



**The United States of America's Compliance with the Convention on the
Elimination of All Forms of Racial Discrimination**

**Suggested List of Themes Report Relating to Criminalization of Homelessness,
Discrimination and Segregation in Housing, and the Criminal Justice System**

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC since 1996

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Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates provides pro bono legal services to people seeking asylum and protection from other harms, survivors of trafficking, unaccompanied minors, and people in immigration detention. The Advocates routinely trains lawyers human rights, and advocates at all levels for changes to immigration, racial justice, and trafficking laws and policies that ensure the protection of human rights.

EXECUTIVE SUMMARY

1. The United State of America (U.S.) fails to uphold human rights obligations by maintaining laws that criminalize homelessness. These laws impact BIPOC (Black, Indigenous and People of Color) communities, which represent a larger share of the homeless population in the U.S. In addition, due to discrimination in public housing and policies that do not adequately prevent discrimination in private housing, the U.S. fails to adequately protect the right of BIPOC communities to access housing and other related rights.
2. Discrimination in housing and the criminalization of homelessness are exacerbated by, and entwined with, collateral legal consequences (CLCs). Reports indicate that CLCs result in exacerbation and criminalization of homelessness, and that BIPOC communities are disproportionately impacted by CLCs. CLCs allow public housing authorities and private landlords to deny housing to some individuals. Yet, the processes for appealing such decisions lack due process protections. This report discusses the criminal justice systems that provide CLCs. The criminalization of homelessness results in more people interacting with the criminal justice system, and BIPOC communities are disproportionately represented in the criminal justice system.

The United States of America fails to uphold its obligations under articles 2, 3, 4 (c), 5, and 6 of the Convention on the Elimination of Racial Discrimination (CERD)

I. Criminalization of Homelessness (Concluding Observations paragraph 12)

3. In its 2014 Concluding Observations, the Committee identified criminalization of homelessness as an issue of particular importance, especially for racial and ethnic minorities.¹ The Committee urged the U.S. to abolish laws criminalizing homelessness and offer incentives to decriminalize it, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness.²
4. BIPOC communities in the U.S. continue to experience poverty and homelessness at disproportionately high rates. BIPOC community members represent more than 60% of the U.S. homeless population despite comprising only about 33% of the general population.³ Black people make up about 40% of the homeless population, but only 13% of the U.S. population.⁴
5. In the U.S., “a person experiencing homelessness is up to 11 times more likely to be arrested than a housed person.”⁵ Arrests disproportionately affecting members of BIPOC communities

¹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of American, adopted by the Committee at its 2317th session* (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 12.

² Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of American, adopted by the Committee at its 2317th session* (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 12 (c)

³ National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, (Dec. 2019), 32.

⁴ National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, (Dec. 2019), 32.

⁵ National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, (Dec. 2019), 50.

are increasing. As an example, the “Black arrest rate for offenses like vagrancy” is double the white arrest rate.⁶

6. In its State Party report, the U.S. fails to adequately address issues of criminalization of homelessness and poverty, as well as the impact of collateral legal consequences (CLCs). Collateral legal consequences (CLCs) are criminal sanctions that attach as early as the moment of arrest and last well beyond release from prison. The United States has a vast array of laws and regulations that diminish the rights of people who interact with the criminal justice system, but these consequences take place outside of traditional sentencing and punishment and are enforced by myriad public and private entities.⁶
7. CLCs are articulated through major legislation directly focused on criminal punishments or as riders attached to other legislation. CLCs may also arise outside of a constitutionally-guided, legislative process, such as a federal penal policy that is adopted or imported into state sentencing statutes. Many CLCs are policies put into effect by unelected officials and outside of judicial review.⁷
8. The United States has failed to measure the implementation, impact, or effectiveness of CLCs.⁸ One non-governmental study has identified over 70 categories of CLCs, all of which can be imposed by federal, state, and local governments through legislation, rules, and policies.⁹ A database of state and federal statutory and regulatory codes that impose CLCs lists over 500 consequences imposed by Minnesota’s state-level statutes and regulations, and over 1,000 consequences imposed by federal statutory and regulatory codes. This does not capture consequences imposed by local ordinances or policies by public and private actors, such as landlords or employers that may lawfully use criminal history to deny housing or employment.¹⁰ The Brennan Center estimates there are over 45,000 state and local laws and regulations that impose these broad ranges of CLCs.¹¹
9. Some statutory disqualifications based on criminal record are mandatory and immediately imposed. Others are imposed but can be waived by individual states. Others facilitate restrictions, such as rules that make criminal histories publicly accessible for employers and landlords who conduct background checks. CLCs can include: lifetime bans from public

