



# Criminalization of Homelessness in the United States of America

## A Report to the U.N. Committee Against Torture

**Drafted by: National Law Center on Homelessness & Poverty, National Coalition for the Homeless, and Southern Legal Counsel, as the US Human Rights Network CAT Homelessness Working Group**

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Endorsed by: ACLU of Idaho | ACLU of the Nation's Capital | ACLU of Southern California | Bennington County Coalition for the Homeless | Boise/Ada County Homeless Coalition | Covenant House International | DC Statehood Green Party | FEANTSA, the European Federation of National Organisations working with the Homeless | Global Initiative for Economic, Social & Cultural Rights | Habitat International Coalition | Haven House Services | House the Homeless!, Inc. | Integrated Community Solutions, Inc. | International Center for Advocates Against Discrimination | Justice Connect | Kairos Center for Religions, Rights, and Social Justice at Union Theological Seminary | Malcolm X Center for Self Determination | Metro Atlanta Task Force for the Homeless | Metropolitan Interfaith Council on Affordable Housing | Metro St. Louis Coalition for the Homeless | Minnesota Tenants Union | National AIDS Housing Coalition | National Alliance of HUD Tenants | National Center for Housing and Child Welfare | National Economic and Social Rights Initiative | National Health Care for the Homeless Council | National Lawyers Guild | New Hampshire Civil Liberties Union | Partnering for Change | Poverty & Race Research Action Council | Public Justice Center | Sacramento Regional Coalition to End Homelessness | Social Justice Committee, UU Congregation at Shelter Rock | Washington Legal Clinic for the Homeless | Western Center on Law and Poverty | Western Regional Advocacy Project | Yamasi People | | Individual Endorsements (affiliations for identification purposes only): Deena Hurwitz, Professor & Director, International Human Rights Law Clinic, University of Virginia School of Law | Mary Bricker-Jenkins, PhD, Professor Emeritus, Temple University | Noah Leavitt, Associate Dean of Students, Whitman College | Michael R. Meng, Human Activity Network | Connie Pascale, Attorney | Florence Wagman Roisman, F. Harvey Professor of Law and Chancellor's Professor, Indiana University Robert H. McKinney School of Law | David Wagner, Professor of Social Work and Sociology, University of Southern Maine

## **Criminalization of Homelessness Constitutes Cruel, Inhuman, and Degrading Treatment**

1. This report details violations of the Convention Against Torture (CAT) stemming from the criminalization of homelessness in the United States, affecting the more than 3.5 million people who experience homelessness in the United States of America annually.<sup>2</sup> Many homeless people in the United States regularly face the degradation of performing basic bodily functions – sitting, eating, sleeping, and going to the bathroom -- in public, a condition which is compounded when they are criminally punished for doing so,<sup>3</sup> and leads to a climate which permits brutal violent crimes against homeless persons to take place.<sup>4</sup> Earlier this year in their Concluding Observations on the U.S., the Human Rights Committee recognized criminalization of homelessness as cruel, inhuman, and degrading treatment,<sup>5</sup> and the Committee on the Elimination of Racial Discrimination called for its abolition.<sup>6</sup> The U.S. government itself has already recognized it may be a violation of our CAT obligations.<sup>7</sup> We seek the Committee’s confirmation that criminalization of homelessness does violate the CAT and strong recommendations for remedial actions.
2. Left with minimal state protection in extremely vulnerable positions, many homeless people must undertake self-made solutions, such as forming alternative communities like tent cities,<sup>8</sup> creating self-designed sanitation processes,<sup>9</sup> or using public space to perform basic bodily functions when there is nowhere else to go. When doing this, individuals engaging in self-help measures are often penalized.<sup>10</sup> 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.<sup>11</sup> These laws are common—and worse, their use is growing,<sup>12</sup> despite the severe deficit of affordable housing in the United States<sup>13</sup> and the shortage of shelter space to meet even the emergency needs of homeless people.<sup>14</sup> Under these laws, homeless people are regularly cycled through prisons and jails, which exacerbate discrimination, exclusion, and violation.<sup>15</sup> The violations described in this report 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, and are often subject to the harshest treatment by private actors and law enforcement officials when that occurs.<sup>16</sup>
3. Jacob, a homeless youth from Salt Lake City, Utah, described the sleep deprivation, the fear, and the comprehensive sense of despair to which he was subjected this way: “The cops give us no rest....There was one night I couldn’t even get a full eight hours of sleep because I was getting woken up by cops and told to go from place to place. And I would just go lay down and get woken up an hour later. Go lay down another place, and get woken up. I got five tickets that night...I don’t [have income to pay the tickets], I try to get a job...but they don’t hire homeless people around here... I’m at risk of getting a ticket every night. I can sleep on the sidewalk and get a ticket. I can sleep [across the street] and get a ticket. No matter where I go I get a ticket.”<sup>17</sup>

