

Submission on Racial Segregation and the Right to Housing
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On Behalf of

Poverty & Race Research Action Council
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Before the
Inter-American Commission on Human Rights
Situation of the right to adequate housing in the Americas
Hearing—122nd Period of Sessions

The Poverty & Race Research Action Council and the Allard K. Lowenstein International Human Rights Clinic at Yale Law School (Clinic) submit this supplement to the Testimony of Maria Foscarinis, Esq. to address inter-American and international law on non-discrimination as applied to U.S. policies that segregate racial and ethnic minorities into separate and unequal housing and neighborhoods.

The Poverty & Race Research Action Council (PRRAC) is a non-partisan, national, not-for-profit organization convened by major civil rights, civil liberties and anti-poverty groups. PRRAC's purpose is to link social science research to advocacy work in order to address problems at the intersection of race and poverty. Its current housing policy work seeks to understand the causes and consequences of racial and economic segregation, and to propose meaningful solutions. The overarching goal of this analysis is to expand housing opportunities for poor people of color, which also serves to expand access to educational and employment opportunities, and to ameliorate related inequities in health, nutrition, crime victimization, and incarceration. PRRAC believes that international human rights standards provide a crucial framework for understanding and responding to these issues in the United States.

The Clinic undertakes numerous litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. The Clinic's work is based on the human rights standards contained in international customary and conventional law. In recent years, the Clinic has focused increasing attention on efforts to ensure respect for international human rights standards in the United States.

I. Introduction

Inter-American and international law make clear that the enjoyment of social and economic rights, including the right to housing, cannot be considered in isolation from the fundamental principles of equal protection and non-discrimination. The Inter-American Court has previously found that the prohibition against discrimination “is a fundamental principle that permeates all laws.”¹ Because discrimination in housing substantially affects access to many

¹ Inter-Am. Ct. H.R., *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 of Sept. 17, 2003, Ser. A No. 18 (2003), para. 101.

other essential institutions – education, health care, the labor market – protection against discrimination is especially necessary in the context of housing.

The need to consider non-discrimination as an integral part of this Commission’s analysis of the housing situation in the United States is highlighted by the dramatic patterns of racial segregation that characterize U.S. neighborhoods.² African Americans are concentrated in high-poverty inner-city ghettos in large and small metropolitan areas throughout the United States.³ These economically and racially isolated neighborhoods tend to have inferior public schools, diminished access to employment opportunities, inadequate access to essential goods and services such as food stores and banking services, higher concentrations of poverty and crime,⁴ and significant negative health impacts.⁵ These disadvantages reinforce the already marginal position of one of the most vulnerable sectors of society.⁶

Current patterns of racial segregation are a direct result of several decades of state-sponsored discrimination against African Americans in the United States. Rather than alleviating racial segregation, as required by domestic laws, the government instituted several policies that significantly contributed to housing segregation. In particular, the U.S. Department of Housing and Urban Development (HUD) and its predecessor agencies have administered U.S. public housing programs so as to confine its minority beneficiaries to geographically and economically isolated ghettos. Given this historical development of housing segregation, the effects of which are still apparent today, the right to housing in the United States cannot be analyzed in isolation from the right to non-discrimination.

Part II of this supplement outlines the inter-American and international law concerning the right to non-discrimination in housing. Part III considers the historical development of segregated housing in the United States in relation to these international standards.

² Of 272 metropolitan areas surveyed in the 2000 United States Census, 74 are classified as “hypersegregated,” 160 as “partially segregated,” and 83 as “less segregated.” Edward L. Glaeser, *Racial Segregation in the 2000 Census: Promising News*, BROOKINGS INSTITUTION SURVEY SERIES (2001), at 4. Although the title of the paper refers to patterns of declining segregation over the past twenty years, the pattern is far from equal. As the author notes, “[t]he large number of metropolitan areas with extremely high levels of segregation remains quite striking.” *Id.*

³ Just over half (51.5%) of African Americans live in inner-city neighborhoods; an additional third (36.0%) live in metropolitan areas outside the inner-city, while only a small percentage (12.5%) live in rural areas; the comparable number for white non-Hispanics in the United States are: 21.1% (inner-city), 56.8% (metropolitan area), and 22.1% (non-metropolitan area). U.S. CENSUS BUREAU, *THE BLACK POPULATION IN THE UNITED STATES: MARCH 2002*, 2 (2003), available at <http://www.census.gov/prod/2003pubs/p20-541.pdf>.