⁶ National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, (Dec. 2019), 51.

⁷ Jeremy Travis, “Invisible Punishment: An Instrument of Social Exclusion,” in Marc Mauer and Meda Chesney-Lind (eds.), *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (2002), 16. Professor Gabriel J. Chin expanded on this phenomenon in Gabriel J. Chin and Richard W. Holmes Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 Cornell Law Review 697 (2002).

⁸ Jeremy Travis, “Invisible Punishment: An Instrument of Social Exclusion,” in Marc Mauer and Meda Chesney-Lind (eds.), *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (2002), 16.

⁹ Margaret Colgate Love, Jenny Roberts, and Cecelia Klingele, *Collateral Consequences of Criminal Convictions: Law, Policy, and Practice* (book is published in 2013 by Thomson West and is regularly updated online on Westlaw - last updated Nov. 2021).

¹⁰ National Inventory of Collateral Consequences of Conviction, “Collateral Consequences Inventory,” accessed May 12, 2022, <https://niccc.nationalreentryresourcecenter.org/consequences>.

¹¹ Cameron Kimble and Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, Brennan Center for Justice, Jun. 21, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment>.

housing¹² and food support¹³ lifetime registry in sex offender databases;¹⁴ lifetime restrictions on freedom of movement;¹⁵ and lifetime bans on voting¹⁶ and from participation in civic processes.¹⁷ Even where a restriction or disqualification isn't permanent, some CLCs restrict fundamental rights at critical moments, such as barring access to housing in the period right after release from incarceration, or for over long periods of time.¹⁸

10. CLCs exacerbate disparities in arrest and incarceration among homeless people. Many people are homeless because a CLC has prevented their access to public housing (discussed below) and they cannot afford a home through the private market.¹⁹ States in the U.S. have created a whole host of laws that criminalize conduct that is prevalent in, and sometimes necessary or unavoidable for, homeless communities. These laws often prohibit necessary activities like bathing, sleeping, and spending long amounts of time in public spaces. While these laws technically apply to everyone,²⁰ they're more likely to be enforced against a homeless person, and often lead to citation or arrest. These arrests come with fines that a homeless person will struggle to pay, and outstanding warrants and fines can escalate into much more severe charges and incarceration, leaving and yet another mark on someone's record when they re-enter

¹² See e.g., 42 U.S.C. § 13663; 24 C.F.R. § 982.553(a)(2)(i) (sex offenses); 42 U.S.C. § 1437n(f)(1); 24 C.F.R. § 982.553(a)(1)(ii)(C) (serious drug offenses)

¹³ 21 U.S.C. § 862(a)(1). Over 180,000 women in states that adopted the federal welfare ban were denied access to public benefits between 1996 and 2011. Marc Mauer and Virginia McCalmont, "A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits," SENTENCING REPORT (2013), <https://www.sentencingproject.org/publications/a-lifetime-of-punishment-the-impact-of-the-felony-drug-ban-on-welfare-benefits/>.

¹⁴ 34 U.S.C §§ 20913-15.

