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## Housing Instability and COVID-19

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## ARTICLE

# HOUSING INSTABILITY AND COVID-19

COURTNEY LAUREN ANDERSON\*

### INTRODUCTION

The pandemic's effects on people experiencing homelessness illuminate the need to address the exposure of this community to adverse health outcomes that are exacerbated at disproportionately high levels when external events that negatively impact everyone occur. This article describes the risks of being homeless, and how racial and other socioeconomic disparities within the homeless population necessitate comprehensive legal and policy reform to prevent people experiencing homelessness from further inequities. This reform should account for the interrelated causes for homelessness, and the best way to accomplish this is by utilizing funds to expand the availability of permanent supportive housing. Furthermore, policies related to housing instability for low-income people should be inherently anti-racist, given the demographic makeup of the homeless population.

First, this article will provide background information on the homeless population and reasons for homelessness. The next section will detail how COVID-19 worsens housing instability, and the physical and mental health effects of suffering homelessness. After a critique of housing policies that were implemented in response to the pandemic, the conclusion will set forth suggested reforms to protect this community from health risks and disease.

### PEOPLE EXPERIENCING HOMELESSNESS

Individuals experiencing homelessness have a higher risk of contracting and transmitting COVID-19 because they are more likely to come into contact with potentially infected surfaces and people, and cannot consistently and effectively practice social distancing and follow stay-at-home orders recommended by the Centers for Disease Control (the "CDC").<sup>1</sup> Also, a number of shelters that house homeless individuals are unable to follow the capacity guidelines implemented by the CDC and the Federal

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1. Leo Beletsky & Sterling Johnson, *Fighting the Coronavirus & Protecting the Unhoused: Policies & Polling*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 139, 139 (2020).

Emergency Management Agency to prevent and mitigate spreading the virus.<sup>2</sup>

A person is considered homeless, as defined by the U.S. Department of Housing and Urban Development's ("HUD"), "if their nighttime residence is a public or private place not intended for human habitation," or if they live in any congregate shelter, transitional shelter, or a hotel/motel room designed for temporary shelter and paid for at the expense of the government or charitable organization.<sup>3</sup> Every year, HUD conducts a Point-in-Time count to determine the number of people who are homeless on a single night in January.<sup>4</sup> In 2020, 580,466 individuals were identified as residing in transitional shelters or emergency shelters or were unsheltered.<sup>5</sup> Racial disparities are prevalent in the homeless population. Black people comprise approximately 13.4 percent of the population in the United States,<sup>6</sup> making the 39.4 percent of homeless people who are Black disproportionately high.<sup>7</sup> Among all racial and ethnic groups, Native Americans and Pacific Islanders have the highest susceptibility to homelessness, as 160 out of every 10,000 people in these communities experience homelessness, compared to the national average of approximately 17 out of 10,000.<sup>8</sup>

Eviction often leads to homelessness. People who get evicted are likely to be low-income individuals. If housing were more affordable, and there were support methods in place to alleviate poverty, this would mitigate instances of eviction. People of color experience eviction at high rates<sup>9</sup> and are overrepresented in the category of low-income individuals.<sup>10</sup> Over six million vacant housing units exist in the United States that could be repurposed for sheltering people who are homeless.<sup>11</sup> Twenty-five percent of all

2. *Id.*

3. HUD EXCHANGE, HOMELESS DEFINITION: RECORDKEEPING REQUIREMENTS AND CRITERIA 1 (2020), [https://files.hudexchange.info/resources/documents/HomelessDefinition\\_RecordkeepingRequirementsandCriteria.pdf](https://files.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf).

4. *Point in Time Count and Housing Inventory Count*, HUD EXCHANGE, <https://www.hudexchange.info/programs/hdx/pit-hic> (last visited Dec. 20, 2021).

5. U.S. DEP'T OF HOUS. AND URB. DEV., HUD 2020 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS HOMELESS POPULATIONS AND SUBPOPULATIONS (2020), [https://files.hudexchange.info/reports/published/CoC\\_PopSub\\_NatTerrDC\\_2020.pdf](https://files.hudexchange.info/reports/published/CoC_PopSub_NatTerrDC_2020.pdf).

6. *Quick Facts: United States*, U.S. CENSUS, <https://www.census.gov/quickfacts/fact/table/US/PST045219> (last visited Dec. 20, 2021).

7. U.S. DEP'T OF HOUS. AND URB. DEV., *supra* note 5.

8. *State of Homelessness: 2021 Edition*, END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2020> (last visited Dec. 20, 2021).

9. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, EVICTION LAB, <https://evictionlab.org/demographics-of-eviction> (last visited Dec. 20, 2021).

