



October 13, 2026

SUBMITTED VIA WWW.REGULATIONS.GOV

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0500

Re: Comment on HUD’s Notice of Research Justifying Additional Incentives for Certain Activities To Reduce Homelessness; Docket No. FR-6628-N-01

To Whom It May Concern:

The American Civil Liberties Union (“ACLU”) submits this comment in strong opposition to the above-docketed “Notice of Research Justifying Additional Incentives for Certain Activities To Reduce Homelessness,” which was published by the Department of Housing and Urban Development (“HUD”) in the Federal Register on September 11, 2026 (the “Notice”).¹ Under the statute authorizing HUD’s Continuum of Care (“CoC”) program, HUD may provide bonuses or other incentives for activities “proven to be effective at reducing homelessness generally, reducing homelessness for a specific subpopulation, or achieving homeless prevention and independent living goals.” 42 U.S.C. § 11386b(d)(1). The statute enumerates certain activities that qualify as “proven to be effective,” including permanent supportive housing, but also provides that HUD can incentivize “any other activity determined by the Secretary, based on research and after notice and comment to the public, to have been proven effective at reducing homelessness.” 42 U.S.C. § 11386b(d)(2)(C). The Notice describes five activities that HUD intends to incentivize through its CoC program (“Proposed Activities”), as well as the research HUD relied upon to reach its determinations that these activities are “proven to be effective at reducing homelessness.” 42 U.S.C. § 11386b(d)(1). The Notice fails to satisfy legal requirements for instituting new CoC bonuses and incentives, including because the Proposed Activities are overly vague, unsupported by research, and potentially unlawful. We strongly oppose the Proposed Activities.²

¹ Notice of Research Justifying Additional Incentives for Certain Activities to Reduce Homelessness, 91 Fed. Reg. 57901 (Sep. 11, 2026).

² While the ACLU opposes the entire Notice, this comment focuses primarily on the Proposed Activities that impact survivors of domestic violence, promote coercive treatment, undermine permanent supportive housing and harm reduction, and criminalize homelessness.



For over 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in the country. With more than seven million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all fifty states, Puerto Rico, and Washington, D.C., for the right of every individual to access opportunity free from discrimination and government abuse. We have advocated at the local, state, and federal levels for increased enforcement of civil rights in housing; elimination of barriers to housing for survivors of domestic violence and sexual assault, the vast majority of whom are women; greater choice in housing options for those who receive public assistance and benefits; development of housing programs that promote residential integration, including among those with a disability that necessitates reasonable accommodation; promoting access to evidence-based treatment and harm reduction tools proven to reduce overdose deaths; the autonomy of individuals in making their own medical decisions; the right of people with disabilities to live in the most integrated community setting appropriate to their needs; and eradication of overbroad tenant screening policies that unfairly deny housing based on prior criminal and/or eviction records. We also use advocacy and litigation to combat laws, policies, and practices that criminalize homelessness and violate the civil rights and liberties of unhoused individuals.

The CoC system is the backbone of the federal response to the homelessness crisis. Through this system, HUD distributes crucial funding to local governments and organizations for a range of homelessness services. This funding is awarded pursuant to a competitive process consistent with criteria set forth in the McKinney-Vento Homeless Assistance Act.³ For decades, and consistent with statutory requirements and evidence, Housing First—an approach that prioritizes access to permanent housing alongside provision of voluntary services, without mandatory preconditions—has been the “cornerstone of the CoC program.”⁴ In 2015, in recognition of the fact that responding to homelessness with criminalization is ineffective and harmful, HUD also instituted a scoring incentive in the CoC application that encouraged applicants to take steps to prevent the criminalization of homelessness.⁵ Since 2025, however, HUD has promoted homelessness policies that diverge from both statutory mandates and evidence-based practice. This Notice is HUD’s latest attempt to impose the administration’s unsupported and unlawful policy preferences on federal homelessness funding.

This Notice is deficient and troubling in several ways. First, it is unlawfully vague, but when read alongside other administration actions, appears to further a carceral approach to

³ 42 U.S.C. § 11301(b) et seq.

⁴ *Washington v. U.S. Dep’t of Hous. & Urb. Dev.*, 171 F.4th 473, 480 (1st Cir. 2026).

⁵ U.S. Dep’t of Hous. & Urb. Dev., *Notice of Funding Availability for the 2015 Continuum of Care Program Competition*, FR-5900-N-25, at 45 (Sept. 17, 2015), <https://perma.cc/BH7D-CN4G>.

homelessness. Second, it attempts to institute vast changes to federal homelessness funding based on unreliable and incomplete research. Third, it undermines the choice, safety, and stability of survivors of domestic violence in conflict with federal law. Fourth, it promotes coercive and mandatory treatment. Fifth, it prioritizes sober housing at the expense of evidence-based permanent supportive housing and harm reduction. And finally, it promotes the criminalization of homelessness.

I. The Notice Is Unlawfully Vague, but When Read in Context, Furthers the Administration’s Carceral Approach to Homelessness.

In several instances throughout the Notice, HUD is vague about the activities it intends to incentivize. HUD asserts that “law enforcement and first responders [are] crucial partners in addressing homelessness,” but it does not articulate how applicants should coordinate with law enforcement or in what way law enforcement should address homelessness.⁶ HUD also asserts that mandatory “supportive services” are critical to reducing homelessness.⁷ But it provides little detail explaining under what circumstances any particular service should be required.⁸ Finally, HUD asserts that “accountability” is an essential piece of any successful homelessness policy, but it never explains what accountability means or when accountability would be triggered.⁹

Because the descriptions of these activities are overly vague, the Notice may run afoul of administrative and Constitutional requirements. HUD’s vague descriptions make it impossible for the public to effectively comment on HUD’s Notice and for CoC applicants to know what activities would be eligible for bonuses and incentives. But the McKinney-Vento Homeless Assistance Act (“Statute”) requires that HUD go through “notice and comment to the public” before incentivizing an activity.¹⁰ And for notice and comment to be meaningful, HUD’s Notice must be “sufficiently descriptive of the ‘subjects and issues involved’ so that the interested parties may offer informed criticism and comments.”¹¹ The Notice’s vague descriptions of its law enforcement activity, supportive services, and accountability do not sufficiently apprise interested parties of the agency’s proposed action to satisfy this administrative requirement.¹² To the extent HUD’s subsequent funding conditions mirror the vague language in the Notice, these

⁶ 91 Fed. Reg. at 57903.

⁷ *See id.* at 57908 (“HUD finds that supportive services, and participation agreements designed to engage program participants in those services, are critical components of an effective response to homelessness.”).

⁸ *Id.* at 57908-11.

⁹ *Id.* at 57910-11.

¹⁰ 42 U.S.C. § 11386b(d)(2)(C).

¹¹ *Cf. Nw. Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309, 1319 (8th Cir. 1981) (quoting 5 U.S.C. § 553(b)(3)).

¹² *Am. Med. Ass’n v. Reno*, 57 F.3d 1129, 1132-33 (D.C. Cir. 1995).

conditions could also run afoul of the Constitution’s Spending Clause.¹³ Funding conditions that use the broad language in the Notice would not allow recipients to “ascertain what is expected of [them]” in a manner sufficient to meet the Spending Clause’s dictates.¹⁴

In addition to being potentially unlawful, the Notice’s vague language leaves unclear the extent to which HUD intends to use the CoC program to advance a carceral approach to homelessness. The Notice does not, however, exist in a vacuum. In other contexts, the administration has made clear that forcing unhoused people into institutions and jails is the primary aim of its homelessness policy. Read in conjunction with the other statements and actions, this Notice appears to be yet another attempt to abandon effective and humane approaches to homelessness in favor of counterproductive coercion and criminalization.

In July 2025, President Trump issued an Executive Order that directed federal authorities to shift homelessness policy away from Housing First and harm reduction and towards criminalization, institutionalization, and forced treatment.¹⁵ Although HUD’s Notice does not explicitly reference the Executive Order, it is clearly designed to implement it. The Notice and Executive Order share the same approach to homelessness policy.¹⁶ Like the Executive Order, the Notice places emphasis on accountability, self-sufficiency, and criminal law enforcement.¹⁷ Moreover, when HUD first announced major changes to the criteria for CoC grants—an ongoing effort of which this Notice is just the most recent step—it explained that it was acting in “accordance with President Trump’s Executive Order, ‘Ending Crime and Disorder on America’s Streets.’”¹⁸ And HUD’s earliest attempt to carry out the Executive Order’s direction included conditioning eligibility for CoC funds on “[t]he proposed project . . . be[ing] located in a jurisdiction (state, county, city) that enforces laws and/or ordinances prohibiting urban camping

¹³ *South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987) (holding that the federal government may “condition[] receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives,” however, any such conditions must be “unambiguous[]”).

¹⁴ *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

¹⁵ See Exec. Order No. 14321, 90 Fed. Reg. 35817 § 1 (July 24, 2025) (hereinafter “Executive Order”).

¹⁶ Other agencies have also adopted the Executive Order’s carceral approach. In June 2026, the Department of Justice announced a new “Model Cities Initiative” that will award federal funding to two to four cities to support public safety initiatives. Among the DOJ priorities that applicants must align their initiatives to are “enforcing prohibitions on urban camping and loitering,” and “enforcing prohibitions on urban squatting.” Department of Justice FY 2026 Model Cities Initiative (MCI) 7, <https://perma.cc/7WQD-ND3P>.

¹⁷ Compare 91 Fed. Reg. at 57910 (emphasizing the need to “optimiz[e] self-sufficiency,” and impose “accountability and structure” in the nation’s homelessness system), and *id.* at 57913 (promoting law enforcement as a “[c]rucial [p]artner[]”), with Executive Order § 5 (ordering the Secretary of HUD to end housing programs that “deprioritize accountability . . . and self-sufficiency”), and *id.* § 3(b)(ii) (directing the provision of funds under the Emergency Federal Law Enforcement Assistance program to support encampment removal efforts).

¹⁸ See Press Release, U.S. Dep’t of Hous. & Urban Dev., *HUD Secretary Scott Turner Leads Monumental Reforms to Homelessness Program, Ending Biden-Era Slush Fund* (Nov. 13, 2025), <https://perma.cc/GZZ8-R7FF>.

or loitering, prohibiting open illicit drug use, and prohibiting urban squatting.”¹⁹ Similarly, the Substance Abuse and Mental Health Services Administration (“SAMHSA”) “Best Practices Toolkit: Addressing Homelessness and Addiction, through ‘Treatment First,’” which HUD relies upon throughout the Notice, frames the publication as responding to the Executive Order’s call for an “accountability-driven national response to homelessness and addiction.”²⁰ HUD’s Notice and the Executive Order, read together, reflect a consistent, misguided, and potentially illegal approach to homelessness.

The Notice and the Executive Order share a commitment to coercive treatment, and it appears in this context that HUD intends to encourage use of involuntary treatment to combat homelessness.²¹ More specifically, the Executive Order directs the Secretary of HUD to ensure that organizations receiving federal funding to work on homelessness “increase requirements” that unhoused people who suffer from “serious mental illness use . . . mental health services as a condition of participation.”²² The Executive Order also prioritizes moving “homeless individuals into long-term institutional settings . . . through the appropriate use of civil commitment” and urges states to expand their laws to permit involuntary civil commitment of individuals “living on the streets and cannot care for themselves.”²³ For its part, HUD’s Notice encourages the use of “participation agreements,” which would condition housing assistance on an unhoused person’s agreement to receive services, including mental health treatment.²⁴ The Notice also vaguely gestures at “accountability,” emphasizing it as an important element of homelessness policy.²⁵ When unhoused individuals fail to comply with mandatory treatment required by participation agreements they will likely face eviction, landing them back on the street and

¹⁹ U.S. Dep’t of Hous. & Urban Dev., *Continuum of Care Builds (CoC Builds)*, FR-6902-N-25A, at 23, <https://perma.cc/P29D-MULK>.

²⁰ Substance Abuse and Mental Health Services Administration, *Best Practices Toolkit: Addressing Homelessness and Addiction through “Treatment First”*, Publication No. PEP26-04-009, at 1 (2026), <https://perma.cc/5TQ9-BMXX>.

²¹ “Involuntary civil commitment in the United States is a legal intervention by which a judge, or someone acting in a judicial capacity, may order that a person with symptoms of a serious mental disorder, and meeting other specified criteria, be confined in a psychiatric hospital or receive supervised outpatient treatment for some period of time.” Substance Abuse and Mental Health Services Administration, *Civil Commitment and the Mental Health Care Continuum: Historical Trends and Principles for Law and Practice* 1 (2019), <https://perma.cc/RG5U-J3DR>.

²² Executive Order § 5(b).