¹⁵ 34 U.S.C § 20914(a)(7); 18 U.S.C. § 2250

¹⁶ Felony disenfranchisement laws vary state-by-state, but some include lifetime bans on voting or impose bans unless people undergo burdensome procedures to restore their civil rights. See 50-State Comparison: Loss and Restoration of Civil Rights & Firearms Rights, Restoration of Rights Project, Collateral Consequences Res. Ctr. <http://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges>. Notably, Missouri has a law where any misdemeanor conviction related to "the exercise of the right of suffrage" is permanently disenfranchised. Mo. Rev. Stat. § 561.026(2). States have charged and convicted people for unlawfully voting even where the voter did not realize they were ineligible. Sam Levine, *A White Man Got Probation for Voting Fraud. A Black Woman Faced Six Years in Prison for an Error*, The GUARDIAN (Mar. 3, 2022) <https://www.theguardian.com/us-news/2022/mar/03/voter-fraud-election-crime-sentencing-racial-disparity>.

¹⁷ See 50-State Comparison: Loss and Restoration of Civil Rights & Firearms Rights, Restoration of Rights Project, Collateral Consequences Res. Ctr., <http://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/> for a survey of state laws on loss and restoration of jury rights. New Jersey's Forfeiture Act provides an especially strict example, and state courts have interpreted it to bar those convicted of "an offense involving or touching on his public office, position or employment . . ." from all government employment. See N.J. Stat. Ann. § 2C:51-2(d); *Cedeno v. Montclair State University*, 163 N.J. 473, 750 A.2d 73 (2000); *Pastore v. County of Essex*, 237 N.J. Super. 371, 568 A.2d 81 (App. Div. 1989).

¹⁸ Margaret Love & David Schlüssel, *Waiting for Relief: A National Survey of Waiting Periods for Record Clearing*, Collateral Consequences Res. Ctr. (Feb. 2022).

¹⁹ Cameron Kimble & Ames Grawert, *Collateral Consequences and the Enduring Nature of Punishment*, The Brennan Center for Justice (June 2021), <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment>.

²⁰ For example, many laws prohibit loitering and vagrancy, but are vaguely defined and selectively enforced. Just about everyone in the United States has lingered in a public place, but someone who appears visibly homeless or poor is more likely to have received a citation for it. National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, (Dec. 2019), 50.

society.²¹ While some U.S. jurisdictions have made progress on addressing these concerns,²² programs and outcomes vary widely based on location and political will of the jurisdiction, resulting in unequal treatment depending on where the person lives. U.S. courts have started to interpret these laws as violations of the U.S. Constitution and anti-discrimination laws but change to the local and state laws and policies have been slow.²³

11. **Suggested questions** related to criminalization of homelessness:

- Please describe recent and ongoing measures to repeal laws that disproportionately affect people who are homeless or experiencing extreme poverty.
- What alternatives, if any, has the United States considered to continued enforcement of laws that disproportionately affect people who are homeless or experiencing extreme poverty?
- Please describe any policies and programs that gather data related to criminalization of poverty, such as numbers of arrests and convictions—disaggregated by race and gender—for inability to pay fines.

II. Discrimination and segregation in housing (Concluding Observations paragraph 13)

12. The Committee also expressed concern about the “persistence of discrimination in access to housing on the basis of race, colour, ethnicity, or national origin” and “high degree of racial segregation and concentrated poverty” in neighborhoods that are disproportionately populated by members of BIPOC communities.²⁴ The Committee called upon the United States to “ensure availability of affordable and adequate housing for all [by implementing nondiscrimination requirements] across all agencies administering housing programmes,” and “strengthening the implementation of legislation to combat discrimination in housing.”²⁵
13. In its 2021 State Party Report, the United States describes a federal strategic plan to prevent and end homelessness and the issuance of a HUD “public notice concerning use of arrest records in housing decisions, prohibiting blanket bans on renting to people with criminal records.”²⁶ While that Notice does inform public housing authorities and owners that “arrest

²¹ Madeline Bailey, Erica Crew, & Madz Reeve, *No Access to Justice: Breaking the Cycle of Homelessness and Jail*, Vera Institute (Aug. 2020), <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/08/homelessness-brief-web.pdf>.