4. Criminalizing homelessness and its associated activities when people have nowhere else to go constitutes cruel, inhuman, and degrading treatment (CIDT) in violation of Article 16.<sup>18</sup> Enforcement of criminalizing ordinances forces an impossible choice: sleep deprivation, hunger, thirst, or denial of access to dignified sanitation – each of which has been recognized as a violation of this treaty – or criminal punishment for engaging in life-sustaining behavior.<sup>19</sup> On March 27, 2014, the U.N. Human Rights Committee condemned the criminalization of homelessness in the United States as CIDT in violation of Article 7 of the International Covenant on Civil & Political Rights, and called upon the U.S. government to abolish criminalization and take corrective action.<sup>20</sup> On August 29, 2014, the U.N. Committee on the Elimination of Racial Discrimination echoed this concern and called for abolition of criminalization of homelessness.<sup>21</sup> Numerous Special Rapporteurs and international authorities have similarly condemned criminalization of homelessness as CIDT in both mission reports on the U.S. and in thematic reports on penalization of poverty and stigmatization.<sup>22</sup> These statements reflect a growing consensus. In its List of Issues to the U.S. Government, this Committee expressed concern about reports of ill-treatment of vulnerable groups by law enforcement officials and asked the U.S. to describe steps taken to address this concern.<sup>23</sup> We urge the Committee to use this opportunity to confirm and build on this emerging norm with specific questions and a concluding observation recognizing the criminalization of homelessness as a violation of Article 16. Explicit recognition of criminalization of homelessness as CIDT from this Committee would be a powerful affirmation for advocates working to safeguard the fundamental rights of homeless people in the United States.
5. 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.<sup>24</sup> Yet 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.
6. A 2012 U.S. government report noted that indicators of both homelessness and the criminalization of homelessness have increased steadily in recent years.<sup>25</sup> For example, 33% of the 235 cities surveyed for a 2009 report cited by the U.S. government had an anti-camping ban in at least some public areas, and 17% had a citywide ban, effectively making these cities partial or total “no homeless” zones. Thirty percent prohibited sitting or lying in public places, 47% prohibited “loitering”, and 47% prohibited begging in at least some public places.<sup>26</sup> A subsequent 2011 report found that, since the data was collected in 2009, there had been a 7% increase in prohibitions on begging or panhandling, a 7% increase in prohibitions on camping in public places, and a 10% increase in prohibitions on loitering in particular public places.<sup>27</sup> A new report from 2014 found that since 2011 city-wide bans on camping in public have increased by 60%, city-wide bans on begging in public have increased by 25%, city-wide bans on loitering, loafing, and vagrancy have increased by 35%, city-wide bans on sitting or lying down in particular public places have increased by 43%. bans on sleeping in vehicles have increased by 119% and city-wide bans on sleeping in public have continued in place since 2011.<sup>28</sup>