²³ *Id.* §§ 1, 3(a)(iv). More specifically, it orders federal authorities to take several actions to achieve that goal, including by, among other things: (1) seeking the “reversal of Federal or State judicial precedents . . . that impede the United States’ policy of civil commitment of individuals with mental illness” who are “living on the streets and cannot care for themselves”; (2) providing assistance to state and local governments to implement “maximally flexible civil commitment, institutional treatment, and ‘step-down’ treatment standards”; and (3) determining whether to prioritize states and municipalities for grants that “enforce . . . standards that address individuals . . . who are living on the streets and cannot care for themselves, through assistant outpatient treatment or by moving them into treatment centers . . . via civil commitment or other available means.” *Id.* §§ 2(a)(i)-(ii), 3(a)(iv).

²⁴ See 91 Fed. Reg. at 57910-11.

²⁵ *Id.* at 57910-11.

vulnerable to being targeted by the expanded use of involuntary civil commitment encouraged by the Executive Order.²⁶ The Notice’s emphasis on “participation agreements” to receive treatment and undefined “accountability” that could follow thus raises the potential that HUD’s Treatment First model may result in unhoused people being funneled into the expanded involuntary civil commitment regime.

In addition to prioritizing coercive treatment, the Executive Order directs federal agencies to encourage criminalizing homelessness.²⁷ It orders agencies to give priority in discretionary grant programs to states and municipalities that “enforce prohibitions on open illicit drug use, . . . urban camping and loitering,” and “urban squatting.”²⁸ The Order also encourages other punitive approaches to homelessness, including inviting states to request federal law enforcement assistance for “encampment removal efforts.”²⁹

While the Notice is less specific about what “law enforcement partnerships” it is seeking to incentivize, it clearly opens the door to encouraging localities to criminalize homelessness by adopting and enforcing laws that regulate and prohibit behaviors associated with homelessness—and which many unhoused individuals have no choice but to engage in—and by dismantling encampments and displacing unhoused individuals under threat of enforcement. The Notice justifies the need for undefined “law enforcement partnerships” by recounting the “harms of unchecked encampments,” which it paints as inextricably linked to drug use, sex offenders, and violence.³⁰ This mirrors the Executive Order’s emphasis on “open illicit drug use” and “registered sex offenders with no fixed address.”³¹ And, like the Executive Order, the “public safety-oriented approaches” to homelessness that the Notice applauds primarily consist of

²⁶ Even the Trump administration recognizes that people with substance use disorders are likely to relapse and therefore will likely violate participation agreements. *See* Office of National Drug Control Policy, *National Drug Control Strategy* 53 (2026), <https://perma.cc/X77H-AQDJ> (“Addiction is a chronic, relapsing, but treatable disease with a relapse rate similar to that of hypertension and asthma.”).

²⁷ The term “criminalizing homelessness” typically connotes laws that prohibit behaviors associated with homelessness or that are disproportionately enforced against unhoused individuals as well as the practices surrounding their enforcement, including dismantling encampments, destroying belongings, and move-along orders. *See* 42 U.S.C. § 11313(a)(13) (describing USICH duties as including to “develop constructive alternatives to criminalizing homelessness and laws and policies that prohibit sleeping, feeding, sitting, resting, or lying in public spaces when there are no suitable alternatives, result in the destruction of a homeless person’s property without due process, or are selectively enforced against homeless persons”).

²⁸ Executive Order § 3(a)(i)-(iii).

²⁹ *Id.* § 3(b)(ii).

³⁰ 91 Fed. Reg. at 57914.

³¹ Executive Order § 3(a)(i), (v).

passage and enforcement of laws banning or restricting public camping and efforts to dismantle encampments.³²

II. HUD’s Determinations as to the Proposed Activities are Based on Incomplete and Unreliable Research.

The methodology employed by HUD and the “research” set forth in the Notice as the basis for HUD’s determinations are also too unreliable and incomplete to fulfill the Statute’s requirement for incentivizing new activities. The McKinney-Vento Homeless Assistance Act requires that any incentivized activity other than permanent supportive housing and rapid rehousing be shown, by “research,” to “have been proven effective at reducing homelessness.”³³ This calls for a research-based judgment about the efficacy of potential activities, not policy discussions.³⁴ When a statute requires an agency to make a research or science-based determination, courts have held that policy judgments are an inadequate substitute for evidence.³⁵ The Notice, however, relies largely on public opinion data, news articles, and the administration’s own policy judgments in reaching its conclusions about the efficacy of the proposed activities. This runs counter to the statutory requirement that HUD present “research” supporting its determination and fails to “prove[]” the Proposed Activities are effective, rendering any incentives or bonuses issued based on the Notice vulnerable to challenge.³⁶

The Notice improperly bases its determinations on “developments in state and local homelessness policy across the country that reflect large-scale shifts in approaches to homelessness.”³⁷ These include increased law enforcement response to drug use, enforcement of camping bans, elimination of encampments, and investments in short-term shelter and housing conditioned on sobriety.³⁸ But the fact that other governmental entities have chosen to adopt certain policies does nothing to demonstrate that those policies are proven effective at reducing homeless and thus cannot satisfy the statutory requirement.

³² See 91 Fed. Reg. at 57915 n.111 (citing enforcement of camping ban in Kentucky, enactment of laws banning or restricting camping in 150 cities and 32 states, reinstatement of camping ban in Austin, Colorado Springs Camping ban, and elimination of encampments in Anchorage).

³³ 42 U.S.C. § 11386(d)(2)(C).

³⁴ *Id.*

³⁵ See *Coal. for Responsible Regul., Inc. v. EPA*, 684 F.3d 102, 117-118 (D.C. Cir. 2012) (citing *Massachusetts v. EPA*, 549 U.S. 497, 533-34 (2007)).

³⁶ Under the Administrative Procedure Act, any new incentivized activity that is not “proven effective” could be “set aside” as an agency action that is in excess of statutory authority or that is not in accordance with the law or the Constitution. See *City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020) (“Any action that an agency takes outside the bounds of its statutory authority . . . violates the Administrative Procedure Act.”).

³⁷ 91 Fed. Reg. at 57905

³⁸ *Id.*

Like much of the evidence cited in the Notice, these policy shifts also do not support HUD’s determinations. For example, while the Notice cites Portland, Oregon’s implementation of a camping ban and investment in shelter as one of the policy shifts supporting its determinations, data on that ban’s enforcement does not show that it is effective at ending homelessness. In the first five months of the ban’s enforcement, fewer than half of unhoused individuals engaged by police accepted offers of shelter and there is no indication that Portland is evaluating whether enforcement of the ban results in stable housing.³⁹ And while the Notice cites the Houston, Texas mayor’s intention to “reclaim[] our public spaces,” it omits the fact that Houston is an example of the success of the Housing First model that HUD now derides.⁴⁰ Since Houston adopted Housing First in 2012, homelessness was reduced by 63%, with over 30,000 people housed.⁴¹ In contrast, according to the same article cited in the Notice, increased enforcement of laws criminalizing homelessness resulted in over 1,300 citations in one neighborhood over the course of the year, while only 200 people were moved from that neighborhood into housing over the same period.⁴²

Similarly, the Notice improperly relies on political and public support for certain policy approaches. For example, while the Notice states that “[s]ervice participation requirements have been successfully employed in many federal social service programs,” its only support for that conclusion is a Cicero Institute public opinion poll.⁴³ Citing the same poll, the Notice also contends that public support for public camping bans and drug law enforcement support its proposed law enforcement partnership activity.⁴⁴ But public opinion does not demonstrate effectiveness at reducing homelessness and cannot be a substitute for the research required by the Statute.

The Notice’s research also fails to meet the statutory requirement because it omits substantial bodies of evidence that contradict HUD’s determinations. For example, the Notice completely ignores decades of studies showing that the Housing First model—prioritizing providing permanent housing without preconditions while also offering voluntary supportive services that meet individual needs—is extremely effective at reducing homelessness.⁴⁵ Indeed in 2024, a HUD Policy & Practice publication concluded that “[t]he research literature has nearly

³⁹ Jake Thomas, *Officials say the ‘camping ban’ is meant to offer resources to homeless Portlanders. None of them are tracking whether it’s working.*, Street Roots, May 27, 2026, <https://perma.cc/ZV4Q-279N>.

⁴⁰ 91 Fed. Reg. at 57905.

⁴¹ Danielle McLean, *Houston’s housing-first model is reducing homelessness. Here’s how it works and the obstacles it faces.*, Smart Cities Drive, Dec. 5, 2022, <https://perma.cc/QWC2-5B8B>.

⁴² Dominic Anthony Walsh, *Mayor Whitmire wants to ‘end homelessness’ in Houston this year. The effort faces challenges*, Houston Public Media, Feb. 28, 2026, <https://perma.cc/L2LW-T4WM>.

⁴³ 91 Fed. Reg. at 57910 (citing Cicero Inst., *National Crime Poll* (2025), <https://perma.cc/S2EX-UWJR>).

⁴⁴ 91 Fed. Reg. at 57915.

⁴⁵ See *Washington v. U.S. Dep’t of Hous. & Urb. Dev.*, 171 F.4th 473, 480 (1st Cir. 2026) (describing Housing First and studies showing “[t]his approach has proven effective”).

reached consensus that providing permanent housing—without mandating sobriety, treatment, or service participation to demonstrate housing readiness—is effective in helping people exit homelessness and achieve long-term stability.”⁴⁶ And while the Notice cites The Housing and Urban Development-VA Supportive Housing (“HUD-VASH”) program as demonstrating the effectiveness of participation agreements based on the language of a 2024 regulation change, it ignores that the HUD-VASH program that successfully reduced veteran homelessness by 50% employed a Housing First model.⁴⁷ As discussed further below, the Notice also disregards significant research demonstrating the importance of ensuring that participation in supportive services is entirely voluntary for survivors of gender-based violence, including to promote survivor autonomy, provide trauma-informed care, and support survivors’ safety and well-being.⁴⁸

Noticeably absent from HUD’s methodology is any consultation with or review of research conducted by the US Interagency Council on Homelessness (“USICH”), even though USICH’s statutory mandate includes a duty to “monitor, evaluate, and recommend improvements in programs and activities to assist homeless individuals conducted by Federal agencies, State and local governments, and private voluntary organizations.”⁴⁹ USICH has consistently concluded that Housing First works and that criminalization of homelessness does not.⁵⁰ The Notice’s failure to take this into account, instead relying on opinion polls and policy positions, fails to meet the statutory requirement that activities be “proven effective” and supported by research.

III. The Notice Will Undermine Choice, Safety, and Housing Stability for Survivors of Gender-Based Violence.

HUD’s Notice would harm survivors of domestic violence, dating violence, sexual assault, stalking, and other forms of gender-based violence in several key ways. First, the Notice would undermine survivor autonomy and safety by incentivizing providers to condition housing on participation in supportive services in conflict with key legal protections, including the Family Violence Prevention and Services Act, the Violence Against Women Act, and related

⁴⁶ U.S. Dep’t of Hous. & Urb. Dev., *Addressing Homelessness through Housing First 2* (Autumn 2024), <https://perma.cc/A7PH-7542>.

⁴⁷ National Low Income Housing Coalition, *Case Study: Housing First Cut Veteran Homelessness by 50%* (June 2, 2022), <https://perma.cc/6UVL-W5QK>.

⁴⁸ See, e.g., Leila Wood, Dessie Clark, Laurie Cook Heffron, & Rachel Voth Schrag, *Voluntary, Survivor-Centered Advocacy in Domestic Violence Agencies*, *Advances in Social Work* 20(1), at 3 (2020); National Network to End Domestic Violence, *The Basics of the Voluntary Services Approach*, <https://perma.cc/3ADN-F4DG>.

⁴⁹ 42 U.S.C. § 11313(a)(4).

⁵⁰ See, e.g., U.S. Interagency Council on Homelessness, *The Evidence Behind Approaches that Drive an End to Homelessness* (Sep. 2019), <https://perma.cc/W3FP-UAGN>; U.S. Interagency Council on Homelessness, *7 Principles for Addressing Encampments* (June 2022), <https://perma.cc/JM4V-74XV>.

provisions. The Notice also fails to adequately address confidentiality for survivors in accordance with the Violence Against Women Act. In addition, the Notice fails to consider or even acknowledge the broad and diverse range of individualized goals, needs, and measures of success for survivors.

a. Conditioning Housing on Participation in Supportive Services Conflicts with Key Legal Protections for Survivors.