²² Center on Budget and Policy Priorities, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, by Alison Bell, Barbara Sard, and Becky Koepnick (Washington, D.C., 2018), available online at <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>.

²³ *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (“[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”).

²⁴ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of American*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 13.

²⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of American*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 12(a), ¶¶ 13(a), (b).

²⁶ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention*, due in 2017, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 45.

records may not be the basis for denying admission, terminating assistance, or evicting tenants” and that HUD does not *require* adoption of “One Strike” policies, and must “safeguard the due process rights of applicants and tenants,” the law continues to allow evictions or terminations if household members or guest engages in “certain drug-related or certain other criminal activity on or off the premises, and requires denial of admission or termination of assistance for public housing for a whole host of criminal activity.”²⁷

14. Having a criminal record results in significant restrictions on one’s ability to secure and maintain housing in the U.S. The Housing Opportunity Extension Act of 1996 requires local police departments to provide criminal conviction records to local public housing authorities to help with screening, lease enforcement, and eviction.²⁸ The public housing authorities apply strict admission and eviction standards geared towards screening out people who engage in criminal behavior.²⁹ Federal laws require housing authorities to categorically deny admission to anyone who has been convicted for certain sex offenses³⁰ and serious drug crimes,³¹ particularly where this mandated ban also includes a prior eviction by “reason of drug-related criminal activity” in the past three years.³²
15. Approximately 600,000 people reenter society after serving a jail or prison sentence; the majority having been convicted for drug-related offenses.³³ The over-criminalization of drug use and the disproportionate and discriminatory impact of that criminalization on BIPOC communities results not only in large numbers of people of color entering the criminal justice system, but also the ongoing impact of CLCs on their access to housing.
16. Additionally, federal law authorizes local housing authorities to develop their own admissions policies surrounding criminal activity relating to drugs or violence, and they may also develop policies over criminal activity that poses a threat to health, safety, and welfare of other

²⁷ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 45.

²⁸ 42 U.S.C. § 1437d(q)(1)(A).

²⁹ 24 CFR § 966.4(1)(5)(vii).

³⁰ 42 U.S.C. § 13663; 24 C.F.R. 982.553(a)(2)(i).

³¹ 42 U.S.C. § 1437n(f)(1); 24 C.F.R. § 982.553(a)(1)(ii)(C). *See e.g.*, 42 U.S.C. § 1437n(f)(1) (permanent prohibition from public housing for people convicted of manufacturing or otherwise producing methamphetamine); 24 C.F.R. § 982.553 (Denial of admission and termination of assistance for criminals and alcohol abusers, including a three-year prohibition from the date of eviction of any household member for drug-related criminal activity). Requiring housing authorities to deny admission to applicants whose household members have had an eviction for drug-related activity in the last three years is troubling, because different regulations give housing authorities wide latitude for eviction actions. *See* 24 C.F.R. § 966.4(1)(5)(i) (eviction allowed for “drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant’s household or guest, and any such activity engaged in on the premises by any other person under the tenant’s control”).

³² Federal Interagency Reentry Council, *A Record of Progress and Roadmap for the Future* (Aug. 2016), <https://nicic.gov/federal-interagency-reentry-council-record-progress-and-roadmap-future-0>; Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, Brookings Institution (Mar. 2018), https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf

³³ 42 U.S.C § 13661(a). The statute does allow housing authorities to waive this ineligibility, but first, the evicted tenant must complete a rehabilitation program that has been approved by the housing authority.