⁴ See generally MASSEY & DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 115-47 (1993); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN* (1996) (describing how the loss of blue-collar jobs and the suburbanization of employment, combined with continued patterns of residential racial segregation, isolate inner-city minorities, and especially African Americans, in jobless poverty tracts).

⁵ A.J. Schulz et al., *Racial and spatial relations as fundamental determinants of health in Detroit*, 80 MILBANK QUART 677 (2002), discussed in Becky Ham, *Segregated Neighborhoods Lead to Poor Health*, HEALTH BEHAVIOR NEWS SERVICE (2002), available at <http://www.hbns.org/news/neighbor12-20-02.cfm>.

⁶ MASSEY & DENTON, *supra* note 4, at 148 (“[A]s long as U.S. cities remain segregated—indeed, hypersegregated—the United States cannot claim to have equalized opportunities for blacks and whites. In a segregated world, the deck is stacked against black socioeconomic progress, political empowerment, and full participation in the mainstream of American life.”).

II. Inter-American and International Law Prohibit Discriminatory Practices in the Provision of Public Benefits, Including Segregation in Housing

A. *Inter-American Law Prohibits Discrimination in the Provision of Public Benefits and Requires States to Take Affirmative Steps to Prevent Such Discrimination*

The principle of equal protection “is linked to the essential dignity of the individual” and is one of the most fundamental norms of the American and international community.⁷ In the inter-American system, this principle is reaffirmed and protected by the OAS Charter,⁸ the American Declaration on the Rights and Duties of Man,⁹ and the American Convention on Human Rights.¹⁰ This right is deemed so fundamental that the Inter-American Court has declared that “the principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws,” and binds all States regardless of whether they are party to particular treaty.¹¹

Although neither the Inter-American Court nor this Commission has directly addressed the question of segregation in housing, the Court has declared the general principle that no State can engage in discrimination in the provision of fundamental rights and benefits.¹² This Commission has also specifically noted that States must work to eliminate racial and ethnic discrimination in the provision of economic and social benefits.¹³ Moreover, guarantees to the right to housing in inter-American law emphasize that the right inheres equally in every person and should be enjoyed by all sectors of the population.¹⁴

⁷ Inter-American Ct. H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, January 19, 1984, Advisory Opinion OC-4/84, Ser. A No. 4 (1984), para. 54.

⁸ Charter of the Organization of America States, Apr. 30, 1948, 119 U.N.T.S. 3, 2 U.S.T. 2394, *entered into force* Dec. 13, 1951, amended 721 U.N.T.S. 324, *entered into force* Feb. 27, 1990, O.A.S.T.S. Nos. 1-C, 61, arts. 3(1), 45(a) [hereinafter OAS Charter].

⁹ American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. Res. XXX, Int’l Conference of Am. States, 9th Conference, OAS Doc. OEA/Ser.L/V/I.4 Rev. XX (1948), art. 2 [hereinafter American Declaration].

¹⁰ American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123, O.A.S.T.S. No. 36, at 1, OEA/Ser.L/V/II.23 doc. rev. 2, 9 I.L.M. 673 (1970), *entered into force* July 18, 1978, arts. 1(1), 24.

¹¹ Inter-Am. Ct. H.R., *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 of Sept. 17, 2003, Ser. A No. 18 (2003), para. 101 (emphasis added).

¹² *See id.* at para. 100 (“The principle of equality before the law and non-discrimination permeates every act of the powers of the State, in all their manifestations, related to respecting and ensuring human rights.”).

¹³ *See, e.g.,* Inter-Am. Comm. H.R., *Annual Report of the Inter-American Commission on Human Rights 2001*, OEA/ser. L/V/II.114 doc. 5 rev. (2001), ch. 5 (instructing the Government of Peru to “improve access to the public services, including health and education, for the native communities, to offset the existing discriminatory differences, and to provide them dignified levels in keeping with national and international standards”); *Id.* at ch. 6 (“We reaffirm the necessity of eliminating racial discrimination against migrants, including migrant workers, in relation to issues such as employment, social services, including education and health, as well as access to justice. . . .”).