7. While eliminating criminalization measures or halting their enforcement is essential, it is also critical to implement the human right to adequate housing, so no person need face the degrading choices imposed on those living on the streets. Even where some shelter accommodation exists, it may not meet the needs of all homeless persons due to religious requirements, gender segregation, or other reasons – and it is not a solution to homelessness. Unless true adequate alternatives exist, governments should not criminalize people who choose not to go into shelters.
8. For example, according to a lawsuit filed in 2009, in Boise, Idaho, “anywhere from 2,000 to 4,500 people are homeless on any given night, while area shelters only have beds for approximately 300 and . . . space for approximately 400 more to sleep on mats on the floor.”<sup>29</sup> During the three years in which Boise resident Brian Carson has been homeless, he, like many local homeless people, has been frequently turned away from local shelters because they were at capacity. Carson received a disorderly conduct citation for sleeping in public after he had unsuccessfully attempted to find shelter. A police officer woke him up with a kick and said that if he allowed him to sleep outside others will do the same, which would be a “mess.” The officer arrested Carson because of a warrant associated with a previous citation for sleeping in public, and Carson spent two days in jail. He was billed \$50 for this period of incarceration, which he cannot afford to pay. Carson expressed fears that he will receive additional citations for sleeping in public places that will interfere with his ability to find employment and housing. He does not have the money to pay additional criminal fines.<sup>30</sup>
9. The City of St. Petersburg has established a comprehensive program of criminalization of homelessness, which demonstrates the cruel, inhuman, and degrading “choices” forced upon homeless people. As originally implemented, the program consists of the following elements:
  - a. In a city which does not have adequate shelter capacity for the homeless population, the City has enacted five ordinances, prohibiting lying down, sleeping, using temporary shelter, or "reclining" on the streets, and “trespass”<sup>31</sup> – where homeless persons can be banned from public places (including public parks) by a police officer, based on his complete discretion;<sup>32</sup>
  - b. At the time of arrest, police officers give homeless persons a choice: to either go to Safe Harbor - a shelter located far from downtown in a former jail annex - or go to jail;<sup>33</sup>
  - c. If the person “chooses” to go to Safe Harbor, they are transported to the jail-like facility 10 miles from downtown St. Petersburg<sup>34</sup>.
    - i. Residents start by sleeping on mats on the floor inside<sup>35</sup> or outside in the courtyard with no air conditioning or protection from the elements.<sup>36</sup> They must comply with rules to "earn" their way to a place inside or a bed.<sup>37</sup> A rules infraction, such as not putting away your mat fast enough or taking an extra towel, will get a resident placed outside and they will have to "earn" their way back in.<sup>38</sup> Residents sleeping outside do not have access to showers every day and instead are permitted showers every three days. If a person agrees to an evaluation for mental health or substance abuse, or completes

community service, the original charge is dropped through a county jail diversion program.<sup>39</sup>

- ii. While the facility is unlocked and residents are not forcibly detained there, should they return to downtown St. Petersburg they are faced with a lack of sufficient shelter space and the resulting likelihood of receiving additional citations, and return to Safe Harbor or jail. The issuance of trespass warnings ensures that homeless people are not permitted to return to the same place in the City where they were originally cited or arrested; their physical presence in those parts of the City has become a crime.<sup>40</sup>
- iii. Additionally, trespass warnings issued for a main city park downtown have the effect of banning homeless people from using the public bathroom located there, one of the only such bathrooms that is accessible to homeless people. People have been arrested for "trespassing" for trying to use the bathrooms, faced with the untenable choice of committing a crime one way or the other -- for trespassing or for meeting a basic human need.<sup>41</sup> The lack of access to bathrooms is particularly harmful to women and persons with medical conditions such as diabetes.<sup>42</sup> Women report the humiliation they suffer at having to use the bathroom outside, exposing themselves to potential harm from sexual assault.<sup>43</sup> Women also report the degrading condition of not having access to adequate facilities during their menstrual cycles to be able to use hygiene products and change them on a regular basis.<sup>44</sup> Women have also reported experiencing urinary tract infections and bladder infections -- from not drinking enough water during the day so that they do not have to use the bathroom overnight when there are no facilities available.<sup>45</sup>
- d. Individuals who do not choose to go to Safe Harbor are sent to jail.<sup>46</sup>
- e. A final aspect of the program, currently in abeyance due to budgetary limitations but likely to be reinstated, is if individuals refuse to go to Safe Harbor more than three times, police officers, at their sole discretion, can write "Homeless Diversion" on the arrest affidavit. Those individuals not permitted to be released on their own recognizance are housed in solitary confinement in a separate wing of the jail, unlike the regular jail population, until they change their minds and "choose" to transfer to Safe Harbor or some other program, or are brought to their arraignment, often after an extended delay.<sup>47</sup>

Under this plan, homeless people in St. Petersburg have no option to conduct any of their basic life necessities – indeed even to exist – in the city without the threat of extended solitary confinement or exile.