³³ Federal Interagency Reentry Council, *A Record of Progress and Roadmap for the Future* (Aug. 2016), <https://nicic.gov/federal-interagency-reentry-council-record-progress-and-roadmap-future-0>; Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, Brookings Institution (Mar. 2018), https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

residents.³⁴ Local public housing authorities tend to interpret the latter category very broadly and are quick to deny admission to applicants with other types of convictions.³⁵

17. Even non-violent offenses have resulted in federal housing authorities rejecting applicants. Examples of minor offenses include shoplifting (even stealing Chapstick and other small items while experiencing homelessness), not paying for video rentals, and paying for merchandise with personal checks when their bank accounts lacked sufficient funds.³⁶
18. Public housing authorities may evict entire families for something as minor as a household member's *suspected* criminal activity³⁷ or a guest's off-site criminal activity³⁸ and allow private and public housing to turn away applicants with a criminal record.³⁹
19. Laws that allow housing-related CLCs do not provide sufficient due process protections to people. Under "One Strike and You're Out" rhetoric⁴⁰ and regulation,⁴¹ the Federal Government authorized eviction in the first instances of suspected drug-related activity. While this guidance says tenants must have notification and opportunity to dispute the accuracy and relevance of a criminal record before denial and may request an informal hearing or review after an application is denied, in practice, people in these situations are often denied or lose their right to housing without adequate due process. Decisions to reject an application or evict a family can happen very quickly. For example, in Minnesota, tenants might only have one week to prepare for an eviction hearing⁴² and people are not guaranteed an attorney to assist.
20. Procedures to appeal or dispute an adverse decision are often *very* complicated and can take a long time. A volunteer reported to The Advocates experience working a mother to navigate the multi-step process of appealing an adverse housing decision. The local housing authority

³⁴ 42 U.S.C. § 13661(c); 24 C.F.R. § 5.855 (allowing housing providers to deny admission to federally assisted housing for four categories of criminal activity that is ongoing or occurred prior to application)

³⁵ Marie Claire Tran-Leung, Sargent Shriver Nat'l Center on Poverty Law, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing* 9 (2015), <https://www.povertylaw.org/article/when-discretion-means-denial>.

³⁶ Human Rights Watch, *No Second Chance: People with Criminal Records Denied Access to Public Housing* (2004), 46.

³⁷ 24 C.F.R. § 982.553(c) ("The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.")

³⁸ *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002) included in its holding that a set of grandparents were rightfully evicted after their grandsons were charged with smoking marijuana in a parking lot near their apartment, a tenant was rightfully evicted after police found cocaine on his caregiver, and a father was rightfully evicted because his daughter was arrested, a few blocks from home, for possession of cocaine. Michelle Alexander, *The New Jim Crow*, 183-84 (2020).

³⁹ 42 U.S.C. § 13661(c) (screening of applicants for federally assisted housing). Private landlords can usually implement their own screening procedures, and nine out of ten use criminal background checks, some of which are supplied by companies that are unregulated and not required to register with a government agency. Jaboa Lake, *Preventing and Removing Barriers to Housing Security for People with Criminal Convictions*, Center for American Progress (Apr. 2021), <https://www.americanprogress.org/article/preventing-removing-barriers-housing-security-people-criminal-convictions>.

⁴⁰ President Bill Clinton, State of the Union Address, January 23, 1996.

⁴¹ U.S. Dep't of Hous. & Urban Dev., "One Strike and You're Out" Policy in Public Housing 3 (1996), reprinted in Office of Pub. and Indian Hous., U.S. Dep't of Hous. and Urban Dev., Notice PIH 96-16 (HA) "One Strike and You're Out" Screening and Eviction Guidelines for Public Housing Authorities (HAs) (1996).

⁴² Minn. Stat. § 504B.321.

justified its decision because the mother had violated a policy she'd signed, but when she had an opportunity to testify, she shared that she had been presented with several lengthy documents—each containing complicated provisions—and didn't feel like she had time to read them closely or ask questions before signing.