¹⁴ OAS Charter, *supra* note 8, art. 34 (k): “To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals . . . [:] (k) Adequate housing for all sectors of the population.”; American Declaration, *supra* note 9, art. 11: “Every person has

The Inter-American Court has declared that a State's obligation to respect equal protection of the laws requires more than the mere cessation of practices of formal discrimination; the State also has a duty to take affirmative steps to remedy past discrimination and combat discrimination wherever it exists.¹⁵

B. *International Law Supports Inter-American Law on Non-Discrimination and Specifically Prohibits Racial Segregation in the Provision of Housing*

The principles articulated by the inter-American system – the right to be free of discrimination in the enjoyment of social and economic rights and States' duties to affirmatively protect that right – are explicitly supported by several sources of international law regarding the right to adequate housing. Moreover, international law specifically states that the elimination of discrimination in the provision of housing must include affirmative steps to prevent and dismantle segregation.

The Committee on Economic, Social and Cultural Rights has emphasized that “the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments [including] the principle of non-discrimination.”¹⁶

More recently, the Special Rapporteur on Adequate Housing has drawn attention to the problem of racial segregation within housing. The 2002 report of the Special Rapporteur considers discrimination and segregation as a priority issue in the realization of housing rights.¹⁷ The report notes that “The realization of the right to adequate housing in an environment free from racial discrimination will have a direct bearing on other congruent human rights, including the right to life, the right to an adequate standard of living, the right to freedom of movement and residence, the right to protection against arbitrary or unlawful interference with privacy, family and home, and the right to popular participation.”¹⁸

Like inter-American law, international law requires States to take affirmative steps to prevent discrimination. The International Convention on the Elimination of All Forms of Racial

the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by public and community resources.”

¹⁵ Inter-Am. Ct. H.R., *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 of Sept. 17, 2003, Ser. A No. 18 (2003), paras. 103-04. (“In compliance with this obligation, States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of de jure or de facto discrimination. . . . In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons.”).

¹⁶ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003), para 9.

¹⁷ REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, MR. MILOON KOTHARI, TO THE COMMISSION ON HUMAN RIGHTS, 1 March 2002, E/CN.4/2002/59, paras. 37-48.

¹⁸ REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, MR. MILOON KOTHARI, TO THE COMMISSION ON HUMAN RIGHTS, 1 March 2002, E/CN.4/2002/59, para. 38.

Discrimination (CERD), ratified by the United States in 1994, imposes on States the obligations not to engage in racial discrimination,¹⁹ to reform any laws or regulations that have the effect of creating or perpetuating discrimination,²⁰ and to ensure the equal enjoyment of rights,²¹ including the right to housing.²²

Moreover, international law specifically declares that residential segregation violates the principle of non-discrimination. The Convention Against Racial Discrimination (CERD) “particularly condemn[s] racial segregation and apartheid” and requires States to “undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”²³ The obligation to eradicate segregation requires States not only to cease from implementing policies promoting segregation, but also to take positive measures to eliminate the lingering effects of past discrimination.²⁴ The Committee has also noted that patterns of partial segregation can emerge from the interaction of racial discrimination and economic inequality;²⁵ and thus the obligation to eliminate segregation can exist even in the absence of *any* past discriminatory initiative or involvement by public authorities.²⁶ Additionally, States have the duty to ensure that private providers of protected rights or opportunities—such as housing—do not operate to create or perpetuate racial discrimination either in purpose or in effect.²⁷

Inter-American and international law dictate that States must provide housing—or any other public benefit—according to the principles of equal protection and non-discrimination. The creation and maintenance of segregated housing patterns clearly contravene these principles. By instituting and perpetuating a system of race-based segregation in housing, the United States has thus violated and continues to violate the *jus cogens* norm of non-discrimination.

III. The Current Patterns of Racial Segregation in the United States Have Resulted Directly from the History of Discriminatory U.S. Housing Policies

Residential segregation by race in the United States stems largely from a long history of discrimination in state and federal policies. The U.S. government has openly acknowledged

¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, Article 2(1)(a).

