sup> Thus, Richard Fordling, a professor at the University of Alabama, attributes Black Belt poverty to the “exploitive economic system that persisted for many decades after Reconstruction.”<sup>300</sup> In Alabama, a large proportion of the population does not have access to public sewerage and water supply services, leaving residents to devise their own septic systems.<sup>301</sup> The Alabama Department of Public Health estimates that, in Alabama’s Black Belt, 40 to 90% of homes have inadequate or no septic systems.<sup>302</sup>

This leads to raw sewage accumulating in backyards and a resurgence of 19th century diseases, largely eradicated due to modern medicine.<sup>303</sup> Additionally, heavy rains and floods, intensifying due to the climate crisis, overwhelm these weak systems, forcing sewage to spill into people’s yards and contaminating the communities drinking water.<sup>304</sup>

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<sup>292</sup> General Comment 4, The Right to Adequate Housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003) [hereinafter “General Comment 4”].

<sup>293</sup> *Id.*

<sup>294</sup> John Herbersspecial, *Black Belt of Alabama is a Stronghold of 19th -Century Racism*, *New York Times* (Mar. 26, 2023, 10:00 AM), <https://www.nytimes.com/1965/02/14/archives/black-belt-of-alabama-is-a-stronghold-of-19th-century-racism.html>.

<sup>295</sup> *Id.*

<sup>296</sup> Michela Zonta, *Expanding the Supply of Affordable Housing for Low-Wage Workers*, *CAP* (Mar. 27, 2023, 9:00 AM), <https://www.americanprogress.org/article/expanding-supply-affordable-housing-low-wage-workers/>.

<sup>297</sup> William A. Dunning, *The Undoing of Reconstruction*, *THE ATLANTIC* (Mar. 27, 2023, (9:00 AM), <https://www.theatlantic.com/magazine/archive/1901/10/the-undoing-of-reconstruction/429219/>.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> Zonta, *supra* note 296.

<sup>301</sup> Catherine Coleman Flowers, *A County Where the Sewer Is Your Lawn*, *THE NEW YORK TIMES* (Mar. 27, 2023, 10:00 AM), <https://www.nytimes.com/2018/05/22/opinion/alabama-poverty-sewers.html>.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

Philip Alston, the UN Special Rapporteur on extreme poverty, stated that he “had never seen such horrible sewage problems in the developed world.”<sup>305</sup> Specifically, Dr. Alston noted that:

The state health department had no idea of how many households exist in these conditions, despite the grave health consequences. Nor did they have any plans to find out or devise a plan to do something about it. But since the great majority of white folks live in the cities, which are well served by government-built and maintained sewerage systems, and most of the rural folks in areas like [Alabama’s Black Belt] are Black, the problem does [not] appear on the political or governmental radar screen.<sup>306</sup>

## B. Lack of Access to Water and Sanitation for Individuals Experiencing Homelessness

**“There is no access to clean water and sanitation when you are experiencing homelessness.”**

-Jason Walker, Florida Action Network Movement<sup>307</sup>

For individuals experiencing homelessness, lack of shelter often means lack of access to clean water and sanitation.<sup>308</sup> This is due to a lack of public toilets, sinks, and showers.<sup>309</sup> A Fresno, California study found that those living in encampments “were denied access to facilities in local businesses and there were no public restrooms nearby.”<sup>310</sup> With no access to public restrooms, they had no choice but to relieve themselves on the street.<sup>311</sup> Another study in Detroit, Michigan highlighted the difficulties people experiencing homelessness face in accessing public showers, including few facilities, excessive wait times, privacy concerns, and concerns about theft.<sup>312</sup>

Reporting on his visit to the U.S. Professor Philip Alston, the then UN Special Rapporteur on extreme poverty and human rights, noted:

The criminalization of homeless individuals in cities that provide almost zero public toilets seems particularly callous. In June 2017, it was reported that the approximately 1,800 homeless individuals on Skid Row in Los Angeles had access to only nine public toilets. Los Angeles failed to meet even the minimum standards the United Nations High Commissioner for Refugees sets for refugee camps in the Syrian Arab Republic and other emergency situations.<sup>313</sup>

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<sup>305</sup> Id.

<sup>306</sup> Id.

<sup>307</sup> Interview with Jason Walker, Communications Coordinator at Florida Family Action Network (Feb. 24, 2023).

<sup>308</sup> April Ballard et al., ‘You feel how you look’: Exploring the impacts of unmet water, sanitation, and hygiene needs among rural people experiencing homelessness and their intersection with drug use, PLOS WATER, May 25, 2022, at 5.

<sup>309</sup> Id. at 2.

<sup>310</sup> Id.

<sup>311</sup> Id.

<sup>312</sup> Id.

<sup>313</sup> Hum. Rts. Council, Report of the Special Rapporteur on extreme poverty and human rights, (2015) [hereinafter Special Rapporteur on extreme poverty and human rights], para. 44..