10. Once arrested, 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. In a survey of homeless persons, 57% stated that bench warrants had been issued, leading to their arrest.<sup>48</sup> 49% of homeless people report having spent five or more days in a city or county jail.<sup>49</sup> In 87% of cases with bail of \$1000 or less in New York City in 2008, defendants were not able to pay and were incarcerated pending trial.<sup>50</sup> The average length of pretrial detention was 15.7 days.<sup>51</sup> This means homeless persons could spend more than two weeks in detention for crimes as minor as sitting on the sidewalk or littering. More than that, pretrial confinement leads to a higher likelihood of conviction. Confinement, or the threat of confinement, prompts defendants to plead guilty and give up their right to a trial.<sup>52</sup>

Eight in 10 convicted misdemeanor arrestees receive sentences that do not include jail time – meaning that if they were detained pre-trial, it was unwarranted.

11. 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, when 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.<sup>53</sup>
12. Criminalization prolongs homelessness, and creates a correctional-system-to-homelessness cycle with astronomical costs to governments.<sup>54</sup> Criminalization also misdirects state resources away from more effective (and cost-effective) short- and long-term solutions such as shelters and transitional housing, as well as permanent supportive housing and affordable housing programs,<sup>55</sup> all of which are more likely to reduce the number of people living on the streets.<sup>56</sup> Thus, policies in many parts of the United States increase homelessness and exposure to cruel, inhuman, and degrading conditions rather than working to reduce them.
13. The severity and disproportionality of the consequences imposed on people who must perform necessary bodily functions in public because they lack other options further constitutes CIDT. For example, 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.<sup>57</sup> And periods of unexpected imprisonment prevent homeless workers from showing up to their job, and may cost them opportunities to obtain shelter<sup>58</sup> or eligibility for benefits like public housing.<sup>59</sup>
14. Moreover, the degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness by private individuals. From 1999-2013, 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, though many more likely go unreported.<sup>60</sup> 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.<sup>61</sup> These crimes, including an array of atrocities from murder to beatings, rapes, and even mutilation, are believed to have been motivated by the perpetrators’ biases against homeless individuals 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 occur in states with the highest rates of criminalization, California and Florida.<sup>62</sup> 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.<sup>63</sup>
15. In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that impose extreme hardships on 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.<sup>64</sup> 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 leaving the underlying problem of homelessness, and culture of degradation, unaddressed.<sup>65</sup> The result is wholly insufficient to bring the United States into compliance with Article 16.

### **Questions for the United States Government**

16. As the Committee conducts its review, we respectfully request the following questions and concerns be raised during the U.S. government’s hearing:
- a. How do federal agencies ensure that the funds they distribute are not used to criminalize homelessness by state or local entities?
  - b. Will the State Party create funding incentives in its federal grants to decrease the criminalization of homeless persons?
  - c. Has the federal government taken any steps to work with local authorities to cease forced evictions and sweeps of outdoor encampments and instead ensure that homeless residents are provided with adequate alternative housing?
  - d. Does the Department of Justice (DOJ) have any plans to open investigations or to intervene in cases to challenge local criminalization practices?
  - e. What measures does the federal government take to challenge specific criminalizing ordinances or promote specific constructive alternative policies?

### **Recommended Concluding Observations**

17. The Committee welcomes the report of the U.S. Interagency Council on Homelessness, *Searching Out Solutions* (2012), acknowledging that criminalization of homelessness may constitute discrimination and cruel, inhuman, and degrading treatment or punishment in violation of the ICCPR and CAT.
18. The Committee notes with concern reports that homeless persons in the United States are routinely and disproportionately criminalized for essential human functions and behaviors they have no choice but to perform in public due to lack of available housing or shelter space. The Committee finds this constitutes cruel, inhuman, and degrading treatment (Article 16). The State Party should take immediate measures to eliminate the criminalization of basic life activities where homeless persons have no choice but to perform them in public, cease disparate enforcement of other laws that adversely affect homeless persons, and ensure homeless persons are provided with housing -- not punishment for their status. Federal agencies should take active steps to discourage criminalization, provide funding incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.

