

HUMAN RIGHT TO HOUSING REPORT CARD

Student: United States of America

CATEGORY	2015
Security of Tenure	
Renters	<i>F</i>
Homeowners	<i>D</i>
Access to Counsel	<i>D-</i>
Emergency & Dire Circumstances	
Criminalization of Homelessness	<i>B</i>
Domestic Violence	<i>C</i>
Availability of Services, Materials & Infrastructure	<i>D-</i>
Affordability	<i>F</i>
Accessibility	<i>C</i>
Habitability	<i>D</i>
Location	<i>B</i>
Cultural Adequacy	<i>D</i>
Overall	<i>D+</i>

CRITERIA

Grades were assigned to the federal government's activities as of December 1, 2015, based on the following criteria:

- 1) Was a law passed or policy adopted that protects the human right to housing?
- 2) Are laws that are in place to protect the human right to housing being implemented and enforced?
- 3) Have laws been enacted or are laws being enforced that undermine the human right to housing?
- 4) Have resources to further the human right to housing been added or are they being taken away?

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, does impact the grades given. Starting with a "neutral" C grade, points were added or taken away based on these criteria, with + or - used to reflect nuance such as the significance of a law or the magnitude of harm.

EXECUTIVE SUMMARY

The past year has brought both exciting developments and disappointments regarding the human right to housing:

Years of advocacy at the domestic and international levels started to pay large dividends this year as the federal government took significant steps to fulfill its obligation to end the criminalization of homeless and to address the importance of location for low-income residents. Of particular note in 2015, the federal government:

1. Began implementing human rights obligations to end the criminalization of homelessness with important actions by DOJ, HUD, USICH and the Supreme Court;

Domestically, the Departments of Justice (DOJ) and Housing and Urban Development (HUD), as well as the U.S. Interagency Council on Homelessness (USICH) took significant steps to end the criminalization of homelessness, citing their human rights obligations as part of the context for their actions.¹ In addition, the Supreme Court set a new precedent that has led to the overturning of panhandling laws across the country.

- o On August 6th, the Justice Department filed a statement of interest brief in NLCHP's case *Bell v. Boise*, challenging the city of Boise's anti-camping ordinance, stating, "[i]t should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment... Sleeping is a life-sustaining activity—i.e., it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless."² This brief garnered significant media attention, and has already resulted in several communities amending or withdrawing plans for criminalization ordinances.
- o HUD issued its annual application for funding for \$1.9 billion in federal homeless assistance grants, for the first time requiring applicants to explain "how they are reducing criminalization of homelessness," and granting "up to two points to Continuums of Care that demonstrate recipients have

implemented specific strategies that prevent criminalization of homelessness."³

- o USICH issued guidance on homeless encampments and convened its Secretary-level members to discuss criminalization and reentry issues.⁴
- o In June 2015, the U.S. Supreme Court issued an important ruling in *Reed v. Town of Gilbert* that has assisted homeless advocates in challenging anti-panhandling cases across the nation.⁵ Since June, anti-panhandling laws have since been struck down in the 1st, 7th, and 10th Circuits, including in *Norton v. Springfield*, a case brought with the assistance of the Law Center.⁶

2. Strengthened civil and human rights protections related to discrimination in housing; and

- o The U.S. Supreme Court affirmed that discrimination under the federal Fair Housing Act may be proven through a disparate impact theory in its June 2015 decision in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*⁷
- o HUD published regulations strengthening requirements of local governments to affirmatively further fair housing while undertaking community planning exercises in order to undo residential segregation and promote diverse, inclusive communities.

3. Supported UN Recommendations about poverty and housing.

- o At the international level, in September 2015, as part of its second Universal Periodic Review by the UN Human Rights Council, the U.S. government stated that it “helps communities pursue alternatives to arrest and prosecution of individuals for various behaviours associated with homelessness by focusing on providing technical assistance and financial resources to help communities provide housing first.”⁸ It supported, in part, a recommendation from the Human Rights Council to “[g]uarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 millions of people in the country;”⁹ and supported fully recommendations to “[i]nvest further efforts in addressing the root causes of recent racial incidents and expand its capacity in reducing poverty in neighborhoods experiencing sub/par public services, including access to adequate housing and public safety”¹⁰ and “[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments.”¹¹ This builds on 2014 recommendations from other UN human rights bodies that federal agencies “offer incentives to decriminalize homelessness. Such incentives include providing financial support to local authorities that implement alternatives to criminalization and withdrawing funding from local authorities that criminalize homelessness.”¹²

But, much more needs to be done...

In spite of the positive steps from these federal agencies, criminalization ordinances remain on the books in too many jurisdictions across the country. Congress has failed to pass the Permanently Protecting Tenants at Foreclosure Act, meaning crucial federal protections for renters expired on January 1, 2015 and have not been renewed. Homeowners in Detroit and other cities are living without running water and sanitation and even losing their homes and children over an inability to pay the dramatically increased water bills. Moreover, years of neglecting affordable housing development at the local level compounded by ongoing budget cuts to HUD and other federal agencies have threatened the basic safety net for many people living in poverty even as real wages continue to drop. These cuts demonstrate the opposite of a human rights-based approach to housing.

A rights-based approach would ask, “What is the need, and how can we progressively meet it, through a combination of spending, regulation, or other tools?” Instead, we are faced with retrogressive cuts to already inadequate resources, with no proposed compensatory changes to other laws or regulations, that will certainly lead us further from full enjoyment of the right to housing.

The United States is passing, but barely

The United States has taken important steps, but not enough of them, earning a collective grade of D+.

