

The State of Civil and Human Rights in the United States

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

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Statement for the Record: Criminalization of Homelessness

submitted by

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The Allard K. Lowenstein Clinic at Yale Law School¹ appreciates the Senate's examination of the current state of civil and human rights in the United States. This submission² surveys the many human rights violations stemming from the criminalization of homelessness, affecting the millions of people who experience homelessness in the United States annually.³ As the events in Staten Island, Ferguson, and elsewhere make plain, public scrutiny is critically needed to understand and to address interactions between police and society's most vulnerable members. While race is and should be a central focus, we also urge Members to consider how the policies and practices of local and state governments adversely affect individuals living in homelessness. From Florida to California, homeless people regularly experience cruel, inhuman, and degrading treatment, in violation of U.S. obligations under the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Across the country, homeless people face a web of state and local ordinances that effectively ban the most basic acts of survival.⁴ Left with no access to safe housing or even to temporary shelter, many homeless people must resort to self-made solutions, such as forming alternative communities like tent cities⁵ and performing basic human bodily functions – sitting, eating, sleeping, and going to the bathroom – in public. But rather than offering these individuals a safe harbor, many municipalities punish the use of public space by homeless people. That harsh treatment—intended to render homelessness invisible—serves to further the cycle of poverty and incarceration. Criminalization also discourages homeless people from seeking protection from the law and contributes to a climate that permits brutal violent crimes against homeless persons to take place.⁶

Recent years have seen a marked increase in homelessness. In 2007, the National Law Center on Homelessness and Poverty Law estimated that about 3.5 million people, including 1.35 million children, were likely to experience homelessness.⁷ Those figures grew in the wake

¹ The Clinic, in partnership with the National Law Center on Homelessness and Poverty, has issued two reports on homelessness and criminalization. See *CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* (2013) [hereinafter *CRUEL, INHUMAN, AND DEGRADING*], http://nlchp.org/Cruel_Inhuman_and_Degrading; *WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES* (2012) [hereinafter *WELCOME HOME*], http://nlchp.org/documents/WelcomeHome_TentCities.

² Portions of this submission draw significantly from the most recent statement submitting to the Committee Against Torture by the NLCHP, with which the Lowenstein Clinic has collaborated on a number of reports concerning homelessness in the United States. See *Criminalization of Homelessness in the United States of America*, Submission to the United Nations Committee Against Torture for its 2014 Review of the United States of America September 15, 2014, http://www.nlchp.org/documents/No_Safe_Place_Advocacy_Manual.

³ See, e.g., NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* (2014) [hereinafter *NO SAFE PLACE*], http://www.nlchp.org/documents/No_Safe_Place; NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* (2011) [hereinafter *CRIMINALIZING CRISIS*], http://www.nlchp.org/Criminalizing_Crisis.

⁴ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS*, (2012), [hereinafter *USICH, SEARCHING OUT SOLUTIONS*], www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

⁵ *WELCOME HOME*, supra note 1.

⁶ NATIONAL COALITION FOR THE HOMELESS, *VULNERABLE TO HATE: A SURVEY OF HATE CRIMES & VIOLENCE COMMITTED AGAINST HOMELESS PEOPLE IN 2013* (2014) [hereinafter *NCH, VULNERABLE TO HATE*], <http://nationalhomeless.org/wp-content/uploads/2014/06/Hate-Crimes-2013-FINAL.pdf>.

⁷ NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *2007 ANNUAL REPORT*, 5 (2007), http://www.nlchp.org/content/pubs/2007_Annual_Report2.pdf.

of the 2008 fiscal and foreclosure crisis. According to a 2013 report by the National Center on Homeless Education, the number of homeless children identified by schools increased by almost 75% since the beginning of the economic crisis in 2007.⁸ The National Alliance to End Homelessness reported in 2013 that a majority of states saw an increase in their homeless populations, with rises in family homelessness reported at about four percent.⁹ Given the severe deficit of affordable housing in the United States¹⁰ and the shortage of shelter space to meet even the emergency needs of homeless people,¹¹ the National Alliance found that nearly four in ten homeless people were living on the street, in a car, or in other places neither fit nor intended for human habitation.¹²

Despite their lack of alternatives, individuals engaging in self-help measures often face criminal sanctions.¹³ A significant number of jurisdictions routinely and discriminately target homeless people under ordinances which prohibit particular behaviors—for example, obstructing sidewalks, loitering, panhandling, begging, trespassing, camping, being in particular places after hours, sitting or lying in particular areas, sleeping in public, erecting temporary structures, storing belongings in public places, or urinating in public.¹⁴ These laws are common—and worse, their use is growing.¹⁵ Under these laws, homeless people are regularly harassed by law enforcement officials and cycled through prisons and jails.¹⁶

Criminalization constitutes cruel, inhuman and degrading treatment, as it forces an impossible choice on homeless individuals: endure sleep deprivation, hunger, thirst, or denial of access to dignified sanitation or face criminal punishment for engaging in life-sustaining

⁸ National Center for Homeless Education, *Education for Homeless Children and Youths Program*, 4 (2013).