10. John Creamer, *Inequalities Persist Despite Decline in Poverty for all Major Race and Hispanic Origin Groups*, U.S. CENSUS, <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> (last visited Dec. 20, 2021).

11. Julie Gilgoff, *Pandemic-Related Vacant Property Initiatives*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 203, 208 (2020).

renters are categorized as extremely low-income, which totals 10.9 million households.<sup>12</sup> Six percent of renters identify as white and non-Hispanic. Twenty percent of extremely low-income renters are Black, 17 percent are American Indian or Alaskan Native, 15 percent identify as Hispanic, and 10 percent are Asian.<sup>13</sup> This shortage of just thirty-seven affordable and available rental homes for every one hundred extremely low-income renter households affects this community in every major metropolitan city and every state.<sup>14</sup> Decades of racial discrimination and systemic inequities have resulted in housing schemes that place people of color at inordinately high rates of eviction.<sup>15</sup> The country's affordable housing crisis is especially hazardous for Black and Latino individuals.<sup>16</sup> Black people are twice as likely as white people to be evicted, with Black women experiencing evictions at higher rates than any other group.<sup>17</sup> In fact, 20 percent of Black women have been evicted, compared with 6 percent of white women.<sup>18</sup> One reason the pandemic affects communities of color at higher rates is because people of color are more likely to rent rather than own their homes.<sup>19</sup> Forty-four percent of Black people, 49 percent of Latino people, and 74 percent of white people are homeowners.<sup>20</sup> Among renters, Black and Latino people spend a higher percentage of household income on rent.<sup>21</sup> People who identify as having a sexual orientation other than heterosexual or who represent a gender minority are also adversely impacted by homelessness at higher rates. Lesbian, Gay, Bisexual, Transsexual, and Queer youth experience homelessness twice as often<sup>22</sup> and for longer periods of time than their non-LGBTQ counterparts.<sup>23</sup> Since many LGBTQ youth are rejected or abused by their family, they avoid shelters and social services to avoid returning home.<sup>24</sup>

Among other things, this complicates the ability of these diverse households to save for emergencies and generate long-term wealth. It can

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12. Beletsky & Johnson, *supra* note 1, at 141.

13. Beletsky & Johnson, *supra* note 1, at 141.

14. *The Gap: A Shortage of Affordable Rental Homes*, NAT'L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/gap> (last visited Dec. 20, 2021).

15. Emily A. Benfer, Seema Mohapatra, Lindsay F. Wiley & Ruqaiyah Yearby, *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL'Y, L. & ETHICS 122, 159 (2020).

16. *Id.* at 150.

17. *Id.*

18. *Id.*

19. *Id.* at 155.

20. Victoria Finkle, Olivia Grob-Lipkis, Andrea Lau, Jorge Andres Soto & Morgan Williams, *Ensuring Fair Housing During the COVID-19 Pandemic*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 179, 185 (2020).

21. *Id.*

22. Joy H. Kim, *The Case Against Criminalizing Homelessness: Functional Barriers to Shelters and Homeless Individuals' Lack of Choice*, 95 N.Y.U. L. REV. 1150, 1184 (2020).

23. *Id.*

24. *Id.*

also make it difficult to spend money on other necessities, such as food and healthcare.<sup>25</sup> The demographics of the homeless population and the lack of affordable housing make it clear that solutions enacted to eradicate homelessness should address what perpetuates homelessness at such alarmingly high rates within these communities. In addition to directly serving these communities, reducing rates of homelessness is positive public health policy, especially during a pandemic when mobility increases the rates of a virus' spread.

### EVICTION CRISIS AND COVID-19

In August 2021, nearly six million households had past due rental payments, putting them at a high risk for eviction.<sup>26</sup> Eviction can lead to homelessness, which is associated with higher rates of COVID-19 infections, but eviction can also increase transmission rates of COVID-19 and the serious complications that can arise from the virus.<sup>27</sup> Housing displacement makes testing more difficult and creates additional obstacles to seeking medical care.<sup>28</sup> In addition to the barriers to prioritizing health in the face of eviction, this has implications for increased community transition, and even mortality.<sup>29</sup>

Pandemic-related job and wage loss have fueled the eviction crisis, and many households are behind on rent. Nearly 16 percent of renters were behind on their rent payments in late October.<sup>30</sup> Delinquency rates were even higher for Black and Latino renters, renters with a high school education or less, and low-income renters.<sup>31</sup> One in four renters have no or slight confidence they can pay next month's rent on time and another quarter have only moderate confidence they can do so.<sup>32</sup> All told, fewer than half of renters who owe rent are highly confident that they can pay it on time.<sup>33</sup>

Eviction has a high likelihood of spreading COVID-19. The U.S. Census Household Pulse Survey illustrated that nearly 50 percent of households who owe rent to landlords expected to get evicted within sixty days.<sup>34</sup> Transiency is an inherent part of evictions, and this puts many more people at a

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25. Finkle, *supra* note 20, at 186.