Restoring autonomy and power over one's life is central to securing long-term safety for survivors of domestic violence and other forms of gender-based violence. Domestic violence is a pattern of coercive control maintained through abuse, including harmful tactics that systematically restrict survivors' autonomy and freedom to make their own decisions about their lives.⁵¹ Therefore, ensuring that supportive services are voluntary is an integral component of a trauma-informed approach to serving survivors.⁵² Indeed, many studies have found that a low-barrier, voluntary services model has positive results for both survivors and providers, including research finding that voluntary services "are inherently more survivor-centered than mandated service models, and are linked to increased survivor autonomy and empowerment."⁵³

In recognition of the importance of survivor agency, the Family Violence Prevention and Services Act ("FVPSA") and its implementing regulations expressly require that supportive services be available to survivors on a *voluntary basis* and prohibit conditioning the receipt of emergency shelter on participation in counseling and other services.⁵⁴ In other words, providers "cannot compel or force individuals to come to a shelter or participate in counseling or other services."⁵⁵ Moreover, the Violence Against Women Act ("VAWA") prohibits covered housing programs from denying admission or assistance, terminating participation, or evicting an individual on the basis that they are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.⁵⁶ If a person is not able to participate in a required service because of the violence and related trauma they have experienced, conditioning housing on participation in such services may lead to wrongful denial, termination, or eviction from covered housing programs in violation of VAWA.

The Notice's participation requirements would harm survivors by decentering their individualized needs and goals while unjustly limiting their ability to make decisions about their

⁵¹ Cris M. Sullivan, Ph.D., *Creating Safe Housing Options for Survivors: Learning From and Expanding Research* (2017), <https://perma.cc/LLY3-W6ZE>.

⁵² National Network to End Domestic Violence, *supra* note 48.

⁵³ Wood, Clark, Heffron, & Schrag, *supra* note 48, at 3.

⁵⁴ 42 U.S.C. § 10408(d); *see also* 45 C.F.R. § 1370.10(b)(10).

⁵⁵ Kara Clifford Billings & Mary Daniels, *Family Violence Prevention and Services Act (FVPSA): Background and Funding*, Congressional Research Service (Jan. 15, 2026), <https://perma.cc/XV6W-TS7R>.

⁵⁶ 34 U.S.C. § 12491(b)(1).

lives. Moreover, conditioning housing on participation in supportive services would lead to the exclusion of many survivors who are discouraged from seeking assistance or even compelled to exit programs before they have secured safe and stable alternative housing because they are unable to comply with the requirement, often because of the violence they have experienced. Such consequences are particularly concerning as many abusive partners and former partners intentionally interfere with survivors' access to or participation in supportive services as a form of abuse and coercive control. In a survey of National Domestic Violence Hotline callers, nearly half of survivors who sought help for mental health concerns reported that a partner or former partner tried to prevent or discourage them from getting help or taking prescribed medication, while over 60 percent of those who sought help for substance use reported that a partner or former partner tried to prevent or discourage them from getting that help.⁵⁷ Accordingly, the Notice's participation requirements would lead to the denial or termination of survivors for the very abuse that they've experienced in conflict with VAWA and put their access to safe, stable housing at increased risk. The Notice does not acknowledge these legal issues or the harms, costs, and burdens that would result from reducing access to safe and stable housing for survivors, their families, providers, and other stakeholders.⁵⁸

The Notice also conflicts with key legal protections by incentivizing the implementation of supportive-service-participation requirements for CoCs and service providers. Imposing these requirements would not only conflict with providers' obligations under the FVPSA and related provisions but also impair providers' mission and ability to provide trauma-informed and survivor-centered care that prioritizes the autonomy and safety of those they serve. Many providers may be forced to take costly and burdensome steps to revise existing program policies and practices to implement these participation requirements, or to forgo certain grant opportunities at a time when they are already facing funding shortfalls.⁵⁹ The Notice's participation requirements also could interfere with the trust and relationships that providers have worked hard to build with survivors by disregarding their individualized needs and goals. However, the Notice fails to consider or even acknowledge how these participation requirements conflict with providers' legal obligations under FVPSA and VAWA, or the extensive research demonstrating the importance of survivor autonomy and choice in deciding whether to participate in supportive services.

⁵⁷ Carole Warshaw & Erin Tinnon, *Coercion related to mental health and substance use in the context of intimate partner violence: A toolkit for screening, assessment, and brief counseling in primary care and behavioral health settings*, National Center on Domestic Violence, Trauma & Mental Health (2018), <https://perma.cc/2TUA-JA7H>.

⁵⁸ See, e.g., Oyesola Oluwafunmilayo Ayeni, *Needs Assessment Report: Promising Practices and Interventions to Address the Housing Needs of Domestic Violence Survivors* 5-15 (Aug. 2022), <https://perma.cc/MKG9-9TQU>.

⁵⁹ Jasmine Mithani & Mariel Padilla, *No one to answer the phone: What a missing \$150 million means for domestic violence services*, The 19th (May 28, 2026), <https://perma.cc/88KH-A5TZ>.

b. The Notice Fails to Address Critical Confidentiality Concerns for Survivors.

A major concern for survivors of domestic violence, sexual assault, and other forms of gender-based violence is how their information will be used and whether their information could be shared in a way that jeopardizes their safety and privacy. Survivors may also hesitate to disclose deeply personal experiences of trauma, which can be painful to recount and may carry well-founded fears of judgment or disbelief. HUD's Notice seeks to incentivize activities that may require providers to closely monitor and document individual participants' behavior to demonstrate compliance, including, but not limited to, participation in supportive services, engagement in treatment, recovery from substance use, and employment and income outcomes. Despite this, the Notice entirely fails to address what measures or protocols, if any, that HUD will require to protect survivors' confidentiality and privacy in accordance with VAWA.

To ensure survivors' safety, VAWA and its implementing regulations set forth critical protections and requirements concerning survivors' confidentiality and privacy. For example, information submitted to public housing agencies, owners, or managers in connection to a survivor's request for VAWA protections must be maintained in confidence and may not be entered into a shared database or disclosed to another entity or individual, except in limited circumstances.⁶⁰ Moreover, VAWA grantees and subgrantees must protect survivors' confidentiality and privacy and generally may not disclose personally identifying or individual information collected in connection with services requested, utilized, or denied.⁶¹ Survivors also cannot be required to consent to the release of this information as a condition of eligibility for services. Although HUD's Notice only applies to the CoC programs funded under HUD, many shelters and providers funded under this program also receive VAWA funding and are subject to these legal obligations. HUD's Notice fails to adequately address these confidentiality requirements, raising major concerns about the participation of survivors in these programs.

c. The Notice Fails to Acknowledge or Consider the Broad Range of Individualized Needs, Goals, and Measures of Success for Survivors.

As an initial matter, the Notice's emphasis on transitional housing fails to acknowledge that a comprehensive and effective response to survivors' unmet-housing needs requires investment in a broad range of critical housing interventions. Although transitional housing is a vital resource and an unmet need for many survivors, it is far from the only or best approach to supporting every survivor—particularly those who are newly seeking assistance and those who

⁶⁰ 34 U.S.C. § 12491(c)(4). *See also* 24 C.F.R. 5.2007(c) (requiring information be maintained in "strict confidence").

⁶¹ 34 U.S.C. § 12291(b)(2).

are already living in permanent supportive housing.⁶² Indeed, the National Network to End Domestic Violence’s 20th Annual Domestic Violence Counts Report—on which the Notice relies—makes clear that transitional housing is just one intervention in the continuum of housing options that should be made available to survivors, including emergency shelter, hotel or motel stays, rapid rehousing, permanent supportive housing, rental assistance, and other housing provided by domestic violence organizations.⁶³ Moreover, research has demonstrated that rapid rehousing and permanent supportive housing are especially effective at achieving long-term housing security for many survivors.⁶⁴ Permanent supportive housing especially serves the needs of survivors who experience chronic homelessness and have serious mental health conditions, as transitional housing programs “do not always afford sufficient time or economic support to address their complex needs.”⁶⁵ To the extent that it prioritizes transitional housing over other critical housing interventions, the Notice would fail to meet the diverse needs of survivors and contribute to lack of housing security and safety for survivors.

The Notice also improperly assumes that the appropriate measures of success for survivors are employment outcomes, sobriety, and “self-sufficiency,” without acknowledging other important outcomes that are central in evaluating whether an intervention is effective. While employment, recovery, and economic independence may be important goals for some survivors, these outcomes do not amount to safety and security or encapsulate the diverse needs and goals of every survivor.⁶⁶ For many survivors, “[r]eclaiming decision-making power is . . . one of the first steps toward lasting safety,” and “[e]ach independent decision strengthens confidence and reinforces the message that survivors have not just the right but the capability to shape their own futures.”⁶⁷ Notably, research about domestic violence programs has identified many desired outcomes predictive of safety and well-being that do not include employment, sobriety, and financial independence. For example, studies have found that survivors who have used shelters “report feeling safer, more hopeful, and having more safety strategies as a result of their shelter stay,” while advocacy services “have been shown to lead to survivors experiencing less violence over time, less difficulty accessing community resources, increased social support,

⁶² Kris Billhardt, *Transforming Our Coordinated Entry Systems to Increase Survivors’ Access to Housing Options*, National Alliance for Safe Housing 4-5 (Jan. 2021), <https://perma.cc/2N2F-NHPM>; see also Cris Sullivan, Ph.D., and Gabriela Lopez-Zeron, Ph.D., *Assessing for & Appropriately Responding to the Housing Needs of Domestic & Sexual Violence Survivors: A Decision Tree as an Alternative to a Scoresheet*, <https://perma.cc/G94K-R5A6>.

⁶³ See National Network to End Domestic Violence, *20th Annual Domestic Violence Counts Report* 2-4, 12 (2026), <https://perma.cc/EY68-QNU9>.

⁶⁴ Daniel Soucy, *Congress Must Invest in Programs with a Proven Track Record of Rehousing People*, National Alliance to End Homelessness (June 29, 2026), <https://perma.cc/K4RD-G6MR>.

⁶⁵ National Alliance for Safe Housing & Downtown Women’s Center, *Creating Permanent Supportive Housing to Meet the Needs of Survivors of Domestic Violence* 20 (2021), <https://perma.cc/VE4R-WUPK>.

⁶⁶ Connections for Abused Women and Their Children, *Understanding the Meaning of Safety for Domestic Violence Survivors Rebuilding Their Lives* (Jan. 15, 2026), <https://perma.cc/K4MK-V2LD>.

⁶⁷ *Id.*

and higher quality of life.”⁶⁸ Moreover, measuring success by employment outcomes, sobriety, and financial independence may actually perpetuate harms related to abuse. Many survivors face significant barriers to maintaining employment or achieving financial stability as a result of the abuse that they have experienced, including that they may be fired or forced to leave their jobs for safety reasons, have suffered economic abuse that damaged their credit or led to coerced debt, or have experienced unaddressed trauma that leads to substance use or negatively impacts their ability to continue working.⁶⁹ The Notice fails to consider or even acknowledge these barriers for survivors or how its proposed measures of success would perpetuate these harms even further.

IV. The Notice Prioritizes Coercion and May Result in Ineffective and Potentially Unlawful Mandatory Treatment.

HUD’s Notice encourages a shift away from a strawman version of “Housing First” and towards a model that conditions housing assistance on a participant’s agreement to receive certain “supportive services.” But in making its case for that shift, the Notice mischaracterizes Housing First as housing only, when Housing First has always emphasized provision of other supportive services. That mischaracterization allows HUD to present its “Treatment First” scheme as “supportive.” However, by both conditioning housing on treatment and prioritizing so-called “accountability” over care, HUD’s Treatment First model instead incentivizes mandatory treatment that is ineffective and potentially unlawful.

The Notice incentivizes a “Treatment First” approach to homelessness policy that emphasizes “supportive services” over safe and stable housing and is premised on HUD’s assertion that “participation agreements designed to engage program participants in those services,” are central to ensuring an effective response to homelessness.⁷⁰ Access to voluntary supportive services like high-quality medical care—including voluntary drug treatment and medications for opioid-use disorder (“MOUD”)—are important, but the Notice and surrounding administration actions incentivize policies that *require* participants to accept various “supportive services” in order to receive housing assistance.⁷¹ The list of services that recipients could be compelled to receive is long and could include: “[e]mployment-focused services, behavioral

⁶⁸ Cris M. Sullivan, *Understanding How Domestic Violence Support Services Promote Survivor Well-being: A Conceptual Model*, 33 J. Family Violence 123, 123 (2017).

⁶⁹ *Id.*

⁷⁰ 91 Fed. Reg. at 57908.

⁷¹ See 91 Fed. Reg. at 57910-11. The shift away from Housing First that the Notice incentivizes may conflict with state laws that require a Housing First approach. See, e.g., Cal. Welf. & Ins. § 8256(a) (“[A]gencies and departments administering state programs created on or after July 1, 2017, shall collaborate with the California Interagency Council on Homelessness to adopt guidelines and regulations to incorporate core components of Housing First.”); Haw. Rev. Stat. § 346-378(a) (“The department of human services . . . shall implement housing first programs and services, as the department deems appropriate for clientele who would most likely benefit from and succeed with the implementation of housing first programs and services.”).

health services, substance use disorder treatment, recovery support services, participation agreements tailored to individual needs, and transitional housing.”⁷² HUD’s emphasis on mandatory supportive services makes reducing homelessness—which is the touchstone for any new activity incentivized by HUD under the Statute—secondary to other goals like promoting “economic self-sufficiency.”⁷³

To make its case for “Treatment First,” HUD mischaracterizes Housing First as prioritizing housing only at the expense of providing “other types of assistance and services.”⁷⁴ That description is wrong. Housing First means that unhoused people can access housing assistance without showing that they have completed mental health treatment, are sober, or meet any other preconditions.⁷⁵ Housing First also means that participants do not have to agree to receive services after housing has been provided.⁷⁶ By prioritizing connecting unhoused people to housing assistance, Housing First treats homelessness as a housing problem. That does not, however, mean that Housing First programs provide no supportive services. In addition to housing, programs under a Housing First model already provide access to supportive services.⁷⁷ To the extent some Housing First programs have failed to provide those supportive services, that problem should be fixed by adding voluntary supportive services, not abandoning the evidence-based Housing First model.