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<sup>1</sup> Endorsing organizations and individuals jointly endorse this report as a statement of solidarity, but do not necessarily endorse every assertion or policy recommendation made herein.

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- <sup>2</sup> See, e.g., NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* (2014) [hereinafter NLCHP, *NO SAFE PLACE*], [http://www.nlchp.org/documents/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 NLCHP, *CRIMINALIZING CRISIS*]. Also, for further development of several of the arguments in this report, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* (2013), [http://nlchp.org/Cruel\\_Inhuman\\_and\\_Degrading](http://nlchp.org/Cruel_Inhuman_and_Degrading).
- <sup>3</sup> UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS*, (2012), available at [www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) [hereinafter USICH, *SEARCHING OUT SOLUTIONS*].
- <sup>4</sup> NATIONAL COALITION FOR THE HOMELESS, *VULNERABLE TO HATE: A SURVEY OF HATE CRIMES & VIOLENCE COMMITTED AGAINST HOMELESS PEOPLE IN 2013*, (2014), <http://nationalhomeless.org/wp-content/uploads/2014/06/Hate-Crimes-2013-FINAL.pdf>, [hereinafter NCH, *VULNERABLE TO HATE*].
- <sup>5</sup> 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*].
- <sup>6</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations*, CERD/C/USA/CO/7-9, para. 12, Aug. 29, 2014.
- <sup>7</sup> See USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 3, at 8.
- <sup>8</sup> JULIE HUNTER, PAUL LINDEN-RETEK & SIRINE SHEBAYA, *WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES*, NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC (2012) [hereinafter NLCHP, *WELCOME HOME*].
- <sup>9</sup> See, e.g., U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to the United States of America*, ¶ 58, A/HRC/18/33/Add.4 (2011), available at [www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) [hereinafter UNHRC, *Report of Albuquerque*].
- <sup>10</sup> 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)).
- <sup>11</sup> NLCHP, *NO SAFE PLACE*, *supra* note 2, at 7-9; NLCHP, *CRIMINALIZING CRISIS* *supra* note 2, at 7-8; USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 3, 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*]).
- <sup>12</sup> NLCHP, *NO SAFE PLACE*, *supra* note 2, at 7-9; NLCHP, *CRIMINALIZING CRISIS*, *supra* note 2, at 8.
- <sup>13</sup> See, e.g., NATIONAL LOW INCOME HOUSING COALITION, *OUT OF REACH* (2013), available at <http://nlihc.org/oor/2013>; NLCHP, *NO SAFE PLACE*, *supra* note 2, at 7.
- <sup>14</sup> See NLCHP, *NO SAFE PLACE* *supra* note 2, at 14.
- <sup>15</sup> 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).
- <sup>16</sup> 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](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 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](http://www.nclrights.org/wp-content/uploads/2013/07/youth_in_state_custody_article.pdf).