Vehicle residents who live in RVs also frequently face barriers to emptying their septic water storage tanks. A few communities have developed mobile sanitation collection programs or safe lots where people can safely dispose of their waste, but these are few and far between, and generally only locally funded.<sup>314</sup> Unmet sanitation needs contribute to low self-esteem, self-worth, anxiety, and depression, further adding to the challenges people experiencing homelessness face.<sup>315</sup> One man experiencing homelessness in Kentucky, stated:

Oh lord, [it was] devastating. I used to be the most confident, radiant person. You'd walk into a room, and I'd light it up...I lost that for a long time. I just shut down, got depressed, got put on medication and everything...I mean, it's the old saying, which is very true, you feel how you look. So, if you feel nasty and dirty, I mean you're going to feel nasty and dirty.<sup>316</sup>

The rapid transmission of COVID-19 and Hepatitis A across the U. S. demonstrates the need for increased access to sanitation infrastructures, with experts noting how homelessness is “a key risk factor for contracting” easily transmissible viruses.<sup>317</sup> Thus, with an estimated 3 million people experiencing homelessness, the availability of and access to water and sanitation infrastructures is critical for the nation’s health.<sup>318</sup>

In addition to violating the right to housing, lack of access to clean water and sanitation violates the right to water.<sup>319</sup> CESCR has provided detailed guidance on implementing the right to water and describes water as “indispensable for leading a life in human dignity” and “a prerequisite for the realization of other human rights.”<sup>320</sup> Adequate water must be available, accessible, and of good quality.<sup>321</sup> The UN Human Rights Council likewise recognizes access to safe drinking water and sanitation as a human right and<sup>322</sup> requires State parties to ensure that “drinking water and water for personal and domestic usage as well as sanitation and hygiene facilities are available, accessible, safe, acceptable, and affordable for all without discrimination.”<sup>323</sup>

Access to water is further reflected in the Sustainable Development Goals, established by the UN, and agreed to by the U. S. Goal 6 seeks to “[e]nsure availability and sustainable management of water and sanitation for all.”<sup>324</sup>

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<sup>314</sup> John Orr, Mountain View Starts Collecting Waste From RV Dwellers, MERCURY NEWS, <https://www.mercurynews.com/2018/02/02/mountain-view-city-starts-collecting-waste-from-rv-dwellers/>.

<sup>315</sup> Ballard, *supra* note 308 at 10.

<sup>316</sup> *Id.* at 12.

<sup>317</sup> *Id.* at 2.

<sup>318</sup> *Id.*

<sup>319</sup> COALITION ON HOMELESSNESS, SAN FRANCISCO, WATER FOR ALL 6 (2021)

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

# Recommendations

At the federal level, the U.S. should:	At the local level, the U.S. should:
Fund a comprehensive nationwide study of inadequate and unaffordable wastewater treatment and fund innovation in affordable wastewater treatment technologies, employing renewable energy strategies. <sup>325</sup>	Create public restrooms and other points of water and sanitation access for unhoused communities until they are adequately housed.
Provide grant incentives to communities to ensure adequate water and sanitation access for all, including unsheltered and vehicle residents.	Create mobile sanitation collection programs for vehicle residents until they are adequately housed.



Source: Yahoo Images

<sup>325</sup> EPA IN WEST VIRGINIA, HIGH TECH SYSTEMS HELP LOW-INCOME FAMILIES DEAL WITH SEWAGE PROBLEMS (2015). The federal government should learn from states that have tackled water and sanitation issues. EPA-funded septic systems have made a large impact in one of the poorest and most rural areas in West Virginia. The project involves "installing high-tech systems that use peat as a secondary treatment and ultraviolet light as the final disinfectant."



## A. Food Apartheid

The UDHR<sup>328</sup> and ICESCR<sup>329</sup> affirm that every individual has the right to adequate food. CESCR states that the right to adequate food is recognized “when every man, woman and child [...] have physical and economic access at all times to adequate food or means for its procurement.”<sup>330</sup> Additionally, the Special Rapporteur for the right to food explained:

*The right to food is the right to have regular, permanent, and unrestricted access— either directly or by means of financial purchases—to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual, and collective, fulfilling, and dignified life free of fear.*<sup>331</sup>

Food apartheid involves “a system of segregation that divides those with access to an abundance of nutritious food and those who have been denied that access due to access due to systematic injustice.”<sup>332</sup> The term highlights the racially discriminatory political structures that impact food access and control.<sup>333</sup> Supermarket redlining is a phenomenon where larger grocery stores either refuse to move in to lower-income area, shut existing outlets, or relocate to wealthier suburbs.<sup>334</sup> This leads to Black and Hispanic neighborhoods having fewer large supermarkets and rarely having access to healthy whole-grain foods that large supermarkets provide.<sup>335</sup>

If not properly addressed, food insecurity may lead to stunted growth and behavioral problems in children.<sup>336</sup> Adults with food insecurity consume lower levels of vital nutrients, including protein, vitamin A, calcium, and iron, leading to higher rates of malnutrition, vitamin deficiencies, and chronic diseases.<sup>337</sup> Accordingly, food insecure adults are 65% more likely to be diabetic and suffer from conditions like congestive heart failure, high blood pressure, asthma, obesity, and gum disease.<sup>338</sup>

Cities are turning towards urban planning as a tool to increase food equity. For instance, Minneapolis, as part of its 2040 plan, aims establish equitable distribution of food sources and food markets.<sup>339</sup> To achieve this, the city is reviewing urban plans, such as exploring and implementing regulatory changes to allow mobile food markets and mobile food pantries.<sup>340</sup> Additionally, Boston is establishing an urban agriculture overlay district, in predominately Black and Latino neighborhoods, by changing zoning to allow commercial urban agriculture, providing employment opportunities for local people.<sup>341</sup>

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<sup>328</sup> UDHR, supra note 23.

<sup>329</sup> ICESCR, supra note 25 at art. 11.

<sup>330</sup> Id. at ¶16.