By contrasting its Treatment First model with an inaccurate version of Housing First, HUD hides the coercive nature of the policies it advocates for. HUD dedicates significant space to explaining the benefits that supportive services provide,⁷⁸ but it glosses over the fact that to receive housing assistance, program participants would be *required* to engage in various services—regardless of whether they want or need them. HUD euphemistically frames the mandatory conditions as “participation agreements” that “empower individual choice while pairing it with accountability.”⁷⁹ But HUD is unclear about what specific services it would require, and it never explains what accountability would look like or how it would be triggered.⁸⁰

⁷² 91 Fed. Reg. at 57904.

⁷³ *Id.* at 57910.

⁷⁴ *Id.* at 57904.

⁷⁵ U.S. Dep’t of Hous. & Urban Dev., *FR-6700-N-35*, at 13 (June 27, 2023), <https://perma.cc/6V7R-N3NZ> (defining Housing First as “[a] model of housing assistance that prioritizes rapid placement and stability in permanent housing in which admission does not have preconditions . . . and in which housing assistance is not conditioned upon participation in services”).

⁷⁶ *Id.*

⁷⁷ National Alliance to End Homelessness, *Protecting the Use of Housing First* (May 2, 2022), <https://perma.cc/442S-9SAJ>.

⁷⁸ 91 Fed. Reg. at 57909-11.

⁷⁹ *Id.* at 57911.

⁸⁰ *See id.* at 57910-11. The range of potential conditions is incredibly long, and ranges from “employment-focused services” to “behavioral health services.” *Id.* at 57904.

Mandatory treatment does not work. It is less effective at preventing homelessness and addressing mental health needs than providing housing and voluntary services. A systematic review of relevant studies showed that “[c]ompared with Treatment First, Housing First programs decreased homelessness by 88%, [and] improved housing stability by 41%.”⁸¹ For people experiencing severe mental health conditions, access to housing and *voluntary* services—not coercive practices—are especially effective at preventing homelessness.⁸² The opposite is true for mandatory treatment, which many studies conclude is not effective and often harmful.⁸³ This research—which HUD ignores—demonstrates that the mandatory treatment encouraged in the Notice does not satisfy the statutory requirement that incentivized activities be “proven effective at reducing homelessness.”⁸⁴

The negative outcomes of mandatory treatment are manifold. There is little evidence that coerced mental healthcare “confers any clinical benefits.”⁸⁵ Instead, the research that exists shows that coercive practices “are often associated with negative outcomes for patients with significantly adverse impacts on satisfaction and quality of life.”⁸⁶ In fact, one recent study found that involuntary hospitalization “increases the probability of being charged with a violent crime and the probability of death by suicide or overdose.”⁸⁷

Those negative effects will fall disproportionately on people of color. Thirty-two percent of unhoused people are Black, almost two-and-a-half times their share of the general

⁸¹ See Yinan Peng et. al, *Permanent Supportive Housing with Housing First to Reduce Homelessness and Promote Health among Homeless Populations with Disability: A Community Guide Systematic Review*, 26 J. of Pub. Health Mgmt & Prac. 1, 2 (2020).

⁸² See Molly Brown et al., *Housing First as an Effective Model for Community Stabilization Among Vulnerable Individuals with Chronic and Nonchronic Homelessness Histories*, 44 J. Cmty. Psych. 384 (2016); Leyla Gulcur et al., *Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes*, 13 J. Cmty. & Applied Soc. Psych. 171 (2003); Sam Tsemberis & Ronda F. Eisenberg, *Pathways to Housing: Supported Housing for Street-Dwelling Homeless Individuals with Psychiatric Disabilities*, 51 Psychiatric Servs. 487, 487, 492 (2000), <https://perma.cc/XG4E-Q2AT>.

⁸³ See, e.g., D. Werb, *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, 28 Int’l J. Drug Pol’y 1, 2 (2015); U.S. Dep’t of Health & Hum. Servs., *Choice Matters: Housing Models that May Promote Recovery for Individuals and Families Facing Opioid Use Disorder*, at v (June 23, 2019) (“Individuals served through the Housing First Model are also less likely to misuse substances compared to clients who are involved in programs that require SUD treatment as a condition of housing.”), <https://perma.cc/GS25-LCDN>; see also Bazelon Ctr. for Mental Health Law, *Mayor Adams’ Plan Will Not Help New Yorkers with Mental Disabilities* 2 (Dec. 2, 2022), <https://perma.cc/4TZ8-QV9Z> (“When it comes to mental health treatment, there is no evidence that court-ordered involuntary treatment in hospitals is more effective than quality community-based treatment.”).

⁸⁴ 42 U.S.C. § 11386(d)(2)(C).

⁸⁵ S.P. Sashidharan, Roberto Mezzina & Dainius Puras, *Reducing Coercion in Mental Healthcare*, 28 Epidemiology & Psychiatric Scis. 605, 606 (2019).

⁸⁶ *Id.*

⁸⁷ Natalia Emanuel, Pim Welle, & Valentin Bolotnyy, *A Danger to Self and Others: Health and Criminal Consequences of Involuntary Hospitalization*, 1158 Fed. Rsrv. Bank N.Y. Staff Reps. 1, 24 (2025), <https://perma.cc/U7HP-PA76>.

population.⁸⁸ This disparity is the result of economic abandonment, housing discrimination, police abuse, and centuries of violent, systemic oppression and racism.⁸⁹ In addition, research shows that mental health professionals diagnose Black and Latine populations with psychiatric disorders at much higher rates than they do white people, and that this disparity may result from racial bias in the diagnosis process and the systemic racism that people of color face in housing, economic opportunity, and medical and mental health treatment prior to the diagnosis.⁹⁰ Under the policies promoted by the Notice, these disproportionate rates of psychiatric diagnoses, combined with the overrepresentation among the unhoused population, would likely result in people of color being disproportionately subjected to mandatory treatment.

The mandatory treatment policies that HUD encourages are also potentially unlawful. Under the Fair Housing Act (“FHA”), it is illegal both to make housing unavailable on the basis of disability and to discriminate in the terms and conditions of housing on the basis of disability.⁹¹ In potential violation of those protections, HUD’s Notice encourages policies that require people with disabilities to undergo mandatory treatment in order to receive housing assistance. In analogous circumstances, courts have concluded that housing and zoning requirements that create heightened or more restrictive terms for people with disabilities violate the FHA, in addition to the ADA and Section 504 of the Rehabilitation Act (“Section 504”).⁹²

⁸⁸ U.S. Dep’t of Hous. & Urban Dev., *The 2025 Annual Homelessness Assessment Report (AHAR) to Congress* 4 (May 2026), <https://perma.cc/VX6L-L5PK>; *Quick Facts*, U.S. Census Bureau, last visited Oct. 9, 2026, <https://perma.cc/DX2U-C5PD>.

⁸⁹ Teresa Wiltz, ‘A Pileup of Inequities’: Why People of Color Are Hit Hardest By Homelessness, Stateline, Mar. 29, 2019, <https://perma.cc/5XTQ-2ZLV>.

⁹⁰ Charles M Olbert, Arundati Nagendra & Benjamin Buck, *Meta-analysis of Black vs. White Racial Disparity in Schizophrenia Diagnosis in the United States: Do Structured Assessments Attenuate Racial Disparities?*, 127 J. Abnormal Psych. 104 (2018); Robert C. Schwartz & David M. Blankenship, *Racial Disparities in Psychotic Disorder Diagnosis: A Review of Empirical Literature*, 4 World J. Psychiatry 133 (2014); Michael A. Gara, et al., *A Naturalistic Study of Racial Disparities in Diagnoses at an Outpatient Behavioral Health Clinic*, 70 Psych. Servs. 1, 3-4 (2018).

⁹¹ See 42 U.S.C. § 3604(f)(1)-(3).

⁹² See, e.g., *Gilead Cmty. Servs., Inc. v. Town of Cromwell*, 112 F.4th 93, 96-98 (2d Cir. 2024) (finding a town violated the FHA when it imposed heightened requirements on an organization attempting to open and run a “group home for individuals with mental health disabilities”); *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 305 (3d Cir. 2007) (concluding that a “law that singles out methadone clinics for different zoning procedures is facially discriminatory under the ADA and the Rehabilitation Act”); *Hum. Res. Rsch. and Mgmt. Grp., Inc. v. Cnty. of Suffolk*, 687 F. Supp. 2d 237, 247 n.5, 254 (E.D.N.Y. 2010) (concluding that plaintiffs established a claim of discrimination under the FHA and ADA where they demonstrated that several zoning regulations related to housing applied only to those “seeking treatment to recover from drug and alcohol addi[c]tion,” but not on others seeking to live in the county); *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 521 n.2, 524-26 (W.D. Pa. 2007) (concluding that plaintiff established a claim of discrimination under the FHA, ADA, and Rehabilitation Act where defendants “imposed burdens on the creation of single-family homes for persons with disabilities that [were] not applicable to the non-disabled”); *Cason v. Rochester Hous. Auth.*, 748 F. Supp. 1002, 1008-11 (W.D.N.Y. 1990) (concluding that plaintiffs established a violation of the FHA and Rehabilitation Act where the defendant public

The mandatory treatment policies likewise risk violating federal regulation. Although recipients of CoC funding have some authority to require program participants “take part in supportive services,” those supportive services cannot be “disability-related services provided through the project as a condition of continued participation in the program.”⁹³ The regulation lists disability-related services as including, at the least, “mental health services, outpatient health services, and provision of medication.”⁹⁴ To the extent that the Notice attempts to encourage homelessness policy that conditions housing assistance on disability-related treatment, those conditions may violate federal regulation.

V. The Notice’s Drug-Free and Sober Housing Determination Fails to Recognize the Importance of Permanent Supportive Housing and Harm Reduction.

HUD’s Notice encourages jurisdictions to invest in drug-free and sober housing at the expense of permanent supportive housing, which does not require sobriety as a precondition.⁹⁵ In so doing, the Notice ignores the importance of providing low-barrier housing options and harmfully maligns effective harm reduction practices. Sober housing works for some and should be an available option. But funding sober housing should not come at the expense of also providing housing that does not require someone to first completely stop using drugs. Supportive housing that does not condition housing on abstinence is important because it recognizes the reality that recovery is non-linear.⁹⁶ Supportive housing is also proven to be effective at promoting housing stability.⁹⁷

The Notice asserts that there is an unmet need for “drug-free housing,” that sober housing should be encouraged, and suggests that permanent supportive housing is responsible for high rates of substance use and overdose deaths among unhoused individuals.⁹⁸ As an initial matter, these conclusions are inadequately supported in the Notice and thus fail to meet the statutory requirement that HUD must show that an activity is proven effective before incentivizing it. The data cited showing an increase in overdose deaths in recent years is tragic but does not demonstrate that those overdose deaths are *caused* by permanent supportive housing.⁹⁹ And HUD’s determination that drug-free housing should be prioritized is based, in large part, on the

housing authority denied housing based on a failure to “live independently” only to disabled applicants, but not non-disabled applicants).

⁹³ See 24 C.F.R. § 578.75(h).

⁹⁴ *Id.*

⁹⁵ 91 Fed. Reg. at 57911-13.

⁹⁶ Substance Abuse & Mental Health Servs. Admin., *SAMHSA’s Working Definition of Recovery* (2012), <https://perma.cc/42B6-4M2G>.

⁹⁷ See *supra* notes 81-82.

⁹⁸ 91 Fed. Reg. at 57909-11.