Category	2011	2012	2013	2014	2015
Security of Tenure					
Renters	B-	C-	C	F	F
Homeowners	D+	D	D	D	D
Access to Counsel	D	F	D-	D-	D-
Emergency & Dire Circumstances					
Criminalization of Homelessness	F	D-	D	D+	B+
Domestic Violence	B-	C	A-	B	C
Availability of Services, Materials & Infrastructure	D	D	D	D	D-

Affordability	D	D	F	F	F
Accessibility	C-	C-	C-	C	C
Habitability	C-	C-	D	D-	D
Location	D	D	D	D	B
Cultural Adequacy	D	D	D	D	D

SUMMARY OF RECOMMENDATIONS

To improve its score, it is recommended that the United States:

1. Increase funding to homelessness prevention programs, and expand HUD's definition of homelessness.
2. Expand funding for affordable housing through Section 8 and other subsidies, and funding the National Housing Trust Fund.
3. Comply with, protect and strengthen Title V of the McKinney-Vento Act, which requires vacant or underutilized federal property to be made available to homeless service providers.
4. Ensure no person loses access to water or sanitation due to inability to pay.
5. Pass the Permanently Protecting Tenants at Foreclosure Act (PPTFA), including a private right of action, and vest authority in the Consumer Financial Protection Bureau to regulate and enforce compliance.
6. Ensure and fund a right to counsel in all civil cases involving the potential loss of housing.
7. Continue to disincentivize local efforts to criminalize homelessness. States and local governments should cease criminalization and instead implement a rights-based approach.
8. Fully implement the housing provisions of the Violence Against Women Act.
9. Fully implement the HUD regulations to affirmatively further fair housing and fund efforts to support compliance and enforcement.
10. Increase the minimum wage and Supplemental Security Income benefits, so that no one is paying no more than 30 percent of their income for housing.

ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is the only national organization dedicated solely to using the power of the law to end and prevent homelessness. We work with federal, state and local policymakers to draft laws that prevent people from losing their homes and to help people out of homelessness. We have been instrumental in enacting numerous federal laws, including the McKinney-Vento Act, the first major federal legislation to address homelessness. We helped enact the federal program that makes vacant government properties available at no cost to non-profits for use as facilities to assist people experiencing homelessness, and we ensure it is enforced including through litigation. We have won federal legal protections for tenants affected by the foreclosure crisis and we are working to make sure lenders comply with it.

We aggressively fight laws criminalizing homelessness and promote measures protecting the civil rights of people experiencing homelessness. We are advocating for proactive measures to ensure that those experiencing homelessness have access to housing, jobs, and public benefits even though they have no address so that they can escape homelessness. We are also upholding the right to vote for those who are experiencing homelessness. We work to improve access to housing for domestic violence survivors and their children and we were instrumental in adding landmark housing rights amendments to Violence Against Women Act.

We invalidate laws that prevent other charitable organizations from distributing food and social services to people experiencing poverty and homelessness.

We protect the right of children and youth experiencing homelessness to stay in school and get the support they need to succeed.

For more information about our organization, access to publications, and to contribute to our work, please visit our website at www.nlchp.org.

ACKNOWLEDGMENTS

We are grateful to the funders whose support enables us to carry out our critical work, including Bank of America Foundation, Deer Creek Foundation, Herb Block Foundation, Oakwood Foundation, and W.K. Kellogg Foundation.

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This report card is an annual evaluation based on our 2011 report “Simply Unacceptable: Homelessness & the Human Right to Housing in the United States.” That report and this update were drafted by Eric S. Tars. Kathryn Krause and Maimana Khattak provided assistance in researching and updating this edition, and Janelle Fernandez, Janet Hostetler and Maria Foscarinis provided expert editorial guidance.

Parts of this report are drawn from the 2014 report *Housing and Homelessness in the United States of America: Submission to the United Nations Universal Periodic Review of the United States of America*, coordinated by the Law Center, which had sections drafted by Toussaint Losier, Chicago Anti-Eviction Campaign; Michael Stoops, National Coalition for the Homeless; Jorge Soto, National Fair Housing Alliance; Sham Manglik and Linda Couch, National Low Income Housing Coalition; and Anne Holcomb, Unity Parenting and Counseling, Inc. John Pollock, National Coalition for a Civil Right to Counsel, drafted the section on access to counsel. We thank our partners for their contributions!

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HOLDING THE U.S. ACCOUNTABLE

This report card assesses the current level of U.S. compliance with the human right to housing in the context of American homelessness. In doing so, we primarily consider the steps the federal government has taken to end and prevent homelessness, with reference to state and local practices where relevant. It is not, and is not intended to be, a comprehensive review or assessment of implementation of all aspects of the right to housing, which is interconnected and interdependent with the enjoyment of many other civil, political, economic, social, and cultural rights. Our much more comprehensive 2011 report, *Simply Unacceptable: Homelessness & the Human Right to Housing in the U.S.*, goes into more depth in its analysis.¹³

According to international standards, the human right to housing consists of seven elements: (1) security of tenure, (2) availability of services, materials, and infrastructure (3) affordability, (4) accessibility, (5) habitability, (6) location, and (7) cultural adequacy.¹⁴ Human rights law requires that countries take progressive steps to respect, protect, and fulfill the right, to the maximum of the country's available resources, in a non-discriminatory manner.¹⁵ The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would *not* require the government to immediately build a home for each person in America or to provide housing for all, free of charge. But it does require much more than the U.S. is doing now, and more than a mere provision of emergency shelter—it requires affirmative steps to be taken to ensure fully adequate housing, based on all the criteria outlined above.