21. Further, there is no guarantee of housing while one awaits resolution of the situation, meaning people may be homeless—and, therefore, facing additional opportunities for interactions with police and other safety concerns—while navigating the process. Because people may be homeless while appealing, that also means loss of access to necessary services to prepare their case, and a decreased likelihood of success in their claim.
22. There have been some recent successes in challenging racially discriminatory housing decisions. For example, in August 2019, the Civil Rights Division of the U.S. Department of Justice “resolved a case alleging that the owners and operators of an apartment complex in Tennessee had discriminated based on race when they denied an application from an African American prospective tenant because of his criminal record, but approved the applications of two similarly situated white prospective tenants with felony convictions.”⁴³ Although this is helpful progress, case-by-case litigation takes time and resources, doesn't address an immediate need for housing, and doesn't prevent discrimination from happening in other areas.
23. Even where blanket bans have been lifted, practices can result in discrimination. Most landlords, whether public or private, conduct background reports on prospective tenants.⁴⁴ Private landlords can pass this cost on to applicants through application fees, which adds up very quickly when tenants must apply to multiple places in hopes of finding one who will accept them. When a landlord denies a tenant due to information in a background screening, the landlord need only provide a name of the screening company, but not a copy of the report itself.⁴⁵
24. **Suggested questions** relating to discrimination and segregation in housing:
 - Please provide comprehensive data, disaggregated by race and sex, about the number of people who lose access to housing due to a collateral consequence (their own, or that of a member of their household). If these data are not available, please describe efforts to collect it.
 - Please provide data, disaggregated by sex and race, on adverse housing decisions based on criminal activity, appeal rate, and results of appeals.
 - What steps has the United States taken to support people who play no role in a household member—or guest's—criminal activity but nevertheless are at risk of adverse housing decisions?

⁴³ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 52.

⁴⁴ Consumer Financial Protection Bureau, *Justice-Involved Individuals and the Consumer Financial Marketplace* at 30 (Jan. 2022).

⁴⁵ Consumer Financial Protection Bureau, *Justice-Involved Individuals and the Consumer Financial Marketplace* at 32 (Jan. 2022). "For tenant screening, a landlord needs to inform the prospective tenant that there was an adverse action, advise them of their dispute rights, and share the name and contact information of the consumer reporting company used so that the prospective tenant can request a report from that company; the landlord need not provide a copy of the report itself."

- Please describe efforts to improve interagency coordination to develop and support reentry initiatives and reduce recidivism.
- What steps has the United States taken to enforce compliance with HUD’s 2016 public notice concerning use of arrest records in housing decisions and prohibiting blanket bans on renting to people with criminal records?
- What policies and procedures does the United States have in place to learn about and address housing authorities that issue adverse housing decisions for very minor criminal records and/or suspected criminal activity?
- What measures are in place to ensure housing authorities are not abusing their discretion and/or rigidly applying outdated One Strike policies?
- Please describe efforts to train housing authorities to move away from strict adherence to outdated One Strike policies.
- What policies are in place or under consideration to ensure tenants and applicants receive an individualized assessment that doesn’t overly rely on their criminal history?
- What steps has the United States taken to ensure that policies that preclude denial solely for a criminal conviction don’t allow housing agencies to nevertheless use evidence of criminal convictions as evidence of safety-risk?

III. Criminal Justice System (Concluding Observations paragraph 20)

25. In its 2014 Concluding Observations, the Committee expressed ongoing concern about racial disparities, especially for African Americans, in the criminal justice system. These concerns included disproportionately high rates of arrest, incarceration, and harsh sentencing.⁴⁶
26. In its 2021 State Party Report, the United States cites the First Step Act of 2018 as a reform “help[ing] to address racial disparities in the federal criminal legal system.”⁴⁷ This is indeed a helpful first step, especially because it indicates the United States is aware that its “facially neutral” laws disproportionately harm African Americans and can act to remedy these disparate impacts.
27. Some jurisdictions in the U.S. have made positive developments toward ensuring greater racial justice in criminal proceedings. These advances are the exception, however, and not the rule. Further, reforms to date have not addressed the discriminatory impact of CLCs.
28. BIPOC communities in the U.S. face racial discrimination in the criminal justice system before, during, and after criminal proceedings.⁴⁸ These racial disparities shape outcomes

⁴⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, adopted by the Committee at its 2317th session (26 August 2014), U.N. Doc CERD/C/USA/CO/7-9, ¶ 20.