⁹⁹ See *id.* at 57911-12 (citing to U.S. Dep’t of Hous. & Urban Dev., *2022 Annual Homelessness Assessment Report (AHAR) to Congress* 106 (May 2024), <https://perma.cc/4XHS-JM2C> (noting that most of the increase in deaths occurred during the height of the COVID-19 pandemic)).

views of a non-representative group of “subject matter experts” handpicked by the Trump administration for its “Treatment First” White House summit.¹⁰⁰ At the same time, the Notice ignores the substantial body of evidence showing that permanent supportive housing that does not make housing contingent on sobriety is effective at reducing homelessness¹⁰¹ and substance use.¹⁰²

In arguing for increased drug-free and sober housing, the Notice also inaccurately suggests that harm reduction is ineffective and even harmful. Harm reduction is “a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use,”¹⁰³ not, as HUD describes it, a practice that “turn[s] a blind eye to drug use.”¹⁰⁴ In fact, a study found that participants in a syringe service program are five times more likely to enter drug treatment and three times more likely to stop injecting illegal drugs.¹⁰⁵ Harm reduction services also facilitate accurate drug education; connection to voluntary drug treatment, including medications for opioid use disorder (“MOUD”); access to overdose reversal medications like naloxone; and stable housing, among other things.¹⁰⁶ Those practices are effective.¹⁰⁷ Sterile syringe programs prevent the spread of diseases including HIV among people who inject drugs, resulting in “significant cost savings to publicly[-]funded HIV care.”¹⁰⁸

Attempts to ban harm reduction services are also likely unlawful under the ADA and Section 504. As explained previously, the ADA prohibits discrimination based on disability,¹⁰⁹ and Section 504 prohibits recipients of federal funding from discriminating on the basis of disability.¹¹⁰ Those protections have been applied to hold that attempts at targeting harm reduction services like sterile syringe supplies and drug testing equipment amount to unlawful discrimination because they “impermissibly prohibit[] disabled individuals from receiving health

¹⁰⁰ See 91 Fed. Reg. at 57905, 57911-12.

¹⁰¹ See *supra* notes 81-82.

¹⁰² See, e.g., Susan E. Collins et al., *Project-Based Housing First for Chronically Homeless Individuals with Alcohol Problems: Within-Subject Analyses of 20-Year Alcohol Trajectories*, 102 Am. J. Pub. Health 511, 511 (2012); Deborah K. Padgett et al., *Substance Use Outcomes Among Homeless Clients with Serious Mental Illness: Comparing Housing First with Treatment First Programs*, 47 Comm. Mental Health J. 227, 227 (2012).

¹⁰³ See National Harm Reduction Coalition, *Principles of Harm Reduction*, <https://perma.cc/A7GM-Y4D2>.

¹⁰⁴ 91 Fed. Reg. at 57912.

¹⁰⁵ Holly Hagan et al., *Reduced Injection Frequency and Increased Entry and Retention in Drug Treatment Associated with Needle-Exchange Participation in Seattle Drug Injectors*, 19 J. Substance Abuse Treatment 247, 250 (2000).

¹⁰⁶ Drug Policy Alliance, *Harm Reduction*, <https://perma.cc/9KEN-FQB7>.

¹⁰⁷ *Id.*

¹⁰⁸ See Monica S. Ruiz et al., *Using Interrupted Time Series Analysis to Measure the Impact of Legalized Syringe Exchange on HIV Diagnoses in Baltimore and Philadelphia*, 82 J. Acquired Immune Deficiency Syndromes S148, S148 (2019).

¹⁰⁹ 42 U.S.C. §§ 12131-32.

¹¹⁰ 29 U.S.C. § 794.

services based on their disability.”¹¹¹ To the extent that the Notice pushes jurisdictions to prohibit harm reduction practices, it is encouraging action that may violate these statutes.

VI. The Notice’s Law Enforcement Determination is Unsupported, Ineffective, and Potentially Unlawful.

The Notice’s fifth “proven effective” activity is “Coordination with law enforcement and first responders as crucial partners in addressing homelessness.”¹¹² This vague description leaves the public and applicants left to guess what “coordination” HUD is proposing to incentivize and in what way law enforcement partners should “address[] homelessness.”¹¹³ Nowhere does the Notice explain the proposed activity with any specificity. Rather, HUD describes the need for vague “partnerships” with first responders and law enforcement in order to “reduce trauma” and “address[] unsheltered homelessness and encampments.”¹¹⁴ Though much of the Notice’s vague language around “public safety,” “emergency services,” and “addressing unsheltered homelessness and encampments” may sound innocuous, as discussed *supra* Section I, when read in the context of other statements and actions by the administration it is likely that this Notice represents an attempt to incentivize criminalizing homelessness.

Health and safety emergencies deserve an appropriate and effective response, including in unhoused communities. But responding to homelessness and behavioral health crises with law enforcement and using criminal enforcement to push visible poverty out of sight are not effective and often do not respect unhoused individuals’ dignity and rights. To the extent the Notice promotes these failed and harmful law enforcement responses to homelessness, we strongly oppose these activities.¹¹⁵

¹¹¹ *Gather Church v. Lewis Cnty.*, 814 F. Supp. 3d 1154, 1160, 1169 (W.D. Wa. 2025) (concluding that a zoning ordinance that banned plaintiffs from providing sterile syringes and drug testing equipment was likely unlawful under the ADA and Rehabilitation Act); see also Abigail Fletes et al., *Advancing Harm Reduction Services in the United States: The Untapped Role of the Americans with Disabilities Act*, 21 Yale J. Health Pol’y & Ethics 61, 75-80 (2022) (describing the ADA and Rehabilitation Act theories).

¹¹² 91 Fed. Reg. at 57903.

¹¹³ *Id.*

¹¹⁴ *Id.* at 57914. See also *id.* at 57913 (stating intention to “create incentives and bonuses to encourage CoCs to assist in reducing the trauma associated with living on the streets or in encampments, and with related public illicit drug use and other criminal activity, including through partnerships with law enforcement, first responders, and other public safety agencies.”).

¹¹⁵ While the Notice nominally includes first responders in this proposed “proven effective” activity, it does not explain who qualifies as a “first responder” or what role they play in the activity HUD intends to incentivize. See *id.* at 57914 (stating that first responders witness and respond to the impacts of homelessness and encampments and concluding that they “possess unique insight into both the needs of homeless individuals and the broader community impacts associated with homelessness”). Because the examples used in the Notice focus on police involvement and criminalization, and, as discussed *supra* Section I, the context suggests this is the focus of HUD’s proposed changes, this comment focuses on the role of law enforcement.

a. The Notice’s Description of a Lack of Law Enforcement in Current Homelessness Policies is False.

The Notice’s description of a “lack of law enforcement” in current responses to homelessness is contrary to the reality that widespread criminalization of homelessness is already underway.¹¹⁶ Laws criminalizing homelessness—including laws that outlaw survival activities such as sleeping, camping, eating, or sitting in public; anti-panhandling laws; vague prohibitions on loitering, loafing, or vagrancy; and food-sharing and scavenging bans—are ubiquitous. A 2019 survey of 187 cities found that 55% prohibit sitting or lying in public, 72% prohibit camping in public, and 60% prohibit public loitering, loafing, or vagrancy.¹¹⁷ And these numbers have dramatically increased following the Supreme Court’s decision in *Grants Pass v. Johnson*, which ruled that punishing a person for sleeping in public, even if they have nowhere else to go, does not violate the Eighth Amendment’s cruel and unusual punishments clause.¹¹⁸ In the two years that followed that Supreme Court decision, over 350 cities and 14 states passed laws criminalizing unhoused people.¹¹⁹ And laws that do not target unhoused people on their face are often disproportionately enforced against them. For example, in Eugene, Oregon, one study found that 75% of defendants charged with criminal trespass lacked permanent housing and that the law was regularly enforced, with more criminal trespass charges issued than speeding tickets.¹²⁰

Unsurprisingly given this landscape, unhoused people are arrested at extremely high rates. A 2015 Colorado survey of 441 unhoused people found 36% had been arrested, and 70% had been ticketed under laws that criminalize homelessness, including bans on sleeping, sitting, loitering, using shelter, or panhandling.¹²¹ In Atlanta, a 2022 study found that while unhoused people made up only 0.4% of the total city population, they represented 12.5% of the city jail population and most were likely jailed for low level quality-of-life offenses.¹²² Another study found that from 2017 to 2020, 50% of arrests in Portland, Oregon, 24% of arrests in Sacramento,

¹¹⁶ 91 Fed. Reg. at 57914.

¹¹⁷ National Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019*, at 12-13, <https://perma.cc/84CC-P6PQ>.

¹¹⁸ 603 U.S. 520, 560 (2024).

¹¹⁹ ACLU, *Two Years Since Grants Pass: Tracking the Criminalization of Homelessness*, <https://perma.cc/6WSK-N647>; National Homelessness Law Center, *Two Years Since the Grants Pass Ruling, 350 Cities, 14 States, and the Trump Administration Have Criminalized Homelessness*, <https://perma.cc/T544-NUU2>.

¹²⁰ See Ryan E. Little et. al., *Cities try to arrest their way out of homeless problems*, PBS News Hour, Jun. 29, 2020, <https://perma.cc/HB8Z-QYSP>.

¹²¹ Denver Homeless Out Loud, *No Right to Rest: Criminalizing Homelessness in Colorado* 7-8 (April 4, 2015), <https://perma.cc/L96A-5ULS>.

¹²² Luci Harrell & Brian Nam-Sonestein, *Unhoused and under arrest: How Atlanta polices poverty*, Prison Policy Initiative (June 8, 2023), <https://perma.cc/36JX-SNS6>.

California, and 24% of arrests in Los Angeles, California were of unhoused people.¹²³ In Phoenix, Arizona, a 2024 Department of Justice investigation found that 37% of all misdemeanor arrests and citations were issued against unhoused people.¹²⁴

Criminal legal system involvement and homelessness are part of a vicious cycle.¹²⁵ Unhoused people are at increased risk of arrest and incarceration and, in turn, arrests, citations, and jail or prison stays make it harder to obtain and keep housing, pushing people into homelessness and keeping them there for longer. Unhoused people are up to 11 times more likely to be arrested than housed people.¹²⁶ And existing research shows that spending time in jail or prison often results in homelessness—at least 50,000 people enter shelters directly from correctional facilities each year.¹²⁷

The pervasive nature of laws that criminalize homelessness makes it almost impossible for people living on the street to avoid violating them.¹²⁸ Even if the penalty is a fine, a person may still be subject to arrest, search, and a warrants check. Failure to pay the fine or to appear in court on the day listed on a summons can lead to an arrest warrant being issued.¹²⁹ It can be extremely difficult for an unhoused person to make it to court on the assigned date and time.¹³⁰ In Atlanta, 86 percent of unhoused people who had been incarcerated at the city jail had bench warrants for failure to appear in court.¹³¹

¹²³ Melissa Lewis, *Police Know Arrests Won't Fix Homelessness. They Keep Making Them Anyway.*, Reveal, June 23, 2022, <https://perma.cc/Q8ZM-3CQC>.

¹²⁴ Janelle Griffith, *'This is Validation': Phoenix Homeless Welcome Justice Department's Findings, Call for Consent Decree*, NBC News, June 18, 2024, <https://perma.cc/F9K7-2BN6>.

¹²⁵ U.S. Interagency Council on Homelessness, *Reducing Criminal Justice System Involvement Among People Experiencing Homelessness*, Aug. 2016, <https://perma.cc/7582-PXSP> (“The relationship between homelessness and criminal justice involvement is also bi-directional — homelessness increases the risk of criminal justice involvement, and vice versa.”).

¹²⁶ NLCHP, *supra* note 117, at 50.

¹²⁷ See U.S. Dep’t of Hous. & Urban Dev., *The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2: Estimates of Homelessness in the United States* 1-14 (Oct. 2018), <https://perma.cc/NX9H-AG8U>.

¹²⁸ See e.g., Coalition on Homelessness, San Francisco, *Punishing the Poorest: How the Criminalization of Homelessness Perpetuates Poverty in San Francisco* 2, <https://perma.cc/E9RN-6548> (stating that 69 percent of unhoused survey respondents had been cited for a “quality of life” citation in the last year, that 90 percent of those “respondents were unable to pay the fine for their last citation,” and that, in San Francisco, inability to pay a fine results in a three hundred dollar civil assessment fee in addition to “the base fine, an arrest warrant, and [suspension] of one’s driver’s license”).

¹²⁹ See Andrew Weber, *Most Tickets for Homelessness Result in Arrest Warrants. That Can Make Finding Housing Hard*, KUT News, June, 20, 2019, <https://perma.cc/Q5AU-M7GK> (showing that from 2015 to 2018 in Austin, Texas, almost 60 percent of citations issued for “sitting or lying down, camping[,] or panhandling in public” resulted in the issuance of an arrest warrant); Paul Boden, *Criminalizing the Homeless Costs Us All*, Street Roots, Mar. 1, 2012, <https://perma.cc/449A-ZYHW> (in survey of over 600 unhoused people across eight cities, 57 percent of respondents “reported having bench warrants issued for their arrest as the result of minor ‘quality of life’ offenses”).

¹³⁰ Vera Institute of Justice, *No Access to Justice: Breaking the Cycle of Homelessness and Jail* 6-7 (August 2020), <https://perma.cc/HCP7-G67X>.

¹³¹ Harrell & Nam-Sonestein, *supra* note 122.