26. Sarah Treuhaft, Michelle Huang, Alex Ramiller, Justin Scoggins, Abbie Langston & Selena Tan, *Rent Debt in America: Stabilizing Renters Is Key to Equitable Recovery*, NAT'L EQUITY ATLAS (Sept. 16, 2021), <https://nationalequityatlas.org/rent-debt-in-america>.

27. Benfer, Mohapatra, Wiley & Yearby, *supra* note 15, at 149.

28. Benfer, Mohapatra, Wiley & Yearby, *supra* note 15, at 149.

29. Benfer, Mohapatra, Wiley & Yearby, *supra* note 15, at 149.

30. DAN THREET, ANDREW AURAND, MACKENZIE PISH, KYLIE ALLEN & SAMUEL CARROLL, *Costs of COVID-19 Evictions*, NAT'L LOW INCOME HOUS. COAL. 1, 3 (2020), <https://nlihc.org/sites/default/files/costs-of-covid19-evictions.pdf>.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Household Pulse Survey*, U.S. CENSUS, <https://www.census.gov/data-tools/demo/hhp/#> (last visited Dec. 20, 2021).

higher risk of contracting COVID-19.<sup>35</sup> The elevated possibility of transmission within households makes moving to new households, shelters, and increasing capacity within households a public health risk during the pandemic.<sup>36</sup> There is a positive correlation between unvaccinated people and people who have been evicted.<sup>37</sup> Unvaccinated individuals have a higher risk of contracting and spreading COVID-19, so this is another way that eviction threatens both public and individual health.<sup>38</sup>

### THE CRIMINAL JUSTICE SYSTEM AND HOMELESSNESS

Disparate creation and enforcement of criminal laws and policies has resulted in people of color and people who are marginalized, due to other socioeconomic factors, being more likely to be incarcerated. Increases in prison and jail rates due to laws that gave harsher penalties for possession and distribution of crack compared to cocaine, and “three strikes” rules, are examples of laws that disproportionately harmed communities of color.<sup>39</sup> The overrepresentation of racial and ethnic minorities in prisons and jails means that these individuals are exposed to environments where overcrowding and other factors create a higher risk of contracting COVID-19.<sup>40</sup>

Policies and laws that place punitive measures on behavior that is inherent to being without a home are the processes of criminalizing homelessness.<sup>41</sup> Such policies and laws have the intent of physically removing the presence of homeless people without instituting a long-term solution to homelessness or its underlying causes.<sup>42</sup> Examples of policies and laws in-

35. Melissa Perri, Naheed Dosani & Stephen W. Hwang, *COVID-19 and People Experiencing Homelessness: Challenges and Mitigation Strategies*, 192 CANADIAN MED. ASS'N J. E716, E717 (June 29, 2020).

36. *Id.*

37. Vaughn Barry, Sharoda Dasgupta, Daniel L. Weller, Jennifer L. Kriss, Betsy L. Cadwell, Charles Rose, Cassandra Pingali, Trieste Musial, J. Danielle Sharpe, Stephen A. Flores, Kurt J. Greenlund, Anita Patel, Andrea Stewart, Judith R. Qualters, LaTrece Harris, Kamil E. Barbour & Carla L. Black, *Patterns in COVID-19 Vaccination Coverage, by Social Vulnerability and Urbanicity*, CTR. FOR DISEASE CONTROL & PREVENTION (June 4, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7022e1.htm>.

38. *Delta Variant: What We Know About Science*, CTR. FOR DISEASE CONTROL & PREVENTION (Aug. 26, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html?s\\_cid=11511:can%20vaccinated%20people%20spread%20delta.sem.ga.p:RG:GM:gen:PTN:FY21](https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html?s_cid=11511:can%20vaccinated%20people%20spread%20delta.sem.ga.p:RG:GM:gen:PTN:FY21).

39. Jelani Jefferson Exum, *Forget Sentencing Equality: Moving From the “Cracked” Cocaine Debate Toward Particular Purpose Sentencing*, 18 LEWIS & CLARK L. REV. 95, 99–102 (2014).