While this report card is based on a qualitative, rather than a quantitative, assessment, it makes some efforts to assess the nation's performance based on quantitative data. The Economic and Social Rights Fulfillment (ESRF) Index assesses how well countries perform in meeting economic and social rights, such as the right to housing, in light of their available resources.¹⁶ In 2012, the most recent year

for which housing data is available, out of the 22 high-income countries analyzed, the U.S. received one of the worst scores, fulfilling only 78.72% of their obligations, a slight decrease from 79.09% in 2011.¹⁷ The fulfillment of obligations differed significantly between states and across racial groups.¹⁸ In a state-by-state assessment, Wyoming fulfilled 79.12% of its obligations in regard to adequate housing, while California fulfilled only 11.68% of its obligations.¹⁹ The fifty states, on average, fulfilled just over 45% of their adequate housing obligations.²⁰

Consistent with these findings, our report card shows there is much work to do to realize the right to housing. We have given a letter-grade ranking for the current status of each aspect of the right. Grades were assigned based on the following criteria:

- 1) Was a law passed or policy adopted that protects the right to housing?
- 2) Are laws that are in place to protect the right to housing being implemented and enforced?
- 3) Have laws been enacted or are laws being enforced that undermine the right to housing?
- 4) Have resources to further the right to housing been added or are they being taken away?

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, does impact the grades given. Starting with a "neutral" C grade, points were added or taken away based on these criteria, with + or – used to reflect nuance such as the significance of a law or the magnitude of harm. Grades were assigned based on an assessment as of December 1, 2015.

We recognize that for many Americans, the overall enjoyment of housing rights is better in the U.S. than it would be in some developing nations, but the human right to housing is one that is progressively realized based on the resources available to the country. Given that the U.S. is still the wealthiest nation in the world, with a well-developed democratic and judicial system, we need to hold

ourselves to a higher standard. Our failure to meet those standards is reflected in the grades assigned in this report.

CURRENT CONTEXT

In 2015, the United States continues to face an affordable housing crisis. Even before the foreclosure crisis and economic recession the country has experienced in the past decade, an estimated 2.5 to 3.5 million men, women, and children were experiencing homelessness annually, including a total of 1.35 million children, and over a million people working full or part-time but unable to pay for housing.²¹

Since then, the crisis has deepened:

- According to a June 2015 report by the Joint Center for Housing Studies at Harvard University, one out of every four renters, or 20.8 million renters, pay an excessive portion of their incomes on housing.²² The number of cost burdened renters has increased each year since 2007.²³
- The safety net has failed to support needy families in this atmosphere of dire housing need. Only one in four of those poor enough to qualify for low-income housing assistance receive it.²⁴ Close to 1.4 million school children were homeless during the 2013-2014 school year—and almost 2.5 million children overall were homeless in 2013. The school numbers represent an 8% increase since the previous year, and have almost doubled since the beginning of the economic crisis in 2007.²⁵
- A 2014 survey in the Law Center’s report *Welcome Home: The Rise of Tent Cities in the United States* showed media reports of tent cities in 46 states across the country.²⁶
- The number of people who have lost their homes and are living doubled up with family or friends due to economic necessity remained at 7.4 million people in 2012 (the last year for which data is available), consistent with 2011, but some states saw as much as an 80% increase.²⁷ While the Department of Housing and Urban Development reported an overall decrease of 5.2 % in homelessness nationally based on a single

night’s count in 2014,²⁸ this count is based on a severely limited and flawed method that almost certainly misses large numbers of homeless people.²⁹

Moreover, many communities have responded to the growth of homelessness not with more housing, but by increasing enforcement of laws criminalizing homelessness. A July 2014 Law Center report, *No Safe Place*, surveyed 187 cities across the country and documented a 60% increase in city-wide bans on camping, 43% increase in city-wide bans on sitting or lying down, and a 119% increase in bans on sleeping in vehicles since 2011.³⁰ These policies are tremendously expensive for communities, but result in further entrenching homelessness because the time and cost of interacting with the criminal justice system set people further back from having the resources to escape homelessness, and criminal records make it even harder for people experiencing homelessness to find a job or housing.

THE HUMAN RIGHT TO HOUSING

In 1948, the U.S. was an international leader in promoting the human right to housing. It led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that “everyone has the right to an adequate standard of living. . . including the right to housing.”³¹ The following year, the 1949 Federal Housing Act stated a *goal* of “a decent home and suitable living arrangement for every American family,” but that goal was never enshrined as a *right* for every American in domestic law.³²

The United States signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979, recognizing the human right to housing, but the Senate has not yet ratified that treaty.³³ Under international law, countries that sign a treaty are obligated to refrain from actions that would defeat the “object and purpose” of that treaty, even before ratification.³⁴

More recently, the U.S. has hinted at signs of its possible interest in revitalizing the human right to housing. In 2010, President Obama stated that it is “simply unacceptable for individuals, children, families and our nation’s veterans to be faced with homelessness in this country.”³⁵ In March

2011, the U.S. acknowledged for the first time that rising homelessness implicates its human rights obligations and made commitments to the United Nations (U.N.) Human Rights Council to “reduce homelessness,” “reinforce safeguards to protect the rights” of homeless people, and continue efforts to ensure access to affordable housing for all.³⁶ And this year, the U.S. government supported, in part, a recommendation from the Human Rights Council to “Guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 millions of people in the country.”³⁷

In explaining its partial acceptance of the above recommendation, the U.S. stated “[t]he U.S. is not a party to the ICESCR, and we understand the rights therein are to be realized progressively ... We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe drinking water and sanitation, with the aim of decreasing poverty and preventing discrimination.”³⁸ While attempting to limit the legal implications, the government does acknowledge housing as a “right” to be implemented progressively. It has also previously acknowledged that despite lack of ratification of the ICESCR, we do retain some obligation not to undermine the object and purpose of that treaty.³⁹ Thus, while not fully embracing a legally binding human right to housing framework, the federal government has now made some basic commitment to implementing the right to housing.