⁹ National Alliance to End Homelessness, STATE OF HOMELESSNESS IN AMERICA, 10 (2013) (STATE OF HOMELESSNESS IN AMERICA), http://www.endhomelessness.org/page/-/files/SOH_2013.pdf. 2012 survey by the U.S. Conference of Mayors reached similar conclusions. The survey found that between 2011 and 2012 the majority of cities surveyed experienced a seven percent increase in homelessness, with an eight percent increase in homeless families. U.S. Conference of Mayors 2012 Survey on Hunger and Homelessness, 2, (2012), <http://usmayors.org/pressreleases/uploads/2012/1219-report-HH.pdf>. Survey cities also reported that an average of seventeen percent of homeless persons needing assistance did not receive it. In addition, sixty percent of survey cities expected an increase in the number of homeless families and fifty-six percent expected an increase in the number of homeless individuals. *Id.* at 3.

¹⁰ See, e.g., NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2013), <http://nlihc.org/oor/2013>; NLCHP, NO SAFE PLACE, *supra* note 3, at 7

¹¹ See NLCHP, NO SAFE PLACE *supra* note 3 at 14.

¹² STATE OF HOMELESSNESS IN AMERICA, *supra* note 9, at 9.

¹³ For example, In St. Petersburg, Florida, advocates filed a 2009 class action complaint on behalf of the city's homeless, who were routinely penalized for using public space to perform basic bodily functions when they had nowhere else to go (Amended Complaint, *Catron v. City of St. Petersburg*, Case No. 8:09-cv-923-SDM-EAJ, at 59 (Dec. 15, 2009)).

¹⁴ NLCHP, NO SAFE PLACE, *supra* note 3, at 7-9; NLCHP, CRIMINALIZING CRISIS, *supra* note 3, at 7-8; USICH, SEARCHING OUT SOLUTIONS, *supra* note 4, at 6-7 (citing NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & NATIONAL COALITION FOR THE HOMELESS, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009) [hereinafter NLCHP, HOMES NOT HANDCUFFS]).

¹⁵ NLCHP, NO SAFE PLACE, *supra* note 3, at 7-9; NLCHP, CRIMINALIZING CRISIS, *supra* note 3, at 8.

¹⁶ For the effects of imprisonment on voting, for example, see Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination (United States of America)*, ¶ 27, U.N. Doc. CERD/C/USA/CO/6 (2008); *Hirst v. United Kingdom (No. 2)*, 2005-IX Eur. Ct. H.R. 681; MATTHEW CARDINALE, TRIPLE-DECKER DISENFRANCHISEMENT: FIRST-PERSON ACCOUNTS OF LOSING THE RIGHT TO VOTE AMONG POOR, HOMELESS AMERICANS WITH A FELONY CONVICTION, THE SENTENCING PROJECT (2004).

behavior.¹⁷ Numerous Special Rapporteurs and international authorities have thus condemned criminalization of homelessness as CIDT in both mission reports on the U.S. and in thematic reports on penalization of poverty and stigmatization.¹⁸ On March 27, 2014, the U.N. Human Rights Committee condemned the criminalization of homelessness in the United States as discriminatory and as “cruel, inhuman, or degrading treatment” in violation of Articles 2, 7, 9, 17, and 26 of the ICCPR; the Committee called upon the U.S. government to abolish criminalization and take corrective action.¹⁹ On November 13, 2014, the Committee against Torture again stressed the “implementation of the recommendations to decrease criminalization of the homeless” in the United States.²⁰ In the words of Sir Nigel Rodney, the Chair of the UN Human Rights Committee, and former U.N. Special Rapporteur on Torture: “I’m just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don’t have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend.”²¹

The criminalization of homelessness also places the United States out of step with the jurisprudence of peer nations and regional human rights systems.²² Several U.S. courts of appeal

¹⁷ See, e.g. U.N. Committee against Torture, *Report of the Committee against Torture: General Assembly 52nd Session*, ¶ 56, 257, A/52/44 (September 10, 1997); *Sendic v. Uruguay*, 69 I.L.R. 183, 185-86 (U.N. Hum. Rts. Comm. 1981); U.N. Committee against Torture, *Concluding Observations – Finland*, ¶ 14, CAT/C/FIN/CO/5-6, (June 29, 2011); U.N. Committee against Torture, *Concluding observations of the Committee against Torture – Honduras*, ¶ 17 CAT/C/HND/CO/1, (June 23, 2009).