<sup>331</sup> Hum. Rts. Council, Report of the Special Rapporteur on the right to food, ¶1, U.N. Doc. A/HRC/52/40 (2022) [hereinafter Special Rapporteur on the right to food].

<sup>332</sup> Kelly Brooks, Research Shows Food Deserts More Abundant in Minority Neighborhoods, JOHN HOPKINS MAG. (Mar. 24, 2023, 9:00 AM), <https://hub.jhu.edu/magazine/2014/spring/racial-food-deserts/>.

<sup>333</sup> Id.

<sup>334</sup> Julian Agyeman, The ugly truth about how food deserts came to be, MIC (Mar. 24, 2023, 9:00 AM), <https://www.mic.com/life/racism-created-the-food-deserts-that-still-plague-too-many-cities-65411672>.

<sup>335</sup> Id.

<sup>336</sup> Hunger in America, FEEDING AMERICA (Mar. 24, 2023, 9:00 AM), <https://www.feedingamerica.org/hunger-in-america>.

<sup>337</sup> Id.

<sup>338</sup> Id.

<sup>339</sup> Julian Agyeman, How urban planning and housing policy helped create ‘food apartheid’ in US cities, PENN LIVE (Mar. 24, 2023, 9:00 AM), <https://www.pennlive.com/opinion/2021/03/how-urban-planning-and-housing-policy-helped-create-food-apartheid-in-us-cities-opinion.html>.

<sup>340</sup> Id.

<sup>341</sup> Id.

## B. Environmental Racism

Environmental racism is a systematic racism “wherein policies and practices place industrial facilities in low-income communities,” promoting high pollution environments, often causing severe health problems for residents.<sup>342</sup> The term “redlining” originated from real red lines on maps that indicated Black neighborhoods as hazardous.<sup>343</sup> These maps were used by government-sponsored organizations, like Homeowners’ Loan Corporation and the Federal Home Loan Bank Board, to deny lending and investment services to Black Americans, leading to a lasting impact on Black neighborhoods.<sup>344</sup>

This inequality disproportionately exposes People of Color to environmental hazards, such as pollution.<sup>345</sup> A report published by the Shriver Center on Poverty Law found that, in the U.S., 70% of hazardous waste sites are located within one mile of public housing.<sup>346</sup> This amounts to over 77,000 families, who reside in federal public housing, living near some of the most polluted Superfund sites or areas that have been improperly managed and designated for cleanup by the federal government.<sup>347</sup> Additionally, Black communities are 13.7% more exposed to fine particulate matter than white communities.<sup>348</sup> People of Color are more vulnerable because of lack of time and resources to attend meetings or hire lawyers to fight on their behalf, with one woman noting:<sup>349</sup>

*By the time we learned that the soil under our homes was contaminated, 40% of the children tested in our community had elevated blood levels.*<sup>350</sup>

In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate based on race, color, or national origin.<sup>351</sup> Because of this, the Biden administration is testing a new legal approach by applying this provision from the 1964 Civil Rights Act.<sup>352</sup> Under this provision, environmental justice concerns have not been readily addressed because of high legal standards.<sup>353</sup> However, current trends seem to suggest that the Department of Justice is looking to enforce this provision more aggressively than previously enforced.<sup>354</sup>

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<sup>342</sup> Helen Millar, What is environmental racism?, Medical News Today (Mar. 24, 2023, 9:00 AM), <https://www.medicalnewstoday.com/articles/environmental-racism>.

<sup>343</sup> How a New Deal Housing Program Enforced Segregation, History (Mar. 24, 2023, 9:00 AM), <https://www.history.com/news/housing-segregation-new-deal-program>.

<sup>344</sup> Id.

<sup>345</sup> Millar, *supra* note 342.

<sup>346</sup> Elle Meyers, Report Finds 70% of Public Housing Is Located Near Toxic Waste Sites, THE KEYSTONE (Mar. 24, 2023, 9:30 AM), <https://keystoneneewsroom.com/story/report-finds-70-of-public-housing-is-located-near-toxic-waste-sites/>.

<sup>347</sup> Id.

<sup>348</sup> Julia Jacobo, Communities with large Black, Asian and Hispanic or Latino populations more likely to be exposed to air pollution, new research suggest, ABC News (Mar. 22, 2023, 8:00 AM), <https://abcnews.go.com/US/communities-large-black-asian-hispanic-latino-populations-exposed/story>.

<sup>349</sup> Id.

<sup>350</sup> @EarthJustice, TWITTER (Mar. 23, 2023, 9:30 AM), <https://twitter.com/earthjustice/status/1280622623832055810>.

<sup>351</sup> Lisa Friedman, White House Takes Aim at Environmental Racism, but Won't Mention Race, NEW YORK TIMES (Mar. 24, 2023, 10:00 AM), <https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html>.

<sup>352</sup> Id.

<sup>353</sup> Id.

<sup>354</sup> Id.