Dismantling encampments and dispersing their residents—often referred to as “encampment sweeps” or described with euphemisms such as “addressing . . . encampments”—are part and parcel of this criminalization.¹³² Police are almost always involved in conducting encampment sweeps.¹³³ And cities use laws that prohibit camping, sleeping, or storing belongings in public to displace unhoused people and confiscate and destroy their belongings and shelter.¹³⁴

As discussed in more detail below, these widespread efforts to criminalize homelessness are not effective at reducing homelessness and can have devastating effects for unhoused individuals.

b. The Notice’s Law Enforcement Determination is Unsupported.

While the Notice asserts that “partnerships between CoCs, first responders, law enforcement agencies, and state and local governments are a proven and effective strategy for reducing homelessness,” this conclusion is not supported by the research cited in the Notice.¹³⁵

The Notice first points to Austin, Texas, asserting that unsheltered homelessness decreased by one-third two years after the city reinstated a camping ban.¹³⁶ That is wrong. In fact, the source cited in the Notice explains that the unsheltered population *grew* and spread out farther from the city center, likely as a result of the camping ban.¹³⁷ The Notice next points to Colorado Springs, Colorado as an example of unsheltered homelessness decreasing after camping restrictions were put in place. But the analysis that the cited source relies on for that proposition found that Colorado Springs’ success in lowering its unsheltered population could be traced to an expansion of the city’s homeless shelter—which increased capacity from 37 to

¹³² 91 Fed. Reg. at 57914 (encouraging “addressing . . . encampments”); *see also id.* at 57915 (describing “full resolution of . . . encampments”).

¹³³ *See* Jamie Suki Chang et al., *Harms of Encampment Abatements on the Health of Unhoused People*, 2 SSM – Qualitative Rsch. Health 1, 1, 6 (2022).

¹³⁴ *See* National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* 30, <https://perma.cc/P4NM-TDM7>; Benioff Homelessness and Housing Initiative, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness* 65 (June 2023), <https://perma.cc/W3U2-M9QC>; Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 Am. Socio. Rev. 769, 790 (2019) (describing punitive and widespread process of policing unhoused individuals through move-along orders, citations, and threats of arrest and pervasive property confiscation and destruction that almost “always involved either a police presence, the threat of police being called, or leveraging anti-homeless ordinances to provide legal cover for property confiscation”).

¹³⁵ 91 Fed. Reg. at 57915.

¹³⁶ *Id.*

¹³⁷ Ben Thompson & Katy McAfee, *Austin’s Homeless Population Dispersing after 2 Years of Camping Ban Enforcement*, Community Impact, May 23, 2023, <https://perma.cc/78H3-Q9F7>; *see also* Roshan Abraham, *A Palantir Co-Founder is Pushing Laws to Criminalize Homeless Encampments Nationwide*, Vice, Mar. 23, 2023, <https://perma.cc/9AXG-4P4V> (“[S]ince a camping ban was reinstated by Prop B in 2021, sheltered homelessness increased from 567 people to 818, and unsheltered homelessness increased from 2,197 to 3,838.”).

450—and makes no mention of any camping ban.¹³⁸ The Notice’s third example of “evidence” that law enforcement approaches reduce homelessness cites to an Anchorage, Alaska announcement that no “major, entrenched homeless encampments” remained in the city, but which says nothing about whether dismantling these encampments resulted in any reduction in homelessness.¹³⁹ And as a representative of the City of Anchorage admitted, when encampments are abated, few residents are housed and “people do often just end up camping in a different part of the city.”¹⁴⁰

The Notice also tries to justify its criminalization approach by equating unsheltered homelessness with “open air drug markets.”¹⁴¹ HUD asserts that encampments and illicit drug use “exist in a self-perpetuating cycle” and therefore concludes that a public safety (i.e. criminalization) approach is necessary to address the “harms of unchecked encampments and public drug use.”¹⁴² But the research cited by HUD does not support this conclusion. The Notice primarily cites a 2018 HUD paper for the proposition that encampments function “as places where substance use, overdose, and criminal activity occur in concentrated form.”¹⁴³ But the conclusion of this paper was that encampments form primarily because of shortcomings in shelter systems, a sense of safety and community in encampments, and a desire for autonomy and privacy. Contrary to what the Notice suggests, the paper is clear that “[n]othing in the literature suggests that most or even many encampments are where people congregate primarily to support their drug addiction.”¹⁴⁴ Moreover, the report concludes that “sweeps of encampments do little to increase shelter usage or otherwise resolve the problem of encampments” and “may actually *reduce* the likelihood that people will seek shelter because it erodes trust and creates an adversarial relationship between people experiencing homelessness and law enforcement or outreach workers.”¹⁴⁵

¹³⁸ 91 Fed. Reg. at 57915 (citing Brief of Amicus Curiae Cicero Institute in Support of Petitioner at 14, *City of Grants Pass v. Johnson*, 603 U.S. 643 (2024) (No. 23–175) (citing *Public Camping Bans: Guiding the Homeless into Shelter*, Cicero Inst. (Dec. 28, 2023), <https://perma.cc/9QSH-X6DY> (citing, Erik Gamm & Chris Brown, *Homelessness in Colorado Springs*, Common Sense Ins., Feb. 23, 2023, <https://perma.cc/X3XE-4GR5>)).

¹³⁹ Municipality of Anchorage, *Chair Constant Statement on Homelessness Milestone* (Mar. 3, 2026), <https://perma.cc/K3CR-X9UR>.

¹⁴⁰ Hannah Flor, *Here’s how Mayor LaFrance’s Team is Clearing Anchorage Homeless Camps*, Alaska Pub. Media, May 28, 2025, <https://perma.cc/4SG3-876A>.

¹⁴¹ 91 Fed. Reg. at 57914.

¹⁴² *Id.*

¹⁴³ *Id.* (citing Rebecca Cohen, Will Yetvin & Jill Khadduri, *Understanding Encampments of People Experiencing Homelessness and Community Responses: Emerging Evidence as of Late 2018*, U.S. Dep’t of Hous. & Urb. Dev., Office of Policy Dev. & Rsch. (Jan. 7, 2019), <https://perma.cc/AL3V-RGJD>). The only other source cited for this proposition is a news article reporting on the existence of an open-air drug market in Portland, Oregon, with no mention of homelessness or encampments. See Makenna Marks, *Open-Air Drug Market in Downtown Portland Hurting Local Businesses*, KPTV FOX 12 Oregon, Nov. 22, 2024, <https://perma.cc/UC2R-TGJU>.

¹⁴⁴ *Understanding Encampments*, *supra* note 143, at 6.

¹⁴⁵ *Id.* at 13.

And the Notice’s conclusion that encampments are associated with violent crime and overdoses does not follow from many of the examples it cites. For example, the fact that 50 percent of all arrests in Portland, Oregon were of unhoused individuals, shows not that unhoused individuals are committing violent crimes, but rather that, as discussed *supra* Section VI(a), they are overpoliced and arrested at high rates for low-level offenses. Indeed, the data shows that unhoused people are less likely than housed people to be arrested for violent crime. In the Portland example relied on in the Notice, only 9% of the arrests of unhoused people included a violent charge, as compared to 18% of arrests of all other people.¹⁴⁶ And while the Notice points to a troubling increase in deaths among unhoused individuals in New York City, it omits that three-quarters of those who died were sheltered, not in encampments.¹⁴⁷ Time and again, the Notice twists data and reporting to paint unsheltered homelessness as tantamount to violent crime that must be addressed through policing and criminalization. And, more importantly, none of the sources cited in the Notice demonstrate that the law enforcement approach to addressing homelessness that HUD promotes actually results in a reduction of crime or violence.¹⁴⁸

The Notice attempts to distance HUD’s proposed activity from criminalization by suggesting that anti-homeless laws that impose penalties other than jailtime are “well designed approaches” that “result[] in treatment and shelter beds being filled, not jail cells.”¹⁴⁹ As an initial matter, the Notice provides no evidence that supports the proposition that enforcement of non-jailable offenses results in acceptance of shelter or treatment.¹⁵⁰ To the contrary, social

¹⁴⁶ Melissa Lewis, *Police Know Arrests Won’t Fix Homelessness. They Keep Making Them Anyway.*, Reveal News, June 23, 2022, <https://perma.cc/Q8ZM-3CQC>.

¹⁴⁷ Kevin Duggan, *Lost and Forgotten: Record Number of Homeless Died in New York Last Year, Report Finds*, AMNY, Mar. 22, 2022, <https://perma.cc/VG9U-HXY7>.

¹⁴⁸ The Notice’s attempt to support a law enforcement response to encampments by asserting that “unchecked encampments” impact children and survivors of domestic violence and trafficking” is similarly unsupported by the cited sources. *See, e.g.*, Charlie Harger, *‘This kid’s going to die’: Neighbors say 9-year-old abandoned in tent off Aurora. CPS claims he’s not in danger*, KIRO, Dec. 19, 2025, <https://perma.cc/Y6VM-CXNZ> (describing plight of a boy living with his parents in a tent that is “not an encampment,” and stating “this is not a story about homelessness”); Melissa Henry, *‘Prostitution, drugs, human trafficking’: Colorado Springs business owner calls on leaders to address homelessness problems*, KKTV, Nov. 7, 2025, <https://perma.cc/M4JR-4L8X> (describing business owner frustrations with homelessness with no mention of children or survivors of domestic violence or trafficking); UC News, May 12, 2025, <https://perma.cc/TAV7-5GBS> (finding adverse childhood events linked to higher risk of homelessness, with no mention of encampments or public drug use).

¹⁴⁹ 91 Fed. Reg. at 57915.

¹⁵⁰ That 92 percent of unlawful camping charges filed in Kentucky were non-jailable offenses, does not demonstrate that enforcement results in acceptance of treatment or shelter. Nor does the fact that cities and states across the country have passed camping bans. *See* 91 Fed. Reg. at 57915. The only support cited for the proposition that camping bans “can be a critical tool to match individual needs with appropriate levels of care” is an op-ed by a Cicero Institute employee making this assertion without any research or data to support it. *See* Devon Kurtz, *With Louisiana Homeless Bill, Democrats Once Again Smear Sensible Policy as Jim Crow*, The Federalist, Apr. 27, 2026, <https://perma.cc/2P8G-PWUV>.

science research shows that citations do not result in recipients receiving additional services.¹⁵¹ It also ignores the reality that imposing low-level criminal and civil penalties on unhoused people for unavoidable behaviors is extremely harmful and only serves to perpetuate homelessness.¹⁵² And even where a person could not face incarceration for the underlying offense as a matter of law, failure to pay fines can easily result in arrest and incarceration.¹⁵³ Defendants who cannot pay fines, court costs, or other fees are routinely held in contempt and jailed.¹⁵⁴ And the same devastating collateral effects can flow from both civil and criminal penalties.¹⁵⁵

c. The Criminalization Promoted by the Notice is Ineffective, Harmful, and Expensive.

Responding to homelessness with law enforcement is misguided and counterproductive. Law enforcement involvement in outreach is costly and makes it less likely that unhoused people will accept services.¹⁵⁶ Police presence also increases the likelihood of enforcement of laws that criminalize homelessness. Fining and arresting unhoused people for unavoidable behaviors and pushing them from place to place under threat of enforcement serves no constructive purpose and keeps people unhoused for longer.¹⁵⁷ Even relatively small fines are unaffordable for most unhoused individuals and make it harder for people to pay for basic necessities like food and

¹⁵¹ See, e.g., Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Soc. Problems at 12 (2019), <https://perma.cc/BQ7X-7VE8>.

¹⁵² See, e.g., Herring, *supra* note 134, at 770 (“Through police interactions that fall short of arrest, move-along orders and citations collectively work to dispossess the poor of their property; create barriers to accessing services, housing, and jobs; and increase vulnerability to violence and crime by stressing the already tenuous social ties between individuals residing in public space.”).

¹⁵³ See Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 Vand. L. Rev. 1055, 1081 (2015); Laws. Comm. for Civ. Rs. of the San Francisco Bay Area, *Cited For Being in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public*, <https://perma.cc/YNQ4-Q24R>.

¹⁵⁴ See ACLU, *In for a Penny: The Rise of America’s New Debtors’ Prisons* 5, 81 (2010), <https://perma.cc/CJS2-L85B>.

¹⁵⁵ *Id.*

¹⁵⁶ Ma’ayan Dembo, *Off The Rails: Alternatives to Policing on Transit*, <https://perma.cc/97Z8-KP58> (Los Angeles study showing law enforcement outreach teams led by a homeless services nonprofit were able to connect 27% of people they contacted with housing, while law enforcement outreach teams working in the same system placed only 1% of people they contacted in housing); *Audit of LA’s Anti-Camping Law Shows About \$3 Million Spent and Just Two People Given Permanent Housing*, CBS News (May 31, 2024), <https://perma.cc/95K7-ZP5K> (implementation and enforcement of Los Angeles anticamping law resulted in just two unhoused people provided with permanent housing while more than \$3 million was spent on implementation and enforcement).