²⁰ *Id.* art. 2(1)(c).

²¹ *Id.* art. 5.

²² *Id.* art. 5(e)(iii).

²³ International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 19, art. 3.

²⁴ Committee on the Elimination of Racial Discrimination, General Recommendation 19, The prevention, prohibition and eradication of racial segregation and apartheid, (Forty-seventh session, 1995), U.N. Doc. A/50/18 at 140 (1995), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (2003). “[T]he obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State.” *Id.* at para. 2.

²⁵ *Id.* at para 3.

²⁶ *Id.* at para. 4.

²⁷ Committee on the Elimination of Racial Discrimination, General Recommendation 20, The guarantee of human rights free from racial discrimination, (Forty-eighth session, 1996), U.N. Doc. A/51/18, annex VIII at 124 (1996), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (2003), para. 5.

some of its intentionally segregative policies during the last several decades, but little has been done to remedy the long-lasting effects of that racial history.

Until the recent past, national and local governments in the United States promoted thorough and systemic racial segregation throughout the country.²⁸ Although black slavery was officially ended in 1863, a *de jure* system of racial discrimination in the United States persisted for the next hundred years. Racially discriminatory laws at the state and municipal level limited African Americans' freedom of movement, their ability to work in certain professions or to own land, and their access to public accommodations and social services, including public education. Police harassment of African Americans and racially restrictive covenants promoted by white homeowners associations helped maintain racial segregation in U.S. cities.²⁹

In 1954, the U.S. Supreme Court ruled in *Brown v. Board of Education* that the racial segregation of school children was unconstitutional.³⁰ However, integration was greatly resisted. The 1960s and 1970s were characterized by patterns of "white flight," in which white middle-class and working-class families systematically moved out of cities into racially homogenous suburbs. State and federal policies encouraged this flight and sustained and exacerbated residential segregation in the United States. These policies included segregative public housing siting decisions and urban renewal programs as well as race-based tenant selection and assignment policies. Racially restrictive suburban mortgage insurance programs, racially divisive urban renewal and relocation programs, and federal transportation policies that divided African American neighborhoods further contributed to housing segregation. Moreover, by delegating uncontrolled land-use discretion to local governments, the federal government permitted states and municipalities to routinely exclude lower-cost housing occupied by African-American and Latino residents from their jurisdictions.³¹ U.S. government complicity in racial segregation has been openly acknowledged by federal housing officials since at least 1970³² and has been confirmed by numerous federal court decisions.³³

²⁸ MASSEY & DENTON, *supra* note 4, at 42-50; *Thompson v. U.S. Dept. of Housing and Urban Development*, 348 F.Supp.2d 398, 405 (2005).

²⁹ See Owen Fiss, *What Should Be Done For Those Left Behind?*, in *A WAY OUT: AMERICA'S GHETTOS AND THE LEGACY OF RACISM* 8 (Joshua Cohen et al. eds., 2003).

³⁰ *Brown v. Board of Education*, 347 U.S. 483 (1954).

³¹ For summaries of these historical policies, see, e.g. SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* (2004) and MASSEY & DENTON, *supra* note 4, at 115-47.

³² In 1970, Secretary George Romney admitted that "the Federal government – through past or present policies – has contributed to the creation of segregated housing patterns," and that past federal housing policies were "clearly indefensible." Statement of George Romney, Secretary, Department of Housing and Urban Development, Before the Senate Select Committee on Equal Educational Opportunity at 2-3 (Aug. 26, 1970). Secretary Romney also conceded that the Fair Housing Authority had engaged in "both official and informal Federal encouragement of racial segregation" by doing such things as refusing to provide insurance in integrated neighborhoods, promoting the use of racially restrictive covenants, and red-lining practices that denied insurance coverage in central city areas. *Id.*

Twenty-five years later, Roberta Achtenberg, HUD Assistant Secretary for Fair Housing stated that "the federal government, including HUD, has a long history of having precipitated and perpetuated housing discrimination, there can be no question. At their inception, federal housing programs incorporated many of the prevailing practices of the private housing market and were explicitly discriminatory as a result. And as new housing programs have evolved, successive administrations, Democratic and Republican, have repeatedly missed opportunities to combat discrimination. . . . Federal programs to assist low-income renters have helped concentrate poor, minority families in poor, minority neighborhoods, limiting housing choice and fostering social division. Originally, public-housing