A. SECURITY OF TENURE:

Under international standards, all persons—whether renters, homeowners or occupants of emergency housing or informal settlements—should possess legal protection against forced eviction and harassment. In the U.S. today, these protections are often lacking:

RENTERS: **F**

There is a 7 million unit shortage of rental housing that is affordable and available to extremely low income households (households with incomes at or below 30% of area median income).⁴⁰ Without assistance, these households find themselves spending more than half their income on rent, leaving very little money for other expenses, and leading to unstable housing situations and homelessness.⁴¹

Rental properties constitute 20% of all foreclosures, and of families facing eviction due to foreclosure, approximately 40% are renters.⁴² Prior to the landmark Protecting Tenants at Foreclosure Act (PTFA), many of these renters were completely unaware that their building owners had received foreclosure notices until a new owner evicted them. “I came home from work last night and the locks were changed,” reported one tenant, who had paid his rent on time and was unaware of any pending foreclosure.⁴³ The PTFA provided some crucial federal protections for renters in foreclosure; some states have enacted stronger protections.⁴⁴

However, the PTFA expired in 2014; bills aiming to make it permanent have been introduced in the House and Senate, but they have yet to pass.⁴⁵ Two states, Florida and North Carolina, enacted new protections for renters in foreclosed properties in 2015, however, protections in individual states are not sufficient to cover renters throughout the country and cannot fully make up for the loss of the PTFA.⁴⁶ Consequently, many renters, who are disproportionately low income and people of color, continue to lose their homes—and face homelessness—due to their landlords’ foreclosures.⁴⁷

Due to the desperate crisis in rental affordability and failure to take action on the PTFA, the U.S. receives an “F”.

HOMEOWNERS: **D**

From 2008 until May 2014, there were over 5 million foreclosures, representing 10% of all homes with a mortgage.⁴⁸ In June of 2015 alone, foreclosure notices were filed against one in every 1128 housing units⁴⁹—in Florida, this rate is as high as one in every 486 units.⁵⁰ This rate has improved since its peak in 2010, but it is still much higher than the rate in 2006 before the crisis.⁵¹

Many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers (who may have no other options) with agreements that incorporated *insecure tenure* by their terms, due to payment conditions borrowers could not sustain.⁵²

During the foreclosure crisis, many banks received billions in public dollars to maintain their financial stability, with no corresponding commitment to keeping victims of foreclosure in their homes, thereby spending the nation’s “available resources,” but not in a way that progressively realizes the human right to housing.⁵³

Although federal and state governments reached a National Mortgage Settlement in February 2012 to bring \$26 billion in relief to nearly two million current and former homeowners, this settlement did not address the targeting of minority borrowers. Moreover, this settlement excluded government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, thereby leaving out half of the mortgages in the U.S.⁵⁴ By exempting the majority of mortgages, this settlement failed to address the dire housing concerns of millions of families who have suffered from illegal lending practices and face potential homelessness, even though the federal government could easily intervene in the foreclosure process through the Federal Housing Finance Agency.⁵⁵

While the number of foreclosures is slowing, the federal government’s ongoing failure to take adequate steps to help keep people in their homes results in a “D” grade.

ACCESS TO COUNSEL: **D-**

To date, no court or legislature anywhere in the U.S. has recognized a right to counsel in housing matters such as evictions, foreclosures, or housing discrimination.⁵⁶ This has led to a situation where, in many areas of the country, more than 90% of foreclosure and eviction defendants are unrepresented, while landlords and mortgage holders are represented 90% of the time.⁵⁷ Lack of access to counsel leads to insecure tenure and wrongful evictions for many low-income homeowners and tenants in the U.S.,⁵⁸ which in turn can lead to homelessness, increased health concerns, job loss, encounters with the criminal justice system, and destabilized educational opportunities for children.⁵⁹

This justice gap is particularly stark when compared to other countries. The World Justice Project's Rule of Law Index, which measures experience of the rule of law through 100,000 individual and 2,400 expert surveys in countries around the globe, routinely ranks the U.S. at or near the bottom of industrialized countries for accessibility and affordability of the civil justice system, leading to homelessness and housing rights violations. The 2015 Rule of Law Index placed the United States 66th overall out of 102 countries on accessibility and affordability of civil justice, below every country in Europe except Kazakhstan.⁶⁰

Some jurisdictions have taken small steps towards advancing the right to counsel in housing cases:

- In 2012, the City of San Francisco enacted an ordinance declaring its desire to become the first "right to civil counsel city", and as a first step created a pilot program to expand representation in eviction proceedings. In May 2014, the pilot released a report that showed 11% of families living in emergency shelter in San Francisco cited evictions (legal and illegal) as the immediate source of their homelessness.⁶¹ However, the report estimated that of 752 tenants provided with representation in their pilot project, 609, or 81% were more likely to avoid homelessness, saving the city \$1,096,200 in homelessness services, given that the average shelter stay for individuals in San Francisco is estimated to be 60 days at \$30/night.⁶²

- In Massachusetts, the Boston Bar Association Task Force completed a privately-funded study that

showed represented tenants fared twice as well as tenants receiving limited scope assistance in terms of retaining possession of their homes, and five times as well in terms of having rent waived and obtaining monetary damages.⁶³

- In New York, a bill was introduced in the New York City Council that would provide a right to counsel for low-income city residents in eviction and foreclosure proceedings.⁶⁴ A majority of the City Council has signed on to the bill, and it has received endorsements from the City Comptroller⁶⁵ and the Chief Judge of the New York Courts.⁶⁶ A bill has also been introduced that would provide a right to counsel statewide in housing cases.⁶⁷

Pilot projects focused on improving access to counsel, particularly in cases of housing need, keep the U.S. at a "D-" rather than an "F", but just barely.