### C. Human Rights Law Developments

The Committee on the Elimination of Racial Discrimination, in its Concluding Observations, called on the U.S. to “guarantee that federal legislation, prohibiting environmental pollution, is effectively enforced at state and local levels.”<sup>355</sup> Additionally, the Committee commended efforts like Executive Order 14008: Tackling the Climate Crisis at Home and Abroad, which helps address the longstanding effects of pollution and climate change on disadvantaged communities.<sup>356</sup>

Despite the enactment of the FHA, purporting the abolishment of segregation in housing, spatial segregation is still prominent in the U.S. As such, racial minorities continue to face segregation.<sup>357</sup> The UN Special Rapporteur on the Right to Adequate Housing, in his report on spatial segregation, defines spatial segregation as “the imposed or preferred separation of groups of people in a particular territory along the lines of race, caste, ethnicity, language, religion, disability, income, or other status.”<sup>358</sup> Further, the UN Special Rapporteur notes that spatial segregation is “almost always characterized by economic and social exclusion, and inequality in accessing infrastructure, services, and livelihood opportunities.”<sup>359</sup> Thus, residential segregation may adversely impact other rights such as the right to education. Residential segregation has a detrimental effect on education opportunities, impacting mostly Black and Hispanic children.<sup>360</sup> Segregated neighborhoods translate into segregated school districts leading to an increase in racial prejudices within these districts.<sup>361</sup> Further, studies show that desegregation provided an increase in educational supplies and resources for Black students.<sup>362</sup>



Leonie, Centre for Homelessness Impact

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<sup>355</sup> CERD Concluding Observations: USA, *supra* note 7, ¶144.

<sup>356</sup> *Id.* at ¶145.

<sup>357</sup> Emily Bramhall, Why Does Segregation Between School Districts Matter for Educational Equity?, HOUSING MATTERS (Mar. 24, 2023, 12:00 PM), <https://housingmatters.urban.org/articles/why-does-segregation-between-school-districts-matter-educational-equity>

<sup>358</sup> Hum. Rts. Council, Report of the Special Rapporteur on the right to adequate housing, ¶1, U.N. Doc. A/HRC/49/48 (2022) [hereinafter Special Rapporteur on the right to adequate housing].

<sup>359</sup> *Id.*

<sup>360</sup> Bramhall, *supra* note 357.

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*



# Recommendations

## The U.S should:

Provide tax incentives, or update zoning regulations to encourage large supermarkets to open in underserved communities.<sup>363</sup>

Provide funds to improve public transportation systems to increase food access in areas where grocers are over 10 miles away.<sup>364</sup>

Clean up radioactive and toxic waste sites in areas inhabited by racial and ethnic minorities.<sup>365</sup>

Undertake thorough investigations into cases of pollution affecting minority communities and hold those responsible accountable by providing effective remedies for the victims.<sup>366</sup>

## VII. Habitability



The U.S. has earned a C- for habitability. The Build Back Better Program, as passed by the House, had earmarked \$65 billion to address the \$70 billion backlog in public housing maintenance issues. These funds would have gone a huge way to remedying the leaks, mold, faulty heating/cooking, and malfunctioning elevators that pose habitability violations for public housing residents. Unfortunately, the program did not pass, and millions of public housing residents continue to see ongoing violations of their right to habitable housing. Additionally, the power imbalance in the private market means many renters are forced to deal with violations of their right to habitable housing as well.

According to CESCR, “[a]dequate housing must be habitable, providing inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind, threats to health, structural hazards, and disease vectors.”<sup>367</sup> Physical safety must also be guaranteed.<sup>368</sup>

<sup>363</sup> CERD Concluding Observations: USA, supra note 7, ¶45.

<sup>364</sup> Id.

<sup>365</sup> Id.

<sup>366</sup> Id.

<sup>367</sup> General Comment 4, supra note 292.

<sup>368</sup> Id. at ¶ 8(e)

## A. Public Housing Distress

With the advent of housing codes, modern construction techniques, and the implied warranty of habitability, the quality of contemporary housing has improved dramatically, and the number of substandard dwellings in the U.S. housing market has decreased.<sup>369</sup> Yet, overcrowding and issues ranging from leaks, mold, faulty heating/coking, and malfunctioning elevators, persist.<sup>370</sup> Moreover, the risks associated with poor housing conditions are borne disproportionately by racial minorities and low-income individuals.<sup>371</sup> For example, those living below the federal poverty line are three times more likely to have substandard quality housing than those who are not poor.<sup>372</sup>

While much of the U.S. enjoys high quality housing stock, many low-income families experience dangerous or unhealthy conditions. Over the last two decades, the federal government “has drastically reduced budgets for public housing,” endangering the homes of over 2 million people.<sup>373</sup> Accordingly, funding major repairs for public house dramatically decreased by over 50 percent between 2000 and 2013, remaining 35 percent below 2000 levels in 2021, leaving public housing developments to fall into disrepair.<sup>374</sup> Specifically, around 10,000 public apartments, nationally, are “lost annually due to dilapidation.”<sup>375</sup> Deborah Thrope, deputy director of the National Housing Law Project, notes:

*Housing authorities are being forced to make very difficult decisions about what they can and cannot pay for. Any type of repair that requires any real money isn't going to get done.*<sup>376</sup>

After years of failing to address to nation's stock of aging public housing, “the backlog of unfunded capital projects has ballooned to an estimated \$80 billion.”<sup>377</sup> These projects directly impact the health and safety of those living in public housing units across the country, including repairing damaged roofs, replacing broken air conditioning systems, and remedying leads, and resulting mold.<sup>378</sup> The Faircloth Amendment, a 1998 law, “sets a cap on the number of units any public housing authority could own and operate, effectively halting new constructions of public housing.” Moreover, this restrictive amendment, by severely limiting the use of federal dollars to construct public housing, removes local power to address chronic maintenance issues plaguing affordable homes.<sup>379</sup>

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<sup>369</sup> Quality of Housing, OASH, <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature%26summaries/quality-housing>.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> Gandour, *supra* note 11.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> *Id.*

<sup>377</sup> Sarah Kleiner, The U.S. ignored public housing. This is what happened, THE CENTER FOR PUBLIC INTEGRITY (Mar. 31, 2023, 10:00 AM), <https://publicintegrity.org/inside-publici/newsletters/watchdog-newsletter/us-ignored%26public-housing/>.