The passage of the Civil Rights Act 1964 and the Fair Housing Act of 1968 placed an affirmative obligation on the administrative agencies to “prevent discrimination in federally assisted programs.”³⁴ Yet despite official mandates to ensure equal opportunity in housing,³⁵ the U.S. government’s participation in fostering and sustaining racially segregated housing remained pervasive. Not only has the United States failed in its duty under national, regional, and international law to dismantle segregation; it has actively perpetuated racial segregation through its public housing policies over the past four decades and continues to do so today.

The U.S. Department of Housing and Urban Development (HUD) was established in 1965 and today provides housing assistance for millions of families and individuals. From 1965 to the present, the implementation of HUD policy has reinforced patterns of residential segregation through two main sources. First, HUD officials assigned tenants to public housing in a racially discriminatory manner, assigning white beneficiaries to public housing located in white, mixed-income neighborhoods, and minority families to housing facilities located in minority, high-poverty neighborhoods. Second, in cities where public housing programs serve overwhelmingly minority populations, HUD has chosen to situate public housing facilities in almost exclusively in minority neighborhoods.³⁶

Through these practices, HUD has willfully contributed to creating racially isolated and economically poor minority communities in major cities throughout the United States.³⁷ National courts have found these discriminatory practices in violation of U.S. law. In 1969, in *Gautreaux v. Chicago Housing Authority*, a U.S. District Court found that HUD had deliberately reinforced racially segregated neighborhoods in Chicago by employing discriminatory site selection processes and by discriminating against tenants when assigning them to sites.³⁸ In this same case, housing officials explicitly stated their intent to locate new housing development sites in predominately African-American neighborhoods, despite their statutory obligations to take

regulations and handbooks encouraged the assignment of families to projects on the basis of their race and the racial composition of the surrounding neighborhoods. And since the passage of civil rights legislation in the 1960s, efforts to desegregate existing projects, ensure equal access to new HUD programs, and open up subsidized housing opportunities in a wider variety of settings have been largely ineffective.” Roberta Achtenberg, *Shaping American Communities: Segregation, Housing and the Urban Poor*, 143 U. PA. L. REV. 1191, 1193 (1995).

³³ See, e.g., *Hills v. Gautreaux*, 425 U.S. 284 (1976); *NAACP v. HUD*, 817 F.2d 149, 151 (1st Cir.1987); *Thompson v. HUD*, 348 F.Supp.2d 398, 405 (D. Md. Jan. 6, 2005).

³⁴ Civil Rights Act of 1964, 42 U.S.C. 2000 (1964). See also Fair Housing Act, 42 U.S.C. 3601 (1968); Roisman Florence, *Long Overdue: Desegregation Litigation and Next Steps To End Discrimination and Segregation in Public Housing and Section 8 Exiting Housing Programs*, 4 CITYSCAPE 3 at 171 (1999).

³⁵ These include Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Section 109 of the Housing and Community Development Act of 1974. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACCOUNTABILITY REPORT 1-17 (2004), available at www.hud.gov.

³⁶ See *supra* at 6 & nn.31-32.

³⁷ MASSEY & DENTON, *supra* note 4, at 77.

³⁸ *Gautreaux v. Chicago Housing Authority*, 296 F.Supp 907, 910 (1968). When choosing areas for new projects, HUD vetoed 99½ percent of potential new housing developments in predominantly white neighborhoods, while approving approximately 10 percent of public housing sites in black neighborhoods. *Id.* Moreover, HUD discriminated against African-American tenants when assigning them to public housing developments. Of the housing sites in predominantly white neighborhoods, each had less than 10 percent African-American occupancy, though the black community comprised about 90 percent of those individuals eligible for public housing in Chicago in 1968. *Id.* at 909.

affirmative steps to integrate public housing.³⁹ HUD officials also confessed to using a “quota system,” designed to severely limit the number of black families occupying housing in Chicago’s public housing buildings that were predominately white.⁴⁰ Although the court ordered Chicago to desegregate its public housing, city officials resisted the court mandate for decades, while HUD-sponsored segregation continued.⁴¹