EMERGENCY AND DIRE CIRCUMSTANCES:

CRIMINALIZATION OF HOMELESSNESS: **B**

Despite a dire lack of adequate shelter and affordable housing, homeless persons are increasingly criminalized for engaging in necessary, life-sustaining activities—like sleeping and sitting—that they often have no choice but to perform in public spaces.⁶⁸ Between 2011 and 2014, city-wide bans on camping in public increased by 60%; begging by 25%; loitering, loafing, and vagrancy by 35% sitting or lying by 43%; and sleeping in vehicles by 119%.⁶⁹ Moreover, communities routinely engage in forced evictions or "sweeps" of homeless encampments with little notice and no provision of alternative housing, often destroying important documents, medicines, and what little shelter the victims have.⁷⁰

In 2015, the U.S. supported a recommendation from the Human Rights Council's second Universal Periodic Review to "Amend laws that criminalize homelessness and which are not in conformity with international human rights instruments."⁷¹ This built on 2014 recommendations from the U.N. Human Rights Committee and Committee on Racial Discrimination that federal agencies "offer incentives to decriminalize homelessness. Such incentives included providing financial support to local authorities that implement alternatives to

criminalization and withdrawing funding from local authorities that criminalize homelessness.⁷²

This year we are happy to report a significant improvement in the federal government's grade on criminalization in response to the international attention and domestic advocacy. Following a 2009 congressional mandate that it address the issue, the U.S. Interagency Council on Homelessness (USICH) issued a report, *Searching Out Solutions*,⁷³ in 2012, and since that time has referred to criminalization of homelessness as a human rights violation.⁷⁴ This August, the Department of Justice filed a brief in the Law Center's case against a Boise, Idaho anti-camping ordinance, stating "[i]t should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment. . . . Sleeping is a life-sustaining activity—i.e., it must occur at some time in some place. If a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless."⁷⁵ This filing received significant national media attention, including a supportive editorial in the Washington Post (although, unfortunately, that editorial recommended against finding a right to housing).⁷⁶ The U.S. Interagency Council on Homelessness also contributed by issuing long-awaited guidance on encampments, specifically stating, "The forced dispersal of people from encampment settings is not an appropriate solution or strategy."⁷⁷ A month later, HUD followed through by creating funding incentives to stop criminalization in their \$1.9 billion grant program for homeless Continuums of Care.⁷⁸

Also of note, in June 2015, the U.S. Supreme Court issued an important ruling in *Reed v. Town of Gilbert* that has assisted homeless advocates in challenging anti-panhandling cases across the nation.⁷⁹ In *Reed*, the Court held that a law imposing differing restrictions on roadside signs based on their subject matter is subject to strict scrutiny under the Constitution, and must be narrowly-tailored.⁸⁰ Since then, every case brought against anti-panhandling laws that similarly restricted only solicitation speech has found those laws to be unconstitutional, including cases in the 1st, 7th, and 10th Circuits.⁸¹ The 7th Circuit, sitting *en banc*, struck down Springfield, Illinois' ordinance in *Norton v. Springfield*, a case brought with Law Center assistance.

Not only does criminalization fail to address the root causes of homelessness, it is actually counterproductive. It saddles homeless individuals with criminal records, making it more difficult for them to secure or maintain employment, housing, and benefits; burdens the criminal justice system; and violates homeless individuals' civil and human rights.⁸² Three states have passed homeless bills of rights in response to discrimination against homeless persons, but coverage is limited and enforcement is uncertain.⁸³

Moreover, the degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness by private individuals. From 1999-2014, housed individuals perpetrated 1,573 acts of violence against homeless individuals in 47 states, Puerto Rico, and the District of Columbia, resulting in 404 deaths, though many more may go unreported.⁸⁴ 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.⁸⁵ 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. The most crimes occur in states with the highest rates of criminalization,⁸⁶ including California and Florida, which produced four of twenty-nine lethal crimes against homeless persons in 2013.

Drawing national attention was the plight of Charly "Africa" Keunang, an African homeless man shot by the Los Angeles Police Department.⁸⁷ In many communities, homelessness disparately affects racial minorities, and because homeless individuals must spend their lives in public, they are particularly exposed to profiling and disparate enforcement by police.⁸⁸ In 2015, the Department of Justice published the 21st Century Policing Task Force report, encouraging police to adopt a "guardian" rather than "warrior" approach, providing an opening for advocates to address homeless persons concerns, along with other issues as police departments work to implement the report's recommendations.⁸⁹

Lack of access to housing and services for homeless youth also places them at higher risk for violence. A

survey of unaccompanied homeless youth in Illinois found 61% reported being victims of violent crimes, including theft, burglary, and physical or sexual assault, during 2014.⁹⁰

The combined actions of the DOJ's brief, the HUD funding incentives, and the USICH guidance put the enforcement teeth of the federal government into the longstanding policy against criminalization. Several communities have already announced they would be amending laws on the books, or discarding proposed criminalization ordinances, but other communities continue to enact ordinances. While the federal actions are a huge step forward, the federal government can still be doing more, and until we see the full impact of this actions at the local level, we can only increase the grade to "B" for this year.

DOMESTIC VIOLENCE: C

Domestic violence is a leading cause of homelessness, particularly for women and children. More than 90% of homeless women report having experienced severe physical or sexual abuse, and many victims of abuse become homeless after escaping violence because adequate housing is not available.⁹¹

The Violence Against Women Act (VAWA) of 2005 created new housing rights for survivors in some federally subsidized housing. The 2013 reauthorization of the law expanded these protections to over 4 million additional federally subsidized units; included of survivors of sexual assault as a protected group; added a requirement that public housing authorities provide notice to tenants of their housing rights; and created an emergency transfer policy. As important as these federal protections are, they only cover the 4.9 million federally-funded rental households—just 12% of the estimated 41 million rental households in the United States.⁹²

In April 2015, the U.S. Department of Housing and Urban Development (HUD) released proposed VAWA implementation regulations.⁹³ This rule, as proposed, will help survivors maintain not only their safety but their housing as well. HUD also continued to use its enforcement authority under the Fair Housing Act to combat housing discrimination against victims of domestic violence.⁹⁴