40. *A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT (Nov. 20, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

41. Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 102–03 (2019); Sarah Gerry, *Jones v. City of Los Angeles: A Moral Response to One City’s Attempt to Criminalize, Rather than Confront, Its Homelessness Crisis*, 42 HARV. CIV. RTS. CIV. LIBERTIES L. REV. 239, 250–51 (2007).

42. Rankin, *supra* note 41; Gerry, *supra* note 41.

clude anti-loitering laws, laws that prohibit sleeping outside or in cars, actions such as clearing homeless encampments, transporting homeless people to different cities or states, and other mechanisms targeting behavior that is generally necessary for people who are experiencing homelessness to survive or perform everyday functions.<sup>43</sup>

Incarcerated and formerly incarcerated individuals are often refused public housing assistance, making it difficult to secure housing upon release from jail or prison, and for periods of time thereafter. Although people in prisons and jails were being released to home confinement to slow the spread of the virus, many people had no home to go to.<sup>44</sup> The lack of housing options means that this population is leaving an environment that puts them at a high risk of contracting COVID-19 into an unsheltered existence, which is also determinantal to their health and well-being. This phenomenon affects Black women and men at higher rates than other races.<sup>45</sup>

Participants in the federal government's Housing Choice Voucher program are low-income families in need of financial assistance to live in suitable rental housing without experiencing extreme rental cost burdens.<sup>46</sup> Housing Choice Voucher programs exclude many formerly incarcerated individuals.<sup>47</sup> Allowing non-violent people who have been released from prison or jail access to these vouchers would expand the number of people who may receive monetary assistance for housing. Since the federal laws did not allocate funds to assist these people, or loosen existing constraints they face in finding shelter, additional programs should be instituted that take these measures. Housing policies, particularly those that purport to address the racial imbalance within the unhoused demographic, should strongly advocate for the anti-criminalization of homelessness. Incarcerating people for not having shelter only exacerbates the effects of homelessness and places these people at greater health risks.

#### THE GOVERNMENT'S RESPONSE TO HOMELESSNESS

Although there were several housing policies, programs, and funding opportunities to address housing instability as a result of COVID-19, most of the suggestions focused on short-term fixes, without enough attention to

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43. Rankin, *supra* note 41; Gerry, *supra* note 41.

44. Joseph Neff & Keri Blakinger, *Few Federal Prisoners Released Under COVID-19 Emergency Policies*, THE MARSHALL PROJECT (April 25, 2020), <https://www.themarshallproject.org/2020/04/25/few-federal-prisoners-released-under-covid-19-emergency-policies>.

45. Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL'Y (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

46. *Housing Choice Voucher Fact Sheet*, U.S. DEP'T OF HOUS. AND URB. DEV., [https://www.hud.gov/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://www.hud.gov/topics/housing_choice_voucher_program_section_8) (last visited Dec. 11, 2021).

47. NAT'L HOUS. L. PROJECT, HOW DOES A CRIMINAL RECORD AFFECT YOUR HOUSING RIGHTS? PUBLIC HOUSING AND SECTION 8 VOUCHERS IN ALAMEDA COUNTY, [https://www.nhlp.org/files/Fact%20sheet%20for%20potential%20tenants%20-%20AC\(final\).pdf](https://www.nhlp.org/files/Fact%20sheet%20for%20potential%20tenants%20-%20AC(final).pdf); 24 C.F.R. § 982.10(c) (1994).

the underlying causes of homelessness. The federal government implemented the American Rescue Plan Act, the December COVID-19 relief bill, and the CARES Act.<sup>48</sup> Close to eighty-five billion dollars in emergency rental and homelessness assistance from these laws have resulted in increased housing stability, rent and utility payment relief, temporary housing, and similar services and programs.<sup>49</sup>

The CDC issued an order for a moratorium on evictions that expired on October 3, 2021.<sup>50</sup> This moratorium is the latest in a series of moratoriums initiated and extended by the CDC and applies to areas “experiencing substantial and high levels of community transmission levels of SARS-CoV-2 as defined by the CDC, as of August 3, 2021.”<sup>51</sup> The first CDC order to halt evictions was put into place on September 4, 2020 and was set to expire at the end of December 2020.<sup>52</sup> This order was extended until January 31, 2021.<sup>53</sup> Congress provided over forty-five billion dollars in rental assistance during 2021.<sup>54</sup> The CDC’s eviction moratorium was further extended, with the announced final extension to be July 31, 2021.<sup>55</sup> However, the Delta variant of COVID-19 necessitated the current order, which still may be modified.<sup>56</sup>

Although eviction moratoria are effective at lowering the number of eviction filings, they do not completely prevent evictions.<sup>57</sup> Despite the fact that eviction moratoria nationwide resulted in 1.5 million fewer evictions in 2020 when compared to eviction filings in 2019, there were still an excess of 450,000 evictions filed during the pandemic.<sup>58</sup> At some point, the eviction moratoria will end. Studies have shown that the risk of contracting COVID-19 increases when there are not protections in place to stop evictions from happening.<sup>59</sup> Up to 100,000 new cases of COVID-19 could be

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48. *Coronavirus Housing and Homelessness Resources*, NAT’L LOW INCOME HOUS. COAL. (2022), <https://nlihc.org/coronavirus-and-housing-homelessness>.