⁴⁷ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (2 June 2021), U.N. Doc. CERD/C/USA/10-12, ¶ 114.

⁴⁸ Nazgol Ghandnoosh, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*, SENTENCING PROJECT 10-12, 15-18 (2015) <https://www.sentencingproject.org/publications/black-lives-matter-eliminating-racial-inequity-in-the-criminal-justice-system/>.

before, during, and after someone enters the criminal justice system, perpetuate ongoing cycles of poverty and racial discrimination.⁴⁹ BIPOC people are charged more frequently by prosecutors and held in pretrial detention, which harms their prospects for trial.⁵⁰ As a result, members of BIPOC communities are more likely to take plea deals or face racial discrimination at trial. Upon sentencing, Black and Latino/a people are more likely to be sentenced for more serious offenses⁵¹ for longer periods of time. Department of Justice data reflect that in 2019, the Black to white ratio of incarcerated people was 4.8:1.⁵² Extreme disparities still exist in 20 states,⁵³ including The Advocates' headquarters state of Minnesota, which ranks 47th in the nation in overall incarceration rates, yet the Black to white rate of incarceration is 9.7:1.⁵⁴

29. Despite representing 13 percent of the U.S. population, Black people make up 27 percent of people arrested for drug possession and distribution. This disparity is even more marked for sentencing decisions: 31 and 38 percent of people sentenced to state and federal prison (respectively) for drug-related crimes are Black. White people make up 73 percent of the population, and while they are proportionally represented in drug arrests, their sentencing rate represents 31 percent for state sentences and 22 percent for federal sentences.
30. Because of the complexity of the U.S. criminal justice system, the harsh consequences of CLCs often have an impact beyond that understood or intended. For example, the list of crimes considered “felonies” that trigger extensive CLCs has expanded beyond violent and dangerous crimes, triggering severe infringements on rights. Statutes imposing CLCs are often overinclusive rather than limiting to those with relevant convictions. For example, crimes that trigger disenfranchisement do not need to be serious or connected to voting to trigger CLCs. In Minnesota, writing a bad check for more than \$500 can trigger a felony conviction,⁵⁵ which, in many states, results in lifetime disenfranchisement.
31. CLCs do not always deliver on a stated policy or safety goal. For example, CLCs are commonly justified as mechanisms that deter drug use and criminal behavior, but data show these laws are often both over and underinclusive. For example, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (commonly referred to as the Welfare Reform Act of

⁴⁹ The Sentencing Project, “Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance” (Mar. 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

⁵⁰ The Sentencing Project, “Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance” (Mar. 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

⁵¹ The Sentencing Project, “Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance” (Mar. 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

⁵² The Sentencing Project, “State-by-State Data,” accessed May 12, 2022, <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.%20Total&state2Option=Minnesota> “Racial/Ethnic Disparity in Imprisonment (2019)”.

⁵³ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT 6,9 (2021) <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>

⁵⁴ The Sentencing Project, “State-by-State Data,” accessed May 12, 2022, <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.%20Total&state2Option=Minnesota> “Racial/Ethnic Disparity in Imprisonment (2019)”.

⁵⁵ Minn. Stat. § 609.02, Minn. Stat. § 609.535

1996) imposes lifetime bans from various public benefits on people convicted of drug crimes.⁵⁶ However, this includes people who possess and sell, but do not necessarily use, drugs and it does not apply to drug users who have convictions for larceny, theft, robbery, or other felonies but no drug-related convictions.