¹⁵⁷ See, e.g., Brief of 57 Social Scientists with published Research on Homelessness as Amici Curiae in Support of Respondents, *City of Grants Pass v. Johnson*, 603 U.S. 643 (2024) (No. 23–175) 2024 WL 1513058, at *2 (“Enforcement of such laws negatively impacts homeless individuals’ health through loss of medication and medical devices; pushes people into hazardous environments along waterways and freeway underpasses; inflicts prolonged sleep deprivation; and catalyzes the spread of infectious disease. Enforcement also exacerbates poverty and extends an individual’s homelessness, most prominently through incarceration, the mark of a criminal record, and impossible-to-pay fines and fees. Enforcement creates churn that makes it difficult for individuals to maintain property and relationships long enough to utilize them to exit homelessness. These impacts create significant barriers to accessing shelter and sustaining engagement with mental and behavioral health treatment, medical care, employment, and housing.”).

medicine and attain the stability necessary to become housed. Both conviction and arrest records make it harder to obtain and keep employment, housing, benefits, and education.¹⁵⁸ Fines and fees can also lead to mounting debt, damaged credit, and jail time.¹⁵⁹ In Seattle, Washington, legal fines and resulting debt extended homelessness by nearly two years.¹⁶⁰ As law enforcement actors have recognized, enforcing anti-homeless laws often result in “officers citing and arresting the same people over and over again, with no impact on homelessness.”¹⁶¹

Moreover, peer-reviewed research demonstrates that criminalizing homelessness has not reduced homelessness. In a recent study, researchers analyzed CoC data from the 100 most populous U.S. cities and found that laws passed between 2000 and 2021 criminalizing behaviors associated with homelessness, such as panhandling, public intoxication, and urban camping, did not lead to a decrease in either total homelessness or unsheltered homelessness.¹⁶² As the authors conclude, “these ordinances lack empirical support to reduce community-level costs or provide community-level benefits. In the absence of such benefits, only the significant costs to the [unhoused] individual remain.”¹⁶³

Addressing homelessness through policing also does not increase safety. Studies show that unsheltered people relocate to more hazardous areas to avoid police enforcement.¹⁶⁴ By pushing unhoused people into more secluded locations and isolating them from the safety that living in a group can bring, encampment sweeps and enforcement also put unhoused individuals at greater risk of being victims of violent crime.¹⁶⁵ In one San Francisco study, 2 out of 23 women interviewed reported being sexually assaulted immediately following a police move-

¹⁵⁸ See Cara Suvall, *Certifying Second Chances*, 42 Cardozo L. Rev. 1175, 1182–83 (2021); Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173, 175 (2019); *What Are Collateral Consequences?*, Nat’l Inventory Collateral Consequences of Conviction, <https://perma.cc/KK8U-5FFQ> (inventorying policies that impose collateral consequences stemming from criminal convictions, including education, government benefits, health care, and more).

¹⁵⁹ See, e.g., Herring et al., *Pervasive Penalty*, *supra* note 151, at 12–13.

¹⁶⁰ Jessica Mogk, Valerie Shmigol, Marvin Futrell, Bert Stover & Amy Hagopian, *Court-Imposed Fines as a Feature of the Homelessness-Incarceration Nexus: A Cross-Sectional Study of the Relationship Between Legal Debt and Duration of Homelessness in Seattle, Washington, USA*, 42 J. Pub. Health 1, 6 (2020).

¹⁶¹ Chuck Wexler, *The Police Response to Homelessness: Problem-Solving, Innovation, and Partnerships*, Police Exec. Rsch. F. 6-7 (June 2018), <https://perma.cc/B44U-P5QB>.

¹⁶² Hannah Lebovits & Andrew Sullivan, *Do Criminalization Policies Impact Local Homelessness?*, Pol’y Stud. J. (May 21, 2025), <https://perma.cc/XH9L-CLGN>.

¹⁶³ *Id.* at 11.

¹⁶⁴ See, e.g., Jamie Suki Chang et al., *supra* note 133, at 1, 4; Shawn Flanigan & Megan Welsh, *Unmet Needs of Individuals Experiencing Homelessness Near San Diego Waterways: The Roles of Displacement and Overburdened Service Systems*, 43 J. Health & Hum. Servs. Admin. 105, 109 (2020).

¹⁶⁵ Nat’l Health Care for the Homeless Council, *Issue Brief: Impact of Encampment Sweeps on People Experiencing Homelessness* 4 (Dec. 2022), <https://perma.cc/F2LD-NAH2> (encampment residents experienced 35% increase in risk of physical assault in 30 days following a sweep); Andrew I. Lief, *A Prosecutorial Solution to the Criminalization of Homelessness*, 169 U. Pa. L. Rev. 1971, 1977 (2021).

along order.¹⁶⁶ In a Denver, Colorado study, unsheltered individuals who were forced to move were more than twice as likely to experience physical assault.¹⁶⁷

Public health researchers consistently find that criminalization makes health outcomes worse.¹⁶⁸ As one recent study concluded, “exposure to encounters with police and experiences with sweeps were associated with poorer physical health, increased psychological distress, and greater loneliness.”¹⁶⁹ Access to medical treatment and social services can be disrupted by increased enforcement of anti-homeless laws in areas where social services, medical care, and shelter are located.¹⁷⁰ And research shows that unsheltered individuals often miss appointments with service providers and doctors, as well as court dates, in order to protect their belongings from being confiscated or destroyed during a sweep.¹⁷¹

Encampment sweeps often result in the loss of valuable property, including survival equipment, medication, and identification documents.¹⁷² This property loss harms unsheltered people’s health and makes it harder to obtain benefits and housing.¹⁷³ The loss of property and displacement caused by encampment sweeps also disrupt continuity of care and interfere with service providers’ ability to access unsheltered clients, leading to health setbacks, loss of employment, and disruption to benefits and efforts to secure permanent housing.¹⁷⁴ Social

¹⁶⁶ See, e.g., Herring et al., *Pervasive Penalty*, *supra* note 151, at 10.

¹⁶⁷ Marisa Westbrook & Tony Robinson, *Unhealthy by Design: Health & Safety Consequences of the Criminalization of Homelessness*, 30(2) J. Soc. Distress & Homelessness 107, 111 (2021).

¹⁶⁸ Johns Hopkins Bloomberg Sch. of Pub. Health, *Public Health Impacts of Criminalizing Homelessness: Hopkins Judicial Health Note: City of Grants Pass v. Johnson*, <https://perma.cc/SP86-E6ZP>; *Protecting the Health and Well-Being of People Living Unsheltered by Stopping Forcible Displacement of Encampments*, Am. Pub. Health Ass’n 1, 9, 19, 21 (Nov. 14, 2023), <https://perma.cc/73VA-L9F5>; Brief for Public Health Professionals and Organizations as Amici Curiae in Support of Respondents, *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024) (No. 23-175).

¹⁶⁹ Jessie Chien, Benjamin Henwood & Randall Kuhn, *Criminalizing homelessness: Longitudinal associations of police encounters and homeless sweeps with psychosocial health among the unhoused community in Los Angeles*, J. of Soc. Sci. & Med. (Mar. 2026).

¹⁷⁰ Brief of 57 Social Scientists, *supra* note 157, at *19.

¹⁷¹ *Id.*

¹⁷² See, e.g., Chris Herring et al., *Pervasive Penalty*, *supra* note 151, at 10 (46 percent of survey respondents in San Francisco reported having their belongings taken or destroyed by city officials).

¹⁷³ See, e.g., Diane Qi et al., *Health Impact of Street Sweeps from the Perspective of Healthcare Providers*, 37 J. Gen. Intern. Med. 3707, 3707 (2022) (doctors and nurses report that property seizure created health problems for their homeless patients and increased costs for those patients’ care); Teresa Wiltz, *Without ID, Homeless Trapped in Vicious Cycle*, Stateline, May 15, 2017, <https://perma.cc/7ABN-AKAB>; *Interim Guidance on People Experiencing Unsheltered Homelessness*, Ctrs. for Disease Control and Prevention (July 8, 2021), <https://perma.cc/DZE3-B729>; NLCHP, *Housing Not Handcuffs*, *supra* note 134, at 30.

¹⁷⁴ Jamie Suki Chang et al., *Harms of Encampment Abatements on the Health of Unhoused People*, *supra* note 133, at 5-6; NLCHP, *Housing Not Handcuffs*, *supra* note 134, at 30.

science research also indicates that encampment sweeps can exacerbate the harms of drug use, including increasing the risk of overdose and death.¹⁷⁵

These harms disproportionately fall on already marginalized communities and exacerbate racial disparities. As discussed *supra* Section IV, because of systemic discrimination and exclusion, Black people, indigenous people, and other people of color are overrepresented among the unhoused population.¹⁷⁶ There are also significant racial disparities in enforcement of laws that criminalize life-sustaining activities such as sleeping or standing. For example, in 2019 in the City of Los Angeles, 63% of all citations for “Loitering-Standing” were issued to Black people.¹⁷⁷ People with disabilities are also overrepresented among the unhoused population. According to some estimates, nearly half of unhoused people have a disability, compared to just over 13 percent of the general population.¹⁷⁸ Laws that restrict where, when, and how a person can exist in public also may impose a disproportionate burden on people with disabilities.¹⁷⁹ For example, complying with a camping restriction that limits how long a person may stay in one place will be particularly challenging for a person with a mobility disability. And during encampment sweeps, cities routinely destroy items that are essential to people with disabilities, such as medication, eyeglasses, wheelchairs, and walkers.¹⁸⁰

Criminalizing homelessness is also expensive. An audit of a Los Angeles anticamping law enacted in 2021 showed that in its first three years, just two unhoused people had been provided permanent housing while more than \$3 million had been spent on implementation and enforcement.¹⁸¹ In Seattle, enforcing just one “quality-of-life” law cost the city \$2.3 million over five years.¹⁸² And in 2015, after spending \$20.6 million enforcing similar laws, a San Francisco

¹⁷⁵ J.L. Goldshear et al., “Notice of Major Cleaning”: A Qualitative Study of the Negative Impact of Encampment Sweeps on the Ontological Security of Unhoused People Who Use Drugs, 339 J. of Soc. Sci. & Med. 116408 (Dec. 2023), <https://perma.cc/UKQ9-FTC6>. One modeling study estimated that involuntary displacement of unhoused people who inject drugs may contribute to between 15.6% and 24.4% of additional deaths over a 10-year period. See Joshua A. Barocas JA et al., *Population-Level Health Effects of Involuntary Displacement of People Experiencing Unsheltered Homelessness Who Inject Drugs in US Cities*, 329 JAMA 1478, 1748–86 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10087093/>.

¹⁷⁶ Wiltz, ‘A Pileup of Inequities’, *supra* note 89.

¹⁷⁷ Laws. Comm. for Civ. Rs. Of the San Francisco Bay Area, *Cited for Being in Plain Sight*, *supra* note 153, at 5. 16.

¹⁷⁸ *Who Experiences Homelessness? People with Unaddressed Health Conditions*, Nat’l All. to End Homelessness, <https://perma.cc/763P-5AYD>; *Anniversary of Americans With Disabilities Act: July 26, 2024*, U.S. Census Bureau (June 12, 2024), <https://perma.cc/HNA2-RKTY>.

¹⁷⁹ Disability Rts. Educ. & Defense Fund, *Legal Advocacy for Unhoused People with Disabilities* 8 (2025), <https://perma.cc/ETE2-Y9U4>.

¹⁸⁰ Ruth Talbot et al., *Swept Away*, ProPublica, Oct. 29, 2024, <https://perma.cc/2P2U-WXET>.

¹⁸¹ *Audit of LA’s Anti-Camping Law Shows About \$3 Million Spent and Just Two People Given Permanent Housing*, CBS News, May 31, 2024, <https://perma.cc/ZR5U-XL5X>.

¹⁸² See Joshua Howard, David Tran & Sara Rankin, *At What Cost: The Minimum Cost of Criminalizing Homelessness in Seattle and Spokane*, Homeless Rights Advocacy Project iii (2015), <https://perma.cc/77HD-GBYJ>.

budget analysis found that the “[c]urrent [e]nforcement [m]easures are [t]oo [e]xpensive” with “[l]imited [r]esults.”¹⁸³ Involving police in encampment operations is also a major cost. A HUD analysis found that police department costs accounted for around 25% of all encampment-related costs in Chicago, Illinois, Houston, Texas, and Tacoma, Washington.¹⁸⁴ This is an inefficient way to address homelessness. Indeed, enforcing laws that criminalize homelessness can cost over three times what it would to provide permanent supportive housing.¹⁸⁵

By positioning law enforcement as an “indispensable partner[] in addressing unsheltered homelessness, behavioral health crises, and the public safety challenges associated with homelessness,” the Notice may also increase the likelihood that unhoused people are subject to involuntary civil commitment proceedings.¹⁸⁶ The involuntary civil commitment system uses civil courts to force individuals with serious mental health conditions into treatment and locked institutions, but is operationalized through partnership with law enforcement. In every state, police can initiate forced hospitalization—also known as an emergency psychiatric hold—that typically lasts 72 hours while a court decides whether the person should be involuntarily committed.¹⁸⁷ And, in most states, “law enforcement—not medical personnel—are responsible for transporting people to the [mental health] facility once the court has committed them.”¹⁸⁸ As discussed, *supra* Section I, when read in conjunction with the administration’s larger effort to target unhoused people for civil commitment, there is a real risk that the increased law enforcement role encouraged by the Notice will funnel unhoused people into involuntary treatment and commitment.

d. The Notice's Law Enforcement Activity Risks Violating Unhoused People's Rights.