49. *Id.*

50. MAGGIE McCARTY, DAVID CARPENTER & LIBBY PERL, CONG. RSCH. SERV., IN11673, THE CDC’S FEDERAL EVICTION MORATORIUM (Aug. 31, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11673>.

51. *Id.*

52. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020) (effective through Dec. 31, 2020).

53. McCARTY, CARPENTER & PERL, *supra* note 50.

54. CONG. RSCH. SERV., PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM 1 (Oct. 21, 2021), <https://crsreports.congress.gov/product/pdf/R/R46688>.

55. McCARTY, CARPENTER & PERL, *supra* note 50.

56. McCARTY, CARPENTER & PERL, *supra* note 50.

57. *See* EVICTION LAB (Nov. 20, 2021), <https://evictionlab.org/eviction-tracking>.

58. *Id.*

59. *Id.*



attributable in the event of mass evictions.<sup>60</sup> It is also significant to note that the spread of COVID-19 related to eviction crosses state lines.<sup>61</sup>

The CDC eviction moratorium in no way relieves individuals of the obligations they have under any lease or tenancy agreement. Such obligations include, but are not limited to, rental payments, late fees, penalties, and interests or other payments.<sup>62</sup> New York State's eviction moratorium prohibits late fees. However, in August 2021, the US Supreme Court temporarily lifted the ban on eviction instituted by New York while the case was being argued.<sup>63</sup> The suit was brought by five New York landlords who argued that their Fourteenth Amendment right to due process was abridged since a tenant's declaration of financial hardship prohibits a landlord from pursuing a remedy of eviction.<sup>64</sup> The landlords argued that the compulsory declaration form they are required to provide tenants against the landlords' will deprives them of their First Amendment right to free speech.<sup>65</sup> Ultimately, the justices agreed that the ability of tenants to declare a financial hardship, without providing additional documentation or evidence, was unconstitutional.<sup>66</sup>

Many of the solutions provided by the federal government are short-term solutions. Long-term solutions are necessary to create ongoing housing stability, particularly for those who face mental and physical health ailments.<sup>67</sup> Although Congress allocated billions of dollars to provide funding for programs seeking to eradicate and mitigate the occurrences and effects of homelessness, logistical issues reduced the effectiveness of the funds.<sup>68</sup> Localities were not provided proper guidance by the federal government, which led to cities and counties delaying expenditure of the funds.<sup>69</sup> Moving forward, housing policies should provide as much direct cash assistance as possible to low-income renters and low-income landlords who are in need.

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60. Kathryn M. Leifheit, Sabriya L. Linton, Julia Raifman, Gabriel L. Schwartz, Emily A. Benfer, Frederick J. Zimmerman & Craig Evan Pollack, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190 AM. J. EPIDEMIOLOGY 2503 (Dec. 2021).

61. *Id.*

62. *Id.*

63. Andrew Chung, *U.S. Supreme Court Lifts New York's Pandemic-Related Eviction Ban*, REUTERS (Aug. 13, 2021), <https://www.reuters.com/legal/government/us-supreme-court-lifts-new-yorks-pandemic-related-eviction-ban-2021-08-12>.

64. *Id.*

65. *Id.*

66. *See* Chrysfafis v. Marks, 141 S. Ct. 2482, 2482 (2021).

67. Michael Novasky & Tina Rosales, *Mental Health and Homelessness in the Wake of Covid-19: The Path to Supportive and Affordable Housing*, 68 UCLA L. REV. DISCOURSE 130, 139–41 (2020).

68. Molly Bohannon, Katie Surma, Austin Fast, Nino Abdaladze, Megan Lupo, Jamie Fields & Sanjana Garg, *COVID-19 is 'A Crisis Within A Crisis' for Homeless People*, ASSOCIATED PRESS (Aug. 24, 2021), <https://www.usatoday.com/story/news/investigations/2020/08/28/covid-19-invisible-victims-homeless-people/5636938002/>.