32. As laws across the U.S. allow consideration of prior convictions in sentencing, CLCs can impact sentencing. Under the 2021 Minnesota Sentencing Guidelines and Commentary, criminal history (ranging from juvenile adjudications to felonies) is a basis for making a recommendation to impose a higher sentence.⁵⁷ If someone has several minor convictions—which could have arisen as a result of living in a neighborhood where they were subjected to racial profiling and disproportionately high risks of involvement with police—they are at a higher risk of receiving a harsher sentence, which can lead to a whole host of additional CLCs.⁵⁸
33. CLCs also have a collateral impact on people who do not have criminal records, such as family and community members, such as by losing an income provider or caretaker, or being included in evictions or revocation of benefits that support food and housing.⁵⁹
34. CLCs can lead to revocation of custody rights even for crimes that are unrelated to child safety. Moreover, because of the impacts CLCs have on economic freedom, family members will lose financial support—further being forced into the poverty-criminalization cycle—when a family member is burdened with a CLC.
35. **Suggested questions** relating to the criminal justice system:
 - Please describe efforts to acknowledge, track, and discuss racial disparities, including implicit bias, in the criminal justice system.
 - Please provide comprehensive data, disaggregated by race and sex, about the number of people who are directly subject to one or more Collateral Legal Consequence. If these data are not available, please describe efforts to collect it.

⁵⁶ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, 110 Stat. 2015; 21 U.S.C. § 862(a)(1)(C). The Act authorized states to make exceptions to or fully opt out of these lifetime bans. Many states have done so today, but there is still substantial variation between states and policies that restrict government assistance, even for finite periods of time, exacerbate ongoing poverty rates. See Amanda Sheely, *State Supervision, Punishment and Poverty: The Case of Drug Bans on Welfare Receipt*, 23 *Punishment & Society* 413 (2021).

⁵⁷ Minnesota Sentencing Guidelines Commission, *MINNESOTA SENTENCING GUIDELINES AND COMMENTARY*, (Saint Paul, Minnesota: September 2021), https://mn.gov/sentencing-guidelines/assets/2021Sept15MinnSentencingGuidelinesCommentary_tcm30-497682.pdf.

⁵⁸ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT 14 n.52 (2021) <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (citing Frase, R. & Roberts, J. V. (2019). *Paying for the past: The case against prior record sentencing enhancements*. Oxford University Press).

⁵⁹ See e.g., Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022*, PRISON POL’Y INITIATIVE (2022) <https://www.prisonpolicy.org/reports/pie2022.html> (“Far more people are impacted by mass incarceration than the 1.9 million currently confined. An estimated 19 million people are burdened with the collateral consequences of a felony conviction . . . and an estimated 79 million have a criminal record of some kind; even this is likely an underestimate, leaving out many people who have been arrested for misdemeanors. Finally . . . 113 million adults (45%) have had an immediate family member incarcerated for at least one night. . . . racial disparities are particularly stark for Black Americans, who make up 38% of the incarcerated population despite representing only 12% of U.S. residents”).

- Please describe efforts ensure awareness of Collateral Legal Consequences prior to and during trial proceedings and pleas, both through pilot programs as well as efforts to adopt legislation nationwide.
- What steps have federal, state, and local governments taken to help people with criminal histories regain their civil rights and privileges? What barriers, such as burdensome and confusing processes, long waiting periods, and financial burdens are still in place and what efforts have been made to lower them?
- What steps have federal, state, and local governments taken to protect unnecessary disclosure of criminal histories, such as the rise of background checks for housing and employment?
- Please explain how public housing tenants and applicants are informed of their rights to appeal an adverse housing decision and any planned pilot programs or appropriations requests to ensure better access to justice, such as legal counsel, for people in these proceedings.
- What steps has the United States taken to ensure access to counsel and/or guidance with important civil issues like avoiding and appealing adverse housing decisions, sealing criminal records, and restoring civil rights?