<sup>378</sup> *Id.*

<sup>379</sup> Gandour, *supra* note 11.

To help counteract the Faircloth Amendment, House Democrats sought to pass the Build Back Better Act.<sup>380</sup> The Build Back Better program “allocates about \$65 billion to preserve and rebuild public housing, including to repair replace, or construct properties.”<sup>381</sup> Thus, this investment aims to reduce health hazards, increase energy efficiency, and boost resilience to disasters.<sup>382</sup> However, while passed in the House, the bill failed in the Senate. In response, Michael Lane, a state policy director at the San Francisco Bay Area Planning and Urban Research Associated, emphasized:

*It just feels like a tremendous, missed opportunity to really address a real human need and make major investments in housing as infrastructure. We’ve been left adrift now by our federal government.*<sup>383</sup>



Photography by Sam Hozian

Furthermore, insecure access to housing, disproportionately falls on Black low-income communities.<sup>384</sup> Advocates note how this unstable access to public housing is a health problem.<sup>385</sup> Specifically, Melissa Jones, executive director of the Bay Area Regional Health Inequities Initiative, highlighted how: “We don’t spend enough time thinking about housing as a health strategy, because I think if we did, we would think of housing as a human right.”<sup>386</sup>

## B. Private Market Conditions

In the private sector, many renters similarly face uninhabitable housing conditions, but are at the mercy of their landlords to fix them. Increasingly, because of the financialization of housing and rental properties being purchased by venture capital firms, that mercy is non-existent, and any complaints about housing conditions are met with eviction notices.<sup>387</sup> Because of the lack of right to counsel (see Security of Tenure, above), many tenants have little recourse other than to move out.

<sup>380</sup> Taylor Locke, Build Back Better includes \$170 billion for affordable housing, CNBC (Mar. 31, 2023, 10:00 AM), <https://www.cnbc.com/2021/11/24/build-back-better-includes-170-billion-for-housing.html>.

<sup>381</sup> Id.

<sup>382</sup> Id.

<sup>383</sup> Id.

<sup>384</sup> Madison Alvarado, How Build Back Better Bill’s Failure Could Hurt SF’s Most Vulnerable, SAN. FRAN. PUBLIC PRESS (Mar. 31, 2023, 10:00 AM), <https://www.sfpublishpress.org/how-build-back-better-failure-could-hurt-sfs-most-vulnerable/>.

<sup>385</sup> Id.

<sup>386</sup> Id.

<sup>387</sup> Heather Vogell, When Private Equity Becomes Your Landlord, PROPUBLICA (Feb. 7, 2022, 10:25 A.M.), <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>

# Recommendations

## At the federal level, the U.S. should:

Provide sufficient funding to the Section 9 public housing program to enable Public Housing Authorities to make all needed capital repairs as well as fund ongoing operations, administration, and maintenance.<sup>388</sup>

Repeal the Faircloth Amendment.<sup>389</sup>

Review the Public Housing Operating Fund to ensure that it provides an accurate reflection of Public Housing Authority's operating costs and funding needs.<sup>390</sup>

Ensure that local Public Housing Authorities encourage resident participation in all aspects of public housing management.<sup>391</sup>

Create penalties for venture capital companies that neglect maintenance of housing in their portfolio.

Fully fund a right to counsel for tenants at risk of eviction.



Laura and Amelia, Centre for Homelessness Impact / Liam McBurney/PA

<sup>388</sup> Gandour, supra note 11.

<sup>389</sup> Id.

<sup>390</sup> Id.

<sup>391</sup> Id.

## VIII. Cultural Adequacy



Hannah Smaglis, *Climate Gentrification*

In our analysis of cultural adequacy, we focused on two main components. The impact of gentrification on culturally adequate housing, and the lack of adequate housing for Indigenous Peoples due to centuries of massive land theft and systematic removal. Since 2016 however, the U.S. has taken important steps to involve Indigenous communities in the construction and distribution of federal aid programs. By providing Indigenous communities with funding opportunities and a simultaneous active role in decision making, the federal government has made a notable effort in providing culturally adequate supportive housing services. However, there is still a deficit in adequate housing to begin with, let alone housing that is culturally sensitive, particularly on Tribal lands.

As such, although the funding and collaboration with Tribal governments is welcome, the housing services required are more significant than what is currently offered. Further, Indigenous groups should not have to assimilate to obtain housing services or shelter. Rather, the housing provided through government grant programs should be geared towards the specific needs of Indigenous communities.

Further, more needs to be done to address the overcrowding and often unlivable housing conditions on Tribal lands.

Pursuant to the CESCR, **housing must be culturally adequate.**<sup>392</sup> This includes, “**the way the building is constructed, the building materials used, and the policies supporting these must appropriately enable the expression of cultural identity and diversity in housing.**” Activities geared towards development of modernization in the housing sphere should ensure that cultural dimensions of housing are not sacrificed and that modern technological facilities as appropriate are also ensured.<sup>393</sup>

Integral to cultural adequacy is the concept of cultural competency. Cultural competency is defined as the knowledge and understanding of the diverse needs of people from various cultural groups.<sup>394</sup> To practice cultural competency, housing services must be provided to meet the needs of all culturally diverse groups.<sup>395</sup> In doing so, state, and local governments should collaborate with these groups and involve them in decision making.