69. *Id.*

A minimum of one hundred billion dollars is estimated to be needed to provide housing stability for renters as a result of the pandemic.<sup>70</sup> Although this number is large, it is important to consider that there is a public cost to homelessness.<sup>71</sup> An estimated \$27–\$56 billion is needed to provide emergency shelter and other services to people experiencing homelessness due to COVID-19.<sup>72</sup> Furthermore, medical costs, as well as tangible and intangible child welfare costs, are incurred.<sup>73</sup> Increases in foster care costs and the cost of child welfare intervention services related to the pandemic are costly. Additionally, the mental health and stress effects of interacting with child welfare services negatively impact families.<sup>74</sup> There is also a likelihood that these juveniles will interact with the criminal justice system, which comes at a cost.<sup>75</sup> The compounding adverse consequences of housing instability on youth further illustrate the inadequacy and detrimental effects of the government's response to the housing crisis. Therefore, it is important to explore permanent solutions to homelessness.

#### MOVING FORWARD TO LONG-TERM HOUSING STABILITY

Long-term solutions need to do more than simply provide shelter. They must provide treatment for the underlying causes of homelessness.<sup>76</sup> The National Alliance to End Homelessness found that the lack of affordable housing, housing instability, and exacerbated effects of COVID-19 transmission and infection on the homeless population will require an additional 400,000 housing units to manage the pandemic's consequences on the population of people experiencing homelessness.<sup>77</sup>

Since there is a shortage of 6.8 million rental homes that are affordable for extremely low-income renters, defined as those whose incomes are at or below the poverty guideline or 30 percent of their area's median income,<sup>78</sup> affordable housing must be a part of the solution for eradicating homelessness. Solutions should increase the inventory of affordable housing, provide financial assistance to low-income individuals and families who cannot af-

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70. THREET, AURAND, PISH, ALLEN & CARROLL, *supra* note 30.

71. THREET, AURAND, PISH, ALLEN & CARROLL, *supra* note 30.

72. THREET, AURAND, PISH, ALLEN & CARROLL, *supra* note 30.

73. THREET, AURAND, PISH, ALLEN & CARROLL, *supra* note 30.

74. THREET, AURAND, PISH, ALLEN & CARROLL, *supra* note 30, at 5.

75. THREET, AURAND, PISH, ALLEN & CARROLL, *supra* note 30, at 6.

76. THE STATE OF HOMELESSNESS IN AMERICA 2012, NAT'L ALL. TO END HOMELESSNESS & HOMELESSNESS RSCH. INST. (Jan. 2012), [https://b.3cdn.net/naeh/9892745b6de8a5ef59\\_q2m6yc53b.pdf](https://b.3cdn.net/naeh/9892745b6de8a5ef59_q2m6yc53b.pdf).

77. DENNIS CULHANE, DAN TREGLIA & KEN STEIF, ESTIMATED EMERGENCY AND OBSERVATIONAL/QUARANTINE CAPACITY NEED FOR THE U.S. HOMELESS POPULATION RELATED TO COVID-19 EXPOSURE BY COUNTY; PROJECTED HOSPITALIZATIONS, INTENSIVE CARE UNITS, AND MORTALITY 8 (Mar. 27, 2020), [https://endhomelessness.org/wp-content/uploads/2020/03/COVID-pa\\_per\\_clean-636pm.pdf](https://endhomelessness.org/wp-content/uploads/2020/03/COVID-pa_per_clean-636pm.pdf).

78. *The Gap: A Shortage of Affordable Rental Homes*, NAT'L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/gap> (last visited Nov. 24, 2021).

ford housing, and properly fund programs that are in place to mitigate eviction and homelessness.<sup>79</sup> The National Low-Income Housing Coalition (“NLIHC”) has set forth local and federal solutions to provide long-term housing stability. These solutions include removing constraints on creating affordable housing, such as restrictive zoning laws.<sup>80</sup> NLIHC also calls for increased funding of Housing Choice Voucher programs, which provide rental assistance.<sup>81</sup> Currently, only 25 percent of low-income renters in need of a voucher receive one.<sup>82</sup> Vouchers are critical components of affordable housing since they supply direct housing payments to landlords who accept the vouchers, making it easier for renters in need to secure housing without spending over 30 percent of their income on housing.<sup>83</sup> Another solution proffered by the NLIHC is a permanent National Housing Stabilization Fund,<sup>84</sup> which would make funds available in emergencies. Evictions would be reduced after an unemployment event or other economic setback because rental assistance would be available.<sup>85</sup>