Furthermore, there has been a major increase in state and local jurisdictions safeguarding domestic violence survivors.⁹⁵ State and local protections include providing a defense from eviction due to the abuse, allowing early lease termination due to domestic violence, changing locks to protect survivors from abusers, obligate abuser to provide for the survivor, and protect the confidentiality of survivors' records. Nearly every state has enacted some protections that expand housing protections for survivors, but it is important to note that only few states have expanded VAWA's non-discrimination provisions to private landlords, leaving many households still unprotected.⁹⁶

While efforts by HUD and individual states are commendable, there is still a lot of work to be done to fill legal gaps and to ensure proper implementation of VAWA 2013. At the time of this printing, HUD has not yet published a final regulation or the needed accompanying guidance, nor has it provided needed technical assistance, and training. And HUD's proposed regulations did not explicitly cover victims of economic abuse to help move survivors toward economic self-sufficiency, despite the fact that economic abuse was a significant consideration in reauthorizing VAWA. The proposed regulations also failed to reference the internationally recognized "due diligence" standard with regards to the governmental duty to prevent domestic violence. Furthermore, while HUD has used its enforcement authority under the Fair Housing Act, HUD has not yet put into place any mechanisms to enforce VAWA 2013 across the multiple programs affected.

The Department of Agriculture and Department of Treasury still need to promulgate regulations to fulfill their responsibilities toward VAWA implementation. Furthermore, interagency collaboration and coordination at federal, state, and local levels remain to be seen.

The 2013 VAWA reauthorization has great potential to keep survivors safe, help victims heal, prevent homelessness, and move them towards self-sufficiency. However, the protracted implementation and continued lack of federal agency guidance, collaboration, and coordination merits a "C" grade. The federal government needs to issue regulations to properly implement VAWA and to further encourage states to enact and implement more laws

that further protect survivors of domestic violence, such as allowing for lease bifurcation, providing relocation assistance, and imposing liability on the abuser.

B. AVAILABILITY OF SERVICES, MATERIALS, AND INFRASTRUCTURE: D-

Existing infrastructure in the U.S. inextricably links housing or other facilities with access to water, sanitation, and other basic services. For homeless individuals, lack of shelter often means lack of these basic resources, cited by the Water Rapporteur in her 2012 report on the U.S.⁹⁷ Two ways in which this lack of infrastructure plays out are (1) a lack of shelter and (2) a lack of water.

The federal government has failed in its statutory duty to use its existing resources to improve the availability of services and infrastructure to homeless individuals. Title V of the McKinney-Vento Act requires government agencies to make available vacant federal properties to homeless service agencies to provide housing and other services, before they can be otherwise transferred or sold. In March 2013, following litigation, a court found that many government agencies have not been complying with the law and mandated additional steps for compliance.⁹⁸ The program continues to be hindered by governmental non-compliance with the law, an overly burdensome application process, and inadequate advertisement and outreach. The U.S. Conference of Mayors reports an average of 22% of the demand for emergency shelter went unmet, and emergency shelters in 73% of the survey cities had to turn away homeless families with children.⁹⁹ Leaving homeless persons on the streets while public buildings stand vacant is unacceptable.

For poor persons, water disconnections often happen when people have to choose between paying for water or rent, resulting in a violation of both the right to adequate housing and the right to water.¹⁰⁰ In October 2015, the InterAmerican Commission on Human Rights held a hearing on the violations of the right to water in the U.S. paving the way for future actions by the Commission.¹⁰¹ Nonetheless, at least one bankruptcy court ruling stated access to water is not a right, in clear contradiction to international standards.¹⁰²

The government's failure to make vacant properties fully accessible and the fact that the government has allowed a significant number of people in major cities to fall into a Third-World situation where they lack running water for drinking and sanitation are reflected in the slide to a "D-" this year.

C. AFFORDABILITY: F

Over half of all American renters pay more than 30% of their income for housing.¹⁰³ For extremely low-income (ELI) households, the percentage paying more than half of their income in rent jumps to 75%.¹⁰⁴ This problem is caused in part by the lack of available, affordable housing for low-income renters. Average rents have increased for 23 straight quarters, and were 15.2% higher in 2014 than in 2009.¹⁰⁵

On top of the existing gap in availability of affordable units, the supply of low-cost rental units has declined since 2007.¹⁰⁶ While ELI renter households may qualify for federal and local subsidy programs, demand for these programs far exceeds the supply: *there is only enough funding for one in four eligible renters to receive assistance.*¹⁰⁷ The remaining three-fourths of eligible ELI households desperately in need of housing find themselves on multi-year waiting lists, or find that waiting lists for affordable housing in their area are closed altogether.¹⁰⁸ While the affordable housing stock declines each year and more families and individuals are unstably housed, the rental market for higher-income households continues to grow, foreclosed homes stand vacant, and abandoned government-owned properties remain empty.¹⁰⁹

Lack of affordable housing is a primary cause of homelessness, and the ongoing crisis has led to an increase in the numbers of homeless persons. While HUD's point-in-time count of homeless persons living in shelters and public places has decreased over the past four years,¹¹⁰ this number is almost certainly a significant undercount of homelessness.¹¹¹ It does not include people living doubled up with family or friends; this number increased by 9.4% to 7.4 million people in 2011, and remained stable during 2012.¹¹² Moreover, close to 1.4 million school children were homeless during the 2013-2014 school year—and almost 2.5 million children overall were homeless in 2013. The school numbers represent an 8% increase since the previous year, and have almost doubled since the beginning of the economic crisis in 2007.¹¹³

The Department of Housing and Urban Development (HUD) budget has decreased by more than 56% since its high point in 1978, leading to the loss of approximately 10,000 units of federally-subsidized low income housing each year.¹¹⁴ This loss comes on top of the failure to produce any new units of affordable housing, reversing the trend of keeping pace with need that preceded 1978, and that prevented homelessness from being a widespread phenomenon.¹¹⁵ The National Housing Trust Fund (NHTF) was designed to be a permanent, dedicated funding source to increase and preserve the supply of rental units and increase homeownership for the lowest income households, funded by contributions from government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. Funding was suspended between 2008 and 2014 and was supposed to resume on January 1, 2015.¹¹⁶ However, the budget passed in 2015 forbade contributions to the NHTF and the up to \$500 million anticipated to come from the fund remains in limbo.¹¹⁷ Even if the NHTF were funded, more would be necessary to address the shortage of affordable rental units nationwide.