<sup>392</sup> CESCR General Comment No. 4, ¶ 8 (g).

<sup>393</sup> *Id.*

<sup>394</sup> Maria Rosario T. de Guzman, Tonia R. Durden, et al, Cultural Competence, UNIVERSITY OF NEBRASKA EXTENSION PUBLICATIONS (February 2016), <https://extensionpublications.unl.edu/assets/html/g1375/build/g1375.htm>

<sup>395</sup> *Id.*

## A. Addressing Gentrification

Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed.<sup>396</sup> Over the past two decades, high income populations have moved back into major cities, often into historically low-income communities of color.<sup>397</sup> Gentrification overwhelmingly leads to the demise of thriving cultural communities, pushing low-income families out of their homes instead of investing in local businesses and affordable housing. Either physically forced out or forced to relocate due to prohibitive rent hikes, original inhabitants of gentrified communities are often faced with little to no affordable housing options close to the area and disconnected from their community and culture.<sup>398</sup>

Climate change has also led “climate gentrification,” or the encroachment on inland communities. As rising water levels threaten to swallow up waterfront properties, wealthy residents who would normally inhabit this area have moved inland, often to historically low-income communities.<sup>399</sup> Through this process, affordable buildings that house culturally diverse communities are knocked down and replaced by million-dollar high rises, displacing the residents of the community.<sup>400</sup>

In Little Haiti, a community in Miami, Florida former mobile home park that housed forty working class families, is now the base of a multimillion-dollar development project.<sup>401</sup> A once culturally diverse and affordable community is now prohibitively expensive for its original inhabitants.<sup>402</sup>

**“Over the last two or three decades the encroachment from neighboring capitalist interests worked their way into the geography of the community and caused a shift. In terms of supply, in terms of demand, in terms of pricing, in terms of availability people were getting squeezed out because housing was becoming less and less affordable.”**

-Paul Namphy, Florida Action Network Movement<sup>403</sup>

Moreover, communities may have inadequate opportunity to participate in neighborhood development. For instance, on switching from traditional (Euclidean) to form-based zoning, Miami and parts of unincorporated MDC recharacterized zoning for the entire region with one legislative act and eliminated the need for public hearings and community participation for many new developments since the code encourages development and streamlined the process for developments to get administratively approved.<sup>404</sup>

This has resulted in substantial loss of affordable housing as the city has instead prioritized rapid development.<sup>405</sup> Under Miami21, Special Area Plans allow parcels that are nine acres or larger in size to forgo normal zoning laws and provide developments free reign to dramatically change the character of neighborhoods and essentially evict existing communities, which are often low-income communities that have experienced historic disenfranchisement and discrimination.<sup>406</sup>

<sup>396</sup> CESC General Comment No. 4, ¶ 8 (g).

<sup>397</sup> Kneebone E. The growth and spread of concentrated poverty, 2000 to 2008-2012. BROOKINGS (2014).

<sup>398</sup> Interview with Caroline LaPorte, National Indigenous Women’s Resource Center (Mar. 31, 2023).

<sup>399</sup> Sasha Forbes, What is Climate Gentrification?, NATURAL RESOURCES DEFENSE COUNCIL, (August 27, 2020), <https://www.nrdc.org/stories/what-climate-gentrification>

<sup>400</sup> Id.

<sup>401</sup> Milena Malaver, South Florida Media Network, Climate Gentrification Continues to Push Residents out of Little Haiti, SOUTH FLORIDA MEDIA NETWORK, (Oct. 12, 2022), <https://sfmn.fiu.edu/climate-gentrification-little-haiti>.

<sup>402</sup> Id.

<sup>403</sup> Interview with Paul Namphy and Jason Walker, Florida Family Action Network (Feb. 24, 2023).

<sup>404</sup> Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019).

<sup>405</sup> Id.

<sup>406</sup> Daniela A. Tagtachian, Natalie N. Barefoot & Adrienne L. Harreveld, Building by Right: Social Equity Implications of Transitioning to Form-Based Code, 28 J. Affordable Housing & Community Dev. L. 71, 84-85 (2019).

## B. Housing in Indigenous Communities

The need for meaningful access to public housing assistance is substantial in Tribal communities.<sup>407</sup> A study conducted by HUD in 2017 found that compared with an average poverty rate of 18%, American Indian/American Natives (AI/AN) along poverty rates stood at 22% in metropolitan areas outside of Indian Country, 28% in surrounding counties, and 32% in tribal areas.<sup>408</sup>

Overcrowding and physical housing problems of AI/ANs living on reservations and other tribal areas are exceedingly more severe than those of other Americans.<sup>409</sup> The remoteness and lack of infrastructure in Tribal areas coupled with complex constraints related to land ownership make improving housing conditions on tribal lands difficult.<sup>410</sup> Inadequate funding continues to be a major constraint. According to the 2017 study, 34% of AI/AN households have had one or more physical problems, compared with only 7% for U.S. households.<sup>411</sup> The study estimated that to address these issues, it would have been necessary to build around 33,000 new units to eliminate overcrowding of the AI/AN population in tribal areas and another 35,000 new units to address or replace units that were barely habitable.<sup>412</sup> In Tribal areas, homelessness mostly translates into overcrowding rather than having people sleeping on the street. The study estimates that, at the time of the household survey in 2013–2015, between 42,000 and 85,000 people in Tribal areas were staying with friends or relatives only because they had no place of their own.<sup>413</sup>

The Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) became law on January 3, 1996, and is the governing statute of the Office of Native American Programs.<sup>414</sup> The stated objective of the law is to provide federal assistance for Indian Tribes in a manner that recognizes the right of Tribal self-governance.<sup>415</sup> The NAHASDA was enacted to codify that the U.S. government assumes a trust responsibility for the protection and preservation of Indian Tribes and for working with Tribes and their members to improve their housing conditions and socioeconomic status. Ensuring adequate housing is an essential part of this role.<sup>416</sup>

NAHASDA further includes a requirement for negotiated rulemaking. As such, any changes to NAHASDA and the two programs it established, must go through a mandated process of collaboration between representatives of Tribes and the U.S. government.<sup>417</sup>

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<sup>407</sup> *Id.*

<sup>408</sup> Nancy Pindus, G. Thomas Kingsley, et al., *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs Executive Summary*, U.S DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, p. 3 (January 2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HousingNeedsAmer...>

<sup>409</sup> *Id.* at 1.

<sup>410</sup> *Id.*

<sup>411</sup> *Id.*

<sup>412</sup> *Id.* at 4.

<sup>413</sup> *Id.* at 5.

<sup>414</sup> What is NAHASDA?, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (2010) [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/codetalk/nahasda](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda)

<sup>415</sup> *Id.*

<sup>416</sup> Public Law 104-330 – Native American Housing Assistance and Self Determination Act of 1996 (October 26, 1996)

<sup>417</sup> Caroline LaPorte, *Housing in Tribal Communities: Three Issues for Consideration of Safety for Native Women*, NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER, (June 2018), [https://www.niwrc.org/restoration%20magazine/june-2018/housing-tribal-communities-three-issues-consideration-safety%20native#:~:text=There%20are%20three%20issues%20to,survivors%3B%20and%203\)%20funding.](https://www.niwrc.org/restoration%20magazine/june-2018/housing-tribal-communities-three-issues-consideration-safety%20native#:~:text=There%20are%20three%20issues%20to,survivors%3B%20and%203)%20funding.)

NAHASDA consolidated several federal housing programs that provided funding to low-income Indigenous groups into a single formula driven recurring block grant program.<sup>418</sup> There are two programs authorized for Indian Tribes under this Act: The Indian Housing Block Grant Program (IHBG) and Title VI Loan Guarantee. The Title VI Loan Guarantee provides financial guarantees to Tribes for private market loans to develop affordable housing.<sup>419</sup> The Indian Housing Block Grant Program (IHBG) is a competitive grant program providing funding to carry out affordable housing activities, such as developing, maintaining, and operating affordable housing on Indian reservations and in other Indian areas. Under the IHBG, native Tribes are actively involved in the determination of the plan, design, construction, and maintenance of affordable housing on Indian reservations and Native communities.

With minimal restrictions on the usage of grant funds, NAHASDA allows Indigenous communities to lead regarding the development of affordable and culturally sensitive housing.<sup>420</sup> However, tribal authorities have complained that the program contains onerous regulatory and administrative requirements that are difficult to meet.<sup>421</sup> For example, Tribes specifically mentioned that the program requires mandatory environmental reviews prior to developing housing and infrastructure projects which can be “overly cumbersome.”<sup>422</sup> Tribes also noted that NAHASDA had not lived up to its promise of developing more effective mechanisms for housing finance in Indian Country.<sup>423</sup>

However, in December 2022, as a part of its Federal Strategic Plan to Prevent and End Homelessness, USICH, in accordance with Executive order 13175 and the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, conveyed its intention to build upon the Tribal consultation set forth in NAHASDA.<sup>424</sup> Pursuant to this initiative, Native Tribes will be consulted on strategies and solutions impacting housing instability and homelessness for American Indian and Alaska Native communities living both on and off Tribal lands.<sup>425</sup>

Outside of NAHASDA, the funding available for housing services in states and localities is highly restricted and has only recently been made available to Tribes.<sup>426</sup> Native individuals experiencing homelessness and housing insecurity often do not seek out mainstream programs because of how poorly they are treated within the programs and the requirements which are difficult to meet.<sup>427</sup>

**“Not only is it uncomfortable to be there, but it is also harmful to be in mainstream housing programs.”**

– Caroline LaPorte, National Indigenous Women’s Resource Center<sup>428</sup>

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<sup>418</sup> What is NAHASDA?, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (2010) [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/codetalk/nahasda](https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/nahasda).

<sup>419</sup> Id.

<sup>420</sup> Caroline LaPorte, Housing in Tribal Communities: Three Issues for Consideration of Safety for Native Women, NATIONAL INDIGENOUS WOMEN’S RESOURCE CENTER, (June 2018), [https://www.niwrc.org/restoration&magazine/june-2018/housing-tribal-communities-three-issues-consideration-safety&native#:~:text=There%20are%20three%20issues%20to,survivors%3B%20and%203\)%20funding](https://www.niwrc.org/restoration&magazine/june-2018/housing-tribal-communities-three-issues-consideration-safety&native#:~:text=There%20are%20three%20issues%20to,survivors%3B%20and%203)%20funding).

<sup>421</sup> Broken Promises: Continuing Federal Funding Shortfall for Native Americans, U.S. COMMISSION ON CIVIL RIGHTS, p. 144, (December 2018).

<sup>422</sup> Id.

<sup>423</sup> Id.