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- <sup>17</sup> Jacob, INVISIBLE PEOPLE (Sep 2, 2013) <http://invisiblepeople.tv/blog/2013/09/jacob-homeless-youth-foster-care-salt-lake-city/>
- <sup>18</sup> HRC, *Concluding observations, supra* note 5, ¶ 19; U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶ 36, U.N. Doc. A/66/265 (2011), available at <http://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf> [hereinafter UNHRC, *Report of Sepúlveda Carmona*].
- <sup>19</sup> 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).
- <sup>20</sup> HRC, *Concluding observations, supra* note 5.
- <sup>21</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations, CERD/C/USA/CO/7-9*, para. 12, Aug. 29, 2014.
- <sup>22</sup> 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*].
- <sup>23</sup> U.N. Committee against Torture, *List of issues prior to the submission of the fifth periodic report of United States of America*, ¶. 42 CAT/C/USA/5 (January 20, 2010).
- <sup>24</sup> USICH, SEARCHING OUT SOLUTIONS, *supra* note 3, at 7 (citing NLCHP, HOMES NOT HANDCUFFS, *supra* note 11); 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.
- <sup>25</sup> *Id.* at 6-7 (citing NLCHP, HOMES NOT HANDCUFFS, *supra* note 10).
- <sup>26</sup> *Id.*
- <sup>27</sup> See, e.g., NLCHP, CRIMINALIZING CRISIS, *supra* note 2, at 8.
- <sup>28</sup> NLCHP, NO SAFE PLACE, *supra* note 2, at 8-9.
- <sup>29</sup> Complaint, *Bell v. City of Boise*, Case No. 1:09-CV-540-REB, at 2 (Oct. 22, 2009).
- <sup>30</sup> *Id.* at 5-6.
- <sup>31</sup> St. Petersburg City Code §§ 20-73, 20-74, 20-75, 20-76
- <sup>32</sup> See St. Petersburg City Code § 20-30; *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11th Cir. 2011) (“Section 20–30 provides no guidance to city officials (or their designees) or police officers in exercising their discretion to determine whether a person has actually committed a violation that permits issuance of a trespass warning: this lack of specificity suggests that whenever an authorized city employee thinks a violation has occurred, he may issue a trespass warning.”)
- <sup>33</sup> Sean McGillen, Robert G. Marbut Jr., and Dan Simovich, *A “Low Demand” Homeless Shelter Relieves Jail Crowding: Pinellas County’s Safe Harbor*, National Jail Exchange, Oct. 25 2012, available at [http://community.nicic.gov/blogs/national\\_jail\\_exchange/archive/2012/10/25/a-low-demand-homeless-shelter-relieves-jail-crowding-pinellas-county-s-safe-harbor.aspx](http://community.nicic.gov/blogs/national_jail_exchange/archive/2012/10/25/a-low-demand-homeless-shelter-relieves-jail-crowding-pinellas-county-s-safe-harbor.aspx).
- <sup>34</sup> Thomas Tryon, *How Pinellas Safe Harbor Works: Notes from a Tour*, Herald-Tribune, Aug. 25, 2013, available at <http://www.heraldtribune.com/article/20130825/ARCHIVES/308251020>.