After *Gautreaux*, HUD adopted regulations requiring it to take into account the “disadvantage of increasing or perpetuating racial concentration” as an important factor when selecting housing sites.⁴² However, the U.S. government made no serious effort to address the segregated siting of existing public housing, and, despite its own regulations, HUD continued to discriminate in the siting of new public housing developments.⁴³

Gautreaux does not represent an isolated incident in the story of segregated housing in the United States. HUD’s active role in the discriminatory allocation of public housing has formed a consistent pattern that affects many geographic areas and extends throughout the last three decades. HUD continued to face court challenges to its policies and practices during the 1970s, 1980s, and 1990s.⁴⁴ For example, in 1985, the U.S. Court of Appeals for the Eighth Circuit found that HUD discriminated against African Americans when distributing public housing in Texarkana, Arkansas.⁴⁵ Ample evidence demonstrates that HUD has acted throughout the last several decades to sustain and exacerbate housing segregation.⁴⁶

Even today, allegations remain that HUD continues to enact discriminatory policies and has failed to remedy the effects of its past discrimination. In 2005, African-American tenants in Maryland filed suit against HUD, claiming that its practices constituted current discrimination and that HUD failed to take effective remedial measures towards eliminating existing segregation in public housing.⁴⁷ The plaintiffs further claim that HUD continued to open new housing developments in areas with predominately African-American and high-poverty populations.⁴⁸

³⁹ *Id.* at 912.

⁴⁰ *Id.* at 909.

⁴¹ Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. ON POVERTY L. & POL’Y 35, 48 (2002).

⁴² MASSEY & DENTON, *supra* note 4, at 201-02.

⁴³ *Shannon v. Department of Housing and Urban Development*, 436 F.2d 809, 822 (1985).

⁴⁴ For a list of desegregation cases pending or recently settled against HUD in the mid 1990s, see Florence Roisman, *supra* note 34, Appendix.

⁴⁵ *Clients’ Council v. Pierce*, 778 F.2d 518, 519 (1985). HUD was also implicated for funding segregated housing sites, as well as constructing more than 121 new sites in Texas, all of which were completely segregated. The court further found that African-American tenants were overrepresented in “low-rent” housing in East Texas, and occupied the majority of the buildings with older insurance even though the demand for housing between the African-American and white communities was “roughly equivalent.”

⁴⁶ *Thompson v. U.S. Dept. of Housing and Urban Development*, 348 F.Supp.2d 398, Plaintiffs Statement of Material Facts submitted in Support of their Pre-Trial Memorandum, (N.D. Md. 2005) (hereinafter Plaintiff’s Statement of Material Fact), available at www.aclu-md.org.

⁴⁷ *Thompson v. U.S. Dept. of Housing and Urban Development*, 348 F.Supp.2d 398 (2005).

⁴⁸ *Id.*; Plaintiffs Statement of Material Facts at 7 (2005).

In the last decade, HUD has not only failed to take any significant steps to alleviate segregation in U.S. public housing,⁴⁹ it has continued to resist desegregating its housing systems.⁵⁰ The United States has not fulfilled its obligation to dismantle patterns of housing segregation and discrimination. Instead, HUD continues to play a major role in establishing racially segregated public housing and maintaining racially isolated communities in U.S. urban centers.

Conclusion

Through decades of intentional and discriminatory practices, the United States has perpetuated a system of segregated housing. Any discussion of the right to housing in the United States must take into account the implications of these past and present practices of discrimination. Whatever the scope of the U.S. obligation to provide public housing, inter-American and international law clearly dictate that States may not discriminate in the provision of any public benefit. By instituting and failing to dismantle a system of housing that concentrates racial minorities in segregated communities with high levels of crime, substandard schools, and poverty, the United States has failed and continues to fail to meet its obligations under inter-American and international law.

Thank you for the opportunity to present these additional comments.

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⁴⁹ Roisman, *supra* note 34, at 173.

⁵⁰ *Gautreaux v. Chicago Housing Authority*, 2004 WL 1427107 (N.D.Ill.); *Davis v. New York City Housing Authority*, 1992 WL 420923 (S.D.N.Y.).