¹⁸ See U.N. Human Rights 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, Raquel Rolnik, Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012) [hereinafter UNHRC, *Report of Raquel Rolnik*]; U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: “Moving Away from the Criminalization of Homelessness, A Step in the Right Direction”* (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>; UNHRC, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Addendum, Mission to the United States of America*, A/HRC/18/33/Add.4, Aug. 2, 2011; Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Stigma and the Realization of the Human Rights to Water and Sanitation*, U.N. Doc. A/HRC/21/42 (July 2, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diéne, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009) [hereinafter UNHRC, *Report of Diéne*].

¹⁹ U.N. Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014) [hereinafter HRC, *Concluding observations*].

²⁰ Committee Against Torture, *Committee Against Torture considers report of the United States*, Nov. 13, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15290&LangID=E>.

²¹ See National Law Center on Homelessness & Poverty, *US ICCPR Review 2014: Cruel, Inhuman, and Degrading* (2014), <http://youtu.be/V3hm25LE75M?list=UUdJRWWjmVSQjFgsujA8-ITA>.

²² For example, the Inter-American Court of Human Rights used the concept of dignity to expand the scope of the right to life, as including “not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.” Inter-American Court of Human Rights, *Case of the ‘Street Children’ (Villagran-Morales v. Guatemala, Judgment of Nov. 1999 (Merits)*, at para. 144. On this basis, the Court challenged the Guatemalan government for failing to provide necessary standards of care to street children. In elaborating the forms of treatment contained within CIDT protections under Article 3 of the European Convention on Human Rights, the European Court of Human Rights observed in *Pretty v. United Kingdom*: “Where treatment humiliates or debases an individual showing a lack of

have held that criminalizing homelessness when no realistic alternative exists may amount to cruel, inhuman treatment under the Eighth Amendment of the U.S. Constitution.²³

Arrests for even minor offenses – such as loitering or pan-handling – can have severe and lasting effects. Unaffordable bail means that homeless persons are nearly always incarcerated until their trials occur – or until they agree to waive their trial rights in exchange for convictions.²⁴ While in jail, homeless people are subject to the poor physical conditions that already exist in these facilities. In one especially horrific case, on February 15, 2014, Jerome Murdough, a homeless veteran, “baked to death,” dying of dehydration in an overheated jail cell on Rikers Island in New York City. Arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures, he was still in jail five days after his arrest for the “crime” of simply trying to survive.²⁵ Criminal convictions—even for minor offenses like loitering—can erect serious and lasting barriers to social integration and economic well-being. Employers are more likely to discriminate against those with criminal records.²⁶ And periods of unexpected imprisonment prevent homeless workers from showing up to their job, and may cost them opportunities to obtain shelter²⁷ or eligibility for benefits like public housing.²⁸

Violations are especially severe for people of color, immigrants, gay, lesbian, bisexual, and transgender people, and people with disabilities, who are among the most likely to be rendered homeless; these particularly vulnerable populations are often subject to the harshest treatment by private actors and law enforcement officials when that occurs.²⁹ The 2010 Census

respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3.” 35 EHRR (2002) 1, at 33, para. 52. Cf. *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497, at para. 53 (“Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits.”).

²³ See *Pottinger v. City of Miami* 76 F.3d 1154 (11th Cir. 1996); *Johnson v. City of Dallas* 61 F.3d 442 (5th Cir. 1995).

²⁴ Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, at 2 (Dec. 3, 2010), <http://www.hrw.org/node/94574/section/1>.

²⁵ Lindsey Bever, *Homeless veteran dies in overheated Rikers Island cell*, WASHINGTON POST (March 20, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/03/20/homeless-veteran-dies-in-overheated-rikers-island-cell/>.