People of color are more prone to eviction and homelessness. In response to the inherent racial disparities in housing instability, the Poverty & Race Research Action Council set forth guidelines for anti-racist housing policies.<sup>86</sup> The guidelines include creating affordable housing opportunities in areas where low-income families are at risk of being priced out of their homes.<sup>87</sup> Integration continues to be a strong theme as the Council advocates for placement of affordable housing units in neighborhoods with desirable assets and for housing choice vouchers to be situated in the same type of areas.<sup>88</sup>

Source of income discrimination occurs when a landlord prevents a renter from occupying their units because of a refusal to accept the renter’s legal source of income.<sup>89</sup> Laws prohibiting source of income discrimination

79. Novasky & Rosales, *supra* note 67; Leo Beletsky & Sterling Johnson, *Fighting the Coronavirus & Protecting the Unhoused: Policies & Polling*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L., 139, 148–49 (2020) (discussing protecting the unhoused during COVID-19).

80. Beletsky & Johnson, *supra* note 79, at 141.

81. Beletsky & Johnson, *supra* note 79, at 141.

82. RESPONDING TO COVID-19: ENSURING HOUSING STABILITY DURING A CRISIS, NAT’L LOW HOUS. COAL. (Jan. 15, 2021), <https://nlihc.org/coronavirus-and-housing-homelessness/responding-coronavirus>.

83. *Id.*

84. *Id.*

85. *Id.*

86. AN ANTI-RACIST AGENDA FOR STATE AND LOCAL HOUSING AGENCIES, POVERTY & RACE RSCH. ACTION COUNCIL 1 (July 1, 2020), <https://prprac.org/pdf/anti-racist-agenda-for-state-and-local-housing-agencies.pdf>.

87. *Id.*

88. *Id.*

89. ANTONIA K. FASANELLI & PHILIP TEGELER, YOUR MONEY’S NO GOOD HERE: COMBATING SOURCE OF INCOME DISCRIMINATION IN HOUSING, 44 HUM. RIGHTS MAG. 16 (Nov. 30, 2019), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/your-money-s-no-good-here--combatting-source-of-income-discrimin).

would prevent landlords from explicitly denying tenancy to prospective residents who are using Housing Choice Vouchers. This would give voucher recipients a wider variety of housing to choose from, which would assist with anti-segregation initiatives.

Legal services for tenants need to have increased availability and funding. There is no constitutional right to counsel for tenants facing eviction. As a result, many tenants represent themselves in eviction proceedings. Providing tenants with counsel would result in more equitable housing court decisions.

It is of paramount importance to efficiently distribute cash directly to those who need it most. The CARES Act earmarked \$4.3 billion to states and cities with the caveat that the funds be used for rental assistance by December 30, 2020.<sup>90</sup> The time and obstacles encountered while reviewing applications for the funds, providing guidance, and allocating the money, resulted in approximately \$300 million of the funds not being used, though not for lack of need on the part of low-income renters. This should inform future policies by showing the need to provide a direct path to assistance to minimize incidents of eviction.<sup>91</sup> In addition to keeping people in their homes, the creation of additional affordable housing should be prioritized. These housing units should address the trauma and violence often experienced by the homeless population, as well as the physical and mental health challenges that afflict these people. Permanent supportive housing can provide a solution.

#### PERMANENT SUPPORTIVE HOUSING AS A PERMANENT SOLUTION

Permanent supportive housing is a program that is borne from Housing First.<sup>92</sup> The End Homeless Alliance describes Housing First as follows:

Housing First is a homeless assistance approach that prioritizes providing permanent housing to people experiencing homelessness, thus ending their homelessness and serving as a platform from which they can pursue personal goals and improve their quality of life. This approach is guided by the belief that people need basic necessities like food and a place to live before attending to anything less critical, such as getting a job, budgeting properly, or attending to substance use issues. Additionally, Housing First is based on the theory that client choice is valuable in housing selection and supportive service participation, and that exercising that choice is likely to make a client more successful in remaining housed and improving their life.<sup>93</sup>

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90. Conor Dougherty, *Use It or Lose It: Tenant Aid Effort Nears a Federal Cutoff*, N.Y. TIMES (Dec. 15, 2020), <https://www.nytimes.com/2020/12/15/business/economy/rental-aid.html>.

91. *Id.*

92. *Housing First*, NAT'L ALL. TO END HOMELESSNESS (Apr. 20, 2016), <https://endhomelessness.org/resource/housing-first>.