<sup>424</sup> ALL IN: The Federal Strategic Plan to Prevent and End Homelessness, December 2022, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, p. 30 [chrome%extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usich.gov/All\\_In.pdf](chrome%extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usich.gov/All_In.pdf)

<sup>425</sup> Id.

<sup>426</sup> Interview with Caroline LaPorte, National Indigenous Women’s Resource Center (Mar. 31, 2023).

<sup>427</sup> Id.

<sup>428</sup> Id.



To further encourage collaboration amongst Indigenous communities and the federal government, the HUD established the Tribal Intergovernmental Advisory Committee (TIAC) and published a Federal Register Notice inviting Tribes to nominate representatives to serve on the TIAC.<sup>429</sup>

Furthermore, the federal government is conducting regional roundtables.<sup>430</sup> In 2021, six regional roundtables were held amongst Tribes and the federal government to address housing issues.<sup>431</sup> HUD issued a statement that one of its “priorities is to provide regular and robust engagement with Tribal leaders while ensuring that HUD is effectively delivering on its mission to provide housing resources to Indian Country.”<sup>432</sup>

Since the roundtables, the federal government has taken further steps to ensure culturally adequate housing for these Indigenous communities. The Fiscal Year 2022 Indian Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG) provided \$92,309,280 in funding to ensure the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low- and moderate-incomes.<sup>433</sup> Awards ranged from \$500,000 to \$7,500,000.<sup>434</sup>

The ICDBG program provides funding for recipients in the following categories:

- Housing rehabilitation, land acquisition to support new housing construction, and under limited circumstances, new housing construction.
- Infrastructure construction, e.g., roads, water and sewer facilities; and single or multipurpose community buildings.
- Wide variety of commercial, industrial, agricultural projects which may be recipient owned and operated or which may be owned and/or operated by a third party.<sup>435</sup>

Further, in September 2022, HUD awarded 28 Tribal HUD-Veterans Affairs Supportive Housing (Tribal HUD-VASH) renewal awards, totaling more than \$9 million, providing rental assistance and supportive services to Native American Veterans experiencing or at risk of homelessness.<sup>436</sup>

Resources available to Tribal lands are severely lacking despite the funding provided through various grant programs.<sup>437</sup> NAHASDA is normally flat funded, meaning that the levels of funding are consistent. However, when adjusted for inflation, the effect of this funding is minimal. Given the physical and overcrowding problems in Tribal housing, flat funding cannot adequately address the severity of the issue.<sup>438</sup> However, the recent increase in funding through ICDBG and Tribal HUD-VASH helps make up for this historic deficit.

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<sup>429</sup> Notice of Intent to Establish a Tribal Intergovernmental Advisory Committee; Structure and Request for Nominations, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, (March 31, 2022), <https://www.federalregister.gov/documents/2022/03/31/2022-06775/notice-of-intent-to-establish-a-tribal-intergovernmental-advisory-committee-structure-and-request>

<sup>430</sup> Adrienne Todman, Regional Tribal Roundtables Recommended Action Items, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, p.1 (March 2022), [https://www.hud.gov/sites/dfiles/PIH/documents/Dep\\_Sec\\_Roundtable\\_Summary\\_of\\_Action\\_Items.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/Dep_Sec_Roundtable_Summary_of_Action_Items.pdf)

<sup>431</sup> Id. at 3.

<sup>432</sup> Id.

<sup>433</sup> Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, p. 4, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.hud.gov/sites/dfiles/PIH/documents/Community\\_Development\\_Block\\_Grant\\_Program\\_for\\_Indian\\_Tribes\\_and\\_Alaska\\_Native\\_Villages.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/Community_Development_Block_Grant_Program_for_Indian_Tribes_and_Alaska_Native_Villages.pdf)

<sup>434</sup> Id.

<sup>435</sup> Indian Community Development Block Grant Program- Grants, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/grants/icdbg](https://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg)

<sup>436</sup> Id.

<sup>437</sup> Interview with Caroline LaPorte, National Indigenous Women’s Resource Center (Mar. 31, 2023).

<sup>438</sup> Broken Promises: Continuing Federal Funding Shortfall for Native Americans, U.S. COMMISSION ON CIVIL RIGHTS, p. 140, (December 2018).

# Recommendations




At the federal level, the U.S. should:	At the local level, the U.S. should:
<p>Create tax incentives to maintain affordable housing and small businesses in low-income communities, to disincentivize the gentrification of affordable and culturally diverse communities.</p>	<p>Require public hearings in neighborhoods with new developments that are accessible with regards to both timing and language.</p>
<p>The targeted Tribal funding opportunities are a step in the right direction, as the federal government is exhibiting initiative in developing housing that is adequate with the cultural needs of Indigenous communities in mind. As such, through the American Rescue Plan, the federal government should continue to invest funding into culturally sensitive housing for Indigenous communities.</p>	<p>Developers should prepare community impact assessments and mitigation plans for displacing vulnerable populations.</p>
<p>The federal government should continue to collaborate with Tribal communities, partnering with Indigenous rights organizations to create culturally adequate housing services and should remove onerous administrative and regulatory barriers for funding.</p>	
<p>The federal government should work with Tribal governments to make more housing available on Tribal lands to address the problem of overcrowding.</p>	
<p>NAHASDA funding should no longer be flat funded and should instead be evaluated on a yearly basis accounting for inflation and need.</p>	
<p>Because of the lack of access to adequate housing on Tribal lands, native communities are often forced to turn to mainstream services. The federal government should make mainstream housing services more accessible to and respectful of Indigenous groups.</p>	

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