²⁶ See, e.g., Devah Pager, *The Mark of a Criminal Record*, 105 AMERICAN J. OF SOCIOLOGY 937-975 (2003); Gary Shaheen & John Rio, *Recognizing Work as a Priority in Preventing or Ending Homelessness* 28 J. PRIMARY PREVENTION 341 (2007). See also NLCHP, NO SAFE PLACE, *supra* note 3 at 32 (thirty-eight states allow employers to consider arrests, even if they never resulted in conviction, when making hiring decisions).

²⁷ See, e.g., LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY 2009 UPDATE (2009), available at <http://www.lac.org/roadblocks-to-reentry/upload/lacreport/Roadblocks-to-Reentry--2009.pdf>.

²⁸ Public Housing Authorities often “use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing” and may even reject applicants even if the charges against them are dropped. NLCHP, NO SAFE PLACE, *supra* note 3, at 33.

²⁹ See NATIONAL COALITION FOR THE HOMELESS, WHO IS HOMELESS? (2009), <http://www.nationalhomeless.org/factsheets/who.html> (based on a 2006 survey of 24 cities); NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, HATE VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED COMMUNITIES IN THE UNITED STATES IN 2011 (2011), http://www.avp.org/storage/documents/Reports/2012_NCAVP_2011_HV_Report.pdf; Rudy Estrada & Jody Marksamer, *Lesbian, Gay, Bisexual, and Transgender Young People in State Custody: Making the Child Welfare*

estimated that roughly 25.2% of the U.S. population is non-white,³⁰ but non-white people represent about 60% of homeless people in shelters, and African Americans are by far the largest group (38%).³¹ As the Special Rapporteur on racism noted, “the enforcement of minor law enforcement violations . . . take[s] a disproportionately high number of African American homeless persons to the criminal justice system.”³² Policymaking has also had racially disparate effects. States and municipalities cutting budgets during the recession have placed black and Latino families at a particularly high risk of homelessness; for example, in 2012, New York State eliminated housing assistance rental vouchers for 8,000 households that were overwhelmingly black or Latino.³³ Racial and ethnic minorities face barriers in accessing education, employment, health care, housing, and social services that interact with residential segregation, patterns of incarceration, and intergenerational poverty to make minority communities more susceptible to becoming or remaining homeless.³⁴

The stark racial disparities among homeless individuals—and the role that criminalization plays in perpetuating them—are in direct contravention of the United States’ obligations under the International Covenant on the Elimination of Racial Discrimination, which calls on states to eliminate racial disparities in the right to housing.³⁵ The Committee and the Special Rapporteur on Racism have condemned the racially disparate aspects of homelessness in the United States as a human rights violation.³⁶ On August 29, 2014, the Committee repeated these concerns and called for the abolition of criminalization of homelessness.³⁷

The degrading and dehumanizing climate produced by criminalization ordinances also promotes hate crimes and violence against homeless people by private individuals. From 1999 to 2013, the National Coalition for the Homeless (NCH) documented 1,437 acts of violence against homeless individuals by housed perpetrators, in 47 states, Puerto Rico, and Washington, DC, resulting in 375 deaths.³⁸ Many more acts of violence likely go unreported, given the strained relations between homeless individuals and law enforcement officials who enforce criminalizing ordinances. The federal government does not currently recognize homelessness as a protected class under its hate crimes statute, but several states have done so, for sentencing and/or tracking purposes.³⁹ These crimes – including an array of atrocities such as murders, beatings, rapes, and even mutilation – are believed to have been motivated by the perpetrators’ biases against homeless individuals and/or by their ability to target homeless people with relative ease. NCH found startling data in the number and severity of attacks, including that the most violent crimes

and Juvenile Justice Systems Safe for All Youth through Litigation, Advocacy, and Education, 79 TEMP. L. REV. 415 (2006), http://www.nclrights.org/wp-content/uploads/2013/07/youth_in_state_custody_article.pdf.

³⁰ U.S. CENSUS BUREAU, THE WHITE POPULATION: 2010, at 3 (2011).

³¹ OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE 2011 ANNUAL HOMELESSNESS ASSESSMENT REPORT TO CONGRESS 16 (2012) [hereinafter OCPD, 2011 REPORT TO CONGRESS].

³² UNHRC, *Report of Diéne*, *supra* note 1836, at para. 64.

³³ David R. Jones, *Homelessness in America – A Racial Issue*, COMMUNITY SERVICE SOCIETY 2 (2012).