93. *Id.*

A Housing First approach can benefit both homeless families and individuals with any degree of service needs. The flexible and responsive nature of a Housing First approach allows it to be tailored to help anyone. As such, a Housing First approach can help end homelessness for a household who became homeless due to a temporary personal or financial crisis, has limited-service needs, and only needs help accessing and securing permanent housing. At the same time, Housing First has been found to be a particularly effective approach to end homelessness for high-need populations, such as chronically homeless individuals.<sup>94</sup>

Housing First models are proven to decrease homelessness, and these models are particularly effective for people experiencing chronic homelessness.<sup>95</sup> Permanent supportive housing has reduced the number of chronically homeless people by 8 percent in the last fourteen years.<sup>96</sup> There were estimated to be only 95,353 permanent supportive housing units in the United States ten years ago, and it is not entirely clear how many exist today.<sup>97</sup>

Permanent supportive housing can either require engagement with specific social services as a prerequisite to residing in the units, or provide units with social services at various locations, and prospective residents are given vouchers to secure housing, and the services would follow via home visits.<sup>98</sup> This type of housing integrates needed services into housing that is affordable in order to provide “decent, safe, affordable, community-based housing with flexible, voluntary support services designed to help the individual or family stay housed and live a more productive life in the community.”<sup>99</sup> The use of permanent supportive housing can effectively replace jails, prisons, and other correctional institutions where unhoused individuals in need of services may be forced to reside.<sup>100</sup> Permanent supportive housing also reduces the need of emergency health care by providing individualized health treatments for people who need specific care. This is all while providing a stable living space for people.<sup>101</sup> Permanent supportive housing has also proven effective at providing services that treat trauma and vio-

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94. *Id.*

95. Novasky & Rosales, *supra* note 67, at 143.

96. *Permanent Supportive Housing*, NAT’L ALL. TO END HOMELESSNESS (Mar. 2021), <https://endhomelessness.org/ending-homelessness/solutions/permanent-supportive-housing>.

97. *Id.*

98. OPENING DOORS FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS, THE UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS 39 (2010), <https://endhomelessness.org/ending-homelessness/solutions/permanent-supportive-housing>.

99. IMPLEMENTING HOUSING FIRST IN PERMANENT SUPPORTIVE HOUSING, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS (June 2014), [https://www.usich.gov/resources/uploads/asset\\_library/Implementing\\_Housing\\_First\\_in\\_Permanent\\_Supportive\\_Housing.pdf](https://www.usich.gov/resources/uploads/asset_library/Implementing_Housing_First_in_Permanent_Supportive_Housing.pdf).

100. Mira E. Signer, *The Case For Permanent Supportive Housing For Persons With Serious Mental Illness: Improved Lives, Reduced Costs, and Compliance with Federal Law*, 35 DEV. MENTAL HEALTH L. 17 (2016) (discussing the benefits of providing housing for the mentally ill).

101. *Id.* at 18.

lence<sup>102</sup> and is designed to be long-term housing that does not concentrate individuals with illness together, but rather emphasizes and facilitates community living.<sup>103</sup> Permanent supportive housing is particularly effective for people who suffer from mental health afflictions.<sup>104</sup> Reinforcement for permanent supportive housing can be found in *Olmstead v. L.C.*, where the US Supreme Court found that the Americans with Disabilities Act (the “ADA”) requires “an affirmative obligation to ensure that individuals with disabilities live in the least restrictive, most integrated settings possible.”<sup>105</sup> Martha Kinsley, a permanent supportive housing expert, noted that avoiding segregated settings that group people with health needs together runs against the policies and practices of the ADA.<sup>106</sup> Permanent supportive housing integrates services to improve health and behaviors. This housing is also affordable, permitting subsidies to cover housing costs in excess of 30 percent of household income.<sup>107</sup>

The White House Summit on Eviction Prevention commenced for the purpose of generating and implementing strategies and policies to assist landlords and tenants with the challenges of evictions due to the pandemic.<sup>108</sup> The increased attention on housing instability related to the pandemic provides an opportunity to advocate for funds to be allocated for the eradication of homelessness, to truly focus on long-term solutions that provide a path to long-term housing stability.

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102. CORPORATION FOR SUPPORTIVE HOUSING 2008–2012 STRATEGIC PLAN, CORP. FOR SUPPORTIVE HOUS. 16 (Apr. 2008), <https://www.csh.org/wp-content/uploads/2011/12/CSH2008-2012StrategicPlanFINAL.pdf>.

103. Signer, *supra* note 100, at 20–21.

104. Novasky & Rosales, *supra* note 67, at 141.

105. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999).

106. Signer, *supra* note 100, at 20.

107. Signer, *supra* note 100, at 20.

108. See READOUT OF THE SECOND WHITE HOUSE EVICTION PREVENTION CONVENING, THE WHITE HOUSE (July 21, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/21/readout-of-the-second-white-house-eviction-prevention-convening>.