There is a substantial risk that the law enforcement activity that HUD seeks to incentivize could violate the rights of unhoused individuals. The Notice does not acknowledge the civil rights and liberties of the population it is intended to serve and provides no guardrails that would prevent law enforcement from violating these rights. Following the Supreme Court’s decision in *Grants Pass v. Johnson*, the U.S. Constitution’s cruel and unusual punishments clause no longer

¹⁸³ Budget & Leg. Anlyst’s Office, City & Cnty. of San Francisco, *Homelessness and the Cost of Quality of Life Laws* 1-2 (June 1, 2016), <https://perma.cc/QZZ8-WGHJ>.

¹⁸⁴ U.S. Dep’t of Hous. & Urban Dev., *Exploring Homelessness Among People Living in Encampments and Associated Cost*, 35 (Feb. 2020), <https://perma.cc/F325-X8RZ>.

¹⁸⁵ Gregory Shinn, *The Cost of Long-Term Homelessness in Central Florida*, ReThink Homelessness, <https://perma.cc/HLE9-XBXP>.

¹⁸⁶ 91 Fed. Reg. at 57915.

¹⁸⁷ Emily Widra, *Involuntary Commitment: How Forced Hospitalization Expands the Criminal Legal System*, The Prison Pol’y Initiative (July 21, 2026), <https://perma.cc/ZMF3-GNAU>.

¹⁸⁸ *Id.*; see also Marvin S. Swartz, Megan Moore & Katie Lazar, *State Laws on Law Enforcement Custody and Transportation in the Process of Involuntary Civil Commitment*, 76 *Psychiatric Servs. Online* 437, 438 (2025) (explaining that law enforcement remains the default transportation provider nationwide for individuals subjected to involuntary civil commitment”).

prohibits cities and states from enforcing sleeping bans, but other legal principles continue to protect unhoused individuals from law enforcement abuse.¹⁸⁹

For example, the U.S. Constitution’s Fourth Amendment prohibits indiscriminate seizure and destruction of unhoused individuals’ property during encampment sweeps.¹⁹⁰ The Fourteenth Amendment’s Due Process Clause also requires cities to provide adequate advanced notice prior to removing unhoused people’s property from an encampment and to store unattended property and provide an opportunity to reclaim seized property.¹⁹¹ Any activity related to encampments that HUD seeks to incentivize would have to respect these rights, yet nowhere in the Notice does HUD mention the need for sufficient advanced notice of encampment operations or procedures to protect unhoused people’s property from destruction. The Notice’s focus on clearing encampments also risks incentivizing state activities that destroy life-sustaining items—such as shelter from the elements, medication and medical devices—and that push unsheltered communities into more dangerous locations, which could violate the Fourteenth Amendment’s state created danger doctrine. Under that doctrine, clearing homeless encampments may violate the Fourteenth Amendment where state conduct exposes residents to increased risk of significant harm.¹⁹² The void-for-vagueness doctrine also restricts the use of broadly worded laws—including those prohibiting loitering, vagrancy, panhandling, and lodging in public—to address poverty and homelessness.¹⁹³ By incentivizing policing of unhoused communities, the Notice risks promoting the arbitrary and discriminatory enforcement of vague laws that this doctrine protects against.

Any law enforcement activity incentivized by HUD would also have to comply with the ADA. This includes providing reasonable accommodations to individuals with disabilities during encampment sweeps or while enforcing ordinances.¹⁹⁴ Under the ADA, the government must take affirmative steps to avoid unduly burdening unsheltered people with disabilities during

¹⁸⁹ See *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024).

¹⁹⁰ See e.g., *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1029 (9th Cir. 2012); *Coal. on Homelessness v. City & Cnty. of San Francisco*, No. 22-CV-05502-DMR, 2025 WL 1667130, at *21 (N.D. Cal. June 12, 2025).

¹⁹¹ See, e.g., *Phillips v. City of Cincinnati*, 479 F. Supp. 3d 611, 646 (S.D. Ohio 2020); *People of City of L.A. Who Are Un-Housed v. Garcetti*, No. LA CV 21-06003-DOC (KES), 2023 WL 8166940, at *16 (C.D. Cal. Nov. 21, 2023).

¹⁹² See, e.g., *Prado v. City of Berkeley*, No. 23-CV-04437-EMC, 2024 WL 3697037, at *29 (N.D. Cal. Aug. 6, 2024); *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1091–92 (E.D. Cal. 2012); *Phillips v. City of Cincinnati*, 479 F. Supp. 3d 611, 649 (S.D. Ohio 2020).

¹⁹³ See, e.g., *Papachristou v. Jacksonville*, 405 U.S. 156, 168 (1972) (vagrancy); Complaint, *Clark v. Formella*, No. 1:25-cv-00379 (D.N.H. Sept. 30, 2025) (loitering); *Desertrain v. Los Angeles*, 754 F.3d 1147, 1156 (9th Cir. 2014) (anti-lodging); *Booher v. Marion Cnty.*, No. 507-CV-00282-WTHGRJ, 2007 WL 9684182 (M.D. Fla. Sept. 21, 2007) (panhandling).

¹⁹⁴ See *Tyson v. City of San Bernardino*, No. EDCV 23-01539, 2024 WL 3468832, at *5 (C.D. Cal. Jan. 12, 2024).

encampment operations, including by assessing disability needs and planning in advance to accommodate those needs.¹⁹⁵

The proposed law enforcement activity may also conflict with state constitutions and statutes. In some states, courts have interpreted state constitutions' prohibitions on cruel and unusual punishments to provide greater protection than the U.S. Constitution's Eighth Amendment. For example, in *Williams v. City of Albuquerque*, a New Mexico court found that enforcement of statutes prohibiting unhoused people from being in public spaces with their belongings could violate the state constitution's prohibition on cruel and unusual punishment and refused to follow the U.S. Supreme Court's decision in *Grants Pass*.¹⁹⁶ Similar challenges are ongoing in other states, including Washington,¹⁹⁷ Alaska,¹⁹⁸ and Colorado.¹⁹⁹ And the Kentucky state law criminalizing camping touted as "effective" in the Notice has been found unconstitutional by at least one state court.²⁰⁰ Other state constitutional provisions also provide strong protections for unhoused individuals that, in some cases, surpass the federal protections. For example, the Hawaii Constitution's Due Process Clause requires the government to hold a hearing *before* seizing and destroying unhoused people's property during encampment clearings.²⁰¹ And the Washington State Court of Appeals ruled that an ordinance enabling the clearing of encampments facially violated the state constitutional provision that protects people from being "disturbed in [their] private affairs, or [their] home invaded, without authority of law."²⁰²

The activity the Notice seeks to incentivize could also conflict with state statutes. For example, an Oregon statute, ORS 195.530, requires any regulation of unhoused people's survival acts, like sleeping or staying warm and dry, to be "objectively reasonable as to time place and manner" with regards to "the impact on persons experiencing homelessness."²⁰³ This statute was used to challenge an anti-camping ordinance that would have banned all camping from 8am to 8pm and within 250 feet of a long list of locations, resulting in a preliminary injunction

¹⁹⁵ *Id.* at *7.

¹⁹⁶ Memorandum Opinion and Order Granting in Part Plaintiff's Motion for a Preliminary Injunction at 7–8, *Williams v. City of Albuquerque*, No. D-202-CV-2022-07562 (N.M. Civ. Ct. Mar. 18, 2025).

¹⁹⁷ See *Kitchon v. City of Seattle*, No. 19-2-25729-6 SEA (Wash. Super. Ct. Oct. 1, 2019); *Currie v. City of Spokane*, No. 24-2-03708 (Wash. Super. Ct. Aug. 1, 2024).

¹⁹⁸ See *Aguila v. Mun. of Anchorage*, No. 3AN-25-04570CI (Alaska Super. Ct. Feb. 6, 2025); *Banks v. Anchorage*, No. 3AN-23-06779-CI (Alaska Super. Ct. Dec. 9, 2024).

¹⁹⁹ *Feet Forward v. City of Boulder*, No. 2022-CV-30341 (Colo. Dist. Ct. May 26, 2022).

²⁰⁰ Sylvia Goodman & Roberto Roldan, *Jefferson County Judge's Ruling Challenges Constitutionality of Unlawful Camping Ban*, Louisville Pub. Med., May 5, 2026, <https://perma.cc/WZD4-VMCR>.

²⁰¹ *Davis v. Bissen*, 545 P.3d 557 (Haw. 2024).

²⁰² *Kitchon v. City of Seattle*, No. 85583-2-I, 2024 WL 5040630, at *2, *9 (Wash. Ct. App. Dec. 9, 2024).

²⁰³ ORS 195.530(5).

preventing Portland from enforcing the ordinance.²⁰⁴ Incentivizing cities to enact and enforce harsh camping laws could conflict with this and similar state statutes.

Finally, to the extent the increased police presence encouraged by the Notice results in the expanded use of involuntary civil commitment pushed by the Executive Order, it risks incentivizing violation of unhoused people’s constitutional rights. Most involuntary civil commitments occur pursuant to state law.²⁰⁵ But the Constitution sets a floor below which those state practices cannot move. Involuntary civil commitment entails a massive curtailment of liberty that requires due process protections. A state may only subject an individual to involuntary civil commitment if they are found to be both “mentally ill” and dangerous.²⁰⁶ In addition, in most circumstances, both dangerousness and “mental ill[ness]” must be proven by clear and convincing evidence.²⁰⁷ The Executive Order does not recognize these constitutional limits, and encourages commitment of people who are “living on the streets and cannot care for themselves,” which may fall short of the due process requirements.²⁰⁸ This policy preference for involuntary civil commitment may also result in violations of the ADA and Section 504 . Under the ADA and Section 504, people with mental health conditions have a right to access treatment and services in the most integrated setting appropriate.²⁰⁹ The U.S. Supreme Court has applied that mandate to hold that the unjustified institutional isolation of individuals with disabilities in hospitals or other locked facilities is discrimination prohibited by the ADA.²¹⁰

VII. Conclusion

There is an urgent need to reduce homelessness in the United States. The federal government must meet this need by investing in approaches that are demonstrably effective and that respect the civil rights and liberties of unhoused individuals, survivors of gender-based violence, and other individuals experiencing housing insecurity. The approach to homelessness that this Notice seeks to incentivize, however, is ineffective, unsupported, harmful, and potentially unlawful. We urge HUD to withdraw this Notice and not to issue incentives or

²⁰⁴ See Alex Zielinski, *Judge halts enforcement of Portland’s camping ban*, OPB, Nov. 9, 2023, <https://perma.cc/6XM9-X2RF>.

²⁰⁵ See Hannah Alise Rogers, *Involuntary Civil Commitment: Fourteenth Amendment Due Process Protections*, Congressional Research Service 1 (May 24, 2023), <https://perma.cc/FLE6-Q8JP>.

²⁰⁶ See *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975); see also *Foucha v. Louisiana*, 504 U.S. 71, 80–86 (1992) (holding that dangerousness alone, without a showing of mental illness, is insufficient to support involuntary commitment).

²⁰⁷ See *Addington v. Texas*, 441 U.S. 418, 433 (1979) (holding that to “meet due process guarantees,” a state must present evidence sufficient to meet the “clear and convincing” standard in civil commitment proceedings).

²⁰⁸ See Executive Order §§ 2(a)(i)–(ii), 3(a)(iv).

²⁰⁹ 42 U.S.C. §§ 12131–34.

²¹⁰ See *Olmstead v. L.C.*, 527 U.S. 581 (1999); see also *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999) (cases interpreting either the ADA or Section 504 are “applicable and interchangeable”).



bonuses for the activities it describes. If you have any questions concerning these comments, please contact Scout Katovich, Senior Staff Attorney at the ACLU Trone Center for Justice and Equality, by email at skatovich@aclu.org.

Sincerely,

Scout Katovich
ACLU Trone Center for Justice and Equality

Trip Carpenter
ACLU Ruth Bader Ginsburg Center for
Liberty

Linda Morris
ACLU Women's Rights Project

Joseph Longley
ACLU Disability Rights Program