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- <sup>35</sup> Arielle Stevenson, *St. Pete's Approach to the Homeless Takes a Positive Turn*. Creative Loafing Tampa, Oct 03, 2011, available at <http://cltampa.com/tampa/st-petes-approach-to-the-homeless-takes-a-positive-turn/Content?oid=2189123#.U-0csvgIapc>.
- <sup>36</sup> Suzette Porter, *Report shows Pinellas Safe Harbor Working as Intended*. TBNWeekly.com, June 21, 2011, available at [http://www.tbnweekly.com/pinellas\\_county/content\\_articles/062111\\_pco-01.txt](http://www.tbnweekly.com/pinellas_county/content_articles/062111_pco-01.txt).
- <sup>37</sup> Mitch Stacy, *St. Pete making progress with legions of homeless*, NBC News, May 9, 2011 at 2, available at <http://posttrib.suntimes.com/news/7490295-418/st-pete-making-progress-with-legions-of-homeless.html#.U-0eoPnIapc>.
- <sup>38</sup> Stephen Thompson, *St. Pete homeless now given ultimatums by police*, The Tampa Tribune, July 14, 2011, available at <http://tbo.com/news/st-pete-homeless-now-given-ultimatums-by-police-243755>.
- <sup>39</sup> Jeremy Bosso, *Dr. Robert Marbut to speak at Pensacola forum on homelessness*, Jeremy Bosso: Life, Liberty and the Pursuit of Happiness...and other current events, Mar. 11, 2014, <http://jeremybosso.wordpress.com/2014/03/11/dr-robert-marbut-to-speak-at-pensacola-forum-on-homelessness/>.
- <sup>40</sup> St. Petersburg City Code §§ 20-30.
- <sup>41</sup> *See Petition for a Writ of Certiorari from Decision of City Hearing, Garcia v. City of St. Petersburg*, No.
- <sup>42</sup> *See Catron v. City of St. Petersburg*, Appendix in Support of Amended Complaint For Declaratory and Injunctive Relief/Class Action, Case No. 8:09-CV-923-SDM-EAJ (Dec. 15, 2009), Exhibit O: Shumate Arrest Report (SPPD # 2007-066578).
- <sup>43</sup> Email from Kirsten Clanton, attorney, Southern Legal Counsel, July 25, 2014, based on interviews from 2007-present.
- <sup>44</sup> *Id.*
- <sup>45</sup> *Id.*
- <sup>46</sup> Stephen Thompson, *Pinellas launching program to deal with the chronically homeless*, The Tampa Tribune, August 7, 2013, available at <http://tbo.com/pinellas-county/pinellas-launching-program-to-deal-with-the-chronically-homeless-20130708/>; David DeCamp, *St. Petersburg's Law-breaking Homeless People Will Soon Get a Choice: Jail or a Shelter*, TampaBay Times, Apr. 22, 2011, <http://www.tampabay.com/news/localgovernment/st-petersburgs-law-breaking-homeless-people-will-soon-get-a-choice-jail-or/1165396>; Stephen Thompson, *Pinellas Authorities Evaluating Homeless Diversion Program*, Tampa Tribune, Sept. 28, 2013, available at <http://tbo.com/pinellas-county/pinellas-authorities-evaluating-homeless-diversion-program-20131028/>.
- <sup>47</sup> NLCHP, WELCOME HOME, *supra* note 8, at 51-55; ROBERT G. MARBUT JR., FOLLOW-UP REVIEW OF HOMELESSNESS IN THE CITY OF ST. PETERSBURG: PRESENTATION OF FINDINGS AND ACTION PLAN RECOMMENDATIONS TO THE CITY OF ST. PETERSBURG (June 8, 2014).
- <sup>48</sup> Paul Boden, *Criminalizing the Homeless Costs Us All* (Mar. 1, 2012), available at <http://news.streetroots.org/2012/03/01/criminalizing-homeless-costs-us-all>.
- <sup>49</sup> Picture the Homeless, *Homelessness and Incarceration: Common Issues in Voting Disenfranchisement, Housing and Employment*, at 2, available at [http://www.picturethehomeless.org/Documents/Legal/Homelessness\\_and\\_Incarceration\\_fact\\_sheet.pdf](http://www.picturethehomeless.org/Documents/Legal/Homelessness_and_Incarceration_fact_sheet.pdf).
- <sup>50</sup> 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), available at <http://www.hrw.org/node/94574/section/1>.
- <sup>51</sup> *Id.*
- <sup>52</sup> *Id.* at 2, 5.
- <sup>53</sup> 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/>.
- <sup>54</sup> *See, e.g., Ending the Cycle between Corrections and Homelessness*, USICH BLOG (Jul. 30, 2012), [http://www.usich.gov/media\\_center/blog/ending\\_the\\_cycle\\_between\\_corrections\\_and\\_homelessness](http://www.usich.gov/media_center/blog/ending_the_cycle_between_corrections_and_homelessness).
- <sup>55</sup> *See, e.g., THE LEWIN GROUP, COSTS OF SERVING HOMELESS INDIVIDUALS IN NINE CITIES: CHARTBOOK* (2004), available at <http://www.rwjf.org/files/newsroom/cshLewinPdf.pdf>; UTAH DEPT. OF COMMUNITY & ECON. DEV., UTAH'S TEN-YEAR BUSINESS PLAN TO END HOMELESSNESS 6-7 (2004), available at <http://www.usich.gov/slocal/plans/utah.pdf> (noting that permanent supportive housing cost approximately \$6,100 per resident per year, compared to \$35,000 per year in Utah state prisons or \$146,730 per year for incarceration in the state mental hospital).

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- <sup>56</sup> See, e.g., USICH, SEARCHING OUT SOLUTIONS, *supra* note 3.
- <sup>57</sup> 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, NLCHP, NO SAFE PLACE, *supra* note 2, at 32; *id.* at 32 (thirty-eight states allow employers to consider arrests, even if they never resulted in conviction, when making hiring decisions).
- <sup>58</sup> 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>.
- <sup>59</sup> 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 2, at 33.
- <sup>60</sup> NCH, VULNERABLE TO HATE, *supra* note 4, at 4.
- <sup>61</sup> *Id.*
- <sup>62</sup> *Id.*, at 8, 10.
- <sup>63</sup> *Ibid.*
- <sup>64</sup> 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.
- <sup>65</sup> 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\\_Remedey](http://nlchp.org/documents/HLRL_Symposium_Edition_Spring2014_Can_I_Get_Some_Remedey).