The ongoing failure to fund federal housing safety net programs at adequate levels, and in particular the failure to open the funding streams to the National Housing Trust Fund, keep this grade at an “F”.

D. ACCESSIBILITY:

Many Americans experience significant difficulties in accessing adequate housing. First, HUD’s definition of homelessness is overly narrow, blocking some homeless persons from government aid. Furthermore, housing applicants experience discrimination based on criminal history, race, disability, sex, source of income, and other statuses. Although the GSEs are designed to mitigate some of the racial disparity in access to housing, it has implemented some policies that have produced the opposite effect.

HUD’s overly restrictive definition of homelessness excludes persons living in doubled-up situations or low-cost motels with no other place to go.¹¹⁸ This eliminates the eligibility of many in need of resources to receive aid, despite other government agencies recognizing these populations as homeless.¹¹⁹

Both private landlords and public housing authorities frequently deny people with criminal convictions or even arrest records access to housing, leading 1 in 11 prisoners to be released into homelessness.¹²⁰ In 2011, following years of advocacy, including the 2010 UPR recommendations to increase affordable housing access, HUD issued a letter to public housing authorities encouraging them to reduce these restrictions.¹²¹ This was followed in 2012 by a letter to owners and agents of other HUD-assisted properties.¹²² And in November 2015, HUD issued further guidance to public housing authorities and HUD-assisted housing outlining that HUD does not support “one strike” policies and that an arrest by itself is not sufficient evidence of criminal activity for making an adverse housing decision.¹²³ These are important steps forward but more is needed to ensure formerly incarcerated individuals are not forced to be homeless after paying their debts to society.

Even where needy applicants are able to access affordable housing or obtain housing assistance, they face discrimination in the private housing market on the basis of race, disability, gender, source of income, or other status, despite some strong de jure protections. There were 27,528 complaints of housing discrimination registered in 2014, a minority of the estimated total amount of housing discrimination. In 2014, the Committee on the Elimination of Racial Discrimination specifically called on the U.S. to “ensur[e] the availability of affordable and adequate housing for all” by “undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering, and redlining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices.”¹²⁴ Yet the number of HUD employees dedicated to fair housing dropped to an all-time low in federal fiscal year 2015.¹²⁵ Part of the United States’ obligation is to ensure enforcement of existing laws; it cannot do that when funding resources shrink despite the need for additional work and resources.

While HUD has undertaken many positive efforts with regard to accessibility, its failure to recognize the full scope of homelessness, take adequate steps for ex-offenders, and fully address the disparate

impact of housing and lending policies keeps this grade at a “C”.

E. HABITABILITY: *D*

While much of the U.S. enjoys high quality housing stock, many poor families experience dangerous or unhealthy conditions. Between 2007 and 2012, the number of shared households increased by 13.2%, totaling 22.3 million households in 2012.¹²⁶ Doubled-up living situations are often unstable, overcrowded, and potentially unsafe if families or youth living on their own are forced to move into inadequate or abusive households to avoid living on the streets.

Beyond doubling up, low-income housing units are often poorly maintained—in violation of housing codes that lack adequate enforcement mechanisms. Many violations go unpunished and un-remedied, leading to health problems for residents—particularly low-income youth, who experience double the rate of asthma of their moderate-income peers.¹²⁷ No city except New York City has a broad, legally enforceable right to shelter, meaning more people are forced to live on the streets or in unsafe places.¹²⁸

The unmet behavioral health needs of some homeless persons start with adequate housing but also include supportive service and health care. The expansion of healthcare access under the Affordable Care Act offers promise, but 21 states have not yet expanded Medicaid, the government subsidized healthcare program for low-income individuals, leaving millions of Americans in a “coverage gap.”¹²⁹ This will mean that some states will be left behind in treating homeless and poor persons with mentally illness and addiction.

The lack of measures to ensure habitable housing keep this grade at a “D” this year.

F. LOCATION: *B*

Adequate housing requires more than four walls and a roof; it also must be in a location that makes it possible to access necessary resources. Too often in the United States poverty is segregated, often along racial lines, so poor families and families of color have significantly reduced access to quality schools, good jobs, healthy housing, and safe neighborhoods.¹³⁰

Segregation by race or ethnicity and income level not only reduces access to opportunity and solidifies intergenerational cycles of poverty, but neighborhood segregation also makes it easier for the private and public markets to discriminate. Continued residential segregation and the history of excluding racial minorities from access to sustainable mortgage credit created model conditions for predatory lending to poor households in communities of color.¹³¹ This has led to the loss of wealth built over generations in neighborhoods of color, representing over half of the total cost of the foreclosure crisis in the United States.

More and more research supports the idea that racially segregated, economically isolated neighborhoods with high concentrations of poverty contribute strongly to intergenerational poverty as well as racial wealth and income gaps.¹³² Low-income children who live in racially and economically intergrated neighborhoods are more likely to break out of poverty.