³⁴ Ralph da Costa Nunez, Matthew Adams & Anna Simonsen-Meehan, *Intergenerational Disparities Experienced by Homeless Black Families*, INSTITUTE FOR CHILDREN, POVERTY, AND HOMELESSNESS 1 (2012).

³⁵ International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (1969).

³⁶ UNHRC, *Report of Diéne*, *supra* note 18.

³⁷ Committee on the Elimination of Racial Discrimination, *Concluding Observations*, CERD/C/USA/CO/7-9, ¶ 12, Aug. 29, 2014 [hereinafter CERD, *Concluding observations*].

³⁸ NCH, VULNERABLE TO HATE, *supra* note 6, at 4.

³⁹ *Id.*

occur in states with the highest rates of criminalization, California and Florida.⁴⁰ Florida produced four of eighteen lethal hate crimes against homeless persons in 2013, including the story of Frank Rudolph, a 54-year-old homeless man beaten to death with sticks and punches by three teenagers in New Port Richey, FL.⁴¹

The U.S. government should be commended for its 2012 recognition that criminalization of homelessness may “violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights,” and for actively engaging with NGOs to discuss strategies to deter criminalization.⁴² However, as the above description demonstrates, the federal government’s recognition that criminalization of homelessness is poor public policy and contrary to its legal obligations has not translated to improved treatment of homeless people.

In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that impose extreme hardships on homeless individuals, and state and local courts have ruled inconsistently on whether criminalization of homelessness violates prohibitions on “cruel and unusual punishment” under the Eighth Amendment of the U.S. Constitution.⁴³ While some courts have provided relief for individual plaintiffs or communities, pursuing such rulings demands time and effort from some of the country’s poorest and most vulnerable people, and often only results in minimal compliance with legal obligations while ignoring the underlying problem of homelessness and the culture of degradation.⁴⁴ The result is wholly insufficient to bring the United States into compliance with Article 16 of the CAT; Articles 2, 7, 9, 17, and 26 of the ICCPR; and Articles 2 and 5(e) of the CERD.

We therefore stress and recommend, as did the U.N. treaty bodies cited above, that federal authorities work with urgency to fulfill the following:

1. Abolish the laws and policies criminalizing homelessness at state and local levels;
2. Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels, to intensify efforts to find solutions for the homeless, in accordance with human rights standards; and

⁴⁰ *Id.*, at 8, 10.

⁴¹ *Ibid.*

⁴² USICH, SEARCHING OUT SOLUTIONS, *supra* note 4, at 7 (citing NLCHP, HOMES NOT HANDCUFFS, *supra* note 14); USICH, *Reducing the Criminalization of Homelessness*, <http://1.usa.gov/15n4emv>, Aug. 17, 2013; NLCHP, Organizing Federal Action to Combat Criminalization of Homelessness, <http://bit.ly/12Pv83e/>, July 18, 2013.

⁴³ Criminalization of an involuntary status was ruled unconstitutional by the U.S. Supreme Court. *Robinson v. California*, 370 U.S. 660, 667 (1962). Other courts have found that penalizing people “for performing innocent conduct in public places—in particular, for being in a park or on public streets at a time of day when there is no place where they can lawfully be—most definitely interferes with their right under the constitution to be free from cruel and unusual punishment,” *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1579 (S.D. Fla. 1992), and that the enforcement of an anti-loitering law “at all times and in all places against homeless individuals who are sitting, lying, or sleeping in Los Angeles’s Skid Row because they cannot obtain shelter violates the Cruel and Unusual Punishment Clause,” *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006). Yet despite these holdings, criminalization remains the norm rather than the exception in U.S. communities.

⁴⁴ See Eric S. Tars, Heather Maria Johnson, Tristia Bauman, and Maria Foscarinis, *Can I Get Some Remedy? Criminalization of Homelessness and the Obligation to Provide an Effective Remedy*, 45 Col. HRLR 738 (2014), http://nlchp.org/documents/HLRL_Symposium_Edition_Spring2014_Can_I_Get_Some_Remedy.

3. Offer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless.⁴⁵

No person in the United States should face the degrading choices imposed on those living on the streets. Eliminating criminalization is essential, but the long-term goal should be to implement the human right to adequate housing. Homeless individuals are not nuisances whose presence must be restricted or managed. Rather, these men and women are resourceful and resilient, despite often overwhelming challenges. Their voices should be central to conversations on how to make our cities safe and vibrant communities for all people who call them home.

⁴⁵ See HRC, *Concluding observations*; CERD, *Concluding observations*, *supra* notes 5 and 6.