Despite laws against racial segregation, governments at all levels in the United States continue to develop and perpetuate segregation through zoning laws, affordable housing decisions, and more.¹³³ HUD historically has failed to sufficiently enforce it’s obligations, as well as state and local requirements, under the Affirmatively Furthering Fair Housing (AFFH) provision of the Fair Housing Act, which is intended to eliminate entrenched patterns of segregation by requiring federal, state, and local governments to take proactive measures to undo segregation.¹³⁴

In July 2015, HUD published a final regulation outlining how Public Housing Authorities (PHAs), as well as state and local governments that receive HUD funds must incorporate regional analyses of residential segregation into their planning.¹³⁵ The rule requires an analysis of how patterns of segregation are related to opportunity indicators, including good schools, job opportunities, and transportation.¹³⁶

This rule has the potential to be a game changer in local planning, but only if funding recipients are incentivized to take the exercise seriously. Many questions remain, such as how strong HUD’s guidance and technical assistance will be, and whether HUD will hold PHAs and state and local

governments responsible for continued forward progress.

In June 2015, the Supreme Court upheld the disparate impact theory for the Fair Housing Act, allowing that discrimination can be proven without proof of intent where there is a disparate effect on a protected class and there are less-discriminatory alternatives for meeting any legitimate goals.¹³⁷ In cases of segregation or other discriminatory actions by governments, intent can be difficult to prove. This decision requires less-discriminatory alternatives when they are available.

The federal government has made two large steps forward this year. Now we must see whether these new policies result in better lives for extremely low-income individuals and their children. This is progress, but still tenuous and unfinished, warranting a “B” grade.

G. CULTURAL ADEQUACY: *D*

The poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations. Inadequate housing for Native Americans creates negative impacts on cultural and social practices—through overcrowding, lack of maintenance, and destruction of historical cultural connections to land and traditional settlement patterns.¹³⁸ Congress has reduced funding for the Indian Housing Block Grant (IHBG) program by more than 10% (\$50 million) over the past few years, despite the IHBG’s existing lack of adequate resources.¹³⁹ HUD is developing a report, now expected to be released in April 2016, on the housing needs of Native Americans, Alaska Natives, and Native Hawaiians, which could bring much-needed attention to this ongoing issue.¹⁴⁰

In November, 2015, USICH and the Departments of Interior, Labor, Veterans Affairs, Health and Human Services, Education, Agriculture, and Housing and Urban Development signed a memorandum of agreement to work together on several key actions that will begin to address Native American homelessness both on and off tribal lands.¹⁴¹

These actions are organized around four strategic areas: 1) Improving access to housing and services through Administrative action, guidance and technical assistance; 2) Improving data collection on homelessness among Native Americans both on and

off Tribal lands; 3) Ensuring that Federal strategies and actions to set a path to end Native American homelessness are informed by consultation and engagement with Tribal leaders, urban native communities, and experts in the field; and 4) Elevating awareness of the crisis of homelessness and housing instability among Native Americans, both on and off Tribal lands.¹⁴²

This new attention is welcome, but while the federal government has taken limited steps to ensure culturally adequate housing for Native Americans, the scope of the crisis is desperate, and much more can be done, necessitating a “D” grade.

RECOMMENDATIONS

The U.S. must take affirmative steps to improve Americans' access to affordable, safe, appropriate housing. Our country's economic struggles are not a reason to defer taking action to realize this vital goal. Rather, it is precisely now that the need to do so is most acute, and a rights-based approach to budgeting and policy decisions would help generate the will to protect people's basic human dignity first, rather than relegating it to the status of an optional policy.

Many steps would bring the U.S. closer to compliance with its human rights obligations and require few additional resources, including laws and regulations to rebalance rights within the private housing market. Where additional public resources are required, framing these expenditures as part of our government's basic obligations to its citizens—the same as its duty to ensure freedom of speech or a fair trial—allows it to establish a new baseline as budget debates intensify.

Because the human right to housing framework itself is so broad, the list of remedies to present violations is similarly broad. We have highlighted the ten most critical—and most relevant—first steps to ending and preventing homelessness:

INCREASE HOUSING FUNDING AND ACCESS TO RESOURCES

1. Congress and HUD should allocate at least \$1 billion in new money per year to homelessness prevention programs, and expand HUD's definition of homelessness to include those living in doubled-up situations or in motels due to loss of housing or economic hardship—as other federal agencies have done.
2. Congress and HUD should ensure every person can afford adequate housing through a combination of new construction of subsidized units, expanded funding for Section 8 and other subsidies, and funding the National Housing Trust Fund at a minimum of \$1 billion per year.
3. Congress and HUD, HHS, and GSA should protect and strengthen Title V of the McKinney-Vento Act, which requires vacant or underutilized federal property to be made available to homeless service providers at no cost, by increasing the number of useful properties made available and easing the application process.
4. Federal, state and local governments must work together to ensure no person loses access to water or sanitation due to inability to pay, or loses their home due to an inability to pay a utility bill.

STRENGTHEN RIGHTS

5. Congress and the Administration should pass the Permanently Protecting Tenants at Foreclosure Act, including a private right of action, and vest authority in the Consumer Protection Financial Bureau to regulate and enforce compliance.
6. Congress, state, and local governments should ensure a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding for legal aid services to facilitate the implementation of this right.
7. HUD, DOJ and other agencies should take concrete steps to stop local criminalization efforts by providing further incentives for constructive alternative approaches and decriminalization and aggressively pursuing enforcement action. States should support and enact Homeless Bills of Rights; local governments should stop enforcing laws that criminalize homelessness in the absence of shelter or housing, and provide adequate notice and adequate alternative housing before evicting homeless persons living in encampments.
8. HUD, the Department of Agriculture, and Treasury should fully implement the Violence Against Women Act's housing protections through regulation and other guidance and

encourage states and municipalities to expand the Act's protections to housing that has no federal subsidy.

9. HUD should fully implement Affirmatively Furthering Fair Housing and fund efforts to support compliance and enforcement.

IMPROVE ECONOMIC JUSTICE AND FAIRNESS

10. Congress should increase the minimum wage and Supplemental Security Income benefits, so that both working and low-income disabled people can afford adequate housing as well as meet other basic needs while paying no more than 30 percent of their income for housing.

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